U.S. Department
of Transportation
**Maritime
Administration**

COMPILATION OF MARITIME LAWS

[As amended through the second session of the 109th Congress]

JANUARY, 2007

Prepared by the Office of Chief Counsel, Maritime Administration
1200 New Jersey Avenue, SE. Washington, DC 20590
Tel. No. 202-366-5711, Fax. No. 202-366-7485

PREFACE

Each year since 1995, the Maritime Administration has published the Compilation of Maritime Laws as an essential reference for its Agency leadership and staff. The Compilation is also widely used by the 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. This publication has been changed considerably from earlier editions to reflect the codification of Title 46 Appendix, United States Code, in Public Law 109-304. An Index giving the old and new citations for various provisions of law has been included at the very end to help the reader find new section numbers.

This convenient volume is current through the second session of the 109th Congress. While this Compilation is 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.

Elizabeth Megginson
Chief Counsel
Maritime Administration

TABLE OF CONTENTS

CHAPTER 1 - DEFINITIONS.
46 U.S.C. 101. Agency. 1
46 U.S.C. 102. Barge 1
46 U.S.C. 103. Boundary Line 1
46 U.S.C. 104. Citizen of the United States 1
46 U.S.C. 105. Consular officer 1
46 U.S.C. 106. Documented vessel 1
46 U.S.C. 107. Exclusive economic zone. [Footnote with text] 2
46 U.S.C. 108. Fisheries 2
46 U.S.C. 109. Foreign commerce or trade 3
46 U.S.C. 110. Foreign vessel 3
46 U.S.C. 111. Numbered vessel 3
46 U.S.C. 112. State 3
46 U.S.C. 113. Undocumented 3
46 U.S.C. 114. United States 3
46 U.S.C. 115. Vessel 3
46 U.S.C. 116. Vessel of the United States 4

General Definition of Vessel.
1 U.S.C. 3. Vessel Definition 4

Definition of United States.
50 U.S.C. 195. "United States" Defined 4

MARITIME ADMINISTRATION.
49 U.S.C. 109. Maritime Administration 5

Maritime Administration Funding 7
Authorizations.
FY 2004 - 2008. Section. 3511 of Public Law 108-136.
FY 2007 - Section. 3501 of Public Law 109-364.
Arctic Sea Route Study - Section 412 of Public Law 109-241.
Appropriations.
FY 2006 - Public Law 109-115 (119 STAT. 2421).
FY 2007 - Public Law 109-383, Continuing Resolution.

CHAPTER 3 - FEDERAL MARITIME COMMISSION.

46 U.S.C. 301. General organization.....11
46 U.S.C. 302. Quorum.....12
46 U.S.C. 303. Record of meetings and votes.....12
46 U.S.C. 304. Delegation of authority.....12
46 U.S.C. 305. Regulations.....12
46 U.S.C. 306. Annual report.....12
46 U.S.C. 307. Expenditures.....13

Federal Maritime Commission Funding.....13

Appropriations.

FY 2006 - Public Law 109-115 (119 STAT. 2479).
FY 2007 - Public Law 109-383. Continuing Resolution.

CHAPTER 5—OTHER GENERAL PROVISIONS.

46 U.S.C. 501. Waiver of navigation and vessel-inspection laws.....15
46 U.S.C. 502. Cargo exempt from forfeiture.....15
46 U.S.C. 503. Notice of seizure.....15
46 U.S.C. 504. Remission of fees and penalties.....15
46 U.S.C. 505. Penalty for violating regulation or order.....15

CHAPTER 121—DOCUMENTATION OF VESSELS.

Subchapter I - General.

46 U.S.C. 12101. Definitions.....17
46 U.S.C. 12102. Vessels requiring documentation.....17
46 U.S.C. 12103. General eligibility requirements.....17
46 U.S.C. 12104. Applications for documentation.....18
46 U.S.C. 12105. Issuance of documentation.....18
46 U.S.C. 12106. Surrender of title and number.....19
46 U.S.C. 12107. Wrecked vessels.....19

Subchapter II - Endorsements and Special Documentation.

46 U.S.C. 12111. Registry endorsement.....19
46 U.S.C. 12112. Coastwise endorsement.....21
46 U.S.C. 12113. Fishery endorsement.....22
46 U.S.C. 12114. Recreational endorsement.....24
46 U.S.C. 12115. Temporary endorsement for vessels procured outside the United States.....25

46 U.S.C. 12116. Limited endorsements for Guam, American Samoa, and Northern Mariana Islands 25
46 U.S.C. 12117. Oil spill response vessels 26
46 U.S.C. 12118. Owners engaged primarily in manufacturing or mineral industry 27
46 U.S.C. 12119. Owners engaged primarily in leasing or financing transactions 30
46 U.S.C. 12120. Liquified gas tankers 33
46 U.S.C. 12121. Small passenger vessels and uninspected passenger vessels 34
Subchapter III - Miscellaneous.
46 U.S.C. 12131. Command of documented vessels 34
46 U.S.C. 12132. Loss of coastwise trade privileges 35
46 U.S.C. 12133. Duty to carry certificate on vessel and allow examination 35
46 U.S.C. 12134. Evidentiary uses of documentation 35
46 U.S.C. 12135. Invalidation of certificates of documentation 35
46 U.S.C. 12136. Surrender of certificates of documentation 35
46 U.S.C. 12137. Recording of vessels built in the United States 36
46 U.S.C. 12138. List of documented vessels 36
46 U.S.C. 12139. Reports 37
Subchapter IV - Penalties.
46 U.S.C. 12151. Penalties 38
46 U.S.C. 12152. Denial or revocation of endorsement for non-payment of civil penalty 38

MANNING OF VESSELS.
46 U.S.C. 8101. Complement of Inspected Vessels 39
46 U.S.C. 8102. Watchmen 40
46 U.S.C. 8103. Citizenship and Navy Reserve Requirements 40
46 U.S.C. 8104. Watches 45
46 U.S.C. 8105. Fishing Vessel Exemption 47
46 U.S.C. 8106 Riding Gangs 47

DOD Riding Gang Member Requirements for U.S.-flag Vessels. Section 1018 of Public Law 109-364 50

Merchant Mariners Documents [Excerpts].

46 U.S.C. 8701. Merchant Mariner's Documents Required 52
46 U.S.C. 7302. Issuing Merchant Mariner's Documents and Continuous Discharge Books..... 53

CHAPTER 301—GENERAL LIABILITY PROVISIONS.

46 U.S.C. 30101. Extension of jurisdiction to cases of damage or injury on land 55
46 U.S.C. 30102. Liability to passengers 55
46 U.S.C. 30103. Liability of master, mate, engineer, and pilot 55
46 U.S.C. 30104. Personal injury to or death of seamen..... 56
46 U.S.C. 30105. Restriction on recovery by non-citizens and non-resident aliens for incidents in waters of other countries 56
46 U.S.C. 30106. Time limit on bringing maritime action for personal injury or death 56

CHAPTER 305—EXONERATION AND LIMITATION OF LIABILITY.

46 U.S.C. 30501. Definition 57
46 U.S.C. 30502. Application..... 57
46 U.S.C. 30503. Declaration of nature and value of goods 57
46 U.S.C. 30504. Loss by fire..... 57
46 U.S.C. 30505. General limit of liability..... 57
46 U.S.C. 30506. Limit of liability for personal injury or death 58
46 U.S.C. 30507. Apportionment of losses 58
46 U.S.C. 30508. Provisions requiring notice of claim or limiting time for bringing action 58
46 U.S.C. 30509. Provisions limiting liability for personal injury or death 59
46 U.S.C. 30510. Vicarious liability for medical malpractice with regard to crew..... 60
46 U.S.C. 30511. Action by owner for limitation..... 60
46 U.S.C. 30512. Liability as master, officer, or seaman not affected 61

CHAPTER 309—SUITS IN ADMIRALTY AGAINST THE UNITED STATES.

46 U.S.C. 30901. Short title 61
46 U.S.C. 30902. Definition 61
46 U.S.C. 30903. Waiver of immunity 61
46 U.S.C. 30904. Exclusive remedy 61
46 U.S.C. 30905. Period for bringing action 61
46 U.S.C. 30906. Venue 62
46 U.S.C. 30907. Procedure for hearing and determination 62
46 U.S.C. 30908. Exemption from arrest or seizure 62
46 U.S.C. 30909. Security 62
46 U.S.C. 30910. Exoneration and limitation 62
46 U.S.C. 30911. Costs and interest 62
46 U.S.C. 30912. Arbitration, compromise, or settlement 63
46 U.S.C. 30913. Payment of judgment or settlement 63
46 U.S.C. 30914. Release of privately owned vessel after arrest or attachment 63
46 U.S.C. 30915. Seizures and other proceedings in foreign jurisdictions 63
46 U.S.C. 30916. Recovery by the United States for salvage services 64
46 U.S.C. 30917. Disposition of amounts recovered by the United States 64
46 U.S.C. 30918. Reports 65

CHAPTER 311—SUITS INVOLVING PUBLIC VESSELS.

46 U.S.C. 31101. Short title 65
46 U.S.C. 31102. Waiver of immunity 65
46 U.S.C. 31103. Applicable procedure 65
46 U.S.C. 31104. Venue 65
46 U.S.C. 31105. Security when counterclaim filed 66
46 U.S.C. 31106. Exoneration and limitation 66
46 U.S.C. 31107. Interest 66
46 U.S.C. 31108. Arbitration, compromise, or settlement 66
46 U.S.C. 31109. Payment of judgment or settlement 66
46 U.S.C. 31110. Subpoenas to officers or members of crew 66
46 U.S.C. 31111. Claims by nationals of foreign countries 66
46 U.S.C. 31112. Lien not recognized or created 67
46 U.S.C. 31113. Reports 67

CIVIL PROCEDURES AND HOBBS ACT.

CIVIL PROCEDURES.
49 U.S.C. 336. Civil Penalty Procedures 67

ORDER OF FEDERAL AGENCIES, REVIEW - THE HOBBS ACT.
28 U.S.C. 2342. Jurisdiction of Court of Appeals 68
28 U.S.C. 2343. Venue 68
28 U.S.C. 2344. Review of Orders; Time, Notice, Contents of Petitions; Service 68
28 U.S.C. 2345. Prehearing Conference 69
28 U.S.C. 2346. Certification of Record on Review 69
28 U.S.C. 2347. Petitions to Review, Proceedings 69
28 U.S.C. 2348. Representation in Proceeding; Intervention 70
28 U.S.C. 2349. Jurisdiction of the Proceeding 70
28 U.S.C. 2350. Review in Supreme Court on Certiorari or Certification 71
28 U.S.C. 2351. Enforcement of Orders by District Courts 71

FEDERAL CIVIL PENALTIES INFLATION ADJUSTMENT ACT.
Public Law 101-410, as amended (28 U.S.C. 2461, note) 71

CHAPTER 313 - COMMERCIAL INSTRUMENTS AND MARITIME LIENS.
Subchapter I - General.
46 U.S.C. 31301. Definitions 74
46 U.S.C. 31302. Availability of instruments, copies, and information 75
46 U.S.C. 31303. Certain civil actions not authorized 75
46 U.S.C. 31304. Liability for noncompliance 75
46 U.S.C. 31305. Waiver of lien rights 75
46 U.S.C. 31306. Declaration of citizenship 75
46 U.S.C. 31307. State statutes superseded 76
46 U.S.C. 31308. Secretary of Commerce or Transportation as mortgagee 76
46 U.S.C. 31309. General civil penalty 76

Subchapter II - Commercial Instruments.

46 U.S.C. 31321. Filing, recording, and discharge 76
46 U.S.C. 31322. Preferred mortgages 78
46 U.S.C. 31323. Disclosing and incurring obligations before executing preferred mortgages 80
46 U.S.C. 31324. Retention and examination of mortgages of vessels covered by preferred mortgages 81
46 U.S.C. 31325. Preferred mortgage liens and enforcement 81
46 U.S.C. 31326. Court sales to enforce preferred mortgage liens and maritime liens and priority of claims 83
46 U.S.C. 31327. Forfeiture of mortgagee interest 83
46 U.S.C. 31329. Court sales of documented vessels 83
46 U.S.C. 31330. Penalties 84

Subchapter III - Maritime Liens.

46 U.S.C. 31341. Persons presumed to have authority to procure necessaries 85
46 U.S.C. 31342. Establishing maritime liens 85
46 U.S.C. 31343. Recording and discharging notices of claim of maritime lien 85

REGULATION OF OCEAN SHIPPING.

CHAPTER 401—GENERAL.

46 U.S.C. 40101. Purposes 87
46 U.S.C. 40102. Definitions 87
46 U.S.C. 40103. Administrative exemptions 91
46 U.S.C. 40104. Reports filed with the Commission 91

CHAPTER 403—AGREEMENTS.

Ch. 40301. Application 91
Ch. 40302. Filing requirements 92
Ch. 40303. Content requirements 92
Ch. 40304. Commission action 94
Ch. 40305. Assessment agreements 94
Ch. 40306. Nondisclosure of information 95
Ch. 40307. Exemption from antitrust laws 95

CHAPTER 405—TARIFFS, SERVICE CONTRACTS, REFUNDS, AND WAIVERS.

46 U.S.C. 40501. General rate and tariff requirements 96
46 U.S.C. 40502. Service contracts 98
46 U.S.C. 40503. Refunds and waivers 99

CHAPTER 407—CONTROLLED CARRIERS.

46 U.S.C. 40701. Rates 100
46 U.S.C. 40702. Rate standards 100
46 U.S.C. 40703. Effective date of rates 101
46 U.S.C. 40704. Commission review 101
46 U.S.C. 40705. Presidential review of Commission orders 102
46 U.S.C. 40706. Exceptions 102

CHAPTER 409—OCEAN TRANSPORTATION INTERMEDIARIES.

46 U.S.C. 40901. License requirement 102
46 U.S.C. 40902. Financial responsibility 102
46 U.S.C. 40903. Suspension or revocation of license 103
46 U.S.C. 40904. Compensation by common carriers 104

CHAPTER 411—PROHIBITIONS AND PENALTIES.

46 U.S.C. 41101. Joint ventures and consortiums 104
46 U.S.C. 41102. General prohibitions 104
46 U.S.C. 41103. Disclosure of information 105
46 U.S.C. 41104. Common carriers 106
46 U.S.C. 41105. Concerted action 107
46 U.S.C. 41106. Marine terminal operators 107
46 U.S.C. 41107. Monetary penalties 108
46 U.S.C. 41108. Additional penalties 108
46 U.S.C. 41109. Assessment of penalties 109

CHAPTER 413—ENFORCEMENT.

46 U.S.C. 41301. Complaints 110
46 U.S.C. 41302. Investigations 110
46 U.S.C. 41303. Discovery and subpoenas 111
46 U.S.C. 41304. Hearings and orders 111
46 U.S.C. 41305. Award of reparations 111
46 U.S.C. 41306. Injunctive relief sought by complainants 112
46 U.S.C. 41307. Injunctive relief sought by the Commission 112

46 U.S.C. 41308. Enforcement of subpoenas and orders 113
46 U.S.C. 41309. Enforcement of reparation orders 113

CHAPTER 421—REGULATIONS AFFECTING SHIPPING IN FOREIGN TRADE.

46 U.S.C. 42101. Regulations of the Commission 114
46 U.S.C. 42102. Regulations of other agencies..... 114
46 U.S.C. 42103. No preference to Government-owned vessels..... 115
46 U.S.C. 42104. Information, witnesses, and evidence 115
46 U.S.C. 42105. Disclosure to public 116
46 U.S.C. 42106. Other actions to remedy unfavorable conditions..... 116
46 U.S.C. 42107. Refusal of clearance and entry 116
46 U.S.C. 42108. Penalty for operating under suspended tariff or service contract..... 117
46 U.S.C. 42109. Consultation with other agencies..... 117

CHAPTER 423—FOREIGN SHIPPING PRACTICES.

46 U.S.C. 42301. Definitions..... 117
46 U.S.C. 42302. Investigations..... 118
46 U.S.C. 42303. Information requests 118
46 U.S.C. 42304. Action against foreign carriers 119
46 U.S.C. 42305. Refusal of clearance and entry 119
46 U.S.C. 42306. Submission of determinations to President 120
46 U.S.C. 42307. Review of regulations and orders 120

CHAPTER 441—EVIDENCE OF FINANCIAL RESPONSIBILITY FOR PASSENGER TRANSPORTATION.

46 U.S.C. 44101. Application..... 120
46 U.S.C. 44102. Financial responsibility to indemnify passengers for nonperformance of transportation 120
46 U.S.C. 44103. Financial responsibility to pay liability for death or injury 121
46 U.S.C. 44104. Civil penalty 121
46 U.S.C. 44105. Refusal of clearance..... 122
46 U.S.C. 44106. Conduct of proceedings 122

MERCHANT MARINE GENERAL.

CHAPTER 501—POLICY, STUDIES, AND REPORTS.

46 U.S.C. 50101. Objectives and policy 123
46 U.S.C. 50102. Survey of merchant marine 123
46 U.S.C. 50103. Determinations of essential services 124
46 U.S.C. 50104. Studies of general maritime problems 125
46 U.S.C. 50105. Studies and cooperation relating to the construction of vessels 125
46 U.S.C. 50106. Studies on the operation of vessels 125
46 U.S.C. 50107. Studies on marine insurance 126
46 U.S.C. 50108. Studies on cargo carriage and cargo containers 126
46 U.S.C. 50109. Miscellaneous studies 126
46 U.S.C. 50110. Securing preference to vessels of the United States 127
46 U.S.C. 50111. Reports to Congress 127
46 U.S.C. 50112. National Maritime Enhancement Institutes 128
46 U.S.C. 50113. Use and performance reports by operators of vessels 129

CHAPTER 503—ADMINISTRATIVE.

46 U.S.C. 50301. Vessel Operations Revolving Fund 130
46 U.S.C. 50302. Port development 131
46 U.S.C. 50303. Operating property and extending term of notes 132
46 U.S.C. 50304. Sale and transfer of property 132
46 U.S.C. 50305. Appointment of trustee or receiver and operation of vessels 133
46 U.S.C. 50306. Requiring testimony and records in investigations 134

VESSEL TRANSFER AUTHORITY. Sec. 3504 of PL 109-364 135

ECONOMY ACT. 31 U.S.C. 1535 135

CHAPTER 505—OTHER GENERAL PROVISIONS - CITIZENSHIP.

46 U.S.C. 50501. Entities deemed citizens of the United States 136
46 U.S.C. 50502. Applicability to receivers, trustees, successors, and assigns 137
46 U.S.C. 50503. Oceanographic research vessels 137
46 U.S.C. 50504. Sailing school vessels 137

AMERICAN FISHERIES ACT.

(Title II of Div. C of Public Law 105-277 (112 STAT. 2681).

Subtitle I - Fisheries Endorsements..... 139
Subtitle II - Bering Sea Pollock Fishery..... 140

MERCHANT MARINE SERVICE.

CHAPTER 511—GENERAL.

46 U.S.C. 51101. Policy 157
46 U.S.C. 51102. Definitions..... 157
46 U.S.C. 51103. General authority of Secretary of Transportation 157
46 U.S.C. 51104. General authority of Secretary of the Navy 158

CHAPTER 513—UNITED STATES MERCHANT MARINE ACADEMY.

46 U.S.C. 51301. Maintenance of the Academy..... 159
46 U.S.C. 51302. Nomination and competitive appointment of cadets 159
46 U.S.C. 51303. Non-competitive appointments 160
46 U.S.C. 51304. Additional appointments from particular areas..... 161
46 U.S.C. 51305. Prohibited basis for appointment..... 161
46 U.S.C. 51306. Cadet commitment agreements 162
46 U.S.C. 51307. Places of training 164
46 U.S.C. 51308. Uniforms, textbooks, and transportation allowances..... 165
46 U.S.C. 51309. Academic degree 165

46 U.S.C. 51310. Deferment of service obligation under cadet commitment agreements 165
46 U.S.C. 51311. Midshipman status in the Naval Reserve 166
46 U.S.C. 51312. Board of Visitors 166
46 U.S.C. 51313. Advisory Board 167
46 U.S.C. 51314. Limitation on charges and fees for attendance 167

CHAPTER 515—STATE MARITIME ACADEMY SUPPORT PROGRAM.

46 U.S.C. 51501. General support program 168
46 U.S.C. 51502. Detailing of personnel 168
46 U.S.C. 51503. Regional maritime academies 168
46 U.S.C. 51504. Use of training vessels 168
46 U.S.C. 51505. Annual payments for maintenance and support 170
46 U.S.C. 51506. Conditions to receiving payments and use of vessels 170
46 U.S.C. 51507. Places of training 171
46 U.S.C. 51508. Allowances for students 171
46 U.S.C. 51509. Student incentive payment agreements 171
46 U.S.C. 51510. Deferment of service obligation under student incentive payment agreements 174
46 U.S.C. 51511. Midshipman status in the Naval Reserve 174

CHAPTER 517—OTHER SUPPORT FOR MERCHANT MARINE TRAINING.

46 U.S.C. 51701. United States Maritime Service 174
46 U.S.C. 51702. Civilian nautical schools 175
46 U.S.C. 51703. Additional training 175
46 U.S.C. 51704. Training for maritime oil pollution prevention, response, and clean-up 176

CHAPTER 519—MERCHANT MARINE AWARDS.

46 U.S.C. 51901. Awards for individual acts or service 177
46 U.S.C. 51902. Gallant Ship Award 177
46 U.S.C. 51903. Multiple awards 178
46 U.S.C. 51904. Presentation to representatives 178
46 U.S.C. 51905. Flags and grave markers 178

46 U.S.C. 51906. Special certificates for civilian service to armed forces 178
46 U.S.C. 51907. Manufacture and sale of awards and replacements 178
46 U.S.C. 51908. Prohibition against unauthorized manufacture, sale, possession, or display of awards 179

CHAPTER 521—MISCELLANEOUS.

Reemployment rights for certain merchant seamen. 46 U.S.C. 52101 180

Protection of Seamen Against Discrimination. 46 U.S.C. 2114 181

CHAPTER 531 - MARITIME SECURITY FLEET.

46 U.S.C. 53101. Definitions 182
46 U.S.C. 53102. Establishment of Maritime Security Fleet. 183
46 U.S.C. 53103. Award of Operating Agreements 187
46 U.S.C. 53104. Effectiveness of Operating Agreements. 190
46 U.S.C. 53105. Obligations & Rights under Agreements 191
46 U.S.C. 53106. Payments 193
46 U.S.C. 53107. National Security Requirements 194
46 U.S.C. 53108. Regulatory relief 196
46 U.S.C. 53109. Age Rule for Participating Vessels 196
46 U.S.C. 53110. Regulations 197
46 U.S.C. 53111. Authorization of Appropriations 197

Sec. 3517. Maintenance and Repair Reimbursement Pilot Program. Sec. 3517 of Public Law 108-136, as amended 197

CHAPTER 531 - SUBTITLE D - NATIONAL DEFENSE TANK VESSEL CONSTRUCTION ASSISTANCE.

Sec. 3541. National defense tank vessel construction program 201
Sec. 3542. Application procedure 201
Sec. 3543. Award of assistance 202
Sec. 3545. Definitions 203
Sec. 3546. Authorization of appropriations 203

CHAPTER 533—CONSTRUCTION RESERVE FUNDS.

46 U.S.C. 53301. Definitions 204
46 U.S.C. 53302. Authority for construction reserve funds 204
46 U.S.C. 53303. Persons eligible to establish funds 205
46 U.S.C. 53304. Vessel ownership 205
46 U.S.C. 53305. Eligible fund deposits 205
46 U.S.C. 53306. Recognition of gain for tax purposes 205
46 U.S.C. 53307. Basis for determining gain or loss and for depreciating new vessels 206
46 U.S.C. 53308. Order and proportions of deposits and withdrawals 206
46 U.S.C. 53309. Accumulation of deposits 207
46 U.S.C. 53310. Obligation of deposits and period for construction of certain vessels 207
46 U.S.C. 53311. Taxation of deposits on failure of conditions 208
46 U.S.C. 53312. Assessment and collection of deficiency tax 208

CHAPTER 535—CAPITAL CONSTRUCTION FUNDS.

46 U.S.C. 53501. Definitions 208
46 U.S.C. 53502. Regulations 210
46 U.S.C. 53503. Establishing a capital construction fund 210
46 U.S.C. 53504. Deposits and withdrawals 210
46 U.S.C. 53505. Ceiling on deposits 211
46 U.S.C. 53506. Investment and fiduciary requirements 211
46 U.S.C. 53507. Nontaxation of deposits 212
46 U.S.C. 53508. Separate accounts within a fund 212
46 U.S.C. 53509. Qualified withdrawals 213
46 U.S.C. 53510. Tax treatment of qualified withdrawals and basis of property 214
46 U.S.C. 53511. Tax treatment of nonqualified withdrawals 214
46 U.S.C. 53512. FIFO and LIFO withdrawals 217
46 U.S.C. 53513. Corporate reorganizations and partnership changes 217
46 U.S.C. 53514. Relationship of old fund to new fund 217
46 U.S.C. 53515. Records and reports 218
46 U.S.C. 53516. Termination of agreement after change in regulations 218
46 U.S.C. 53517. Reports 218

CHAPTER 537—LOANS AND GUARANTEES.

Subchapter I - General.

46 U.S.C. 53701. Definitions 219
46 U.S.C. 53702. General authority 222
46 U.S.C. 53703. Application procedures 222
46 U.S.C. 53704. Funding limits 223
46 U.S.C. 53705. Pledge of United States Government 224
46 U.S.C. 53706. Eligible purposes of obligations 224
46 U.S.C. 53707. Findings related to obligors and operators 226
46 U.S.C. 53708. Findings related to economic soundness 227
46 U.S.C. 53709. Amount of obligations 228
46 U.S.C. 53710. Contents of obligations 230
46 U.S.C. 53711. Security interest 231
46 U.S.C. 53712. Monitoring financial condition and operations of obligor 231
46 U.S.C. 53713. Administrative fees 232
46 U.S.C. 53714. Guarantee fees 233
46 U.S.C. 53715. Escrow fund 234
46 U.S.C. 53716. Deposit fund 236
46 U.S.C. 53717. Management of funds in the Treasury 236
46 U.S.C. 53718. Annual report to Congress 237

Subchapter II - Default Provisions.

46 U.S.C. 53721. Rights of oblige 237
46 U.S.C. 53722. Actions by Secretary 238
46 U.S.C. 53723. Payments by Secretary and issuance of obligations 239
46 U.S.C. 53724. Rights to secured property 240
46 U.S.C. 53725. Actions against obligor 240

Subchapter III - Particular Projects.

46 U.S.C. 53731. Commercial demonstration ocean thermal energy conversion facilities and plantships 240
46 U.S.C. 53732. Eligible export vessels 242
46 U.S.C. 53733. Shipyard modernization and improvement 244
46 U.S.C. 53734. Replacement of vessels because of changes in operating standards 245
46 U.S.C. 53735. Fisheries financing and capacity reduction 247

Federal Credit Reform Act. 2 U.S.C. 661c(b) 248

CHAPTER 539—WAR RISK INSURANCE.

46 U.S.C. 53901. Definitions 249
46 U.S.C. 53902. Authority to provide insurance 249
46 U.S.C. 53903. Insurable interests 250
46 U.S.C. 53904. Liability insurance for persons involved in war or defense efforts 250
46 U.S.C. 53905. Agency insurance 251
46 U.S.C. 53906. Hull insurance valuation. 251
46 U.S.C. 53907. Reinsurance 252
46 U.S.C. 53908. Additional insurance privately obtained 252
46 U.S.C. 53909. War risk insurance revolving fund 252
46 U.S.C. 53910. Administrative 253
46 U.S.C. 53911. Civil actions for losses 254
46 U.S.C. 53912. Expiration date 255

Indemnification of DOT for War Risk Insurance.

10 U.S.C. 2645. Indemnification of Department of Transportation for Losses Covered by Vessels War Risk Insurance 255

PROMOTIONAL PROGRAMS.

CHAPTER 551—COASTWISE TRADE.

46 U.S.C. 55101. Application of coastwise laws 257
46 U.S.C. 55102. Transportation of merchandise 257
46 U.S.C. 55103. Transportation of passengers 258
46 U.S.C. 55104. Transportation of passengers between Puerto Rico and other ports in the United States 258
46 U.S.C. 55105. Transportation of hazardous waste 259
46 U.S.C. 55106. Merchandise transferred between barges 260
46 U.S.C. 55107. Empty cargo containers and barges 260
46 U.S.C. 55108. Platform jackets 261
History of 46 U.S.C. 55108 262
46 U.S.C. 55109. Dredging 264
46 U.S.C. 55110. Transportation of dredged material 265
46 U.S.C. 55111. Towing 265
46 U.S.C. 55112. Vessel escort operations and towing assistance 266
46 U.S.C. 55113. Use of foreign documented oil spill response vessels 266

46 U.S.C. 55114. Unloading fish from foreign vessels.....267
46 U.S.C. 55115. Supplies on fish processing vessels.....268
46 U.S.C. 55116. Canadian rail lines 268
46 U.S.C. 55117. Great Lakes rail route 268
46 U.S.C. 55118. Foreign railroads whose road enters by ferry, tugboat, or towboat.....268
46 U.S.C. 55119. Yukon River 269
46 U.S.C. 55120. Transshipment of imported merchandise intended for immediate exportation 269
46 U.S.C. 55121. Transportation of merchandise and passengers on Canadian vessels 269

Coastwise trade vessels. 46 U.S.C. 3704.....270

Phaseout of vessels supporting oil and gas development. Sec. 705. of Public Law 109-347.....270

Hawaii Cruise Trade. Sec. 211 of Public Law 108-7 271

CABOTAGE REGULATIONS.
19 CFR 4.80. Vessels entitled to engage in coastwise trade.....273

STATUTORY WAIVERS OF THE JONES ACT.
Foreign-Built Tankers - Sec. 214 of Public Law 107-295.....276
Stad Amsterdam - Sec. 604 of Public Law 108-293.....278

Note: Administrative Process for Small Passenger Vessel Jones Act Waivers.
Old Citation. Title V of Public Law 105-383.
New Citation. 46 U.S.C. 12121..... 34

EXPORTS OF ALASKAN NORTH SLOPE OIL.
30 U.S.C. 185(s) Exports of Alaskan North Slope Oil.....279

MILITARY CARGO PREFERENCE STATUTES.

10 U.S.C. 2631. Military Cargo Preference Act of 1904 281
10 U.S.C. 2634. DOD Motor Vehicle Transportation..... 281
10 U.S.C. 402. DOD Transportation of Humanitarian Relief Supplies..... 284
10 U.S.C. 404. DOD Foreign Disaster Assistance..... 285
10 U.S.C. 2561. DOD Humanitarian assistance 285

CHAPTER 553—PASSENGER AND CARGO PREFERENCES.

Subchapter I - General.

46 U.S.C. 55301. Priority loading for coal 287
46 U.S.C. 55302. Transportation of United States Government personnel..... 287
46 U.S.C. 55303. Motor vehicles owned by United States Government personnel..... 287
46 U.S.C. 55304. Exports financed by the United States Government..... 287
46 U.S.C. 55305. Cargoes procured, furnished, or financed by the United States Government 288

Subchapter II - Export Transportation of Agricultural Commodities.

46 U.S.C. 55311. Findings and purposes 288
46 U.S.C. 55312. Determining prevailing world market price 289
46 U.S.C. 55313. Exemption of certain agricultural exports from cargo preference provisions 289
46 U.S.C. 55314. Transportation requirements for certain exports sponsored by the Secretary of Agriculture 290
46 U.S.C. 55315. Minimum tonnage..... 292
46 U.S.C. 55316. Financing the transportation of agricultural commodities..... 292
46 U.S.C. 55317. Termination of subchapter 294
46 U.S.C. 55318. Effect on other law..... 294

Subchapter III - American Great Lakes Vessels.

46 U.S.C. 55331. Definitions..... 295
46 U.S.C. 55332. Designating American Great Lakes vessels 295
46 U.S.C. 55333. Exemption from restriction on transporting certain cargo..... 296
46 U.S.C. 55334. Restrictions on operations 296

46 U.S.C. 55335. Revocations and terminations of designations 296
46 U.S.C. 55336. Civil penalty 297

Ocean Freight Differential Funding.
Appropriations FY 2006. Public Law 109-97 (119 STAT. 2146) 297
Appropriations FY 2007. Public Law 109-383, Continuing Resolution 297

Penalties for Substandard Operations. 46 U.S.C. 2302 297

CHAPTER 561—RESTRICTIONS ON TRANSFERS.
46 U.S.C. 56101. Approval required to transfer vessel to noncitizen 299
46 U.S.C. 56102. Additional controls during war or national emergency 300
46 U.S.C. 56103. Conditional approvals 302
46 U.S.C. 56104. Penalty for false statements 302
46 U.S.C. 56105. Forfeiture procedure 302

CHAPTER 563—EMERGENCY ACQUISITION OF VESSELS.
46 U.S.C. 56301. General authority 303
46 U.S.C. 56302. Charter terms 303
46 U.S.C. 56303. Compensation 303
46 U.S.C. 56304. Disputed compensation 304
46 U.S.C. 56305. Vessel encumbrances 304
46 U.S.C. 56306. Use and transfer of vessels 305
46 U.S.C. 56307. Return of vessels 305

GOVERNMENT-OWNED MERCHANT VESSELS.

CHAPTER 571—GENERAL AUTHORITY.
46 U.S.C. 57101. Placement of vessels in National Defense Reserve Fleet 306
46 U.S.C. 57102. Disposition of vessels not worth preserving 306

46 U.S.C. 57103. Sale of obsolete vessels in National Defense Reserve Fleet....306
46 U.S.C. 57104. Acquisition of vessels from sale of obsolete vessels....308
46 U.S.C. 57105. Acquisition of vessels for essential services, routes, or lines....308
46 U.S.C. 57106. Maintenance, improvement, and operation of vessels....309
46 U.S.C. 57107. Vessels for other agencies....309
46 U.S.C. 57108. Consideration of ballast and equipment in determining selling price....309
46 U.S.C. 57109. Operation of vessels purchased, chartered, or leased from Secretary of Transportation....309

MERCHANT SHIP SALES ACT OF 1946.

50 U.S.C. App. 1735. Declaration of Policy....310
50 U.S.C. App. 1736. Definitions....310
50 U.S.C. App. 1738. Charter of Vessels....310
50 U.S.C. App. 1741. Exchange of Vessels....311
50 U.S.C. App. 1744. National Defense Reserve Fleet....312
50 U.S.C. App. 1745. Reconversion of Vessels for Normal Commercial Operation, etc....314

CHAPTER 573—VESSEL TRADE-IN PROGRAM.

46 U.S.C. 57301. Definitions....314
46 U.S.C. 57302. Authority to acquire vessels....314
46 U.S.C. 57303. Utility value and tonnage requirements....314
46 U.S.C. 57304. Eligible acquisition dates....315
46 U.S.C. 57305. Determination of trade-in allowance....315
46 U.S.C. 57306. Payment of trade-in allowance....315
46 U.S.C. 57307. Recognition of gain for tax purposes....316
46 U.S.C. 57308. Use of vessels at least 25 years old....316

VESSEL SCRAPPING

SCRAPPING OF NDRF VESSELS.

Sec. 6 of the National Maritime Heritage Act (16 U.S.C. 5405)....317
Sec. 3502 of Public Law 106-398, as amended - Scrapping of NDRF Vessels....319

ARTIFICIAL REEFS.

Reefs for Marine Life Conservation.
16 U.S.C. 1220. State applications for obsolete ships for use as offshore reefs.....321
16 U.S.C. 1220a. Transfer of title; terms and conditions 321
16 U.S.C. 1220b. Obsolete ships available; number; equitable administration.....322
16 U.S.C. 1220c. Denial of applications; finality of decision 322
16 U.S.C. 1220c-1. Financial assistance to State to prepare transferred ship.....322
16 U.S.C. 1220d. Definition of "obsolete ship".....323

Preparation as Artificial Reefs and Scrapping of Obsolete Vessels. Sec. 3504 of Public Law 107-314 (116 STAT. 2754).....323

Transfer of Vessels Stricken from the Naval Vessel Register. 10 U.S.C. 7306b.....324

ADDITIONAL AUTHORITY.

Temporary Authority to Transfer Obsolete Combatant Vessels to Navy for Disposal. Sec. 3507 of Public Law 109-364.....325

Pilot Program on Export of Obsolete Vessels for Dismantlement and Recycling. Sec. 3504(c) of Public Law 107-314.....326

Funding for Scrapping of NDRF Vessels.....327
Public Law 108-199 (118 STAT. 312).
Public Law 108-4547 (118 STAT. 3231).
Public Law 109-115 (119 STAT. 2396, 2422).

TITLE 40 - PUBLIC BUILDINGS, PROPERTY, AND WORKS.

40 U.S.C. 102. Definitions.....328
40 U.S.C. 111. Application to Federal Property and Administrative Services Act of 1949 328

40 U.S.C. 113. Limitations 328
40 U.S.C. 548. Surplus Vessels..... 329
40 U.S.C. 554. Property for Development or Operation of a Port Facility 329
40 U.S.C. 556. Disposal of Dredge Vessels 331
40 U.S.C. 558. Donation of Forfeited Vessels..... 331
40 U.S.C. 1306. Disposition of Abandoned or Forfeited Personal Property..... 332
40 U.S.C. 3134. Waivers for Certain Contracts..... 332

CHAPTER 575—CONSTRUCTION, CHARTER, AND SALE OF VESSELS.

Subchapter I - General.

46 U.S.C. 57501. Completion of long-range program 334
46 U.S.C. 57502. Construction, reconditioning, and remodeling of vessels 334
46 U.S.C. 57503. Competitive bidding 334
46 U.S.C. 57504. Charter or sale of vessels acquired by Department of Transportation..... 335
46 U.S.C. 57505. Employment of vessels on foreign trade routes 335
46 U.S.C. 57506. Minimum selling price of vessels..... 335

Subchapter II - Charters.

46 U.S.C. 57511. Demise charters 335
46 U.S.C. 57512. Competitive bidding 336
46 U.S.C. 57513. Minimum bid..... 336
46 U.S.C. 57514. Qualifications of bidders..... 336
46 U.S.C. 57515. Awarding of charters 336
46 U.S.C. 57516. Operating-differential subsidies 337
46 U.S.C. 57517. Recovery of excess profits 337
46 U.S.C. 57518. Performance bond..... 337
46 U.S.C. 57519. Insurance 338
46 U.S.C. 57520. Vessel maintenance 338
46 U.S.C. 57521. Termination of charter during national emergency 338

Subchapter III - Miscellaneous.

46 U.S.C. 57531. Construction and charter of vessels for unsuccessful routes..... 338
46 U.S.C. 57532. Operation of experimental vessels..... 340

MILITARY PROGRAMS.

FAST SEALIFT PROGRAM.

Fast Sealift Program. Sec. 1424 of Public Law 101-510, as amended (10 U.S.C. 7291, note) 341

Procurement of Ships for the Fast Sealift Program. Sec. 1021 of Public Law 102-484 343

Consideration of Vessel Location for Layberth Contracts. Sec. 375 of Public Law 102-484 343

NATIONAL DEFENSE SEALIFT FUND.

National Defense Sealift Fund. 10 U.S.C. 2218 344

National Defense Sealift Fund Funding 347
Authorizations FY 2007 Sec. 302 of Public Law 109-364 .
Supplemental Appropriations FY 2006. Public Law 109- 234 (120 STAT. 451).
Appropriations FY 2007. Public Law 109-289 (120 STAT. 1269).

NDSF Funds for Purchase of Chartered Prepositioned Ships. Sec. 1018 of Public Law 109-163 349

NAVY SHIPBUILDING AND CONVERSIONS.

Navy Shipbuilding and Conversion Funding 350
Authorization FY 2007. Section 102(a)(3) of Public Law 109-364) 350
Supplemental Appropriations FY 2006. Public Law 109-234 (120 STAT. 450) 350
Gulf Coast Shipyards With Navy Contracts. Sec. 2203 of Public Law 109-234 350

Appropriations FY 2007. Public Law 109-289 (120 STAT. 1265) 351

Limitation on Navy Shipyard Funding. Sec. 322 of Public Law 109-163 352

Navy Shipyard Capability Preservation. 10 U.S.C. 7315 354

Overhaul, Repair, and Maintenance of Vessels in Foreign Shipyards. 10 U.S.C. 7310 355

DOD MISCELLANEOUS PROVISIONS.

Competition Between DOD Maintenance Activities and Private Firms. Sec. 8026 of Public Law 109-289 356

DOD Export Loan Guarantee Program.
10 U.S.C. 2540. Establishment of loan guarantee program 356
10 U.S.C. 2540a. Transferability 357
10 U.S.C. 2540 b. Limitations 357
10 U.S.C. 2540c. Fees charged and collected 357
10 U.S.C. 2540d. Definitions 358

DOD Loan Guarantee Authority. Sec. 8065 of Public Law 108-287 358

DOD Obtaining Carriage by Vessel - Criterion Regarding Overhaul, Repair, and Maintenance of Vessels in the United States. Sec. 1017 of Public Law 109-364 359

DOD Riding Gangs Member Requirements. Sec. 1018 of Public Law 109-364 360

DOD Support for Transfers of Decommissioned Vessels and Shipboard Equipment. 10 U.S.C. 7316 361

Limitation on Disposal of Obsolete Naval Vessel. Sec. 1015 of Public Law 108-375 361

Navy Charter of RV CORY CHOUEST. Sec. 8124 of Public Law 108-87 362

Transfer of Naval Vessels to Certain Foreign Recipients. Sec. 1013 of Public Law 108-375 362

Vessel Transfer Between Departments. 10 U.S.C. 2578 363

UNITED STATES COMMERCIAL SHIPYARDS.

Revitalization of U.S. Shipbuilding Industry. Sec.1031 of Public Law 102-484 364

Assistance for Small Shipyards and Maritime Communities. Sec. 3506 of Public Law 109-163 366

Manufacturing Extension Program. Sec. 8062 of Public Law 108-87 368

Contracts for Nuclear Ships; Sales of Navy Shipyard Articles and Services to Private Shipyards. 10 U.S.C. 7300 369

Naval Vessels Not to be Maintained by Foreign Shipyard. 10 U.S.C. 7291, note 369

Encouragement of Construction in U.S. Shipyards of Combatant Vessels for U.S. Allies. Sec. 1455 of Public Law 99-145 369

DEFENSE PRODUCTION ACT. [Excerpts]
50 U.S.C. App. 2071. Priority in Contracts and Orders 371
50 U.S.C. App. 2158. Voluntary Agreements for Preparedness Programs and Expansion of Production Capacity and Supply 372

NATIONAL EMERGENCIES ACT.
50 U.S.C. 1601. Termination of Existing Declared Emergencies 379
50 U.S.C. 1621. Declaration of National Emergency by President, Publication in Federal Register; Effect on Other Laws; Superseding Legislation 379
50 U.S.C. 1622. National Emergencies 379
50 U.S.C. 1631. Declaration of National Emergency by Executive

Order, Authority; Publication in Federal Register, Transmittal to Congress 381
50 U.S.C. 1641. Accountability and Reporting Requirements of the President 381
50 U.S.C. 1651. Other Laws, Powers and Authorities Conferred Thereby, and Actions Taken Thereunder; Congressional Studies 382

VESSELS IN TERRITORIAL WATERS OF THE UNITED STATES.
50 U.S.C. 191. Regulation of Anchorage and Movement of Vessels during National Emergency 382
50 U.S.C. 191a. Transfer of Secretary of Treasury's [Secretary of Transportation] powers to Secretary of Navy when Coast Guard operates as part of Navy 383
50 U.S.C. 192. Seizure and Forfeiture of Vessel; Fine and Imprisonment 384
50 U.S.C. 195. "United States" defined.....384
50 U.S.C. 196. Emergency Foreign Vessels Acquisition; Purchase or Requisition of Vessels Lying Idle in United States waters 385
50 U.S.C. 197. Voluntary Purchase or Charter Agreements 385
50 U.S.C. 198. Requisitioned Vessels.....385

TITLE 49 - INTERSTATE WATER CARRIER TRANSPORTATION. [Excerpts].....388

VETERAN'S BENEFITS FOR MERCHANT SEAMEN.

GI Bill Improvement Act of 1977. Sec. 401 of Public Law 95-292 411
Veterans Programs Enhancement Act of 1998, as amended.
Chapter 112. Merchant Marine Benefits.
46 U.S.C. 11201. Eligibility for Veterans' Burial and Cemetery Benefits.....413
46 U.S.C. 11202. Qualified Service 413
46 U.S.C. 11203. Documentation of Qualified Service 414
46 U.S.C. 11204. Processing Fees 414

Chapter 23. Burial Benefits.

38 U.S.C. 2301, Flags 415
38 U.S.C. 2302. Funeral Expenses 416
38 U.S.C. 2303. Death in Department Facility; Plot Allowance 417
38 U.S.C. 2304. Claims for Reimbursement 418
38 U.S.C. 2305. Persons Eligible Under Prior Law 418
38 U.S.C. 2306. Headstones, Markers, and Burial Receptacles 419
38 U.S.C. 2307. Death from Service-Connected Disability 421
38 U.S.C. 2308. Transportation of Deceased Veteran to a National Cemetery 422

TAX PROVISIONS OF INTEREST.

REDUCED TAXES FOR CERTAIN INLAND WATERWAYS FUEL.

26 U.S.C. 4042. Tax on Fuel Used in Commercial Transportation on Inland Waterways 423

INTERNATIONAL SHIPPING TONNAGE TAX.

26 U.S.C. 1352. Alternative Tax on Qualifying Shipping Activities 425
26 U.S.C. 1353. Notional Shipping Income 425
26 U.S.C. 1354. Alternative Tax Election, Revocation, Termination 426
26 U.S.C. 1355. Definitions and Special Rules 427
26 U.S.C. 1356. Qualifying Shipping Activities 430
26 U.S.C. 1357. Items Not Subject to Regulation, Tax Depreciation, Interest 431
26 U.S.C. 1358. Allocation of Credits, Income, and Deductions. 432
26 U.S.C. 1359. Disposition of Qualifying Vessels 433

SHIPYARD ACCOUNTING CHANGE. Sec. 708 of Public Law 108-357. 434

MISCELLANEOUS MARITIME PROVISIONS.

American Merchant Marine Memorial Wall of Honor. Sec. 203 of Public Law 107-295 435

American's National Maritime Museum Designation. 16 U.S.C. 5409 436

Arctic Sea Route Study/Maritime Administration. Sec. 412 of Public Law 109-241 437

Assignment of Coast Guard and Merchant Marine Personnel as At Sea Marshals. Sec 107(a) of Public Law 107-295 (33 U.S.C. 1226). See also Section 107(b) 437

Customs Duty on Vessel Equipment and Repairs.
19 U.S.C. 1466. Equipment and Repair of Vessels 438

Double Hull Provisions.
Double Hull Report (Conference Report 106-940, page 68) 441
Tank Vessel Construction Standards. 46 U.S.C. 3703a 442
Existing Tank Vessel Research. Sec. 1134 of Public Law 104-324 446
Double Hull Alternatives. 46 U.S.C. 3703a, note 447

Gambling Ships.
18 U.S.C. 1081. Definitions 447
18 U.S.C. 1082. Gambling Ships 448
18 U.S.C. 1083. Transportation Between Shore and Ship; Penalties 448
18 U.S.C. 1084. Transmission of Wagering Information; Penalties 449

Merchant Mariner Documents - Gambling Vessels.
46 U.S.C. 7302. Issuing Merchant Mariners' Documents and Continuous Discharge Books 450
46 U.S.C. 8701. Merchant Mariners' Documents Required 451

Gambling Devices - The Johnson Act.
15 U.S.C. 1171. Definitions 452
15 U.S.C. 1172. Transportation of Gambling Devices as Unlawful; Exceptions; Authority of Federal Trade Commission. 452
15 U.S.C. 1173. Registration of Manufacturers and Dealers 453
15 U.S.C. 1174. Labeling and Marking of Shipping Packages 455
15 U.S.C. 1175. Specific Jurisdiction Within Which Manufacturing, Repairing, Selling, Possessing, etc,. Prohibited 455
15 U.S.C. 1176. Penalties 457

15 U.S.C. 1177. Confiscation of Gambling Devices and Means of Transportation; Laws Governing 457
15 U.S.C. 1178. Non-applicability of Chapter to Certain Machines and Devices 458

Great Lakes National Maritime Enhancement Institute. Sec. 605 of Public Law 108-293 458

Maritime Research and Technology Development. Sec. 3505 of Public Law 106-398 459

Maritime Security Professional Training at Maritime Schools. Sec. 109 of Public Law 107-295 460

Prevention of Departure 46 U.S.C. 3505 463

Requirement to Notify Coast Guard of Release of Objects into the Navigable Water of the United States. Sec. 602 of Public Law 109-241 463

St. Lawrence Seaway Development Corporation Appropriations 463
FY 2006. Public Law 109-115 (119 STAT. 2396).
FY 2007 Public Law 109-383, Continuing Resolution.

Victory Ships Inspection Exemption 465
46 U.S.C. 3302. Exemptions.

PORT MATTERS.

DEEPWATER PORT ACT.

33 U.S.C. 1501. Congressional Declaration of Policy 466
33 U.S.C. 1502. Definitions 466
33 U.S.C. 1503. License for Ownership, Construction, and Operation of Deepwater Ports 468
33 U.S.C. 1504. Procedure 471
33 U.S.C. 1505. Environmental Review Criteria 476
33 U.S.C. 1506. [Repealed] 477
33 U.S.C. 1507. Common Carrier Status 477
33 U.S.C. 1508. Adjacent Coastal States 478
33 U.S.C. 1509. Marine Environmental Protection and Navigational Safety 479
33 U.S.C. 1510. International Agreements 481
33 U.S.C. 1511. Suspension or Termination of Licenses 481
33 U.S.C. 1512. Recordkeeping and Inspection 481
33 U.S.C. 1513. Public Access to Information 482
33 U.S.C. 1514. Remedies 483
33 U.S.C. 1515. Citizen Civil Action 484
33 U.S.C. 1516. Judicial Review; Persons Aggrieved; Jurisdiction of Courts of Appeal 485
33 U.S.C. 1517. [Repealed]
33 U.S.C. 1518. Relationship to Other Laws 485
33 U.S.C. 1519. [Repealed].
33 U.S.C. 1520. Pipeline Safety and Operation 487
33 U.S.C. 1521. Negotiations with Canada and Mexico; Report to Congress 487
33 U.S.C. 1522. Limitation on Export Provisions of 30 U.S.C. 185(u) unaffected 488
33 U.S.C. 1523. General Procedures; Issuance and Enforcement of Orders; Scope of Authority; Evidentiary Matters 488
33 U.S.C. 1524. Authorization of Appropriations 488

LNG TANKER PROGRAM. Sec 304(a) of Public Law 109-241 488

HIGHWAY BILL PROVISIONS.

ADMINISTERED BY THE MARITIME ADMINISTRATION.

Hawaii Port Infrastructure Expansion Program - Maritime Administration. Sec. 9008 of Public Law 109-59 489

Anchorage Intermodal Transportation Maritime Facility - Maritime Administration. Sec. 10205 of Public Law 109-59 490

OF INTEREST TO THE MARITIME ADMINISTRATION.

Ferry Boats - Authorization of Appropriations. Sec. 1101(13) of Public Law 109-59 491

Ferry Boats - Territorial Highway Program. Sec. 1118 of Public Law 109-59 491

Construction of Ferry Boats and Ferry Terminal Facilities. Sec. 1801 of Public Law 109-59 491

Ferry Boats - Capital Investment Grants. Sec. 3011 of Public Law 109-59 493

CHAPTER 701 - PORT SECURITY.

46 U.S.C. 70101. Definitions 495
46 U.S.C. 70102. United States facility and vessel vulnerability assessments 495
46 U.S.C. 70103. Maritime transportation security plans 496
Port Security Training Program. Sec. 113 of Public Law 109-347 500
Port Security Exercise Program. Sec. 114 of Public Law 109-347 502
Facility Exercise Requirements. Sec. 115 of Public Law 109-347 503
46 U.S.C. 70104. Transportation security incident response 504
46 U.S.C. 70105. Transportation security cards 504

46 U.S.C. 70106. Maritime safety and security teams 509
46 U.S.C 70107. Grants 510
46 U.S.C. 70107A Interagency operational centers for port security 516
46 U.S.C. 70108. Foreign port assessment 518
46 U.S.C. 70109. Notifying foreign authorities 519
46 U.S.C. 70110. Actions when foreign ports not maintaining effective antiterrorism measures 519
46 U.S.C. 70111. Enhanced crewmember identification 520
46 U.S.C. 70112. Maritime Security Advisory Committees 520
46 U.S.C. 70113. Maritime intelligence 522
46 U.S.C. 70114. Automatic identification systems 522
46 U.S.C. 70115. Long-range vessel tracking system 523
46 U.S.C. 70116. Secure systems of transportation 523
46 U.S.C. 70117. Firearms, arrests, and seizure of property 524
46 U.S.C. 70118. Enforcement by State and local officers 524
46 U.S.C. 70119. Civil penalty 525
46 U.S.C. 70120. In rem liability for civil penalties and certain costs 525
46 U.S.C. 70121. Withholding of clearance 526

SAFE PORT ACT. Public Law 109-347 (120 STAT. 1884).

Title I - Security of United States Seaports.
Subtitle A - General Provisions.

Sec. 101.- Salvage response plan included in area Maritime Transportation Security Plan 527
Sec. 102 - Requirements for Maritime Facility Officers 527
Sec. 103 - Unannounced inspections of maritime facilities 527
Sec. 104 - TWIC Program implementation 527
Sec. 105 - GAO study of background record checks 527
Sec. 106 - Disqualification of felons 527
Sec. 107 - Deadline for automated Long-Range Vessel Tracking System 528
Sec. 108 - Establishment of interagency operational centers for port security 528

Sec. 109 - Notice of arrival for foreign vessels on the Outer Continental Shelf....528
Sec. 110 - Enhanced crewmember identification....528
Subtitle B - Port Security Grants; Training and Exercise Programs.
Sec. 111 - Risk assessment tool....528
Sec. 112 - Port security grants....528
Sec. 113 - Port Security Training Program (6 U.S.C. 911)....528
Sec. 114 - Port Security Exercise Program (6 U.S.C. 912)....528
Sec. 115 - Facility exercise requirements (6 U.S.C. 913)....529
Subtitle C - Port Operations.
Sec. 121. Domestic radiation detection and imaging (6 U.S.C. 921)....529
Sec. 122. Inspection of car ferries entering from abroad (6 U.S.C. 922)....531
Sec. 123. Random searches of containers (6 U.S.C. 923)....531
Sec. 124. Work stoppages and employee-employer disputes....531
Sec. 125. Threat assessment screening of port truck drivers (6 U.S.C. 924)....532
Sec. 126. Border Patrol unit for United States Virgin Islands (6 U.S.C. 925)....532
Sec. 127. Report on arrival and departure manifests for certain commercial vessels in the United States Virgin Islands....532
Sec. 128. Center of Excellence for Maritime Domain Awareness (6 U.S.C. 926)....533

TERRORISM RISK INSURANCE ACT. 15 U.S.C. 6701, note.
Sec. 101. Congressional findings and purpose....534
Sec. 102. Definitions....535
Sec. 103. Terrorism Insurance Program....538
Sec. 104. General authority and administration of claims....544
Sec. 105. Preemption and nullification of pre-existing terrorism exclusions....546
Sec. 106. Preservation provisions....547
Sec. 107. Litigation management....547
Sec. 108. Termination of Program....549

PORT SECURITY FUNDING.
FY 2006 - Public Law 109-90 (119 STAT. 2064)....550
FY 2007 - Public Law 109-295 (120 STAT. 1369)....551

Limitation of Discretionary Grants. Sec. 508 of Public Law 109-295 552

EXTENSION OF TERRITORIAL JURISDICTION.
50 U.S.C. 195. "United States" Defined 553
Presidential Proclamation No. 5928 of December 27, 1988 553
50 U.S.C. 192. Seizure and Forfeiture of Vessel; Fine and Imprisonment 554

PHILADELPHIA MILITARY CARGO TERMINAL Sec. 115 of Public Law 108-199, as amended 555

AUTOMATIC IDENTIFICATION SYSTEM. Sec. 419 of Public Law 109-241 556

APPENDIX - PUBLIC LAWS OF THE 109TH CONGRESS, SECOND SESSION, PROVIDING OR AMENDING CERTAIN MARITIME LAWS 557

INDEX 583

DEFINITIONS

CHAPTER 1 - DEFINITIONS[1]

46 U.S.C. 101 (2006). Agency. In this title, the term "agency" means a department, agency, or instrumentality of the United States Government.

46 U.S.C. 102 (2006). Barge. In this title, the term "barge" means a non-self-propelled vessel.

46 U.S.C. 103 (2006). Boundary Line. In this title, the term "Boundary Line" means a line established under section 2(b) of the Act of February 19, 1895 (33 U.S.C. 151).

46 U.S.C. 104 (2006). Citizen of the United States. In this title, the term "citizen of the United States", when used in reference to a natural person, means an individual who is a national of the United States as defined in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).

46 U.S.C. 105 (2006). Consular officer. In this title, the term "consular officer" means an officer or employee of the United States Government designated under regulations to issue visas.

46 U.S.C. 106 (2006). Documented vessel. In this title, the term "documented vessel" means a vessel for which a certificate of documentation has been issued under chapter 121 of this title.

---

[1] Section 4 of Public Law 109-304, approved October 6, 2006 (120 STAT. 1486).

46 U.S.C. 107 (2006). Exclusive economic zone. In this title, the term "exclusive economic zone" means the zone established by Presidential Proclamation 5030 of March 10, 1983 (16 U.S.C. 1453 note).[2]

46 U.S.C. 108 (2006). Fisheries. In this title, the term "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].**EXCLUSIVE ECONOMIC ZONE OF THE UNITED STATES**
Proclamation 5030
Exclusive Economic Zone of the United States of America
March 10, 1983
By the President of the United States of America
A Proclamation
WHEREAS the Government of the United States of America desires to facilitate the wise development and use of the oceans consistent with international law;
WHEREAS international law recognizes that, in a zone beyond its territory and adjacent to its territorial sea, known as the Exclusive Economic Zone, a coastal State may assert certain sovereign rights over natural resources and related jurisdiction; and;
WHEREAS the establishment of an Exclusive Economic Zone by the United States will advance the development of ocean resources and promote the protection of the marine environment, while not affecting other lawful uses of the zone, including the freedoms of navigation and overflight, by other States;
NOW, THEREFORE, I RONALD REAGAN, by the authority vested in me as President by the Constitution and laws of the United States of America, do hereby proclaim the sovereign rights and jurisdiction of the United States of America and confirm also the rights and freedoms of all States within an Exclusive Economic Zone, as described herein.
The Exclusive Economic Zone of the United States is a zone contiguous to the territorial sea, including zones contiguous to the territorial sea of the United States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands (to the extent consistent with the Covenant and the United Nations Trusteeship Agreement), and United States overseas territories and possessions. The Exclusive Economic Zone extends to a distance 200 nautical miles from the baseline from which the breadth of the territorial sea is measured. In cases where the maritime boundary with a neighboring State remains to be determined, the boundary of the Exclusive Economic Zone shall be determined by the United States and other States concerned in accordance with equitable principles.
Within the Exclusive Economic Zone, the United States has, to the extent permitted by international law, (a)sovereign rights for the purpose of exploring, exploiting, conserving and managing natural resources, both living and non-living, of the seabed and subsoil and the superjacent waters and with regard to other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents and winds; and (b)jurisdiction with regard to the establishment and use of the artificial islands, and installations and structures having economic purposes, and the protection and preservation of the marine environment.
This proclamation does not change existing United States policies concerning the continental shelf, marine mammals and fisheries, including highly migratory species of tuna which are not subject to United States jurisdiction and require international agreements for affective management.
The United States will exercise these sovereign rights and jurisdiction in accordance with the rules of international law.
Without prejudice to the sovereign rights and jurisdiction of the United States, the Exclusive Economic Zone remains an area beyond the territory and territorial sea of the United States in which all States enjoy the high seas freedoms of navigation, overflight, the laying of submarine cables and pipelines, and other internationally lawful uses of the sea.
IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of March, in the year of our Lord nineteen hundred and eighty-three, and of the Independence of the United States of America the two hundred and seventh.
RONALD REAGAN

46 U.S.C. 109 (2006). Foreign commerce or trade.
(a) In general. In this title, the terms "foreign commerce" and "foreign trade" mean commerce or trade between a place in the United States and a place in a foreign country.
(b) Capital construction funds and construction-differential subsidies. In the context of capital construction funds under chapter 535 of this title, and in the context of construction-differential subsidies under title V of the Merchant Marine Act, 1936, the terms "foreign commerce" and "foreign trade" 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 a manner that will permit bulk vessels of the United States to compete freely with foreign bulk vessels in their operation or competition for charters, subject to regulations prescribed by the Secretary of Transportation.

46 U.S.C. 110 (2006). Foreign vessel. In this title, the term "foreign vessel" means a vessel of foreign registry or operated under the authority of a foreign country.

46 U.S.C. 111 (2006). Numbered vessel. In this title, the term "numbered vessel" means a vessel for which a number has been issued under chapter 123 of this title.

46 U.S.C. 112 (2006). State. In this title, the term "State" means a State of the United States, the District of Columbia, Guam, Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands, and any other territory or possession of the United States.

46 U.S.C. 113 (2006). Undocumented. In this title, the term "undocumented" means not having and not required to have a certificate of documentation issued under chapter 121 of this title.

46 U.S.C. 114 (2006). United States. In this title, the term "United States", when used in a geographic sense, means the States of the United States, the District of Columbia, Guam, Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands, and any other territory or possession of the United States.

46 U.S.C. 115. (2006). Vessel. In this title, the term "vessel" has the meaning given that term in section 3 of title 1.

46 U.S.C. 116 (2006). Vessel of the United States. In this title, the term "vessel of the United States" means a vessel documented under chapter 121 of this title (or exempt from documentation under section 12102(c) of this title, numbered under chapter 123 of this title, or titled under the law of a State.

GENERAL DEFINITION OF VESSEL

1 U.S.C. 3 (2006). "Vessel" as including all means of water transportation. 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.

DEFINITION OF UNITED STATES

50 U.S.C. 195 (2006). "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].

MARITIME ADMINISTRATION

49 U.S.C. 109 (2006). Maritime Administration.

(a) Organization.—The Maritime Administration is an administration in the Department of Transportation.

(b) Maritime Administrator.—The head of the Maritime Administration is the Maritime Administrator, who is appointed by the President by and with the advice and consent of the Senate. The Administrator shall report directly to the Secretary of Transportation and carry out the duties prescribed by the Secretary.

(c) Deputy Maritime Administrator.—The Maritime Administration shall have a Deputy Maritime Administrator, who is appointed in the competitive service by the Secretary, after consultation with the Administrator. The Deputy Administrator shall carry out the duties prescribed by the Administrator. The Deputy Administrator shall be Acting Administrator during the absence or disability of the Administrator and, unless the Secretary designates another individual, during a vacancy in the office of Administrator.

(d) Duties and Powers Vested in Secretary.—All duties and powers of the Maritime Administration are vested in the Secretary.

(e) Regional Offices.—The Maritime Administration shall have regional offices for the Atlantic, Gulf, Great Lakes, and Pacific port ranges, and may have other regional offices as necessary. The Secretary shall appoint a qualified individual as Director of each regional office. The Secretary shall carry out appropriate activities and programs of the Maritime Administration through the regional offices.

(f) Interagency and Industry Relations.—The Secretary shall establish and maintain liaison with other agencies, and with representative trade organizations throughout the United States, concerned with the transportation of commodities by water in the export and import foreign commerce of the United States, for the purpose of securing preference to vessels of the United States for the transportation of those commodities.

(g) Detailing Officers from Armed Forces.—To assist the Secretary in carrying out duties and powers relating to the Maritime Administration, not more than five officers of the armed forces may be detailed to the Secretary at any one time, in addition to details authorized by any other law. During the period of a detail, the Secretary shall pay the officer an amount that, when added to the officer's pay and allowances as an officer in the armed forces, makes the officer's total pay and allowances equal to the amount that would be paid to an individual performing work the Secretary considers to be of similar importance, difficulty, and responsibility as that performed by the officer during the detail.

(h) Contracts and Audits.—
(1) Contracts.—In the same manner that a private corporation may make a contract within the scope of its authority under its charter, the Secretary may make contracts for the United States Government and disburse amounts to—
(A) carry out the Secretary's duties and powers under this section and subtitle V of title 46; and
(B) protect, preserve, and improve collateral held by the Secretary to secure indebtedness.
(2) Audits.—The financial transactions of the Secretary under paragraph (1) shall be audited by the Comptroller General. The Comptroller General shall allow credit for an expenditure shown to be necessary because of the nature of the business activities authorized by this section or subtitle V of title 46. At least once a year, the Comptroller General shall report to Congress any departure by the Secretary from this section or subtitle V of title 46.
(i) Authorization of Appropriations.—
(1) In General.—Except as otherwise provided in this subsection, there are authorized to be appropriated such amounts as may be necessary to carry out the duties and powers of the Secretary relating to the Maritime Administration.
(2) Limitations.—Only those amounts specifically authorized by law may be appropriated for the use of the Maritime Administration for—
(A) acquisition, construction, or reconstruction of vessels;
(B) construction-differential subsidies incident to the construction, reconstruction, or reconditioning of vessels;
(C) costs of national defense features;
(D) payments of obligations incurred for operating differential subsidies;
(E) expenses necessary for research and development activities, including reimbursement of the Vessel Operations Revolving Fund for losses resulting from expenses of experimental vessel operations;
(F) the Vessel Operations Revolving Fund;
(G) National Defense Reserve Fleet expenses;
(H) expenses necessary to carry out part B of subtitleV of title 46; and
(I) other operations and training expenses related to the development of waterborne transportation systems, the use of waterborne transportation systems, and general administration.
(3) Training Vessels.—Amounts may not be appropriated for the purchase or construction of training vessels for State maritime academies unless the Secretary has approved a plan for sharing training vessels between State maritime academies.

MARITIME ADMINISTRATION FUNDING

AUTHORIZATIONS.

Authorizations FY 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 FY 2007.

> Section 3501 of Public Law 109-364, approved October 17, 2006 (120 STAT. 2514), provides:
>
> **SEC. 3501. AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEAR 2007.**
> Funds are hereby authorized to be appropriated for fiscal year 2007, to be available without fiscal year limitation if so provided in appropriations Acts, for the use of the Department of Transportation for the Maritime Administration as follows:
> (1) For expenses necessary for operations and training activities, $116,442,000.

(2) For paying reimbursement under section 3517 of the Maritime Security Act of 2003 (46 U.S.C. 53101 note), $19,500,000.
(3) For assistance to small shipyards and maritime communities under section 3506 of the National Defense Authorization Act for Fiscal Year 2006 (46 U.S.C. App. 1249), $15,000,000.
(4) For expenses to dispose of obsolete vessels in the National Defense Reserve Fleet, including provision of assistance under section 7 of Public Law 92–402, $25,740,000.
(5) For administrative expenses related to the implementation of the loan guarantee program under title XI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1271 et seq.), administrative expenses related implementation of the reimbursement program under section 3517 of the Maritime Security Act of 2003 (46 U.S.C. 53101 note), and administrative expenses related to the implementation of the small shipyards and maritime communities assistance program under section 3506 of the National Defense Authorization Act for Fiscal Year 2006 (46 U.S.C. App. 1249), $3,317,000.

Arctic Sea Route Study. Section 412 of Public Law 109-241, approved July 11, 2006 (120 STAT. 540), provides:

> **Sec. 412. Assessment and Planning.** There is authorized to be appropriated to the Maritime Administration $400,000 to carry out an assessment of, and planning for, the impact of an Arctic Sea Route on the indigenous people of Alaska.

APPROPRIATIONS.

Appropriations FY 2006.

Public Law 109-115, approved November 30, 2005 (119 STAT. 2396), the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act, 2006, provides at 119 STAT. 2421:

> **MARITIME ADMINISTRATION.**
>
> **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, $156,000,000, to remain available until expended.

OPERATIONS AND TRAINING.
For necessary expenses of operations and training activities authorized by law, $122,249,000 of which $23,750,000 shall remain available until September 30, 2006, for salaries and benefits of employees of the United States Merchant Marine Academy; of which $15,000,000 shall remain available until expended for capital improvements at the United States Merchant Marine Academy; and of which $8,211,000 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, $21,000,000, to remain available until expended.

MARITIME GUARANTEED LOAN (TITLE XI) PROGRAM ACCOUNT (INCLUDING TRANSFER OF FUNDS).
For administrative expenses to carry out the guaranteed loan program, not to exceed $4,126,000, 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, $2,071,280 are rescinded.

ADMINISTRATIVE PROVISIONS—MARITIME ADMINISTRATION.
SEC. 150. 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. 151. No obligations shall be incurred during the current fiscal year from the construction fund established by the Merchant Marine Act, 1936 (46 App. U.S.C. 1101 et seq.), or otherwise, in excess of the appropriations and limitations contained in this Act or in any prior appropriations Act.

Appropriations FY 2007.

The Maritime Administration has been operating under a series of Continuing Resolutions. As of January 1, 2007, it was operating under Public Law 109-383, approved December 9, 2006 (120 STAT. 2678). The reader is advised to make reference to subsequently enacted Continuing Resolutions.

CHAPTER 3 - FEDERAL MARITIME COMMISSION[3]

46 U.S.C. 301 (2006). General organization.

(a) Organization. The Federal Maritime Commission is an independent establishment of the United States Government.

(b) Commissioners.

(1) Composition. The Commission is composed of 5 Commissioners, appointed by the President by and with the advice and consent of the Senate. Not more than 3 Commissioners may be appointed from the same political party.

(2) Terms. The term of each Commissioner is 5 years, with each term beginning one year apart. An individual appointed to fill a vacancy is appointed only for the unexpired term of the individual being succeeded. A vacancy shall be filled in the same manner as the original appointment. When the term of a Commissioner ends, the Commissioner may continue to serve until a successor is appointed and qualified.

(3) Removal. The President may remove a Commissioner for inefficiency, neglect of duty, or malfeasance in office.

(c) Chairman.

(1) Designation. The President shall designate one of the Commissioners as Chairman.

(2) General authority. The Chairman is the chief executive and administrative officer of the Commission. In carrying out the duties and powers of the Commission (other than under paragraph (3)), the Chairman is subject to the policies, regulatory decisions, findings, and determinations of the Commission.

(3) Particular duties.

(A) In general. The Chairman shall--

(i) appoint and supervise officers and employees of the Commission;

(ii) appoint the heads of major organizational units, but only after consultation with the other Commissioners;

(iii) distribute the business of the Commission among personnel and organizational units;

(iv) supervise the expenditure of money for administrative purposes; and

(v) assign Commission personnel, including Commissioners, to perform duties and powers delegated by the Commission under section 304 of this title.

(B) Nonapplication. Subparagraph (A) (other than clause (v)) does not apply to personnel employed regularly and full-time in the offices of Commissioners other than the Chairman.

---

[3] Section 4 of Public Law 109-304, approved October 6, 2006 (120 STAT. 1488).

(4) Delegation. The Chairman may designate officers and employees under the Chairman's jurisdiction to perform duties and powers of the Chairman, subject to the Chairman's supervision and direction.
(d) Seal. The Commission shall have a seal which shall be judicially recognized.

46 U.S.C. 302 (2006). Quorum. A vacancy or vacancies in the membership of the Federal Maritime Commission do not impair the power of the Commission to execute its functions. The affirmative vote of a majority of the Commissioners serving on the Commission is required to dispose of any matter before the Commission.

46 U.S.C. 303 (2006). Record of meetings and votes. The Federal Maritime Commission, through its secretary, shall keep a record of its meetings and the votes taken on any action, order, contract, or financial transaction of the Commission.

46 U.S.C. 304 (2006). Delegation of authority.
(a) Delegation. The Federal Maritime Commission, by published order or regulation, may delegate to a division of the Commission, an individual Commissioner, an employee board, or an officer or employee of the Commission, any of its duties or powers, including those relating to hearing, determining, ordering, certifying, reporting, or otherwise acting on any matter. This subsection does not affect section 556(b) of title 5.
(b) Review. The Commission may review any action taken under a delegation of authority under subsection (a). The review may be taken on the Commission's own initiative or on the petition of a party to or an intervenor in the action, within the time and in the manner prescribed by the Commission. The vote of a majority of the Commission, less one member, is sufficient to bring an action before the Commission for review.
(c) Deemed action of Commission. If the Commission declines review, or if review is not sought, within the time prescribed under subsection (b), the action taken under the delegation of authority is deemed to be the action of the Commission.

46 U.S.C. 305 (2006). Regulations. The Federal Maritime Commission may prescribe regulations to carry out its duties and powers.

46 U.S.C. 306 (2006). Annual report.
(a) In general. Not later than April 1 of each year, the Federal Maritime Commission shall submit a report to Congress. The report shall include the results of its investigations, a summary of its transactions, the purposes for

which all of its expenditures were made, and any recommendations for legislation.

(b) Report on foreign laws and practices. The Commission shall include in its annual report to Congress--

(1) a list of the 20 foreign countries that 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 section 42302(a) of this title being investigated or found to exist in foreign countries;

(3) any actions being taken by the Commission to offset those conditions;

(4) any recommendations for additional legislation to offset those conditions; and

(5) a list of petitions filed under section 42302(b) of this title that the Commission rejected and the reasons for each rejection.

46 U.S.C. 307 (2006). Expenditures. The Federal Maritime Commission may make such expenditures as are necessary in the performance of its functions from funds appropriated or otherwise made available to it, which appropriations are authorized.

Federal Maritime Commission Funding:

Appropriations.

FMC APPROPRIATIONS FY 2006. Public Law 109-115, approved November 30, 2005 (119 STAT. 2479), provides:

> **FEDERAL MARITIME COMMISSION**
> **SALARIES AND EXPENSES**
> For necessary expenses of the Federal Maritime Commission as authorized by section 201(d) of the Merchant Marine Act, 1936, as amended (46 U.S.C. App. 1111), including services as authorized by 5 U.S.C. 3109; hire of passenger motor vehicles as authorized by 31 U.S.C. 1343(b); and uniforms or allowances therefor, as authorized by 5 U.S.C. 5901–5902, $20,499,000: *Provided,* That not to exceed $2,000 shall be available for official reception and representation expenses.

FMC APPROPRIATIONS FY 2007.

The Federal Maritime Commission has been operating under a series of Continuing Resolutions. As of January 1, 2007, it was operating under Public Law 109-383, approved December 9, 2006 (120 STAT. 2678). The reader is advised to make reference to subsequently enacted legislation.

CHAPTER 5—OTHER GENERAL PROVISIONS[4]

46 U.S.C. 501 (2006). Waiver of navigation and vessel-inspection laws.
(a) On request of Secretary of Defense. On request of the Secretary of Defense, the head of an agency responsible for the administration of the navigation or vessel-inspection laws shall waive compliance with those laws to the extent the Secretary considers necessary in the interest of national defense.
(b) By head of agency. When the head of an agency responsible for the administration of the navigation or vessel-inspection laws considers it necessary in the interest of national defense, the individual may waive compliance with those laws to the extent, in the manner, and on the terms the individual prescribes.
(c) Termination of authority. The authority granted by this section shall terminate at such time as the Congress by concurrent resolution or the President may designate.

46 U.S.C. 502 (2006). Cargo exempt from forfeiture. Cargo on a vessel is exempt from forfeiture under this title if--
(1) the cargo is owned in good faith by a person not the owner, master, or crewmember of the vessel; and
(2) the customs duties on the cargo have been paid or secured for payment as provided by law.

46 U.S.C. 503 (2006). Notice of seizure. When a forfeiture of a vessel or cargo accrues, the official of the United States Government required to give notice of the seizure of the vessel or cargo shall include in the notice, if they are known to that official, the name and the place of residence of the owner or consignee at the time of the seizure.

46 U.S.C. 504 (2006). Remission of fees and penalties. Any part of a fee, tax, or penalty paid or a forfeiture incurred under a law or regulation relating to vessels or seamen may be remitted if--
(1) application for the remission is made within one year after the date of the payment or forfeiture; and
(2) it is found that the fee, tax, penalty, or forfeiture was improperly or excessively imposed.

---

[4] Section 4 of Public Law 109-304, approved October 6, 2006 (120 STAT. 1490).

46 U.S.C. 505 (2006). Penalty for violating regulation or order. A person convicted of knowingly and willfully violating a regulation or order of the Federal Maritime Commission or the Secretary of Transportation under subtitle IV or V of this title, for which no penalty is expressly provided, shall be fined not more than $500. Each day of a continuing violation is a separate offense.

CHAPTER 121—DOCUMENTATION OF VESSELS[5]

SUBCHAPTER I—GENERAL.

46 U.S.C. 12101 (2006). Definitions.

(a) Rebuilt in the United States. In this chapter, a vessel is deemed to have been rebuilt in the United States only if the entire rebuilding, including the construction of any major component of the hull or superstructure, was done in the United States.

(b) Related terms in other laws. When the following terms are used in a law, regulation, document, ruling, or other official act referring to the documentation of a vessel, the following definitions apply:

(1) Registry endorsement. The terms "certificate of registry", "register", and "registry" mean a certificate of documentation with a registry endorsement issued under this chapter.

(2) Coastwise endorsement. The terms "license", "enrollment and license", "license for the coastwise (or coasting) trade", and "enrollment and license for the coastwise (or coasting) trade" mean a certificate of documentation with a coastwise endorsement issued under this chapter.

(3) Yacht. The term "yacht" means a recreational vessel even if not documented.

46 U.S.C. 12102 (2006). Vessels requiring documentation.

(a) In general. Except as otherwise provided, a vessel may engage in a trade only if the vessel has been issued a certificate of documentation with an endorsement for that trade under this chapter.

(b) Vessels less than 5 net tons. A vessel of less than 5 net tons may engage in a trade without being documented if the vessel otherwise satisfies the requirements to engage in the particular trade.

(c) Barges. A barge qualified to engage in the coastwise trade may engage in the coastwise trade, without being documented, on rivers, harbors, lakes (except the Great Lakes), canals, and inland waters.

46 U.S.C. 12103. General eligibility requirements.

(a) In general. Except as otherwise provided, a certificate of documentation for a vessel may be issued under this chapter only if the vessel is--

(1) wholly owned by one or more individuals or entities described in subsection (b);

(2) at least 5 net tons as measured under part J of this subtitle; and

(3) not documented under the laws of a foreign country.

---

[5] Section 5 of Public Law 109-304, approved October 6, 2006 (120 STAT. 1491).

(b) Eligible owners. For purposes of subsection (a)(1), the following are eligible owners:

(1) An individual who is a citizen of the United States.

(2) An association, trust, joint venture, or other entity if--

(A) each of its members is a citizen of the United States; and

(B) it is capable of holding title to a vessel under the laws of the United States or a State.

(3) A partnership if--

(A) each general partner is a citizen of the United States; and

(B) the controlling interest in the partnership is owned by citizens of the United States.

(4) A corporation if--

(A) it is incorporated under the laws of the United States or a State;

(B) its chief executive officer, by whatever title, and the chairman of its board of directors are citizens of the United States; and

(C) no more of its directors are noncitizens than a minority of the number necessary to constitute a quorum.

(5) The United States Government.

(6) The government of a State.

(c) Temporary certificates prior to measurement. Notwithstanding subsection (a)(2), the Secretary may issue a temporary certificate of documentation for a vessel before it is measured.

46 U.S.C. 12104 (2006). Applications for documentation.

(a) In general. An application for a certificate of documentation or endorsement under this chapter must be filed by the owner of the vessel. The application must be filed in the manner, be in the form, and contain the information prescribed by the Secretary.

(b) Applicant's identifying information. The Secretary shall require the applicant to provide--

(1) if the applicant is an individual, the individual's social security number; or

(2) if the applicant is an entity--

(A) the entity's taxpayer identification number; or

(B) if the entity 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 entity and who signs the application.

46 U.S.C. 12105 (2006). Issuance of documentation.

(a) In general. Except as provided in section 12152 of this title, the Secretary, on receipt of a proper application, shall issue a certificate of documentation or a temporary certificate of documentation for a vessel satisfying the requirements of section 12103 of this title. The certificate shall contain each endorsement under subchapter II of this chapter for which the owner applies and the vessel is eligible.

(b) Temporary certificates for recreational vessels. The Secretary may delegate, subject to the supervision and control of the Secretary and under terms prescribed 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 eligible under section 12103 of this title. A temporary certificate issued under this subsection is valid for not more than 30 days.

(c) Information to be included in certificate. A 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) Procedures to ensure integrity and accuracy. The Secretary shall prescribe procedures to ensure the integrity of, and the accuracy of information contained in, certificates of documentation.

46 U.S.C. 12106 (2006). Surrender of title and number.

(a) In general. A documented vessel may not be titled by a State or required to display numbers under chapter 123 of this title, and any certificate of title issued by a State for a documented vessel shall be surrendered as provided by regulations prescribed by the Secretary.

(b) Vessels covered by preferred mortgage. 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.

46 U.S.C. 12107 (2006). Wrecked vessels.

(a) Requirements. A vessel is a wrecked vessel under this chapter if it--

(1) was wrecked on a coast of the United States or adjacent waters; and

(2) has undergone repairs in a shipyard in the United States equal to at least 3 times the appraised salvage value of the vessel.

(b) Appraisals. The Secretary may appoint a board of three appraisers to determine whether a vessel satisfies subsection (a)(2). The costs of the appraisal shall be paid by the owner of the vessel.

SUBCHAPTER II - ENDORSEMENTS AND SPECIAL DOCUMENTATION.

46 U.S.C. 12111 (2006). Registry endorsement.

(a) Requirements. A registry endorsement may be issued for a vessel that satisfies the requirements of section 12103 of this title.

(b) Authorized activity. A vessel for which a registry endorsement is issued may engage in foreign trade or trade with Guam, American Samoa, Wake, Midway, or Kingman Reef.

(c) Certain vessels owned by trusts.

(1) Nonapplication of beneficiary citizenship requirement. For the issuance of a certificate of documentation with only a registry endorsement, the beneficiaries of a trust are not required to be citizens of the United States if the trust qualifies under paragraph (2) and the vessel is subject to a charter to a citizen of the United States.

(2) Requirements for trust to qualify.

(A) In general. Subject to subparagraph (B), a trust qualifies under this paragraph with respect to a vessel only if--

(i) each trustee 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 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) Authority of non-citizens. 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.

(C) Ownership by non-citizens. Subparagraphs (A) and (B) do not prohibit a person that is not a citizen of the United States from holding more than 25 percent of the beneficial interest in a trust.

(3) Citizenship of person chartering vessel. If a person chartering a vessel from a trust that qualifies under paragraph (2) is a citizen of the United States under section 50501 of this title, the vessel is deemed to be owned by a citizen of the United States for purposes of that section and related laws, except chapter 531 of this title.

(d) (1) Only a vessel for which a certificate of documentation with a registry endorsement is issued may engage in--

(A) the setting, relocation, or recovery of the anchors or other mooring equipment of a mobile offshore drilling unit that is located over the outer Continental Shelf (as defined in section 2(a) of the Outer Continental Shelf Lands Act (*43 U.S.C. 1331(a)*)); or

(B) the transportation of merchandise or personnel to or from a point in the United States from or to a mobile offshore drilling unit located over the outer Continental Shelf that is not attached to the seabed.

(2) Nothing in paragraph (1) authorizes the employment in the coastwise trade of a vessel that does not meet the requirements of section 12106 [12112] of this title.][6]

46 U.S.C. 12112 (2006). Coastwise endorsement.

(a) Requirements. A coastwise endorsement may be issued for a vessel that--

(1) satisfies the requirements of section 12103 of this title;

(2) (A) was built in the United States; or

(B) if not built in the United States--

(i) was captured in war by citizens of the United States and lawfully condemned as prize;

(ii) was adjudged to be forfeited for a breach of the laws of the United States; or

(iii) qualifies as a wrecked vessel under section 12107 of this title; and

(3) otherwise qualifies under the laws of the United States to engage in the coastwise trade.

(b) Authorized activity. Subject to the laws of the United States regulating the coastwise trade, a vessel for which a coastwise endorsement is issued may engage in the coastwise trade.

---

[6] Section 310 of Public Law 109-241, approved July 11, 2006, amended 46 U.S.C. 12105. Registry Endorsements, by the addition of a subsection (c) to generally restrict this trade to U.S.-flag vessels. This includes anchor work on mobile offshore drilling rigs, and the transportation of merchandise or personnel to or from such rigs on the Outer Continental Shelf and a point in the United States. 46 U.S.C. 12105(c) was then incorporated in 46 U.S.C. 12111(d) by Public Law 109-304, approved October 6, 2006, that codified 46 U.S.C. 12105 as 46 U.S.C. 12111. Thereafter, Section 705 of Public Law 109-347, approved October 13, 2006, made the following exception to 46 U.S.C. 12105(c).

"**Sec. 705. PHASEOUT OF VESSELS SUPPORTING OIL AND GAS DEVELOPMENT. (a) In General**.--Notwithstanding section 12105(c) of title 46, United States Code, a foreign-flag vessel may be chartered by, or on behalf of, a lessee to be employed for the setting, relocation, or recovery of anchors or other mooring equipment of a mobile offshore drilling unit that is located over the Outer Continental Shelf (as defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a)) for operations in support of exploration, or flow-testing and stimulation of wells, for offshore mineral or energy resources in the Beaufort Sea or the Chukchi Sea adjacent to Alaska-- (1) until December 31, 2009, if the Secretary of Transportation determines after publishing notice in the Federal Register, that insufficient vessels documented under section 12105(c) of title 46, United States Code, are reasonably available and suitable for these support operations and all such reasonably available and suitable vessels are employed in support of such operations; and (2) for an additional 2-year period beginning January 1, 2010, if the Secretary of Transportation determines (A) as of December 31, 2009, the lessee has entered into a binding agreement to employ an eligible vessel or vessels to be documented under section 12105(c) of title 46, United States Code, in sufficient numbers and with sufficient suitability to replace any vessel or vessels operating under this section; and (B) after publishing notice in the Federal Register, that insufficient vessels documented under section 12105(c) of title 46, United States Code, are reasonably available and suitable for these support operations and all such reasonably available and suitable vessels are employed in support of such operations. **(b) Lessee Defined.**--In this section, the term "lessee" means the holder of a lease (as defined in section 1331(c) of title 43, United States Code). **(c) Savings Provision.**--Nothing in subsection (a) may be construed to authorize the employment in the coastwise trade of a vessel that does not meet the requirements of section 12106 of title 46, United States Code.

46 U.S.C. 12113 (2006). Fishery endorsement.

(a) Requirements. A fishery endorsement may be issued for a vessel that--

(1) satisfies the requirements of section 12103 of this title and, if owned by an entity, the entity satisfies the ownership requirements in subsection (c);

(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; and

(5) otherwise qualifies under the laws of the United States to engage in the fisheries.

(b) Authorized activity.

(1) In general. Subject to the laws of the United States regulating the fisheries, a vessel for which a fishery endorsement is issued may engage in the fisheries.

(2) Use by prohibited persons. A fishery endorsement is invalid immediately if the vessel for which it is issued is used as a fishing vessel while it 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.

(c) Ownership requirements for entities.

(1) In general. A vessel owned by an entity is eligible for a fishery endorsement only if at least 75 percent of the interest in the entity, at each tier of ownership and in the aggregate, is owned and controlled by citizens of the United States.

(2) Determining 75 percent interest. In determining whether at least 75 percent of the interest in the entity is owned and controlled by citizens of the United States under paragraph (1), the Secretary shall apply section 50501(d) of this title, except that for this purpose the terms "control" or "controlled"--

(A) include the right to--

(i) direct the business of the entity;

(ii) 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; or

(iii) direct the transfer, operation, or manning of a vessel with a fishery endorsement; but

(B) do 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, except 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) Exceptions. This subsection does not apply to a vessel when it is engaged in the 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 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 pursuant to this paragraph is valid for engaging only in the activities described in this paragraph.

(d) Requirements based on length, tonnage, or horsepower.

(1) Application. This subsection applies to a vessel that--

(A) is greater than 165 feet in registered length;

(B) is more than 750 gross registered tons as measured under chapter 145 of this title or *1*,900 gross registered tons as measured under chapter 143 of this title; or

(C) has an engine or engines capable of producing a total of more than 3,000 shaft horsepower.

(2) Requirements. A vessel subject to this subsection is not eligible for a fishery endorsement 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 October 21, 1998; and

(iii) if the fishery endorsement is invalidated after October 21, 1998, application is made for a new fishery endorsement within 15 business days of the invalidation; or

(B) the owner of the 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 October 21, 1998, and the Secretary of Commerce has approved, conservation and management measures in accordance with the American Fisheries Act (Public Law 105-277, div. C, title II) (*16 U.S.C. 1851* note) to allow the vessel to be used in fisheries under the council's authority.

(e) Vessels measuring 100 feet or greater.

(1) In general. The Administrator of the Maritime Administration shall administer subsections (c) and (d) 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 on an annual basis to demonstrate compliance with those provisions.

(2) Regulations. 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 shall be

written in a manner to allow the owner of the vessel to satisfy any annual renewal requirements for a certificate of documentation for the vessel and to comply with this subsection and subsections (c) and (d), and shall not be required to be notarized.

(3) Transfer of ownership. Transfers of ownership and control of vessels subject to subsection (c) or (d), which are 100 feet or greater in registered length, shall be rigorously scrutinized for violations of those provisions, with particular attention given to--

(A) leases, charters, mortgages, financing, and similar arrangements;

(B) the control of persons not eligible to own a vessel with a fishery endorsement under subsection (c) or (d), over the management, sales, financing, or other operations of an entity; and

(C) contracts involving the purchase over extended periods of time of all, or substantially all, of the living marine resources harvested by a fishing vessel.

(f) Vessels measuring less than 100 feet. The Secretary shall establish reasonable and necessary requirements to demonstrate compliance with subsections (c) and (d), 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 those vessels.

(g) Vessels purchased through fishing capacity reduction program. A vessel purchased by the Secretary of Commerce through a fishing capacity reduction program under the Magnuson-Stevens Fishery Conservation Management Act (16 U.S.C. 1801 et seq.) or section 308 of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107) is not eligible for a fishery endorsement, and any fishery endorsement issued for that vessel is invalid.

(h) Revocation of endorsements. The Secretary shall revoke the fishery endorsement of any vessel subject to subsection (c) or (d) whose owner does not comply with those provisions.

(i) Regulations. Regulations to implement subsections (c) and (d) and sections 12151(c) and 31322(b) of this title shall prohibit impermissible transfers of ownership or control, specify any transactions that require prior approval of an implementing agency, identify transactions that do not require prior agency approval, and to the extent practicable, minimize disruptions to the commercial fishing industry, to the traditional financing arrangements of that industry, and to the opportunity to form fishery cooperatives.

46 U.S.C. 12114 (2006). Recreational endorsement.

(a) Requirements. A recreational endorsement may be issued for a vessel that satisfies the requirements of section 12103 of this title.

(b) Authorized activity. A vessel operating under a recreational endorsement may be operated only for pleasure.

(c) Application of customs laws. A vessel for which a recreational endorsement is issued may proceed between a port of the United States and a port of a foreign country without entering or clearing with the Secretary of Homeland Security.[7] However, a recreational vessel is subject to the requirements for reporting arrivals under section 433 of the Tariff Act of 1930 (*19 U.S.C. 1433*), and individuals on the vessel are subject to applicable customs regulations.

46 U.S.C. 12115 (2006). Temporary endorsement for vessels procured outside the United States.

(a) General authority. The Secretary 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 and meeting the ownership requirements of section 12103 of this title.

(b) Authorized activity. Subject to limitations the Secretary may prescribe, a vessel documented under this section may proceed to the United States and engage en route in foreign trade or trade with Guam, American Samoa, Wake, Midway, or Kingman Reef.

(c) Application of United States jurisdiction and laws. A vessel documented under this section is subject to the jurisdiction and laws of the United States. However, if the Secretary considers it to be in the public interest, the Secretary 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.

(d) Surrender of certificate. On the vessel's arrival in the United States, the certificate of documentation shall be surrendered as provided by regulations prescribed by the Secretary.

46 U.S.C. 12116 (2006). Limited endorsements for Guam, American Samoa, and Northern Mariana Islands.

(a) Endorsements. A vessel satisfying the requirements of subsection (b) may be issued--

(1) a coastwise endorsement to engage in the coastwise trade of fisheries products between places in Guam, American Samoa, and the Northern Mariana Islands; or

(2) 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.

---

[7] "Secretary of Homeland Security" is substituted for "Customs Service" because the functions of the Customs Service and of the Secretary of the Treasury relating thereto were transferred to the Secretary of Homeland Security by section 403(1) Public Law 107-296 (116 Stat. 2178), the Homeland Security Act of 2002.

(b) Requirements. An endorsement may be issued under subsection (a) for a vessel that--

(1) satisfies the requirements of section 12103 of this title;

(2) was not built in the United States, except that for an endorsement under subsection (a)(2), the vessel must not have been built or rebuilt in the United States;

(3) is less than 200 gross tons as measured under section 14502 of this title, or an alternate tonnage as measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title; and

(4) otherwise qualifies under the laws of the United States to engage in the coastwise trade or the fisheries, as the case may be.

46 U.S.C. 12117 (2006). Oil spill response vessels.

(a) Requirements. A coastwise endorsement may be issued for a vessel that--

(1) satisfies the requirements for a coastwise endorsement, except for the ownership requirement otherwise applicable without regard to this section;

(2) is owned by a not-for-profit oil spill response cooperative or by members of such a cooperative that dedicate the vessel to use by the cooperative;

(3) is at least 50 percent owned by individuals or entities described in section 12103(b) of this title; and

(4) is to be used only for--

(i) deploying equipment, supplies, and personnel to recover, contain, or transport oil discharged into the navigable waters of the United States or the exclusive economic zone; or

(ii) training exercises to prepare to respond to such a discharge.

(b) Deemed owned by citizens. A vessel satisfying subsection (a) is deemed to be owned only by citizens of the United States under sections 12103, 12132, and 50501 of this title.

46 U.S.C. 12118 (2006). Owners engaged primarily in manufacturing or mineral industry.

(a) Definitions.[8] In this section:

(1) Bowaters corporation. The term "Bowaters corporation" means a corporation that has filed a certificate under oath with the Secretary, in the form and at the times prescribed by the Secretary, establishing that--

(A) the corporation is incorporated under the laws of the United States or a State;

(B) a majority of the officers and directors of the corporation are individuals who are citizens of the United States;

(C) at least 90 percent of the employees of the corporation are residents of the United States;

(D) the corporation is engaged primarily in a manufacturing or mineral industry in the United States;

(E) the total book value of the vessels owned by the corporation is not more than 10 percent of the total book value of the assets of the corporation; and

(F) the corporation buys or produces in the United States at least 75 percent of the raw materials used or sold in its operations.

(2) Parent. The term "parent" means a corporation that has filed a certificate under oath with the Secretary, in the form and at the times prescribed by the Secretary, establishing that the corporation-- (A) is incorporated under the laws of the United States or a State; and

(B) controls, directly or indirectly, at least 50 percent of the voting stock of a Bowaters corporation.

(3) Subsidiary. The term "subsidiary" means a corporation that has filed a certificate under oath with the Secretary, in the form and at the times prescribed by the Secretary, establishing that the corporation--

(A) is incorporated under the laws of the United States or a State; and

(B) has at least 50 percent of its voting stock controlled, directly or indirectly, by a Bowaters corporation or its parent.

(b) Deemed citizen. A Bowaters corporation is deemed to be a citizen of the United States for purposes of chapters 121, 551, and 561 and section 80104 of this title.

(c) Issuance of documentation. A certificate of documentation and appropriate endorsement may be issued for a vessel that--

(1) is owned by a Bowaters corporation;

(2) was built in the United States; and

---

[8] In this section, the word "Secretary" is substituted for "Secretary of the Treasury", thereby incorporating the definition of "Secretary" in 46 U.S.C. 2101. The functions of the Secretary of the Treasury relating to the Coast Guard previously were transferred to the Secretary of Transportation by section 6(b) of Public Law 89-670 (80 STAT. 938), the Department of Transportation Act. The Coast Guard and the functions of the Secretary of Transportation relating to the Coast Guard were again transferred to the Department of Homeland Security by section 888(b) of Public Law 107-296 (116 STAT. 2135), the Homeland Security Act of 2002.

(3) (A) is self-propelled and less than 500 gross tons as measured under section 14502 of this title, or an alternate tonnage as measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title; or

(B) is not self-propelled.

(d) Effects of documentation.

(1) In general. Subject to paragraph (2)--

(A) a vessel documented under this section may engage in the coastwise trade; and

(B) the vessel and its owner and master are entitled to the same benefits and are subject to the same requirements and penalties as if the vessel were otherwise documented or exempt from documentation under this chapter.

(2) Transportation of passengers or merchandise. A vessel documented under this section may transport passengers or merchandise for hire in the coastwise trade only--

(A) as a service for a parent or subsidiary of the corporation owning the vessel; or

(B) when under a demise or bareboat charter, at prevailing rates for use not in the domestic noncontiguous trades, from the corporation owning the vessel to a carrier that--

(i) is subject to jurisdiction under subchapter II of chapter 135 of title 49;

(ii) otherwise qualifies as a citizen of the United States under section 50501 of this title*;* and

(iii) is not owned or controlled, directly or indirectly, by the corporation owning the vessel.

(e) Validity of corporate certificate. A certificate filed by a corporation under this section remains valid only as long as the corporation continues to satisfy the conditions required of the corporation by this section. When a corporation no longer satisfies those conditions, the corporation loses its status under this section and immediately shall surrender to the Secretary any documents issued to it based on that status.

(f) Penalties.

(1) Falsifying material fact. If a corporation knowingly falsifies a material fact in a certificate filed under subsection (a), the vessel (or its value) documented or operated under this section shall be forfeited.

(2) Transporting merchandise. If a vessel transports merchandise for hire in violation of this section, the merchandise shall be forfeited to the United States Government.

(3) Transporting passengers. If a vessel transports passengers for hire in violation of this section, the vessel is liable for a penalty of $200 for each passenger so transported.[9]

---

[9]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 71.

(4) Remission or mitigation. A penalty or forfeiture incurred under this subsection may be remitted or mitigated under section 2107(b) of this title.

46 U.S.C. 12119[10] (2006). Owners engaged primarily in leasing or financing transactions.

(a) Definitions. In this section:

---

[10] 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). 46 U.S.C. 12106(f) was codified as 46 U.S.C. 12119, by Section 5 of Public Law 109-304, approved October 6, 2006 (120 STAT. 1501). It is unclear as to the disposition of Section 608(b), (c), (d), and (e) of Public Law 108-293, 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 U.S.C. 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.

(1) 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 that 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.

(2) 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 subsection (c)(3).

(3) Oil. The term "oil" has the meaning given that term in section 2101(20) of this title.

(4) Passive investment. The term "passive investment" means an investment in which neither the investor nor any affiliate of the 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.

(5) Qualified proprietary cargo. The term "qualified proprietary cargo" means--

(A) oil, petroleum products, petrochemicals, or liquefied natural gas cargo that is beneficially owned by the person that submits to the Secretary an application or annual certification under subsection (c)(3), or by an affiliate of that person, immediately before, during, or immediately after the cargo is carried in coastwise trade on a vessel owned by that person;

(B) oil, petroleum products, petrochemicals, or liquefied natural gas cargo not beneficially owned by the person that submits to the Secretary an application or an annual certification under subsection (c)(3), or by an affiliate of that person, but which is carried in coastwise trade by a vessel owned by that person and which is part of an arrangement in which vessels owned by that 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 that person, or by an affiliate of that person, is carried in coastwise trade on one or more other vessels, not owned by that person, or by an affiliate of that person, if the other vessel or vessels are also part of the same arrangement;

(C) in the case of a towing vessel associated with a non-self-propelled tank vessel where both vessels function as a single self-propelled vessel, oil, petroleum products, petrochemicals, or liquefied natural gas cargo that is beneficially owned by the person that owns both the towing vessel and the non-self-propelled tank vessel, or any United States affiliate of that person, immediately before, during, or immediately after the cargo is carried in coastwise trade on either of those vessels; or

(D) 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 the vessel to the owner of the vessel after December 31, 1999; and

(ii) was purchased by a person for the purpose, and with the reasonable expectation, of transporting on the vessel liquefied natural gas or unrefined petroleum beneficially owned by the owner of the vessel, or an affiliate of the owner, from Alaska to the continental United States.

(6) 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.

(b) Requirements. A coastwise endorsement may be issued for a vessel if--

(1) the vessel satisfies the requirements for a coastwise endorsement, except for the ownership requirement otherwise applicable without regard to this section;

(2) 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 (c);

(3) 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 under section 50501 of this title for engaging in the coastwise trade; and

(4) the demise charter is for a period of at least 3 years or a shorter period as may be prescribed by the Secretary.

(c) Ownership certification.

(1) In general. A person meets the requirements of this subsection if the 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 that operates any vessel for hire; and

(D) is independent from, and not an affiliate of, any charterer of the vessel or any other person that 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 the person and United States affiliates of the person does not exceed 10 percent of the aggregate book value of all assets owned by the person and its United States affiliates;

(ii) not more than 10 percent of the aggregate revenues of the 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 the person and its United States affiliates and documented with a coastwise endorsement is qualified proprietary cargo;

(iv) any cargo other than qualified proprietary cargo carried by all vessels owned by the person and its United States affiliates and documented with a coastwise endorsement consists of oil, petroleum products, petrochemicals, or liquified natural gas;

(v) no vessel owned by the person or any of its United States affiliates and documented with a coastwise endorsement carries molten sulphur; and

(vi) the person owned one or more vessels documented under this section as of August 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 at least 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 both vessels function as a single self-propelled vessel.

(d) Filing of demise charter. The demise charter and any amendments to the charter shall be filed with the certification required by subsection (b)(3) or within 10 days after filing an amendment to the charter. The charter and amendments shall be made available to the public.

(e) Continuation of endorsement after termination of charter. When a charter required by subsection (b)(3) is terminated for default by the charterer, the Secretary may continue the coastwise endorsement for not more than 6 months on terms and conditions the Secretary may prescribe.

(f) Deemed owned by citizens. A vessel satisfying the requirements of this section is deemed to be owned only by citizens of the United States under sections 12103 and 50501 of this title.

46 U.S.C. 12120 (2006). Liquified gas tankers. Notwithstanding any agreement with the United States Government, the Secretary may issue a certificate of documentation with a coastwise endorsement for a vessel to transport liquified natural gas or liquified petroleum gas to Puerto Rico from other ports in the United States, if the vessel--

(1) is a foreign built vessel that was built before October 19, 1996; or

(2) was documented under this chapter before that date, even if the vessel is placed under a foreign registry and subsequently redocumented under this chapter for operation under this section.

46 U.S.C. 12121 (2006). Small passenger vessels and uninspected passenger vessels.

(a) Definitions. In this section:

(1) Eligible vessel. The term "eligible vessel" means a vessel that--

(A) was not built in the United States and is at least 3 years old; or

(B) if rebuilt, was rebuilt outside the United States at least 3 years before the certificate requested under subsection (b) would take effect.

(2) 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 those terms in section 2101 of this title.

(b) Issuance of Certificate and Endorsement. Notwithstanding sections 12112, 12113, 55102, and 55103 of this title, the Secretary may issue a certificate of documentation with an appropriate endorsement for employment in the coastwise trade as a small passenger vessel or an uninspected passenger vessel in the case of an eligible vessel authorized to carry no more than 12 passengers for hire if the Secretary of Transportation, 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 that employs vessels built in the United States in that business.

(c) Revocation.

(1) For fraud. The Secretary shall revoke a certificate or endorsement issued under subsection (b) if the Secretary of Transportation, after notice and an opportunity for a hearing, determines that the certificate or endorsement was obtained by fraud.

(2) Other provisions not affected. Paragraph (1) does not affect--

(A) the criminal prohibition on fraud and false statements in section 1001 of title 18; or

(B) any other authority of the Secretary to revoke a certificate or endorsement issued under subsection (b).

SUBCHAPTER III - MISCELLANEOUS.

46 U.S.C. 12131 (2006). Command of documented vessels.

(a) In general. Except as provided in subsection (b), a documented vessel may be placed under the command only of a citizen of the United States.

(b) Exceptions. Subsection (a) does not apply to--

(1) a vessel with only a recreational endorsement; or

(2) an unmanned barge operating outside of the territorial waters of the United States.

46 U.S.C. 12132 (2006). Loss of coastwise trade privileges.
(a) Sold foreign or placed under foreign registry. A vessel of more than 200 gross tons (as measured under chapter 143 of this title), eligible to engage in the coastwise trade, and later sold foreign in whole or in part or placed under foreign registry may not thereafter engage in the coastwise trade.
(b) Rebuilt outside the United States. A vessel eligible to engage in the coastwise trade and later rebuilt outside the United States may not thereafter engage in the coastwise trade.

46 U.S.C. 12133 (2006). Duty to carry certificate on vessel and allow examination.
(a) Duty to carry. The certificate of documentation of a vessel shall be carried on the vessel unless the vessel is exempt by regulation from carrying the certificate.
(b) Availability. The owner or individual in charge of a vessel required to carry its certificate of documentation shall make the certificate available for examination at the request of an officer enforcing the revenue laws or as otherwise required by law or regulation.
(c) Criminal penalty. A person willfully violating subsection (b) shall be fined under title 18, imprisoned for not more than one year, or both.

46 U.S.C. 12134 (2006). Evidentiary uses 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) conclusive evidence of qualification to engage in a specified trade; and
(3) not conclusive evidence of ownership in a proceeding in which ownership is in issue.

46 U.S.C. 12135 (2006). Invalidation of certificates of documentation. A certificate of documentation or an endorsement on the certificate 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 the certificate or endorsement; or
(2) is placed under the command of an individual not a citizen of the United States in violation of section 12131 of this title.

46 U.S.C. 12136 (2006). Surrender of certificates of documentation.
(a) Surrender. An invalid certificate of documentation, or a certificate with an invalid endorsement, shall be surrendered as provided by regulations prescribed by the Secretary.

(b) Conditions for surrender.

(1) Vessels over 1,000 tons. The Secretary may condition approval of the surrender of the certificate of documentation for a vessel over 1,000 gross tons.

(2) Vessels covered by mortgage. The Secretary may approve the surrender of the certificate of documentation of a vessel covered by a mortgage filed or recorded under section 31321 of this title only if the mortgagee consents.

(3) Notice of lien. The Secretary may 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.

(c) Continued application of certain laws.

(1) In general. Notwithstanding subsection (a), 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 56101 and 56102(a)(2) and chapter 563 of this title; and

(C) any other law of the United States identified by the Secretary by regulation as a law to which the Secretary applies this subsection.

(2) Exception. This subsection does not apply when a vessel is forfeited or sold by order of a district court of the United States.

46 U.S.C. 12137 (2006). Recording of vessels built in the United States. The Secretary may provide for recording and certifying information about vessels built in the United States that the Secretary considers to be in the public interest.

46 U.S.C. 12138 (2006). List of documented vessels.

(a) In general. The Secretary 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.

(b) Vessels for cable laying, maintenance, and repair.

(1) In general. The Secretary of Transportation shall develop, maintain, and periodically update an inventory of vessels that are documented under this chapter, are at least 200 feet in length, and have the capability to lay, maintain, or repair a submarine cable, without regard to whether a particular vessel is classed as a cable ship or cable vessel.

(2) Information to be included. For each vessel listed in the inventory, the Secretary of Transportation shall include in the inventory--

(A) the name, length, beam, depth, and other distinguishing characteristics of the vessel;

(B) the abilities and limitations of the vessel with respect to laying, maintaining, and repairing a submarine cable; and

(C) the name and address of the person to whom inquiries regarding the vessel may be made.

(3) Publication. The Secretary of Transportation shall publish in the Federal Register an updated inventory every 6 months.

46 U.S.C. 12139 (2006). Reports.

(a) In general. To ensure compliance with this chapter and laws governing the qualifications of vessels to engage in the coastwise trade and the fisheries, the Secretary may require owners, masters, charterers, and mortgagees of documented vessels to submit reports in any reasonable form and manner the Secretary may prescribe.

(b) Vessels rebuilt outside United States.

(1) In general. Under regulations prescribed by the Secretary,[11] if a vessel exceeding the tonnage specified in paragraph (2) and documented or last documented under the laws of the United States is rebuilt outside the United States, the owner or master shall submit a report of the rebuilding to the Secretary.

(2) Tonnage. The tonnage referred to in paragraph (1) is--

(A) 500 gross tons as measured under section 14502 of this title; or

(B) an alternate tonnage as measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title.

(3) Timing of submission. If the rebuilding is completed in the United States, the report shall be submitted when the rebuilding is completed. If the rebuilding is completed outside the United States, the report shall be submitted when the vessel first arrives at a port in the customs territory of the United States.

---

[11] "Secretary" is substituted for "Secretary of the Treasury", thereby incorporating the definition of "Secretary" in 46 U.S.C. 2101. The functions of the Secretary of the Treasury relating to the Coast Guard previously were transferred to the Secretary of Transportation by section 6(b) of Public Law 89-670 (80 Stat. 938), the Department of Transportation Act. The Coast Guard and the functions of the Secretary of Transportation relating to the Coast Guard were again transferred to the Department of Homeland Security by section 888(b) of Public Law 107-296 (116 Stat. 2135), the Homeland Security Act of 2002. The words "rebuilt outside the United States" are substituted for "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 possessions" because of the definition of "rebuilt" in 46 U.S.C. 12101, and the definition of "United States" in chapter 1, of the revised title.

SUBCHAPTER IV - PENALTIES.

46 U.S.C. 12151 (2006). Penalties.

(a) In general. 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. Each day of a continuing violation is a separate violation.

(b) Seizure and forfeiture of vessels. A vessel and its equipment are liable to seizure by and forfeiture to the Government if--

(1) the owner of the 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 of the vessel or in applying for documentation of the vessel;

(2) a certificate of documentation is knowingly and fraudulently used for the vessel;

(3) the vessel is operated after its endorsement has been denied or revoked under section 12152 of this title*;*

(4) the vessel is employed in a trade without an appropriate endorsement;

(5) the vessel has only a recreational endorsement and is operated other than for pleasure;

(6) the vessel is a documented vessel and is placed under the command of a person not a citizen of the United States, except as authorized by section 12131(b) of this title; or

(7) the vessel is rebuilt outside the United States and a report of the rebuilding is not submitted as required by section 12139(b) of this title.

(c) Engaging in fishing after falsifying eligibility. In addition to other penalties under this section, the owner of a documented vessel for which a fishery endorsement has been issued is liable to the Government for a civil penalty of not more than $100,000 for each day the vessel engages in fishing (as defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802)) within the exclusive economic zone, 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, about the eligibility of the vessel under section 12113(c) or (d) of this title in applying for or applying to renew the fishery endorsement.

46 U.S.C. 12152 (2006). Denial or revocation of endorsement for non-payment of civil penalty.

If the owner of a vessel fails to pay a civil penalty imposed by the Secretary, the Secretary may deny the issuance or renewal of an endorsement, or revoke the endorsement, on a certificate of documentation issued for the vessel under this chapter.

MANNING OF VESSELS

46 U.S.C. 8101 (2006). Complement of inspected vessels.[12]

(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 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.

(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)

---

[12] Note that the amount of the civil penalties set forth in this section may have been changed pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, set forth at page 71.

violating this subsection is liable to the Government for a civil penalty of not more than $10,000. 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. 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 (2006). 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.
(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 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 hotwork is being done to guard against and give alarm in case of a fire.

46 U.S.C. 8103 (2006). Citizenship and Navy Reserve requirements.

(a) Except as otherwise provided in this title, 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 seaman 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 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 Navy 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.

(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)).

(j) Riding gang member. This section does not apply to an individual who is a riding gang member.

(k) Crew requirements for large passenger vessels.

(1) Citizenship and nationality. Each unlicensed seaman on a large passenger vessel shall be--

(A) a citizen of the United States;

(B) an alien lawfully admitted to the United States for permanent residence;

(C) an alien allowed to be employed in the United States under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), including an alien crewman described in section 101(a)(15)(D)(i) of that Act (8 U.S.C. 1101(a)(15)(D)(i)), who meets the requirements of paragraph (3)(A) of this subsection; or

(D) a foreign national who is enrolled in the United States Merchant Marine Academy.

(2) Percentage limitation for alien seamen. Not more than 25 percent of the unlicensed seamen on a vessel described in paragraph (1) of this subsection may be aliens referred to in subparagraph (B) or (C) of that paragraph.

(3) Special rules for certain unlicensed seamen.

(A) Qualifications. An unlicensed seaman described in paragraph (1)(C) of this subsection--

(i) shall have been employed, for a period of not less than 1 year, on a passenger vessel under the same common ownership or control as the vessel described in paragraph (1) of this subsection, as certified by the owner or managing operator of such vessel to the Secretary;

(ii) shall have no record of material disciplinary actions during such employment, as verified in writing by the owner or managing operator of such vessel to the Secretary;

(iii) shall have successfully completed a United States Government security check of the relevant domestic and international databases, as appropriate, or any other national security-related information or database;

(iv) shall have successfully undergone an employer background check--

(I) for which the owner or managing operator provides a signed report to the Secretary that describes the background checks undertaken that are reasonably and legally available to the owner or managing operator including personnel file information obtained from such seaman and from databases available to the public with respect to the seaman;

(II) that consisted of a search of all information reasonably available to the owner or managing operator in the seaman's country of citizenship and any other country in which the seaman receives employment referrals, or resides;

(III) that is kept on the vessel and available for inspection by the Secretary; and

(IV) the information derived from which is made available to the Secretary upon request; and

(v) may not be a citizen or temporary or permanent resident of a country designated by the United States as a sponsor of terrorism or any other country that the Secretary, in consultation with the Secretary of State and the heads of

other appropriate United States agencies, determines to be a security threat to the United States.

(B) Restrictions. An unlicensed seaman described in paragraph (1)(C) of this subsection--

(i) may be employed only in the steward's department of the vessel; and

(ii) may not perform watchstanding, automated engine room duty watch, or vessel navigation functions.

(C) Status, documentation, and employment. An unlicensed seaman described in subparagraph (C) or (D) of paragraph (1) of this subsection--

(i) is deemed to meet the nationality requirements necessary to qualify for a merchant mariners document notwithstanding the requirements of part 12 of title 46, Code of Federal Regulations;

(ii) is deemed to meet the proof-of-identity requirements necessary to qualify for a merchant mariners document, as prescribed under regulations promulgated by the Secretary, if the seaman possesses--

(I) an unexpired passport issued by the government of the country of which the seaman is a citizen or subject; and

(II) an unexpired visa issued to the seaman, as described in paragraph (1)(C);

(iii) shall, if eligible, be issued a merchant mariners document with an appropriate annotation reflecting the restrictions of subparagraph (B) of this paragraph; and

(iv) may be employed for a period of service on board not to exceed 36 months in the aggregate as a nonimmigrant crewman described in section 101(a)(15)(D)(i) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(D)(i)) on vessels engaged in domestic voyages notwithstanding the departure requirements and time limitations of such section and the regulations and rules promulgated thereunder.

(4) Merchant mariner's document requirements not affected. This subsection shall not be construed to affect any requirement under Federal law that an individual must hold a merchant mariner's document.

(5) Definitions. In this subsection:

(A) Steward's department. The term "steward's department" means the department that includes entertainment personnel and all service personnel, including wait staff, housekeeping staff, and galley workers, as defined in the vessel security plan approved by the Secretary pursuant to section 70103(c) of this title.

(B) Large passenger vessel. The term "large passenger vessel" means a vessel of more than 70,000 gross tons, as measured under section 14302 of this title, with capacity for at least 2,000 passengers and documented with a coastwise endorsement under chapter 121 of this title.

46 U.S.C. 8104 (2006). 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.

(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. 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.

(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 less than 500 gross tons as measured under section 14502 of this title, or is less than 2,500 gross tons as measured under section 14302 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 less than 500 gross tons as measured under section 14502 of this title, or is less than 2,500 gross tons as measured under section 14302 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 (2006). 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.

46 U.S.C. 8106 (2006) Riding gangs.

(a) In general. The owner or managing operator of a freight vessel of the United States on voyages covered by the International Convention for Safety of Life at Sea, 1974 (32 UST 47m) shall--

(1) ensure that--

(A) subject to subsection (d), each riding gang member on the vessel--

(i) is a United States citizen or an alien lawfully admitted to the United States for permanent residence; or

(ii) possesses a United States nonimmigrant visa for individuals desiring to enter the United States temporarily for business, employment-related and personal identifying information, and any other documentation required by the Secretary;

(B) all required documentation for such member is kept on the vessel and available for inspection by the Secretary; and

(C) each riding gang member is identified on the vessel's crew list;

(2) ensure that--

(A) the owner or managing operator attests in a certificate that the background of each riding gang member has been examined and found to be free of any credible information indicating a material risk to the security of the vessel, the vessel's cargo, the ports the vessel visits, or other individuals onboard the vessel;

(B) the background check consisted of a search of all information reasonably available to the owner or managing operator in the riding gang member's country of citizenship and any other country in which the riding gang member works, receives employment referrals, or resides;

(C) the certificate required under subparagraph (A) is kept on the vessel and available for inspection by the Secretary; and

(D) the information derived from any such background check is made available to the Secretary upon request;

(3) ensure that each riding gang member, while on board the vessel, is subject to the same random chemical testing and reporting regimes as crew members;

(4) ensure that each such riding gang member receives basic safety familiarization and basic safety training approved by the Coast Guard as satisfying the requirements for such training under the International Convention of Training, Certification, and Watchkeeping for Seafarers, 1978;

(5) prevent from boarding the vessel, or cause the removal from the vessel at the first available port, and disqualify from future service on board any other vessel owned or operated by that owner or operator, any riding gang member--

(A) who has been convicted in any jurisdiction of an offense described in paragraph (2) or (3) of section 7703;

(B) whose license, certificate of registry, or merchant mariner's document has been suspended or revoked under section 7704; or

(C) who otherwise constitutes a threat to the safety of the vessel;

(6) ensure and certify to the Secretary that the sum of--

(A) the number of riding gang members on board a freight vessel, and

(B) the number of individuals in addition to crew permitted under section 3304,

does not exceed 12;

(7) ensure that every riding gang member is employed on board the vessel under conditions that meet or exceed the minimum international standards of all applicable international labor conventions to which the United States is a

party, including all of the merchant seamen protection and relief provided under United States law; and

(8) ensure that each riding gang member--

(A) is supervised by an individual who holds a license issued under chapter 71; and

(B) only performs work in conjunction with individuals who hold merchant mariners documents issued under chapter 73 and who are part of the vessel's crew.

(b) Permitted work. Subject to subsection (f), a riding gang member on board a vessel to which subsection (a) applies who is neither a United States citizen nor an alien lawfully admitted to the United States for permanent residence may not perform any work on board the vessel other than--

(1) work in preparation of a vessel entering a shipyard located outside of the United States;

(2) completion of the residual repairs after departing a shipyard located outside of the United States; or

(3) technical in-voyage repairs, in excess of any repairs that can be performed by the vessel's crew, in order to advance the vessel's useful life without having to actually enter a shipyard.

(c) Workday limit.

(1) In general. The maximum number of days in any calendar year that the owner or operator of a vessel to which subsection (a) applies may employ on board riding gang members who are neither United States citizens nor aliens lawfully admitted to the United States for permanent residence for work on board that vessel is 60 days. If the vessel is at sea on the 60th day, each riding gang member shall be discharged from the vessel at the next port of call reached by the vessel after the date on which the 60-workday limit is reached.

(2) Calculation. For the purpose of calculating the 60-workday limit under this subsection, each day worked by a riding gang member who is neither a United States citizen nor an alien lawfully admitted to the United States for permanent residence shall be counted against the limitation.

(d) Exceptions for warranty work.

(1) In general. Subsections (b), (c), (e), and (f) do not apply to a riding gang member employed exclusively to perform, and who performs only, work that is--

(A) customarily performed by original equipment manufacturers' technical representatives;

(B) required by a manufacturer's warranty on specific machinery and equipment; or

(C) required by a contractual guarantee or warranty on actual repairs performed in a shipyard located outside of the United States.

(2) Citizenship requirement. Subsection (a)(1)(A) applies only to a riding gang member described in paragraph (1) who is on the vessel when it calls at a United States port.

(e) Recordkeeping. In addition to the requirements of subsection (a), the owner or managing operator of a vessel to which subsection (a) applies shall ensure that all information necessary to ensure compliance with this section, as determined by the Secretary, is entered into the vessel's official logbook required by chapter 113.

(f) Failure to employ qualified available U.S. citizens or residents.

(1) In general. The owner or operator of a vessel to which subsection (a) applies may not employ a riding gang member who is neither a United States citizen nor an alien lawfully admitted to the United States for permanent residence to perform work described in subsection (b) unless the owner or operator determines, in accordance with procedures established by the Secretary to carry out section 8103(b)(3)(C), that there is not a sufficient number of United States citizens or individuals lawfully admitted to the United States for permanent residence who are qualified and available for the work for which the riding gang member is to be employed.

(2) Civil penalty. A violation of paragraph (1) is punishable by a civil penalty of not more than $10,000 for each day during which the violation continues.

(3) Continuing violations. The maximum amount of a civil penalty for a violation under this subsection shall not exceed--

(A) $50,000 if the violation occurs in fiscal year 2006;

(B) $75,000 if the violation occurs in fiscal year 2007; and

(C) $100,000 if the violation occurs after fiscal year 2007.

(4) Determination of amount. In determining the amount of the penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the violator, the degree of culpability, the history of prior offenses, the ability to pay, and such other matters as justice may require.

(5) Compromise, modification, and remittal. The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty imposed under this section.

DOD RIDING GANG MEMBER REQUIREMENTS FOR U.S.-FLAG VESSELS.

Section 1018 of Public Law 109-364, approved October 17, 2006 (120 STAT. 2380), provides:

> **SEC. 1018. RIDING GANG MEMBER REQUIREMENTS.**
>
> **(a) Requirement for Charters and Contracts**.—
>
> (1) IN GENERAL.—The Secretary of Defense may not award, renew, extend, or exercise an option to extend any charter of a vessel documented under chapter 121 of title 46, United States Code, for the Department of Defense, or any contract for the carriage of cargo by a vessel documented under that

chapter for the Department of Defense, unless the charter or contract, respectively, includes provisions that allow riding gang members to perform work on the vessel during the effective period of the charter or contract only under terms, conditions, restrictions, and requirements that, except as provided in paragraphs (2) and (3), are substantially the same as those that apply under section 8106 of title 46, United States Code, as in effect immediately before the enactment of this Act, with respect to a vessel referred to in that section.

(2) LIMITATION.—For purposes of paragraph (1) of this subsection, subsections (a)(1)(A)(ii), (c), and (d) of section 8106 of title 46, United States Code, shall not apply with respect to a charter or contract referred to in paragraph (1).

(3) MERCHANT MARINER'S DOCUMENT REQUIRED.—The Secretary of Defense shall include in the provisions required under paragraph (1) a requirement that each riding gang member who performs work on the vessel must hold a merchant mariner's document issued under chapter 73 of title 46, United States Code.

(4) RIDING GANG MEMBER DEFINED.—In this subsection the term ''riding gang member'' has the meaning that term has in section 8106 of title 46, United States Code, as in effect immediately before the enactment of this Act.

(b) Exemptions by Secretary of Defense.—

(1) IN GENERAL.—The Secretary of Defense may issue regulations that exempt from the charter or contract provisions required under subsection (a) any individual who is on a vessel for purposes other than engaging in the operation or maintenance of the vessel, including an individual who is—

(A) one of the personnel who accompany, supervise, guard, and maintain unit equipment aboard a ship, commonly referred to as supercargo personnel;

(B) one of the force protection personnel of the vessel;

(C) a specialized repair technician; or

(D) otherwise required by the Secretary of Defense to be aboard the vessel.

(2) BACKGROUND CHECK.—Such regulations shall include a requirement that any individual who is exempt under the regulations must pass a background check before going aboard the vessel, unless the individual holds a merchant mariner's document issued under chapter 73 of title 46, United States Code.

(3) EXEMPTED INDIVIDUAL NOT TREATED AS IN ADDITION TO THE CREW.—An individual exempted under paragraph (1) shall not be counted as an individual in addition to the crew for the purposes of section 3304 of title 46, United States Code.

MERCHANT MARINERS' DOCUMENTS. [Excerpts]

46 U.S.C. 8701 (2006). 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.

46 U.S.C. 7302 (2006). Issuing merchant mariners' documents and continuous discharge books.[13]

(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 section 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.

---

[13] Section 702 of Public Law 109-241, approved July 11, 2006 (120 STAT. 560), provides: "SEC. 702. TEMPORARY AUTHORIZATION TO EXTEND THE DURATION OF LICENSES, CERTIFICATES OF REGISTRY, AND MERCHANT MARINERS' DOCUMENTS. (a) LICENSES AND CERTIFICATES OF REGISTRY.—Notwithstanding section 7106 and 7107 of title 46, United States Code, the Secretary of the department in which the Coast Guard is operating may temporarily extend the duration of a license or certificate of registry issued for an individual under chapter 71 of that title for up to one year if— (1) the records of the individual are located at the Coast Guard facility in New Orleans that was damaged by Hurricane Katrina; (2) the individual is a resident of Alabama, Mississippi, or Louisiana; or (3) the records of an individual were damaged or lost as a result of Hurricane Katrina. (b) MERCHANT MARINERS' DOCUMENTS.—Notwithstanding section 7302(g) of title 46, United States Code, the Secretary of the department in which the Coast Guard is operating may temporarily extend the duration of a merchant mariners' document issued for an individual under chapter 73 of that title for up to one year, if— (1) the records of the individual are located at the Coast Guard facility in New Orleans that was damaged by Hurricane Katrina; (2) the individual is a resident of Alabama, Mississippi, or Louisiana; or (3) the records of an individual were damaged or lost as a result of Hurricane Katrina. (c) MANNER OF EXTENSION.—Any extensions granted under this section may be granted to individual seamen or a specifically identified group of seamen. (d) EXPIRATION OF AUTHORITY.—The authorities provided under this section expire on April 1, 2007."

(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.

CHAPTER 301—GENERAL LIABILITY PROVISIONS.[14]

46 U.S.C. 30101 (2006). Extension of jurisdiction to cases of damage or injury on land.

(a) In general. The admiralty and maritime jurisdiction of the United States extends to and includes cases of injury or damage, to person or property, caused by a vessel on navigable waters, even though the injury or damage is done or consummated on land.

(b) Procedure. A civil action in a case under subsection (a) may be brought in rem or in personam according to the principles of law and the rules of practice applicable in cases where the injury or damage has been done and consummated on navigable waters.

(c) Actions against United States.

(1) Exclusive remedy. In a civil action against the United States for injury or damage done or consummated on land by a vessel on navigable waters, chapter 309 or 311 of this title, as appropriate, provides the exclusive remedy.

(2) Administrative claim. A civil action described in paragraph (1) may not be brought until the expiration of the 6-month period after the claim has been presented in writing to the agency owning or operating the vessel causing the injury or damage.

46 U.S.C. 30102 (2006). Liability to passengers.

(a) Liability. The owner and master of a vessel, and the vessel, are liable for personal injury to a passenger or damage to a passenger's baggage caused by--

(1) a neglect or failure to comply with part B or F of subtitle II of this title; or

(2) a known defect in the steaming apparatus or hull of the vessel.

(b) Not subject to limitation. A liability imposed under this section is not subject to limitation under chapter 305 of this title.

46 U.S.C. 30103 (2006). Liability of master, mate, engineer, and pilot.

A person may bring a civil action against a master, mate, engineer, or pilot of a vessel, and recover damages, for personal injury or loss caused by the master's, mate's, engineer's, or pilot's--

(1) negligence or willful misconduct; or

(2) neglect or refusal to obey the laws governing the navigation of vessels.

---

[14] Section 6 of Public Law 109-304, approved October 6, 2006 (120 STAT. 1509).

46 U.S.C. 30104 (2006). Personal injury to or death of seamen.
(a) Cause of action. A seaman injured in the course of employment or, if the seaman dies from the injury, the personal representative of the seaman may elect to bring a civil action at law, with the right of trial by jury, against the employer. Laws of the United States regulating recovery for personal injury to, or death of, a railway employee apply to an action under this section.
(b) Venue. An action under this section shall be brought in the judicial district in which the employer resides or the employer's principal office is located.

46 U.S.C. 30105 (2006). Restriction on recovery by non-citizens and non-resident aliens for incidents in waters of other countries.
(a) Definition. In this section, the term "continental shelf" has the meaning given that term in article I of the 1958 Convention on the Continental Shelf.
(b) Restriction. Except as provided in subsection (c), a civil action for maintenance and cure or for damages for personal injury or death may not be brought under a maritime law of the United States if--
(1) the individual suffering the injury or death was not a citizen or permanent resident alien of the United States at the time of the incident giving rise to the action;
(2) the incident occurred in the territorial waters or waters overlaying the continental shelf of a country other than the United States; and
(3) the individual suffering the injury or death was employed at the time of the incident by a person engaged in the exploration, development, or production of offshore mineral or energy resources, including 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.
(c) Nonapplication. Subsection (b) does not apply if the individual bringing the action establishes that a remedy is not available under the laws of--
(1) the country asserting jurisdiction over the area in which the incident occurred; or
(2) the country in which the individual suffering the injury or death maintained citizenship or residency at the time of the incident.

46 U.S.C. 30106 (2006). Time limit on bringing maritime action for personal injury or death.
Except as otherwise provided by law, a civil action for damages for personal injury or death arising out of a maritime tort must be brought within 3 years after the cause of action arose.

CHAPTER 305—EXONERATION AND LIMITATION OF LIABILITY.[15]

46 U.S.C. 30501 (2006). Definition. In this chapter, the term "owner" includes a charterer that mans, supplies, and navigates a vessel at the charterer's own expense or by the charterer's own procurement.

46 U.S.C. 30502 (2006). Application. Except as otherwise provided, this chapter (except section 30503) applies to seagoing vessels and vessels used on lakes or rivers or in inland navigation, including canal boats, barges, and lighters.

46 U.S.C. 30503 (2006). Declaration of nature and value of goods,
(a) In general. If a shipper of an item named in subsection (b), contained in a parcel, package, or trunk, loads the item as freight or baggage on a vessel, without at the time of loading giving to the person receiving the item a written notice of the true character and value of the item and having that information entered on the bill of lading, the owner and master of the vessel are not liable as carriers. The owner and master are not liable beyond the value entered on the bill of lading.
(b) Items. The items referred to in subsection (a) are precious metals, gold or silver plated articles, precious stones, jewelry, trinkets, watches, clocks, glass, china, coins, bills, securities, printings, engravings, pictures, stamps, maps, papers, silks, furs, lace, and similar items of high value and small size.

46 U.S.C. 30504 (2006). Loss by fire. The owner of a vessel is not liable for loss or damage to merchandise on the vessel caused by a fire on the vessel unless the fire resulted from the design or neglect of the owner.

46 U.S.C. 30505 (2006). General limit of liability
(a) In general. Except as provided in section 30506 of this title, the liability of the owner of a vessel for any claim, debt, or liability described in subsection (b) shall not exceed the value of the vessel and pending freight. If the vessel has more than one owner, the proportionate share of the liability of any one owner shall not exceed that owner's proportionate interest in the vessel and pending freight.
(b) Claims subject to limitation. Unless otherwise excluded by law, claims, debts, and liabilities subject to limitation under subsection (a) are those arising from any embezzlement, loss, or destruction of any property, goods, or merchandise shipped or put on board the vessel, any loss, damage, or injury by

---

[15] Section 6 of Public Law 109-304, approved October 6, 2006 (120 STAT. 1512).

collision, or any act, matter, or thing, loss, damage, or forfeiture, done, occasioned, or incurred, without the privity or knowledge of the owner.
(c) Wages. Subsection (a) does not apply to a claim for wages.

46 U.S.C. 30506 (2006). Limit of liability for personal injury or death.
(a) Application. This section applies only to seagoing vessels, but does not apply to pleasure yachts, tugs, towboats, towing vessels, tank vessels, fishing vessels, fish tender vessels, canal boats, scows, car floats, barges, lighters, or nondescript vessels.
(b) Minimum liability. If the amount of the vessel owner's liability determined under section 30505 of this title is insufficient to pay all losses in full, and the portion available to pay claims for personal injury or death is less than $420 times the tonnage of the vessel, that portion shall be increased to $420 times the tonnage of the vessel. That portion may be used only to pay claims for personal injury or death.
(c) Calculation of tonnage. Under subsection (b), the tonnage of a self-propelled vessel is the gross tonnage without deduction for engine room, and the tonnage of a sailing vessel is the tonnage for documentation. However, space for the use of seamen is excluded.
(d) Claims arising on distinct occasions. Separate limits of liability apply to claims for personal injury or death arising on distinct occasions.
(e) Privity or knowledge. In a claim for personal injury or death, the privity or knowledge of the master or the owner's superintendent or managing agent, at or before the beginning of each voyage, is imputed to the owner.

46 U.S.C. 30507 (2006). Apportionment of losses. If the amounts determined under sections 30505 and 30506 of this title are insufficient to pay all claims--
(1) all claimants shall be paid in proportion to their respective losses out of the amount determined under section 30505 of this title; and
(2) personal injury and death claimants, if any, shall be paid an additional amount in proportion to their respective losses out of the additional amount determined under section 30506(b) of this title.

46 U.S.C. 30508 2006). Provisions requiring notice of claim or limiting time for bringing action.
(a) Application. This section applies only to seagoing vessels, but does not apply to pleasure yachts, tugs, towboats, towing vessels, tank vessels, fishing vessels, fish tender vessels, canal boats, scows, car floats, barges, lighters, or nondescript vessels.

(b) Minimum time limits. The owner, master, manager, or agent of a vessel transporting passengers or property between ports in the United States, or between a port in the United States and a port in a foreign country, may not limit by regulation, contract, or otherwise the period for--

(1) giving notice of, or filing a claim for, personal injury or death to less than 6 months after the date of the injury or death; or

(2) bringing a civil action for personal injury or death to less than one year after the date of the injury or death.

(c) Effect of failure to give notice. When notice of a claim for personal injury or death is required by a contract, the failure to give the notice is not a bar to recovery if--

(1) the court finds that the owner, master, or agent of the vessel had knowledge of the injury or death and the owner has not been prejudiced by the failure;

(2) the court finds there was a satisfactory reason why the notice could not have been given; or

(3) the owner of the vessel fails to object to the failure to give the notice.

(d) Tolling of period to give notice. If a claimant is a minor or mental incompetent, or if a claim is for wrongful death, any period provided by a contract for giving notice of the claim is tolled until the earlier of--

(1) the date a legal representative is appointed for the minor, incompetent, or decedent's estate; or

(2) 3 years after the injury or death.

46 U.S.C. 30509 (2006). Provisions limiting liability for personal injury or death.

(a) Prohibition.

(1) In general. The owner, master, manager, or agent of a vessel transporting passengers between ports in the United States, or between a port in the United States and a port in a foreign country, may not include in a regulation or contract a provision limiting--

(A) the liability of the owner, master, or agent for personal injury or death caused by the negligence or fault of the owner or the owner's employees or agents; or

(B) the right of a claimant for personal injury or death to a trial by court of competent jurisdiction.

(2) Voidness. A provision described in paragraph (1) is void.

(b) Emotional distress, mental suffering, and psychological injury.

(1) In general. Subsection (a) does not prohibit a provision in a contract or in ticket conditions of carriage with a passenger that relieves an owner, master, manager, agent, operator, or crewmember of a vessel from liability for infliction of emotional distress, mental suffering, or psychological injury so long as the provision does not limit such liability when the emotional distress, mental suffering, or psychological injury is--

(A) the result of physical injury to the claimant caused by the negligence or fault of a crewmember or the owner, master, manager, agent, or operator;

(B) the result of the claimant having been at actual risk of physical injury, and the risk was caused by the negligence or fault of a crewmember or the owner, master, manager, agent, or operator; or

(C) intentionally inflicted by a crewmember or the owner, master, manager, agent, or operator.

(2) Sexual offenses. This subsection does not limit the liability of a crewmember or the owner, master, manager, agent, or operator of a vessel in a case involving sexual harassment, sexual assault, or rape.

46 U.S.C. 30510 (2006). Vicarious liability for medical malpractice with regard to crew.

In a civil action by any person in which the owner or operator 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, the owner, operator, or employer is entitled to rely on any 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.

46 U.S.C. 30511 (2006). Action by owner for limitation.

(a) In general. The owner of a vessel may bring a civil action in a district court of the United States for limitation of liability under this chapter. The action must be brought within 6 months after a claimant gives the owner written notice of a claim.

(b) Creation of fund. When the action is brought, the owner (at the owner's option) shall--

(1) deposit with the court, for the benefit of claimants--

(A) an amount equal to the value of the owner's interest in the vessel and pending freight, or approved security; and

(B) an amount, or approved security, that the court may fix from time to time as necessary to carry out this chapter; or

(2) transfer to a trustee appointed by the court, for the benefit of claimants--

(A) the owner's interest in the vessel and pending freight; and

(B) an amount, or approved security, that the court may fix from time to time as necessary to carry out this chapter.

(c) Cessation of other actions. When an action has been brought under this section and the owner has complied with subsection (b), all claims and proceedings against the owner related to the matter in question shall cease.

46 U.S.C. 30512 (2006). Liability as master, officer, or seaman not affected.
This chapter does not affect the liability of an individual as a master, officer, or seaman, even though the individual is also an owner of the vessel.

CHAPTER 309—SUITS IN ADMIRALTY AGAINST THE UNITED STATES.[16]

46 U.S.C. 30901 (2006). Short Title. This chapter may be cited as the "Suits in Admiralty Act."

46 U.S.C. 30902 (2006). Definition. In this chapter, the term "federally-owned corporation" means a corporation in which the United States owns all the outstanding capital stock.

46 U.S.C. 30903 (2006). Waiver of immunity.
(a) In general. In a case in which, if a vessel were privately owned or operated, or if cargo were privately owned or possessed, or if a private person or property were involved, a civil action in admiralty could be maintained, a civil action in admiralty in personam may be brought against the United States or a federally-owned corporation. In a civil action in admiralty brought by the United States or a federally-owned corporation, an admiralty claim in personam may be filed or a setoff claimed against the United States or corporation.
(b) Non-jury. A claim against the United States or a federally-owned corporation under this section shall be tried without a jury.

46 U.S.C. 30904 (2006). Exclusive remedy. If a remedy is provided by this chapter, it shall be exclusive of any other action arising out of the same subject matter against the officer, employee, or agent of the United States or the federally-owned corporation whose act or omission gave rise to the claim.

46 U.S.C. 30905 (2006). Period for bringing action. A civil action under this chapter must be brought within 2 years after the cause of action arose.

---

[16] Section 6 of Public Law 109-304, approved October 6, 2006 (120 STAT. 1517).

46 U.S.C. 30906 (2006). Venue.
(a) In general. A civil action under this chapter shall be brought in the district court of the United States for the district in which--
(1) any plaintiff resides or has its principal place of business; or
(2) the vessel or cargo is found.
(b) Transfer. On a motion by a party, the court may transfer the action to any other district court of the United States.

46 U.S.C. 30907 (2006). Procedure for hearing and determination.
(a) In general. A civil action under this chapter shall proceed and be heard and determined according to the principles of law and the rules of practice applicable in like cases between private parties.
(b) In rem.
(1) Requirements. The action may proceed according to the principles of an action in rem if--
(A) the plaintiff elects in the complaint; and
(B) it appears that an action in rem could have been maintained had the vessel or cargo been privately owned and possessed.
(2) Effect on relief in personam. An election under paragraph (1) does not prevent the plaintiff from seeking relief in personam in the same action.

46 U.S.C. 30908 (2006). Exemption from arrest or seizure. The following are not subject to arrest or seizure by judicial process in the United States:
(1) A vessel owned by, possessed by, or operated by or for the United States or a federally-owned corporation.
(2) Cargo owned or possessed by the United States or a federally-owned corporation.

46 U.S.C. 30909 (2006). Security. Neither the United States nor a federally-owned corporation may be required to give a bond or admiralty stipulation in a civil action under this chapter.

46 U.S.C. 30910 (2006). Exoneration and limitation. The United States is entitled to the exemptions from and limitations of liability provided by law to an owner, charterer, operator, or agent of a vessel.

46 U.S.C. 30911 (2006). Costs and interest.
(a) In general. A judgment against the United States or a federally-owned corporation under this chapter may include costs and interest at the rate of 4 percent per year until satisfied. Interest shall run as ordered by the court, except that interest is not allowable for the period before the action is filed.

(b) Contract providing for interest. Notwithstanding subsection (a), if the claim is based on a contract providing for interest, interest may be awarded at the rate and for the period provided in the contract.

46 U.S.C. 30912 (2006). Arbitration, compromise, or settlement.

The Secretary of a department of the United States Government, or the board of trustees of a federally-owned corporation, may arbitrate, compromise, or settle a claim under this chapter.

46 U.S.C. 30913 (2006). Payment of judgment or settlement.

(a) In general. The proper accounting officer of the United States shall pay a final judgment, arbitration award, or settlement under this chapter on presentation of an authenticated copy.

(b) Source of payment. Payment shall be made from an appropriation or fund available specifically for the purpose. If no appropriation or fund is specifically available, there is hereby appropriated, out of money in the Treasury not otherwise appropriated, an amount sufficient to pay the judgment, award, or settlement.

46 U.S.C. 30914 (2006). Release of privately owned vessel after arrest or attachment.

If a privately owned vessel not in the possession of the United States or a federally-owned corporation is arrested or attached in a civil action arising or alleged to have arisen from prior ownership, possession, or operation by the United States or corporation, the vessel shall be released without bond or stipulation on a statement by the United States, through the Attorney General or other authorized law officer, that the United States is interested in the action, desires release of the vessel, and assumes liability for the satisfaction of any judgment obtained by the plaintiff. After the vessel is released, the action shall proceed against the United States in accordance with this chapter.

46 U.S.C. 30915 (2006). Seizures and other proceedings in foreign jurisdictions.

(a) In general. If a vessel or cargo described in section 30908 or 30914 of this title is arrested, attached, or otherwise seized by judicial process in a foreign country, or if an action is brought in a court of a foreign country against the master of such a vessel for a claim arising from the ownership, possession, or operation of the vessel, or the ownership, possession, or carriage of such cargo, the Secretary of State, on request of the Attorney General or another officer authorized by the Attorney General, may direct the United States consul residing at or nearest the place at which the action was brought--

(1) to claim the vessel or cargo as immune from arrest, attachment, or other seizure, and to execute an agreement, stipulation, bond, or undertaking, for the

United States or federally-owned corporation, for the release of the vessel or cargo and the prosecution of any appeal; or

(2) if an action has been brought against the master of such a vessel, to enter the appearance of the United States or corporation and to pledge the credit of the United States or corporation to the payment of any judgment and costs in the action.

(b) Arranging bond or stipulation. The Attorney General may--

(1) arrange with a bank, surety company, or other person, whether in the United States or a foreign country, to execute a bond or stipulation; and

(2) pledge the credit of the United States to secure the bond or stipulation.

(c) Payment of judgment. The appropriate accounting officer of the United States or corporation may pay a judgment in an action described in subsection (a) on presentation of a copy of the judgment if certified by the clerk of the court and authenticated by--

(1) the certificate and seal of the United States consul claiming the vessel or cargo, or by the consul's successor; and

(2) the certificate of the Secretary as to the official capacity of the consul.

(d) Right to claim immunity not affected. This section does not affect the right of the United States to claim immunity of a vessel or cargo from foreign jurisdiction.

46 U.S.C. 30916 (2006). Recovery by the United States for salvage services.

(a) Civil action. The United States, and the crew of a merchant vessel owned or operated by the United States, or a federally-owned corporation, may bring a civil action to recover for salvage services provided by the vessel and crew.

(b) Deposit of amounts recovered. Any amount recovered under this section by the United States for its own benefit, and not for the benefit of the crew, shall be deposited in the Treasury to the credit of the department of the United States Government, or the corporation, having control of the possession or operation of the vessel.

46 U.S.C. 30917 (2006). Disposition of amounts recovered by the United States. Amounts recovered in a civil action brought by the United States on a claim arising from the ownership, possession, or operation of a merchant vessel, or the ownership, possession, or carriage of cargo, shall be deposited in the Treasury to the credit of the department of the United States Government, or the federally-owned corporation, having control of the vessel or cargo, for reimbursement of the appropriation, insurance fund, or other fund from which the compensation for which the judgment was recovered was or will be paid.

46 U.S.C. 30918 (2006). Reports. The Secretary of each department of the United States Government, and the board of trustees of each federally-owned corporation, shall report to Congress at each session thereof all arbitration awards and settlements agreed to under this chapter since the previous session, for which the time to appeal has expired or been waived.

CHAPTER 311—SUITS INVOLVING PUBLIC VESSELS.[17]

46 U.S.C. 31101 (2006). Short title. This chapter may be cited as the "Public Vessels Act".

46 U.S.C. 31102 (2006). Waiver of immunity.
(a) In general. A civil action in personam in admiralty may be brought, or an impleader filed, against the United States for--
(1) damages caused by a public vessel of the United States; or
(2) compensation for towage and salvage services, including contract salvage, rendered to a public vessel of the United States.
(b) Counterclaim or setoff. If the United States brings a civil action in admiralty for damages caused by a privately owned vessel, the owner of the vessel, or the successor in interest, may file a counterclaim in personam, or claim a setoff, against the United States for damages arising out of the same subject matter.

46 U.S.C. 31103 (2006). Applicable procedure. A civil action under this chapter is subject to the provisions of chapter 309 of this title except to the extent inconsistent with this chapter.

46 U.S.C. 31104 (2006). Venue.
(a) In general. A civil action under this chapter shall be brought in the district court of the United States for the district in which the vessel or cargo is found within the United States.
(b) Vessel or cargo outside territorial waters. If the vessel or cargo is outside the territorial waters of the United States--

---

[17] Section 6 of Public law 109-304, approved October 6, 2006 (120 STAT. 1521). Note the definition of Public Vessel in "**46 U.S.C. 2101 (2006). General definitions,** In this subtitle . . . (24) 'public vessel' means a vessel that-- (A) is owned, or demise chartered, and operated by the United States Government or a government of a foreign country; and (B) is not engaged in commercial service." See also the following: "**46 U.S.C. 2109 (2006). Public vessels.** Except as otherwise provided, this subtitle does not apply to a public vessel of the United States. However, this subtitle does apply to a vessel (except a Saint Lawrence Seaway Development Corporation vessel) owned or operated by the Department of Transportation or by any corporation organized or controlled by the Department." This subtitle refers to Title 46 - Shipping, Subtitle II, Vessels and Seamen (46 U.S.C. 2101, et seq.).

(1) the action shall be brought in the district court of the United States for any district in which any plaintiff resides or has an office for the transaction of business; or

(2) if no plaintiff resides or has an office for the transaction of business in the United States, the action may be brought in the district court of the United States for any district.

46 U.S.C. 31105 (2006). Security when counterclaim filed. If a counterclaim is filed for a cause of action for which the original action is filed under this chapter, the respondent to the counterclaim shall give security in the usual amount and form to respond to the counterclaim, unless the court for cause shown orders otherwise. The proceedings in the original action shall be stayed until the security is given.

46 U.S.C. 31106 (2006). Exoneration and limitation. The United States is entitled to the exemptions from and limitations of liability provided by law to an owner, charterer, operator, or agent of a vessel.

46 U.S.C. 31107 (2006). Interest. A judgment in a civil action under this chapter may not include interest for the period before the judgment is issued unless the claim is based on a contract providing for interest.

46 U.S.C. 31108 (2006). Arbitration, compromise, or settlement. The Attorney General may arbitrate, compromise, or settle a claim under this chapter if a civil action based on the claim has been commenced.

46 U.S.C. 31109 (2006). Payment of judgment or settlement. The proper accounting officer of the United States shall pay a final judgment, arbitration award, or settlement under this chapter on presentation of an authenticated copy. Payment shall be made from any money in the Treasury appropriated for the purpose.

46 U.S.C. 31110 (2006). Subpoenas to officers or members of crew. An officer or member of the crew of a public vessel may not be subpoenaed in a civil action under this chapter without the consent of--

(1) the Secretary of the department or the head of the independent establishment having control of the vessel at the time the cause of action arose; or

(2) the master or commanding officer of the vessel at the time the subpoena is issued.

46 U.S.C. 31111 (2006). Claims by nationals of foreign countries. A national of a foreign country may not maintain a civil action under this chapter unless it appears to the satisfaction of the court in which the action is brought

that the government of that country, in similar circumstances, allows nationals of the United States to sue in its courts.

46 U.S.C. 31112. (2006) Lien not recognized or created. This chapter shall not be construed as recognizing the existence of or as creating a lien against a public vessel of the United States.

46 U.S.C. 31113 (2006). Reports. The Attorney General shall report to Congress at each session thereof all claims settled under this chapter.

CIVIL PROCEDURES AND HOBBS ACT

CIVIL PROCEDURES

49 U.S.C. 336 (2006). Civil penalty procedures.
(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.[18]

[18] See also the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, set forth at page 71.

ORDER OF FEDERAL AGENCIES, REVIEW - THE HOBBS ACT.

28 U.S.C. 2342 (2006). Jurisdiction of court of appeals. 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--

(1) all final orders of the Federal Communications Commission made reviewable by section 402(a) of title 47;

(2) all final orders of the Secretary of Agriculture made under chapters 9 and 20A of title 7, except orders issued under sections 210(e), 217a, and 499g(a) of title 7;

(3) all rules, regulations, or final orders of--

(A) the Secretary of Transportation issued pursuant to section 50501, 50502, 56101-56404, or 57109 of title 46 or pursuant to part B or C of subtitle IV, subchapter III of chapter 311, chapter 313, or chapter 315 of title 49; and

(B) the Federal Maritime Commission issued pursuant to section 305, 41304, 41308, or 41309 or chapter 421 or 441 of title 46;

(4) all final orders of the Atomic Energy Commission made reviewable by section 2239 of title 42;

(5) all rules, regulations, or final orders of the Surface Transportation Board made reviewable by section 2321 of this title;

(6) all final orders under section 812 of the Fair Housing Act; and

(7) all final agency actions described in section 20114(c) of title 49.

Jurisdiction is invoked by filing a petition as provided by section 2344 of this title.

28 U.S.C. 2343 (2006). Venue. 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.

28 U.S.C. 2344 (2006). Review of orders; time; notice; contents of petition; service. 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.

28 U.S.C. 2345 (2006). Prehearing conference. The court of appeals may hold a prehearing conference or direct a judge of the court to hold a prehearing conference.

28 U.S.C. 2346 (2006). Certification of record on review. 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.

28 U.S.C. 2347 (2006). Petitions to review; proceedings.
(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 counterevidence 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.

28 U.S.C. 2348 (2006). Representation in proceeding; intervention.
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.

28 U.S.C. 2349 (2006). Jurisdiction of the proceeding.
(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.

28 U.S.C. 2350 (2006). Review in Supreme Court on certiorari or certification.
(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.

28 U.S.C. 2351 (2006). Enforcement of orders by district courts. 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).[19]

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;

[19] 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

(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

(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.[20]

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 [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

---

[20] 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."

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.

CHAPTER 313 - COMMERCIAL INSTRUMENTS AND MARITIME LIENS.

SUBCHAPTER I - GENERAL.

46 U.S.C. 31301 (2006). 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 (2006). 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 (2006). 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 (2006). 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 (2006). 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 (2006). 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 56102 or 56103 of this title.

(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 (2006). 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 (2006). 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 chapter 537 of this title, subject to section 362(b) of title 11.

46 U.S.C. 31309 (2006). 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.

SUBCHAPTER II - COMMERCIAL INSTRUMENTS.

46 U.S.C. 31321 (2006). 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.

(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 (2006). 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;
(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 12113(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 for purposes of documentation under section 12103 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 13107(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 12113(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.

46 U.S.C. 31323 (2006). 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 (2006). 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 (2006). 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 56101 or 56102 of this title.

(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 a 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 a 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 (2006). 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 chapter 537 of this title, 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 chapter 537 of this title, the preferred mortgage lien is subordinate to a maritime lien for necessaries provided in the United States.

46 U.S.C. 31327 (2006). 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 (2006). 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 12103 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 chapter 563 of this title; and
(3) the sale of the vessel to the mortgagee is not a sale to a person not a citizen of the United States under section 12132 of this title
(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 (2006). Penalties.[21]
(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.

---

[21]With respect to civil penalty amounts, check the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, set forth at page 71 for possible changes.

SUBCHAPTER III - MARITIME LIENS.

46 U.S.C. 31341 (2006). 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;

(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 tortiously or unlawfully in possession or charge of a vessel has no authority to procure necessaries for the vessel.

46 U.S.C. 31342 (2006). 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 (2006). Recording and discharging notices of claim of maritime lien.

(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.

REGULATION OF OCEAN SHIPPING.

CHAPTER 401—GENERAL.[22]

46 U.S.C. 40101 (2006). Purposes. The purposes of this part are to--

(1) 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) 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;

(3) encourage the development of an economically sound and efficient liner fleet of vessels of the United States capable of meeting national security needs; and

(4) promote the growth and development of United States exports through competitive and efficient ocean transportation and by placing a greater reliance on the marketplace.

46 U.S.C. 40102 (2006). Definitions. In this part:

(1) Agreement. The term "agreement"--

(A) means a written or oral understanding, arrangement, or association, and any modification or cancellation thereof; but

(B) does not include a maritime labor agreement.

(2) Antitrust laws. The term "antitrust laws" means--

(A) the Sherman Act (15 U.S.C. 1 et seq.);

(B) sections 73 and 74 of the Wilson Tariff Act (15 U.S.C. 8, 9);

(C) the Clayton Act (15 U.S.C. 12 et seq.);

(D) the Act of June 19, 1936 (15 U.S.C. 13, 13a, 13b, 21a);

(E) the Federal Trade Commission Act (15 U.S.C. 41 et seq.);

(F) the Antitrust Civil Process Act (15 U.S.C. 1311 et seq.); and

(G) Acts supplementary to those Acts.

(3) Assessment agreement. The term "assessment agreement" means an agreement, whether part of a collective bargaining agreement or negotiated separately, to the extent the agreement provides for the funding of collectively bargained fringe-benefit obligations on other than a uniform worker-hour basis, regardless of the cargo handled or type of vessel or equipment used.

(4) Bulk cargo. The term "bulk cargo" means cargo that is loaded and carried in bulk without mark or count.

(5) Chemical parcel-tanker. The term "chemical parcel-tanker" means a vessel that has--

---

[22] Section 7 of Public Law 109-304, approved October 6, 2006 (120 STAT. 1523).

(A) a cargo-carrying capability consisting of individual cargo tanks for bulk chemicals that--

(i) are a permanent part of the vessel; and

(ii) have segregation capability with piping systems to permit simultaneous carriage of several bulk chemical cargoes with minimum risk of cross-contamination; and

(B) a valid certificate of fitness under the International Maritime Organization Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk.

(6) Common carrier. The term "common carrier"--

(A) means a person that--

(i) holds 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;

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

(iii) uses, 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; but

(B) does not include a 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 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.

(7) Conference. The term "conference"--

(A) means an association of ocean common carriers permitted, pursuant to an approved or effective agreement, to engage in concerted activity and to use a common tariff; but

(B) does not include a joint service, consortium, pooling, sailing, or transshipment agreement.

(8) Controlled carrier. The term "controlled carrier" means an ocean common carrier that is, or whose operating assets are, directly or indirectly, owned or controlled by a government, with ownership or control by a government being deemed to exist for a carrier if--

(A) a majority of the interest in the carrier is owned or controlled in any manner by that government, an agency of that government, or a 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. The term "deferred rebate" means a return by a common carrier of any freight money to a shipper, where the return is--

(A) consideration for the shipper giving all or any portion of its shipments to that or any other common carrier over a fixed period of time;

(B) deferred beyond the completion of the service for which it was paid; and

(C) made only if the shipper has agreed to make a further shipment with that or any other common carrier.

(10) Forest products. The term "forest products" includes 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, and paper and paper board in rolls or in pallet or skid-sized sheets.

(11) Inland division. The term "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. The term "inland portion" means the charge to the public by a common carrier for the non-ocean portion of through transportation.

(13) Loyalty contract. The term "loyalty contract" means a contract with an ocean common carrier or agreement providing for--

(A) a shipper to obtain lower rates by committing all or a fixed portion of its cargo to that carrier or agreement; and

(B) a deferred rebate arrangement.

(14) Marine terminal operator. The term "marine terminal operator" means a person engaged in the United States in the business of providing 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 II of chapter 135 of title 49.

(15) Maritime labor agreement. The term "maritime labor agreement"--

(A) means--

(i) a collective bargaining agreement between an employer subject to this part, or a group of such employers, and a labor organization representing employees in the maritime or stevedoring industry;

(ii) an agreement preparatory to such a collective bargaining agreement among members of a multi-employer bargaining group; or

(iii) an agreement specifically implementing provisions of such a collective bargaining agreement or providing for the formation, financing, or administration of a multi-employer bargaining group; but

(B) does not include an assessment agreement.

(16) Non-vessel-operating common carrier. The term "non-vessel-operating common carrier" means a common carrier that--

(A) does not operate the vessels by which the ocean transportation is provided; and

(B) is a shipper in its relationship with an ocean common carrier.

(17) Ocean common carrier. The term "ocean common carrier" means a vessel-operating common carrier.

(18) Ocean freight forwarder. The term "ocean freight forwarder" means a person that--

(A) 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

(B) processes the documentation or performs related activities incident to those shipments.

(19) Ocean transportation intermediary. The term "ocean transportation intermediary" means an ocean freight forwarder or a non-vessel-operating common carrier.

(20) Service contract. The term "service contract" means a written contract, other than a bill of lading or receipt, between one or more shippers, on the one hand, and an individual ocean common carrier or an agreement between or among ocean common carriers, on the other, in which--

(A) the shipper or shippers commit to providing a certain volume or portion of cargo over a fixed time period; and

(B) 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.

(21) Shipment. The term "shipment" means all of the cargo carried under the terms of a single bill of lading.

(22) Shipper. The term "shipper" means--

(A) a cargo owner;

(B) the person for whose account the ocean transportation of cargo is provided;

(C) the person to whom delivery is to be made;

(D) a shippers' association; or

(E) a non-vessel-operating common carrier that accepts responsibility for payment of all charges applicable under the tariff or service contract.

(23) Shippers' association. The term "shippers' association" means a group of shippers that consolidates or distributes freight on a nonprofit basis for the members of the group to obtain carload, truckload, or other volume rates or service contracts.

(24) Through rate. The term "through rate" means the single amount charged by a common carrier in connection with through transportation.

(25) Through transportation. The term "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 port or point and a foreign port or point.

46 U.S.C. 40103 (2006). Administrative exemptions.

(a) In general. The Federal Maritime Commission, on application or its own motion, may by order or regulation exempt for the future any class of agreements between persons subject to this part or any specified activity of those persons from any requirement of this part if the Commission finds that the exemption will not result in substantial reduction in competition or be detrimental to commerce. The Commission may attach conditions to an exemption and may, by order, revoke an exemption.

(b) Opportunity for hearing. An order or regulation of exemption or revocation of an exemption may be issued only if the Commission has provided an opportunity for a hearing to interested persons and departments and agencies of the United States Government.

46 U.S.C. 40104 (2006). Reports filed with the Commission.

(a) In general. The Federal Maritime Commission may require a common carrier or an officer, receiver, trustee, lessee, agent, or employee of the carrier to file with the Commission a periodical or special report, an account, record, rate, or charge, or a memorandum of facts and transactions related to the business of the carrier. The report, account, record, rate, charge, or memorandum shall be made under oath if the Commission requires, and shall be filed in the form and within the time prescribed by the Commission.

(b) Conference minutes. Conference minutes required to be filed with the Commission under this section may not be released to third parties or published by the Commission.

CHAPTER 403 - AGREEMENTS

46 U.S.C. 40301 (2006). Application.

(a) Ocean common carrier agreements. This part applies to an agreement between 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 regulate the number and character of voyages between ports;

(4) regulate the volume or character of cargo or passenger traffic to be carried;

(5) engage in an exclusive, preferential, or cooperative working arrangement between themselves or with a marine terminal operator;

(6) control, regulate, or prevent competition in international ocean transportation; or

(7) discuss and agree on any matter related to a service contract.

(b) Marine terminal operator agreements. This part applies to an agreement between or among marine terminal operators, or between or 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 the agreement involves ocean transportation in the foreign commerce of the United States.

(c) Acquisitions. This part does not apply to an acquisition by any person, directly or indirectly, of any voting security or assets of any other person.

(d) Maritime labor agreements. This part does not apply to a maritime labor agreement. However, this subsection does not exempt from this part any rate, charge, regulation, or practice of a common carrier that is required to be set forth in a tariff or is an essential term of a service contract, whether or not the rate, charge, regulation, or practice arises out of, or is otherwise related to, a maritime labor agreement.

(e) Assessment agreements. This part (except sections 40305 and 40307(a)) does not apply to an assessment agreement.

46 U.S.C. 40302 (2006). Filing requirements.

(a) In general. A true copy of every agreement referred to in section 40301(a) or (b) of this title shall be filed with the Federal Maritime Commission. If the agreement is oral, a complete memorandum specifying in detail the substance of the agreement shall be filed.

(b) Exceptions. Subsection (a) does not apply to--

(1) an agreement related to transportation to be performed within or between foreign countries; or

(2) an agreement among common carriers to establish, operate, or maintain a marine terminal in the United States.

(c) Regulations. The Commission may by regulation prescribe the form and manner in which an agreement shall be filed and any additional information and documents necessary to evaluate the agreement.

46 U.S.C. 40303 (2006). Content requirements.

(a) Ocean common carrier agreements.

(1) Restrictions. An ocean common carrier agreement may not--

(A) prohibit or restrict a member of the agreement from engaging in negotiations for a service contract with a shipper;

(B) require a member of the agreement to disclose a negotiation on a service contract, or the terms of a service contract, other than those terms required to be published under section 40502(d) of this title; or

(C) adopt mandatory rules or requirements affecting the right of an agreement member to negotiate and enter into a service contract.

(2) Voluntary guidelines. An ocean common carrier agreement may provide authority to adopt voluntary guidelines relating to the terms and procedures of an agreement member's service contracts if the guidelines explicitly state the right of members of the agreement not to follow the guidelines. Any guidelines adopted shall be submitted confidentially to the Federal Maritime Commission.

(b) Conference agreements. Each conference agreement must--

(1) state its purpose;

(2) provide reasonable and equal terms 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 on 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 41105(1) or (3) of this title;

(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 requests and complaints of shippers; and

(8) provide that--

(A) any member of the conference may take independent action on a rate or service item on not more than 5 days' notice to the conference; and

(B) except for an exempt commodity 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 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) 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.

(d) Vessel sharing agreements.

(1) In general. An ocean common carrier that is the owner, operator, or bareboat, time, or slot charterer of a liner vessel documented under section 12103 or 12111(c) of this *title* may agree with an ocean common carrier described in paragraph (2) to which it charters or subcharters the vessel or space on the vessel that the charterer or subcharterer may not use or make available space on the vessel for the carriage of cargo reserved by law for vessels of the United States.

(2) Carrier described. An ocean common carrier described in this paragraph is one that is not the owner, operator, or bareboat charterer for at least one year

of liner vessels of the United States that are eligible to be included in the Maritime Security Fleet Program and are enrolled in an Emergency Preparedness Program under chapter 531 of this title.

46 U.S.C. 40304 (2006). Commission action.

(a) Notice of filing. Within 7 days after an agreement is filed, the Federal Maritime Commission shall transmit a notice of the filing to the Federal Register for publication.

(b) Preliminary review and rejection. After preliminary review, the Commission shall reject an agreement that it finds does not meet the requirements of sections 40302 and 40303 of this title. The Commission shall notify in writing the person filing the agreement of the reason for rejection.

(c) Review and effective date. Unless rejected under subsection (b), an agreement (other than an assessment agreement) is 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 is later; or

(2) if additional information or documents are requested under subsection (d)--

(A) on the 45th day after the Commission receives all the additional information and documents; or

(B) if the request is not fully complied with, on the 45th day after the Commission receives the information and documents submitted and a statement of the reasons for noncompliance with the request.

(d) Request for 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 documents the Commission considers necessary to make the determinations required by this section.

(e) Modification of review period.

(1) Shortening. On request of the party filing an agreement, the Commission may shorten a period specified in subsection (c), but not to a date that is less than 14 days after notice of the filing of the agreement is published in the Federal Register.

(2) Extension. The period specified in subsection (c)(2) may be extended only by the United States District Court for the District of Columbia in a civil action brought by the Commission under section 41307(c) of this title.

(f) Fixed terms. The Commission may not limit the effectiveness of an agreement to a fixed term.

46 U.S.C. 40305 (2006). Assessment agreements.

(a) Filing requirement. An assessment agreement shall be filed with the Federal Maritime Commission and is effective on filing.

(b) Complaints. If a complaint is filed with the Commission within 2 years after the date of an assessment agreement, the Commission shall disapprove, cancel, or modify the agreement, or an assessment or charge pursuant to the agreement, that the Commission finds, after notice and opportunity for a hearing, to be unjustly discriminatory or unfair as between carriers, shippers, or ports. The Commission shall issue its final decision in the proceeding within one year after the date the complaint is filed.
(c) Adjustments of assessments and charges. To the extent that the Commission finds under subsection (b) that an assessment or charge is unjustly discriminatory or unfair as between carriers, shippers, or ports, the Commission shall adjust the assessment or charge for the period between the filing of the complaint and the final decision by awarding prospective credits or debits to future assessments and charges. However, if the complainant has ceased activities subject to the assessment or charge, the Commission may award reparations.

46 U.S.C. 40306 (2006). Nondisclosure of information. Information and documents (other than an agreement) filed with the Federal Maritime Commission under this chapter are exempt from disclosure under section 552 of title 5 and may not be made public except as may be relevant to an administrative or judicial proceeding. This section does not prevent disclosure to either House of Congress or to a duly authorized committee or subcommittee of Congress.

46 U.S.C. 40307 (2006). Exemption from antitrust laws.
(a) In general. The antitrust laws do not apply to--
(1) an agreement (including an assessment agreement) that has been filed and is effective under this chapter;
(2) an agreement that is exempt under section 40103 of this title from any requirement of this part;
(3) an agreement or activity within the scope of this part, whether permitted under or prohibited by this part, undertaken or entered into with a reasonable basis to conclude that it is--
(A) pursuant to an agreement on file with the Federal Maritime Commission and in effect when the activity takes place; or
(B) exempt under section 40103 of this title from any filing or publication requirement of this part;
(4) an agreement or activity relating to transportation services within or between foreign countries, whether or not via the United States, unless the agreement or activity has a direct, substantial, and reasonably foreseeable effect on the commerce of the United States;
(5) an agreement or activity relating to the foreign inland segment of through transportation that is part of transportation provided in a United States import or export trade;

(6) an agreement or activity to provide wharfage, dock, warehouse, or other terminal facilities outside the United States; or

(7) an agreement, modification, or cancellation approved before June 18, 1984, by the Commission under section 15 of the Shipping Act, 1916, or permitted under section 14b of that Act, and any properly published tariff, rate, fare, or charge, or classification, rule, or regulation explanatory thereof implementing that agreement, modification, or cancellation.

(b) Exceptions. This part does not extend antitrust immunity to--

(1) an agreement with or among air carriers, rail carriers, motor carriers, or common carriers by water not subject to this part relating to transportation within the United States;

(2) a discussion or agreement among common carriers subject to this part relating to the inland divisions (as opposed to the inland portions) of through rates within the United States;

(3) an agreement among common carriers subject to this part to establish, operate, or maintain a marine terminal in the United States; or

(4) a loyalty contract.

(c) Retroactive effect of determinations. A determination by an agency or court that results in the denial or removal of the immunity to the antitrust laws under subsection (a) does not remove or alter the antitrust immunity for the period before the determination.

(d) Relief under Clayton Act. A person may not 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 part.

CHAPTER 405—TARIFFS, SERVICE CONTRACTS, REFUNDS, AND WAIVERS.[23]

46 U.S.C. 40501 (2006). General rate and tariff requirements.

(a) Automated tariff system.

(1) In general. 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, a common carrier is not required to state separately or otherwise reveal in tariffs the inland divisions of a through rate.

(2) Exceptions. Paragraph (1) does not apply with respect to bulk cargo, forest products, recycled metal scrap, new assembled motor vehicles, waste paper, or paper waste.

---

[23] Section 7 of Public Law 109-304, approved October 6, 2006 (120 STAT. 1532).

(b) Contents of tariffs. A tariff under subsection (a) shall--

(1) state the places between which cargo will be carried;

(2) list each classification of cargo in use;

(3) state the level of compensation, if any, of any ocean freight forwarder by a carrier or conference;

(4) state separately each terminal or other charge, privilege, or facility under the control of the carrier or conference and any rules that in any way change, affect, or determine any part or the total of the rates or charges;

(5) include sample copies of any bill of lading, contract of affreightment, or other document evidencing the transportation agreement; and

(6) include copies of any loyalty contract, omitting the shipper's name.

(c) Electronic access. A tariff under subsection (a) shall be made available electronically to any person, without time, quantity, or other limitation, through appropriate access from remote locations. A reasonable fee may be charged for such access, except that no fee may be charged for access by a Federal agency.

(d) Time-volume rates. A rate contained in a tariff under subsection (a) may vary with the volume of cargo offered over a specified period of time.

(e) Effective dates.

(1) Increases. A new or initial rate or change in an existing rate that results in an increased cost to a shipper may not become effective earlier than 30 days after publication. However, for good cause, the Federal Maritime Commission may allow the rate to become effective sooner.

(2) Decreases. A change in an existing rate that results in a decreased cost to a shipper may become effective on publication.

(f) Marine terminal operator schedules. A marine terminal operator may make available to the public 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 is enforceable by an appropriate court as an implied contract without proof of actual knowledge of its provisions.

(g) Regulations.

(1) In general. The Commission shall by regulation prescribe the requirements for the accessibility and accuracy of automated tariff systems established under this section. The Commission, after periodic review, may prohibit the use of any automated tariff system that fails to meet the requirements established under this section.

(2) Remote terminals. The Commission may not require a common carrier to provide a remote terminal for electronic access under subsection (c).

(3) Marine terminal operator schedules. The Commission shall by regulation prescribe the form and manner in which marine terminal operator schedules authorized by this section shall be published.

46 U.S.C. 40502 (2006). Service contracts.

(a) 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 part.

(b) Filing requirements.

(1) In general. Each service contract entered into under this section by an individual ocean common carrier or an agreement shall be filed confidentially with the Federal Maritime Commission.

(2) Exceptions. Paragraph (1) does not apply to contracts regarding bulk cargo, forest products, recycled metal scrap, new assembled motor vehicles, waste paper, or paper waste.

(c) Essential terms. Each service contract shall include--

(1) the origin and destination port ranges;

(2) the origin and destination geographic areas in the case of through intermodal movements;

(3) the commodities involved;

(4) the minimum volume or portion;

(5) the line-haul rate;

(6) the duration;

(7) service commitments; and

(8) the liquidated damages for nonperformance, if any.

(d) Publication of certain terms. When a service contract is filed confidentially with the Commission, a concise statement of the essential terms specified in paragraphs (1), (3), (4), and (6) of subsection (c) shall be published and made available to the general public in tariff format.

(e) Disclosure of certain terms.

(1) Definitions. In this subsection, the terms "dock area" and "within the port area" have the same meaning and scope as in the applicable collective bargaining agreement between the requesting labor organization and the carrier.

(2) Disclosure. An ocean common carrier that is a party to or is otherwise subject to a collective bargaining agreement with a labor organization shall, in response to a written request by the labor organization, state whether it is responsible for the following work at a dock area or within a port area in the United States with respect to cargo transportation under a service contract:

(A) 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.

(B) The assignment of intraport carriage of the shipper's cargo between areas on a dock or within the port area.

(C) 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 the container yard.

(D) The assignment of container freight station work and container maintenance and repair work performed at a dock area or within the port area.

(3) Within reasonable time. The common carrier shall provide the information described in paragraph (2) to the requesting labor organization within a reasonable period of time.

(4) Existence of collective bargaining agreement. This subsection does not require the disclosure of information by an ocean common carrier unless there exists an applicable and otherwise lawful collective bargaining agreement pertaining to that carrier. A disclosure by an ocean common carrier may not be deemed an admission or an agreement that any work is covered by a collective bargaining agreement. A dispute about whether any work is covered by a collective bargaining agreement and the responsibility of an ocean common carrier under a collective bargaining agreement shall be resolved solely in accordance with the dispute resolution procedures contained in the collective bargaining agreement and the National Labor Relations Act (*29 U.S.C. 151* et seq.), and without reference to this subsection.

(5) Effect under other laws. This subsection does not affect the lawfulness or unlawfulness under this part or any other Federal or State law of any collective bargaining agreement or element thereof, including any element that constitutes an essential term of a service contract.

(f) Remedy for breach. Unless the parties agree otherwise, the exclusive remedy for a breach of a service contract is an action in an appropriate court. The contract dispute resolution forum may not be controlled by or in any way affiliated with a controlled carrier or by the government that owns or controls the carrier.

46 U.S.C. 40503 2006). Refunds and waivers. The Federal Maritime Commission, on application of a carrier or shipper, may permit a common carrier or conference to refund a portion of the freight charges collected from a shipper, or to waive collection of a portion of the charges from a shipper, if--

(1) there is an error in a tariff, a failure to publish a new tariff, or an error in quoting a tariff, and the refund or waiver will not result in discrimination among shippers, ports, or carriers;

(2) the common carrier or conference, before filing an application for authority to refund or waive any charges for an error in a tariff or a failure to publish a tariff, has published a new tariff setting forth the rate on which the refund or waiver would be based; and

(3) the application for the refund or waiver is filed with the Commission within 180 days from the date of shipment.

CHAPTER 407—CONTROLLED CARRIERS.[24]

46 U.S.C. 40701 (2006). Rates.

(a) In general. A controlled carrier may not--

(1) maintain a rate or charge in a tariff or service contract, or charge or assess a rate, that is below a just and reasonable level; or

(2) establish, maintain, or enforce in a tariff or service contract a classification, rule, or regulation that results, or is likely to result, in the carriage or handling of cargo at a rate or charge that is below a just and reasonable level.

(b) Commission prohibition. The Federal Maritime Commission, at any time after notice and opportunity for a hearing, may prohibit the publication or use of a rate, charge, classification, rule, or regulation that a controlled carrier has failed to demonstrate is just and reasonable.

(c) Burden of proof. In a proceeding under this section, the burden of proof is on the controlled carrier to demonstrate that its rate, charge, classification, rule, or regulation is just and reasonable.

(d) Voidness. A rate, charge, classification, rule, or regulation that has been suspended or prohibited by the Commission is void and its use is unlawful.

46 U.S.C. 40702 (2006). Rate standards.

(a) Definition. In this section, 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.

(b) Standards. In determining whether a rate, charge, classification, rule, or regulation of a controlled carrier is just and reasonable, the Federal Maritime Commission--

(1) shall take into account whether the rate or charge that has been published or assessed, or that would result from the pertinent classification, rule, or regulation, is below a level that is fully compensatory to the controlled carrier based on the carrier's actual costs or constructive costs; and

(2) may take into account other appropriate factors, including whether the rate, charge, classification, rule, or regulation is--

(A) the same as, or similar to, those published or assessed by other carriers in the same trade;

(B) required to ensure movement of particular cargo in the same trade; or

(C) required to maintain acceptable continuity, level, or quality of common carrier service to or from affected ports.

---

[24] Section 7 of Public Law 109-304, approved October 6, 2006 (120 STAT. 1535).

46 U.S.C. 40703 (2006). Effective date of rates. Notwithstanding section 40501(e) of this title and except for service contracts, a rate, charge, classification, rule, or regulation of a controlled carrier may not become effective, without special permission of the Federal Maritime Commission, until the 30th day after publication.

46 U.S.C. 40704 (2006). Commission review.

(a) Request for justification. On request of the Federal Maritime Commission, a controlled carrier shall file with the Commission, within 20 days of the request, a statement of justification that sufficiently details the carrier's need and purpose for an existing or proposed rate, charge, classification, rule, or regulation and upon which the Commission may reasonably base a determination of its lawfulness.

(b) Determination. Within 120 days after receipt of information requested under subsection (a), the Commission shall determine whether the rate, charge, classification, rule, or regulation may be unjust and unreasonable.

(c) Show cause order. Whenever the Commission is of the opinion that a rate, charge, classification, rule, or regulation 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 the rate, charge, classification, rule, or regulation should not be prohibited.

(d) Suspension pending determination.

(1) Not yet effective. Pending a determination of the lawfulness of a rate, charge, classification, rule, or regulation in a proceeding under subsection (c), the Commission may suspend the rate, charge, classification, rule, or regulation at any time before its effective date.

(2) Already effective. If a rate, charge, classification, rule, or regulation has already become effective, the Commission, on issuance of an order to show cause, may suspend the rate, charge, classification, rule, or regulation on at least 30 days' notice to the controlled carrier.

(3) Maximum suspension. A period of suspension under this subsection may not exceed 180 days.

(e) Replacement during suspension. Whenever the Commission has suspended a rate, charge, classification, rule, or regulation under this section, the controlled carrier may publish a new rate, charge, classification, rule, or regulation to take effect immediately during the suspension in lieu of the suspended rate, charge, classification, rule, or regulation. However, the Commission may reject the new rate, charge, classification, rule, or regulation if the Commission believes it is unjust and unreasonable.

46 U.S.C. 40705 (2006). Presidential review of Commission orders.
(a) Transmission to President. The Federal Maritime Commission shall transmit to the President, concurrently with publication thereof, each order of suspension or final order of prohibition issued under section 40704 of this title.
(b) Presidential request and Commission action. Within 10 days after receipt or the effective date of a Commission order referred to in subsection (a), the President, in writing, may request the Commission to stay the effect of the order if the President finds that the stay is required for reasons of national defense or foreign policy. The reasons shall be specified in the request. The Commission shall immediately grant the request by issuing an order in which the President's request shall be described. During a stay, the President shall, whenever practicable, attempt to resolve the matter by negotiating with representatives of the applicable foreign governments.

46 U.S.C. 40706 (2006). Exceptions. This chapter does not apply to--
(1) a controlled carrier of a foreign country whose vessels are entitled by a treaty of the United States to receive national or most-favored-nation treatment; or
(2) a trade served only by controlled carriers.

CHAPTER 409—OCEAN TRANSPORTATION INTERMEDIARIES.[25]

46 U.S.C. 40901 (2006). License requirement.
(a) In general. A person in the United States may not act as an ocean transportation intermediary unless the person holds an ocean transportation intermediary's license issued by the Federal Maritime Commission. The Commission shall issue a license to a person that the Commission determines to be qualified by experience and character to act as an ocean transportation intermediary.
(b) Exception. A person whose primary business is the sale of merchandise may forward shipments of the merchandise for its own account without an ocean transportation intermediary's license.

46 U.S.C. 40902 (2006). Financial responsibility.
(a) In general. A person may not act as an ocean transportation intermediary unless the person furnishes a bond, proof of insurance, or other surety--
(1) in a form and amount determined by the Federal Maritime Commission to insure financial responsibility; and

[25] Section 7 of Public Law 109-304, approved October 6, 2006 (120 STAT. 1537).

(2) issued by a surety company found acceptable by the Secretary of the Treasury.

(b) Scope of financial responsibility. A bond, insurance, or other surety obtained under this section--

(1) shall be available to pay any penalty assessed under section 41109 of this title or any order for reparation issued under section 41305 of this title*;*

(2) may be available to pay any claim against an ocean transportation intermediary arising from its transportation-related activities--

(A) with the consent of the insured ocean transportation intermediary and subject to review by the surety company; or

(B) 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

(3) shall be available to pay any judgment for damages against an ocean transportation intermediary arising from its transportation-related activities, if the claimant has first attempted to resolve the claim under paragraph (2) and the claim has not been resolved within a reasonable period of time.

(c) Regulations on court judgments. 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.

(d) Resident agent. 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.

46 U.S.C. 40903 (2006). Suspension or revocation of license.

(a) Failure to maintain qualifications or to comply. The Federal Maritime Commission, after notice and opportunity for a hearing, shall suspend or revoke an ocean transportation intermediary's license if the Commission finds that the ocean transportation intermediary--

(1) is not qualified to provide intermediary services; or

(2) willfully failed to comply with a provision of this part or with an order or regulation of the Commission.

(b) Failure to maintain bond, proof of insurance, or other surety. The Commission may revoke an ocean transportation intermediary's license for failure to maintain a bond, proof of insurance, or other surety as required by section 40902(a) of this title.

46 U.S.C. 40904 (2006). Compensation by common carriers.
(a) Certification of license and services. A common carrier may compensate an ocean freight forwarder for a shipment dispatched for others only when the ocean freight forwarder has certified in writing that it holds an ocean transportation intermediary's license (if required under section 40901 of this title) and has--

(1) engaged, booked, secured, reserved, or contracted directly with the carrier or its agent for space aboard a vessel or confirmed the availability of the space; and

(2) prepared and processed the ocean bill of lading, dock receipt, or other similar document for the shipment.

(b) Dual compensation. A common carrier may not pay compensation for services described in subsection (a) more than once on the same shipment.
(c) Beneficial interest shipments. An ocean freight forwarder may not receive compensation from a common carrier for a shipment in which the ocean freight forwarder has a direct or indirect beneficial interest. A common carrier may not knowingly pay compensation on that shipment.
(d) Limits on authority of conference or group. A conference or group of two or more ocean common carriers in the foreign commerce of the United States that is authorized to agree on the level of compensation paid to an ocean freight forwarder may not--

(1) deny a member of the conference or group the right, upon notice of not more than 5 days, to take independent action on any level of compensation paid to an ocean freight forwarder; or

(2) agree to limit the payment of compensation to an ocean freight forwarder to less than 1.25 percent of the aggregate of all rates and charges applicable under a tariff and assessed against the cargo on which the services of the ocean freight forwarder are provided.

CHAPTER 411—PROHIBITIONS AND PENALTIES.[26]

46 U.S.C. 41101 (2006). Joint ventures and consortiums. In this chapter], a joint venture or consortium of two or more common carriers operating as a single entity is deemed to be a single common carrier.

46 U.S.C. 41102 (2006). General prohibitions.
(a) Obtaining transportation at less than applicable rates. A person may not knowingly and willfully, directly or indirectly, by means of false billing, false classification, false weighing, false report of weight, false measurement,

---

[26] Section 7 of Public Law 109-304, approved October 6, 2005 (120 STAT. 1539).
Note that the amount of civil penalties may have been changed pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, set forth at page 71.

or 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 apply.

(b) Operating contrary to agreement. A person may not operate under an agreement required to be filed under section 40302 or 40305 of this title if--

(1) the agreement has not become effective under section 40304 of this title or has been rejected, disapproved, or canceled; or

(2) the operation is not in accordance with the terms of the agreement or any modifications to the agreement made by the Federal Maritime Commission.

(c) Practices in handling property. A common carrier, marine terminal operator, or ocean transportation intermediary may not fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property.

46 U.S.C. 41103 (2006). Disclosure of information.

(a) Prohibition. A common carrier, marine terminal operator, or ocean freight forwarder, either alone or in conjunction with any other person, directly or indirectly, may not 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 the information--

(1) may be used to the detriment or prejudice of the shipper, the consignee, or any common carrier; or

(2) may improperly disclose its business transaction to a competitor.

(b) Exceptions. Subsection (a) does not prevent providing the information--

(1) in response to legal process;

(2) to the Federal Maritime Commission or an agency of the United States Government; or

(3) 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 part.

(c) Disclosure for determining breach or compiling statistics. An ocean common carrier that is a party to a conference agreement approved under this part, a receiver, trustee, lessee, agent, or employee of the carrier, or any other person authorized by the carrier to receive information--

(1) may give information to the conference or any person or agency designated by the conference, for the purpose of--

(A) determining whether a shipper or consignee has breached an agreement with the conference or its member lines;

(B) determining whether a member of the conference has breached the conference agreement; or

(C) compiling statistics of cargo movement; and

(2) may not prevent the conference or its designee from soliciting or receiving information for any of those purposes.

46 U.S.C. 41104 (2006). Common carriers. A common carrier, either alone or in conjunction with any other person, directly or indirectly, may not--

(1) allow a 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 any other unjust or unfair device or means;

(2) provide service in the liner trade that is--

(A) not in accordance with the rates, charges, classifications, rules, and practices contained in a tariff published or a service contract entered into under chapter 405 of this title, unless excepted or exempted under section 40103 or 40501(a)(2) of this title; or

(B) under a tariff or service contract that has been suspended or prohibited by the Federal Maritime Commission under chapter 407 or 423 of this title;

(3) retaliate against a 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, with due regard being given to the proper loading of the vessel and the available tonnage;

(D) loading and landing of freight; or

(E) 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 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 as required by section 40501 of this title and a bond, insurance, or other surety as required by section 40902 of this title; or

(12) knowingly and willfully enter into a service contract with an ocean transportation intermediary that does not have a tariff as required by section 40501 of this title and a bond, insurance, or other surety as required by section 40902 of this title, or with an affiliate of such an ocean transportation intermediary.

46 U.S.C. 41105 (2006). Concerted action. A conference or group of two or more common carriers may not--

(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 non-ocean carrier or group of non-ocean carriers (such as truck, rail, or air operators) on any matter relating to rates or services provided to ocean common carriers within the United States by those non-ocean carriers, unless the negotiations and any resulting agreements are not in violation of the antitrust laws and are consistent with the purposes of this part, except that this paragraph does not prohibit the setting and publishing of a joint through rate by a conference, joint venture, or association of ocean common carriers;

(5) deny in the export foreign commerce of the United States compensation to an ocean freight forwarder or limit that compensation to less than a reasonable amount;

(6) 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--

(A) authorized by section 40303(d) of this title;

(B) required by the law of the United States or the importing or exporting country; or

(C) 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 person due to the person's status as a shippers' association or ocean transportation intermediary; 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 person due to the person's status as a shippers' association or ocean transportation intermediary.

46 U.S.C. 41106 (2006). Marine terminal operators. A marine terminal operator may not--

(1) agree with another marine terminal operator or with a common carrier to boycott, or unreasonably discriminate in the provision of terminal services to, a common carrier or ocean tramp;

(2) give any undue or unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage with respect to any person; or

(3) unreasonably refuse to deal or negotiate.

46 U.S.C. 41107 (2006). Monetary penalties.

(a) In general. A person that violates this part or a regulation or order of the Federal Maritime Commission issued under this part is liable to the United States Government for a civil penalty. Unless otherwise provided in this part, the amount of the penalty may not exceed $5,000 for each violation or, if the violation was willfully and knowingly committed, $25,000 for each violation. Each day of a continuing violation is a separate violation.

(b) Lien on carrier's vessels. The amount of a civil penalty imposed on a common carrier under this section constitutes a lien on the vessels operated by the carrier. Any such vessel is subject to an action in rem to enforce the lien in the district court of the United States for the district in which it is found.

46 U.S.C. 41108 (2006). Additional penalties.

(a) Suspension of tariffs. For a violation of section 41104(1), (2), or (7) of this title, the Federal Maritime 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.

(b) Operating under suspended tariff. A common carrier that accepts or handles cargo for carriage under a tariff that has been suspended, or after its right to use that tariff has been suspended, is liable to the United States Government for a civil penalty of not more than $50,000 for each shipment.

(c) Failure to provide information.

(1) Penalties. If the Commission finds, after notice and opportunity for a hearing, that a common carrier has failed to supply information ordered to be produced or compelled by subpoena under section 41303 of this title, the Commission may--

(A) suspend any or all tariffs of the carrier or the carrier's right to use any or all tariffs of conferences of which it is a member; and

(B) request the Secretary of Homeland Security to refuse or revoke any clearance required for a vessel operated by the carrier, and when so requested, the Secretary shall refuse or revoke the clearance.

(2) Defense based on foreign law. If, in defense of its failure to comply with a subpoena or discovery order, a common carrier alleges that information or documents 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. On receiving the notification, the Secretary of State shall promptly consult with

the government of the nation within which the information or documents are alleged to be located for the purpose of assisting the Commission in obtaining the information or documents.
(d) Impairing access to foreign trade. If the Commission finds, after notice and opportunity for a hearing, that the action of a common carrier, acting alone or in concert with another 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 imposing any of the penalties authorized by this section. The Commission also may take any of the actions authorized by sections 42304 and 42305 of this title.
(e) Submission of order to President. Before an order under this section becomes effective, it shall be submitted immediately to the President. The President, within 10 days after receiving it, may disapprove it if the President finds that disapproval is required for reasons of national defense or foreign policy.

46 U.S.C. 41109 (2006). Assessment of penalties.

(a) General authority. Until a matter is referred to the Attorney General, the Federal Maritime Commission may, after notice and opportunity for a hearing, assess a civil penalty provided for in this part. The Commission may compromise, modify, or remit, with or without conditions, a civil penalty.
(b) Factors in determining amount. In determining the amount of a civil 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 other matters justice may require.
(c) Exception. A civil penalty may not be imposed for conspiracy to violate section 41102(a) or 41104(1) or (2) of this title or to defraud the Commission by concealing such a violation.
(d) Prohibited basis of penalty. The Commission or a court may not order a 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 a tariff or service contract by that common carrier for the transportation service provided.
(e) Time limit. A proceeding to assess a civil penalty under this section must be commenced within 5 years after the date of the violation.
(f) Review of civil penalty. A person against whom a civil penalty is assessed under this section may obtain review under chapter 158 of title 28.
(g) Civil actions to collect. If a person does not 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 collect the amount assessed in an appropriate district court of the United States. The court shall enforce the order of the

Commission unless it finds that the order was not regularly made and duly issued.

CHAPTER 413—ENFORCEMENT.[27]

46 U.S.C. 41301 (2006). Complaints.

(a) In general. A person may file with the Federal Maritime Commission a sworn complaint alleging a violation of this part, except section 41307(b)(1). If the complaint is filed within 3 years after the claim accrues, the complainant may seek reparations for an injury to the complainant caused by the violation.
(b) Notice and response. The Commission shall provide a copy of the complaint to the person named in the complaint. Within a reasonable time specified by the Commission, the person shall satisfy the complaint or answer it in writing.
(c) If complaint not satisfied. If the complaint is not satisfied, the Commission shall investigate the complaint in an appropriate manner and make an appropriate order.

46 U.S.C. 41302 (2006). Investigations.

(a) In general. The Federal Maritime Commission, on complaint or its own motion, may investigate any conduct or agreement that the Commission believes may be in violation of this part. The Commission may by order disapprove, cancel, or modify any agreement that operates in violation of this part.
(b) Effectiveness of agreement during investigation. Unless an injunction is issued under section 41306 or 41307 of this title, an agreement under investigation by the Commission remains in effect until the Commission issues its order.
(c) Date for decision. Within 10 days after the initiation of a proceeding under this section or section 41301 of this title, the Commission shall set a date by which it will issue its final decision. The Commission by order may extend the date for good cause.
(d) Sanctions for delay. If, within the period for final decision under subsection (c), the Commission determines that it is unable to issue a final decision because of undue delay caused by a party to the proceeding, the Commission may impose sanctions, including issuing a decision adverse to the delaying party.
(e) Report. The Commission shall make a written report of every investigation under this part in which a hearing was held, stating its conclusions, decisions, findings of fact, and order. The Commission shall provide a copy of the report to all parties and publish the report for public

---

[27] Section 7 of Public Law 109-304, approved October 6, 2006 (120 STAT. 1544).

information. A published report is competent evidence in a court of the United States.

46 U.S.C. 41303 (2006). Discovery and subpoenas.

(a) In general. In an investigation or adjudicatory proceeding under this part--

(1) the Federal Maritime Commission may subpoena witnesses and evidence; and

(2) a party may use depositions, written interrogatories, and discovery procedures under regulations prescribed by the Commission that, to the extent practicable, shall conform to the Federal Rules of Civil Procedure (28 App. U.S.C.).

(b) Witness fees. Unless otherwise prohibited by law, a witness is entitled to the same fees and mileage as in the courts of the United States.

46 U.S.C. 41304 (2006). Hearings and orders.

(a) Opportunity for hearing. The Federal Maritime Commission shall provide an opportunity for a hearing before issuing an order relating to a violation of this part or a regulation prescribed under this part.

(b) Modification of order. The Commission may reverse, suspend, or modify any of its orders.

(c) Rehearing. On application of a party to a proceeding, the Commission may grant a rehearing of the same or any matter determined in the proceeding. Except by order of the Commission, a rehearing does not operate as a stay of an order.

(d) Period of effectiveness. An order of the Commission remains in effect for the period specified in the order or until suspended, modified, or set aside by the Commission or a court of competent jurisdiction.

46 U.S.C. 41305 (2006). Award of reparations.

(a) Definition. In this section, the term "actual injury" includes the loss of interest at commercial rates compounded from the date of injury.

(b) Basic amount. If the complaint was filed within the period specified in section 41301(a) of this title, the Federal Maritime Commission shall direct the payment of reparations to the complainant for actual injury caused by a violation of this part, plus reasonable attorney fees.

(c) Additional amounts. On a showing that the injury was caused by an activity prohibited by section 41102(b), 41104(3) or (6), or 41105(1) or (3) of this title, the Commission may order the payment of additional amounts, but the total recovery of a complainant may not exceed twice the amount of the actual injury.

(d) Difference between rates. If the injury was caused by an activity prohibited by section 41104(4)(A) or (B) of this title, 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.

46 U.S.C. 41306 (2006). Injunctive relief sought by complainants.

(a) In general. After filing a complaint with the Federal Maritime Commission under section 41301 of this title, the complainant may bring a civil action in a district court of the United States to enjoin conduct in violation of this part.

(b) Venue. The action must be brought in the judicial district in which--

(1) the Commission has brought a civil action against the defendant under section 41307(a) of this title; or

(2) the defendant resides or transacts business, if the Commission has not brought such an action.

(c) Remedies by court. After notice to the defendant, and a showing that the standards for granting injunctive relief by courts of equity are met, 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.

(d) Attorney fees. A defendant prevailing in a civil action under this section shall be allowed reasonable attorney fees to be assessed and collected as part of the costs of the action.

46 U.S.C. 41307 (2006). Injunctive relief sought by the Commission.

(a) General violations. In connection with an investigation under section 41301 or 41302 of this title, the Federal Maritime Commission may bring a civil action to enjoin conduct in violation of this part. The action must be brought in the district court of the United States for any judicial district in which the defendant resides or transacts business. After notice to the defendant, and a showing that the standards for granting injunctive relief by courts of equity are met, 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.

(b) Reduction in competition.

(1) Action by Commission. If, at any time after the filing or effective date of an agreement under chapter 403 of this title, 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, the Commission, after notice to the person filing the agreement, may bring a civil action in the United States District Court for the District of Columbia to enjoin the operation of the agreement. The Commission's sole remedy with respect to an agreement likely to have such an effect is an action under this subsection.

(2) Remedies by court. In an action under this subsection, the court may issue--

(A) a temporary restraining order or a preliminary injunction; and

(B) a permanent injunction after a showing that the agreement is likely to have the effect described in paragraph (1).

(3) Burden of proof and third parties. In an action under this subsection, the burden of proof is on the Commission. The court may not allow a third party to intervene.

(c) Failure to provide information. If a person filing an agreement, or an officer, director, partner, agent, or employee of the person, fails substantially to comply with a request for the submission of additional information or documents within the period provided in section 40304(c) of this title, the Commission may bring a civil action in the United States District Court for the District of Columbia. At the request of the Commission, the Court--

(1) may order compliance;

(2) shall extend the period specified in section 40304(c)(2) of this title until there has been substantial compliance; and

(3) may grant other equitable relief that the court decides is appropriate.

(d) Representation. The Commission may represent itself in a proceeding under this section in--

(1) a district court of the United States, on notice to the Attorney General; and

(2) a court of appeals of the United States, with the approval of the Attorney General.

46 U.S.C. 41308 (2006). Enforcement of subpoenas and orders.

(a) Civil action. If a person does not comply with a subpoena or order of the Federal Maritime Commission, the Attorney General, at the request of the Commission, or an injured party, may seek enforcement in a district court of the United States having jurisdiction over the parties. If, after hearing, the court determines that the subpoena or order was regularly made and duly issued, the court shall enforce the subpoena or order.

(b) Time limit on bringing actions. An action under this section to enforce an order of the Commission must be brought within 3 years after the date the order was violated.

46 U.S.C. 41309 (2006). Enforcement of reparation orders.

(a) Civil action. If a person does not comply with an order of the Federal Maritime Commission for the payment of reparation, the person to whom the award was made may seek enforcement of the order in a district court of the United States having jurisdiction over the parties.

(b) Parties and service of process. 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 action in a judicial district in which any one plaintiff could maintain an action against any one defendant. Service of process against a defendant not

found in that district may be made in a district in which any office of that defendant is located or in which any port of call on a regular route operated by that defendant is located. Judgment may be entered for any plaintiff against the defendant liable to that plaintiff.
(c) Nature of review. In an action under this section, the findings and order of the Commission are prima facie evidence of the facts stated in the findings and order.
(d) Costs and attorney fees. The plaintiff is not liable for costs of the action or for costs of any subsequent stage of the proceedings unless they accrue on the plaintiff's appeal. A prevailing plaintiff shall be allowed reasonable attorney fees to be assessed and collected as part of the costs of the action.
(e) Time limit on bringing actions. An action under this section to enforce an order of the Commission must be brought within 3 years after the date the order was violated.

CHAPTER 421—REGULATIONS AFFECTING SHIPPING IN FOREIGN TRADE.[28]

46 U.S.C. 42101 (2006). Regulations of the Commission.

(a) Unfavorable conditions. To further the objectives and policy set forth in section 50101 of this title, the Federal Maritime Commission shall prescribe regulations affecting shipping in foreign trade, not in conflict with law, to adjust or meet general or special conditions unfavorable to shipping in foreign trade, whether in a particular trade or on a 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 transportation systems, and which arise out of or result from laws or regulations of a foreign country or competitive methods, pricing practices, or other practices employed by owners, operators, agents, or masters of vessels of a foreign country.
(b) Initiation of regulation. A regulation under subsection (a) may be initiated by the Commission on its own motion or on the petition of any person, including another component of the United States Government.

46 U.S.C. 42102 (2006). Regulations of other agencies.

(a) Request to agency. To further the objectives and policy set forth in section 50101 of this title, the Federal Maritime Commission shall request the head of a department, agency, or instrumentality of the United States Government to suspend, modify, or annul any existing regulations, or to make new regulations, affecting shipping in the foreign trade, except regulations relating to the Public Health Service, the Consular Service, or the inspection of vessels.

---

[28] Section 7 of Public Law 109-304, approved October 6, 2006 (120 STAT. 1548).

(b) Prior review and approval. A department, agency, or instrumentality of the Government may not prescribe a regulation affecting shipping in the foreign trade (except a regulation affecting the Public Health Service, the Consular Service, or the inspection of vessels) until the regulation has been submitted to the Commission for its approval and final action has been taken by the Commission or the President.
(c) Submission to President. If the head of a department, agency, or instrumentality of the Government refuses to comply with a request under subsection (a) or objects to a decision of the Commission under subsection (b), the Commission or the head of the department, agency, or instrumentality may submit the facts to the President. The President may establish, suspend, modify, or annul the regulation.

46 U.S.C. 42103 (2006). No preference to Government-owned vessels. A regulation may not give a vessel owned by the United States Government a preference over a vessel owned by citizens of the United States and documented under the laws of the United States.

46 U.S.C. 42104 (2006). Information, witnesses, and evidence.
(a) Order to supply information. In carrying out section 42101 of this title, the Federal Maritime Commission may order any person (including a 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 the Commission considers necessary or appropriate. The Commission may require the response to any such order to be made under oath. The response shall be provided in the form and within the time specified by the Commission.
(b) Subpoenas and discovery. In carrying out section 42101 of this title, the Commission may--
(1) subpoena witnesses and evidence; and
(2) authorize a party to use depositions, written interrogatories, and discovery procedures that, to the extent practicable, conform to the Federal Rules of Civil Procedure (28 App. U.S.C.).
(c) Witness fees. Unless otherwise prohibited by law, and subject to funds being appropriated, a witness in a proceeding under section 42101 of this title is entitled to the same fees and mileage as in the courts of the United States.
(d) Penalties. For failure to supply information ordered to be produced or compelled by subpoena under this section, the Commission may--
(1) after notice and opportunity for a hearing, suspend tariffs and service contracts of a common carrier or the common carrier's right to use tariffs of conferences and service contracts of agreements of which it is a member; or

(2) assess a civil penalty of not more than $5,000 for each day that the information is not provided.[29]

(e) Enforcement. If a person does not comply with an order or subpoena of the Commission under this section, the Commission may seek enforcement in a district court of the United States having jurisdiction over the parties. If, after hearing, the court determines that the order or subpoena was regularly made and duly issued, the court shall enforce the order or subpoena.

46 U.S.C. 42105 (2006). Disclosure to public.
Notwithstanding any other provision of law, the Federal Maritime Commission may refuse to disclose to the public a response or other information submitted to it under this chapter.

46 U.S.C. 42106 (2006). Other actions to remedy unfavorable conditions. If the Federal Maritime Commission finds that conditions unfavorable to shipping in foreign trade as described in section 42101 of this title exist, the Commission may--

(1) limit voyages 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 any agreement filed with the Commission, including any agreement authorizing preferential treatment at terminals, preferential terminal leases, space chartering, or pooling of cargo 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.

46 U.S.C. 42107 (2006). Refusal of clearance and entry. At the request of the Federal Maritime Commission--

(1) the Secretary of Homeland Security shall--

(A) refuse the clearance required by section 60105 of this title to a vessel of a country that is named in a regulation prescribed by the Commission under section 42101 of this title; and

(B) collect any fees imposed by the Commission under section 42106(4) of this title; and

---

[29] 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 71.

(2) the Secretary of the department in which the Coast Guard is operating shall--

(A) deny entry, for purposes of oceanborne trade, of a vessel of a country that is named in a regulation prescribed by the Commission under section 42101 of this title, to a port or place in the United States or the navigable waters of the United States; or

(B) detain the 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.

46 U.S.C. 42108 (2006). Penalty for operating under suspended tariff or service contract. A common carrier that accepts or handles cargo for carriage under a tariff or service contract that has been suspended under section 42104(d)(1) or 42106(2) of this title, or after its right to use another tariff or service contract has been suspended under those provisions, is liable to the United States Government for a civil penalty of not more than $50,000 for each day that it is found to be operating under a suspended tariff or service contract.[30]

46 U.S.C. 42109 (2006). Consultation with other agencies. The Federal Maritime Commission may consult with, seek the cooperation of, or make recommendations to other appropriate agencies of the United States Government prior to taking any action under this chapter.

CHAPTER 423—FOREIGN SHIPPING PRACTICES.[31]

46 U.S.C. 42301 (2006). Definitions.

(a) Defined in part A. In this chapter, the terms "common carrier", "marine terminal operator", "ocean common carrier", "ocean transportation intermediary", "shipper", and "shippers' association" have the meaning given those terms in section 40102 of this title.

(b) Other definitions. In this chapter:

(1) Foreign carrier. The term "foreign carrier" means an ocean common carrier a majority of whose vessels are documented under the laws of a foreign country.

(2) Maritime services. The term "maritime services" means port-to-port transportation of cargo by vessels operated by an ocean common carrier.

(3) Maritime-related services. The term "maritime-related services" means intermodal operations, terminal operations, cargo solicitation, agency services,

---

[30] 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 71.

[31] Section 7 of Public Law 109-304, approved October 6, 2006 (120 STAT. 1551)

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 for themselves and others.

(4) United States carrier. The term "United States carrier" means an ocean common carrier operating vessels documented under the laws of the United States.

(5) United States oceanborne trade. The term "United States oceanborne trade" means the carriage of cargo between the United States and a foreign country, whether directly or indirectly, by an ocean common carrier.

46 U.S.C. 42302 (2006). Investigations.

(a) In general. The Federal Maritime Commission shall investigate whether any laws, rules, regulations, policies, or practices of a foreign government, or any practices of a foreign carrier or other person 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.

(b) Initiation of investigation. An investigation under subsection (a) may be initiated by the Commission on its own motion or on the petition of any person, including another component of the United States Government.

(c) Time for decision. The Commission shall complete an investigation under this section and render a decision within 120 days after it is initiated. However, the Commission may extend this 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 (a) exists. A notice providing an extension shall state clearly the reasons for the extension.

46 U.S.C. 42303 (2006). Information requests.

(a) In general. To further the purposes of section 42302(a) of this title, the Federal Maritime Commission may order any person (including a common carrier, 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 any periodic or special report, answers to questions, documentary material, or other information the Commission considers necessary or appropriate. The Commission may require the response to any such order to be made under oath. The response shall be provided in the form and within the time specified by the Commission.

(b) Subpoenas. In an investigation under section 42302 of this title, the Commission may subpoena witnesses and evidence.
(c) Nondisclosure. Notwithstanding any other provision of law, the Commission may determine that any information submitted to it in response to a request under this section, or otherwise, shall not be disclosed to the public.

46 U.S.C. 42304 (2006). Action against foreign carriers.
(a) In general. Subject to section 42306 of this title, whenever the Federal Maritime Commission, after notice and opportunity for comment or hearing, determines that the conditions specified in section 42302(a) of this title exist, the Commission shall take such action to offset those conditions as it considers necessary and appropriate against any foreign carrier that is a contributing cause, or whose government is a contributing cause, to those conditions. The action may include--

(1) limitations on voyages to and from United States ports or on the amount or type of cargo carried;

(2) suspension, in whole or in part, of any or all tariffs and service contracts, including an ocean common carrier's right to use any or all tariffs and service contracts of conferences in United States trades of which it is a member for any period the Commission specifies;

(3) suspension, in whole or in part, of an ocean common carrier's right to operate under any agreement filed with the Commission, including any agreement authorizing preferential treatment at terminals, preferential terminal leases, space chartering, or pooling of cargo or revenue with other ocean common carriers; and

(4) a fee not to exceed $1,000,000 per voyage.

(b) Consultation. The Commission may consult with, seek the cooperation of, or make recommendations to other appropriate agencies of the United States Government prior to taking any action under subsection (a).

46 U.S.C. 42305 (2006). Refusal of clearance and entry. Subject to section 42306 of this title, whenever the Federal Maritime Commission determines that the conditions specified in section 42302(a) of this title exist, then at the request of the Commission--

(1) the Secretary of Homeland Security shall refuse the clearance required by section 60105 of this title to a vessel of a foreign carrier that is identified by the Commission under section 42304 of this title*;* and

(2) the Secretary of the department in which the Coast Guard is operating shall--

(A) deny entry, for purposes of oceanborne trade, of a vessel of a foreign carrier that is identified by the Commission under section 42304 of this title, to a port or place in the United States or the navigable waters of the United States; or

(B) detain the 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.

46 U.S.C. 42306 (2006). Submission of determinations to President. Before a determination under section 42304 of this title becomes effective or a request is made under section 42305 of this title, the determination shall be submitted immediately to the President. The President, within 10 days after receiving it, may disapprove it in writing, setting forth the reasons for the disapproval, if the President finds that disapproval is required for reasons of national defense or foreign policy.

46 U.S.C. 42307 (2006). Review of regulations and orders. A regulation or final order of the Federal Maritime Commission under this chapter is reviewable exclusively in the same forum and in the same manner as provided in section 2342(3)(B) of title 28.

CHAPTER 441—EVIDENCE OF FINANCIAL RESPONSIBILITY FOR PASSENGER TRANSPORTATION.[32]

46 U.S.C. 44101 (2006). Application. This chapter applies to a vessel that--

(1) has berth or stateroom accommodations for at least 50 passengers; and

(2) boards passengers at a port in the United States.

46 U.S.C. 44102 (2006). Financial responsibility to indemnify passengers for nonperformance of transportation.

(a) Filing requirement. A person in the United States may not arrange, offer, advertise, or provide transportation on a vessel to which this chapter applies unless the person has filed with the Federal Maritime Commission evidence of financial responsibility to indemnify passengers for nonperformance of the transportation.

(b) Satisfactory evidence. To satisfy subsection (a), a person must file--

(1) information the Commission considers necessary; or

(2) a copy of a bond or other security, in such form as the Commission by regulation may require.

(c) Authorized issuer of bond. If a bond is filed, it must be issued by a bonding company authorized to do business in the United States.

---

[32] Section 7 of Public Law 109-304, approved October 6, 2006 (120 STAT. 1554).

46 U.S.C. 44103 (2006). Financial responsibility to pay liability for death or injury.

(a) General requirement. The owner or charterer of a vessel to which this chapter applies shall establish, under regulations prescribed by the Federal Maritime Commission, financial responsibility to meet liability for death or injury to passengers or other individuals on a voyage to or from a port in the United States.

(b) Amounts.

(1) In general. The amount of financial responsibility required under subsection (a) shall be based on the number of passenger accommodations as follows:

(A) $20,000 for each of the first 500 passenger accommodations.

(B) $15,000 for each additional passenger accommodation between 501 and 1,000.

(C) $10,000 for each additional passenger accommodation between 1,001 and 1,500.

(D) $5,000 for each additional passenger accommodation over 1,500.

(2) Multiple vessels. If the owner or charterer is operating more than one vessel subject to this chapter, the amount of financial responsibility shall be based on the number of passenger accommodations on the vessel with the largest number of passenger accommodations.

(c) Availability to pay judgment. The amount determined under subsection (b) shall be available to pay a judgment for damages (whether less than or more than $20,000) for death or injury to a passenger or other individual on a voyage to or from a port in the United States.

(d) Means of establishing. Financial responsibility under this section may be established by one or more of the following if acceptable to the Commission:

(1) Insurance.

(2) Surety bond issued by a bonding company authorized to do business in the United States.

(3) Qualification as a self-insurer.

(4) Other evidence of financial responsibility.

46 U.S.C. 44104 (2006). Civil penalty.[33] A person that violates section 44102 or 44103 of this title is liable to the United States Government for a civil penalty of not more than $5,000, plus $200 for each passage sold, to be assessed by the Federal Maritime Commission. The Commission may remit or mitigate the penalty on terms the Commission considers proper.

---

[33] Note that the amount of civil penalties may have been changed pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, set forth at page 71.

46 U.S.C. 44105 (2006). Refusal of clearance. The Secretary of Homeland Security shall refuse the clearance required by section 60105 of this title, at the port or place of departure from the United States, of a vessel that is subject to this chapter and does not have evidence issued by the Federal Maritime Commission of compliance with sections 44102 and 44103 of this title.

46 U.S.C. 44106 (2006). Conduct of proceedings. Part A of this subtitle applies to proceedings conducted by the Federal Maritime Commission under this chapter.

MERCHANT MARINE GENERAL

CHAPTER 501—POLICY, STUDIES, AND REPORTS.[34]

46 U.S.C. 50101 (2006). Objectives and policy.

(a) Objectives. It is necessary for the national defense and the development of the domestic and foreign commerce of the United States that the United States have a merchant marine--

(1) sufficient to carry the waterborne domestic commerce and a substantial part of the waterborne export and import foreign commerce of the United States and to provide shipping service essential for maintaining the flow of the waterborne domestic and foreign 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 as vessels of the United States by citizens of the United States;

(4) composed of the best-equipped, safest, and most suitable types of vessels and manned with a trained and efficient citizen personnel; and

(5) supplemented by efficient facilities for building and repairing vessels.

(b) Policy. It is the policy of the United States to encourage and aid the development and maintenance of a merchant marine satisfying the objectives described in subsection (a).

46 U.S.C. 50102 (2006). Survey of merchant marine.

(a) In general. The Secretary of Transportation shall survey the merchant marine of the United States to determine whether replacements and additions are required to carry out the objectives and policy of section 50101 of this title. The Secretary shall study, perfect, and adopt a long-range program for replacements and additions that will result, as soon as practicable, in--

(1) an adequate and well-balanced merchant fleet, including vessels of all types, that will provide shipping service essential for maintaining the flow of foreign commerce by vessels designed to be readily and quickly convertible into transport and supply vessels in a time of national emergency;

(2) ownership and operation of the fleet by citizens of the United States insofar as practicable;

(3) vessels designed to afford the best and most complete protection for passengers and crew against fire and all marine perils; and

(4) an efficient capacity for building and repairing vessels in the United States with an adequate number of skilled personnel to provide an adequate mobilization base.

---

[34] Section 8 of Public Law 109-304, approved October 6, 2006 (120 STAT. 1556).

(b) Cooperation with Secretary of Navy. In carrying out subsection (a)(1), the Secretary of Transportation shall cooperate closely with the Secretary of the Navy as to national defense requirements.

46 U.S.C. 50103 (2006). Determinations of essential services.

(a) Essential services, routes, and lines.

(1) In general. The Secretary of Transportation shall investigate, determine, and keep current records of the ocean services, routes, and lines from ports in the United States, or in the territories and possessions of the United States, to foreign markets, which the Secretary determines to be essential for the promotion, development, expansion, and maintenance of the foreign commerce of the United States. In making such a determination, the Secretary shall consider and give due weight to--

(A) the cost of maintaining each line;

(B) the probability that a line cannot be maintained except at a heavy loss disproportionate to the benefit to foreign trade;

(C) the number of voyages and types of vessels that should be employed in a line;

(D) the intangible benefit of maintaining a line to the foreign commerce of the United States, the national defense, and other national requirements; and

(E) any other facts and conditions a prudent business person would consider when dealing with the person's own business.

(2) Saint Lawrence Seaway. For purposes of paragraph (1), the Secretary shall establish services, routes, and lines that reflect the seasonal closing of the Saint Lawrence Seaway and provide for alternate routing of vessels through a different range of ports during that closing to maintain continuity of service on a year-round basis.

(b) Bulk cargo carrying services. The Secretary shall investigate, determine, and keep current records of the bulk cargo carrying services that should be provided by vessels of the United States (whether or not operating on particular services, routes, or lines) for the promotion, development, expansion, and maintenance of the foreign commerce of the United States and the national defense or other national requirements.

(c) Types of vessels. The Secretary shall investigate, determine, and keep current records of the type, size, speed, method of propulsion, and other requirements of the vessels, including express-liner or super-liner vessels, that should be employed in--

(1) the services, routes, or lines described in subsection (a), and the frequency and regularity of the voyages of the vessels, with a view to furnishing adequate, regular, certain, and permanent service; and

(2) the bulk cargo carrying services described in subsection (b).

46 U.S.C. 50104 (2006). Studies of general maritime problems. The Secretary of Transportation shall study all maritime problems arising in carrying out the policy in section 50101 of this title.

46 U.S.C. 50105 (2006). Studies and cooperation relating to the construction of vessels.

(a) Relative costs and new designs. The Secretary of Transportation shall investigate, determine, and keep current records of--

(1) the relative cost of construction of comparable vessels in the United States and in foreign countries; and

(2) new designs, new methods of construction, and new types of equipment for vessels.

(b) Rules, classifications, and ratings. The Secretary shall examine the rules under which vessels are constructed abroad and in the United States and the methods of classifying and rating the vessels.

(c) Collaboration with owners and builders. The Secretary shall 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 from standardized production where practicable and desirable.

(d) Express-liner and super-liner vessels. The Secretary shall study and cooperate with vessel owners in devising means by which there may be constructed, by or with the aid of the United States Government, express-liner or super-liner vessels comparable to those of other nations, especially with a view to their use in a national emergency, and the use of transoceanic aircraft service in connection with or in lieu of those vessels.

46 U.S.C. 50106 (2006). Studies on the operation of vessels.

(a) Relative costs. The Secretary of Transportation shall investigate, determine, and keep current records of 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 and regulations of the United States and those of the foreign countries whose vessels are substantial competitors of American vessels.

(**b) Shipyards.** The Secretary shall investigate, determine, and keep current records of the number, location, and efficiency of shipyards in the United States.

(c) Navigation laws. The Secretary shall examine the navigation laws and regulations of the United States and make such recommendations to Congress as the Secretary considers proper for the amendment, improvement, and revision of those laws and for the development of the merchant marine of the United States.

46 U.S.C. 50107 (2006). Studies on marine insurance. The Secretary of Transportation shall--

(1) 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

(2) ascertain what steps may be necessary to develop an ample marine insurance system as an aid in the development of the merchant marine of the United States.

46 U.S.C. 50108 (2006). Studies on cargo carriage and cargo containers.

(a) Studies. The Secretary of Transportation shall study--

(1) the 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

(2) the economic and technological aspects of the use of cargo containers as a method of carrying out the policy in section 50101 of this title.

(b) Restriction. In carrying out subsection (a) and the policy in section 50101 of this title, the United States Government may not give preference as between carriers based on the length, height, or width of cargo containers or the length, height, or width of cargo container cells. This restriction applies to all existing container vessels and any container vessel to be constructed or rebuilt.

46 U.S.C. 50109 (2006). Miscellaneous studies.

(a) Foreign subsidies. The Secretary of Transportation shall investigate, determine, and keep current records of the extent and character of the governmental aid and subsidies granted by foreign governments to their merchant marine.

(b) Laws applicable to aircraft. The Secretary shall investigate, determine, and keep current records of the provisions of law relating to shipping that should be made applicable to aircraft engaged in foreign commerce to further the policy in section 50101 of this title, and any appropriate legislation in this regard.

(c) Aid for cotton, coal, lumber, and cement. The Secretary shall investigate, determine, and keep current records of the advisability of enactment of suitable legislation authorizing the Secretary, in an economic or commercial emergency, to aid farmers and producers of cotton, coal, lumber, and cement 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, until

the Secretary considers the special rate reduction and operation unnecessary for the benefit of those farmers and producers.
(d) Intercoastal and inland water transportation. The Secretary shall investigate, determine, and keep current records of intercoastal and inland water transportation, including their relation to transportation by land and air.
(e) Obsolete tonnage and tramp service. The Secretary shall make studies and reports to Congress on--

(1) the scrapping or removal from service of old or obsolete merchant tonnage owned by the United States Government or in use in the merchant marine; and

(2) tramp shipping service and the advisability of citizens of the United States participating in that service with vessels under United States registry.

(f) Mortgage loans. The Secretary shall investigate the legal status of mortgage loans on vessel property, with a view to the means of improving the security of those loans and of encouraging investment in American shipping.

46 U.S.C. 50110 (2006). Securing preference to vessels of the United States.

(a) Possibilities of promoting carriage. The Secretary of Transportation shall investigate, determine, and keep current records of the possibilities of promoting the carriage of United States foreign trade in vessels of the United States.
(b) Inducements to importers and exporters. The Secretary shall study and cooperate with vessel owners in devising means by which the importers and exporters of the United States can be induced to give preference to vessels of the United States.
(c) Liaison with agencies and organizations. The Secretary shall establish and maintain liaison with such other agencies 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 waterborne export and import foreign commerce of the United States, for the purpose of securing preference to vessels of the United States in the shipment of those commodities.

46 U.S.C. 50111 (2006). Reports to Congress.

(a) In general. Not later than April 1 of each year, the Secretary of Transportation shall submit a report to Congress. The report shall include, with respect to activities of the Secretary under this subtitle, the results of investigations, a summary of transactions, a statement of all expenditures and receipts, the purposes for which all expenditures were made, and any recommendations for legislation.
(b) Administered and oversight funds. The Secretary, in the report under subsection (a) and in the annual budget estimate for the Maritime

Administration submitted to 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.
(c) Additional recommendations for legislation. The Secretary, from time to time, shall make recommendations to Congress for legislation the Secretary considers necessary to better achieve the objectives and policy of section 50101 of this title.

46 U.S.C. 50112 (2006). National Maritime Enhancement Institutes.

(a) Designation. The Secretary of Transportation may designate National Maritime Enhancement Institutes.
(b) Activities. Activities undertaken by an institute may include--
(1) conducting research about methods to improve 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) Application for designation. An institution seeking designation as a National Maritime Enhancement Institute shall submit an application under regulations prescribed by the Secretary.
(d) Criteria for designation. 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 applicant for carrying out the activities specified in subsection (b).
(2) The ability of the applicant 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 applicant encompassing research and training directed to enhancing maritime industries.
(4) The demonstrated ability of the applicant 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.
(5) The qualification of the applicant as a nonprofit institution of higher learning.

(e) Financial 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 may not exceed $500,000.
(f) University transportation research funds. The Secretary may make a grant under section 5505 of title 49 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. In making a grant, the Secretary, through the Research and Innovative Technology Administration, shall advise the Maritime Administration on the availability of funds for the grants and consult with the Administration on making the grants.

46 U.S.C. 50113 (2006). Use and performance reports by operators of vessels.

(a) Filing requirement. The Secretary of Transportation by regulation may require the operator of a vessel in the waterborne foreign commerce of the United States to file such report, account, record, or memorandum on the use and performance of the vessel as the Secretary considers desirable to assist in carrying out this subtitle. The report, account, record, or memorandum shall be signed and verified, and be filed at the times and in the manner, as provided by regulation.
(b) Civil penalty.[35] An operator not filing a report, account, record, or memorandum required by the Secretary under this section is liable to the United States Government for a civil penalty of $50 for each day of the violation. A penalty imposed under this section on the operator of a vessel constitutes a lien on the vessel involved in the violation. A civil action in rem to enforce the lien may be brought in the district court of the United States for any district in which the vessel is found. The Secretary may remit or mitigate any penalty imposed under this section.

[35] Note that the amount of this penalty may have been changed pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, set forth at page 71.

CHAPTER 503—ADMINISTRATIVE.[36]

46 U.S.C. 50301 (2006). Vessel Operations Revolving Fund.
(a) In general. There is a "Vessel Operations Revolving Fund" for use by the Secretary of Transportation in carrying out duties and powers related to vessel operations, including charter, operation, maintenance, repair, reconditioning, and improvement of merchant vessels under the jurisdiction of the Secretary. The Fund has a working capital of $20,000,000, to remain available until expended.
(b) Relationship to other laws. Notwithstanding any other law, rates for shipping services provided under the Fund shall be prescribed by the Secretary and the Fund shall be credited with receipts from vessel operations conducted under the Fund. Sections 1(a) and (c), 3(c), and 4 of the Act of March 24, 1943 (50 App. U.S.C. 1291(a), (c), 1293(c), 1294), apply to those operations and to seamen employed through general agents as employees of the United States Government. Notwithstanding any other law on the employment of persons by the Government, the seamen may be employed in accordance with customary commercial practices in the maritime industry.
(c) Advancements. With the approval of the Director of the Office of Management and Budget, the Secretary may advance amounts the Secretary considers necessary, but not more than 2 percent of vessel operating expenses, from the Fund to the appropriation "Salaries and Expenses" in carrying out duties and powers related to vessel operations, without regard to the limitations on amounts stated in that appropriation.
(d) Transfers. The unexpended balances of working funds or of allocation accounts established after January 1, 1951, for the activities provided for in subsection (a), and receipts received from those activities, may be transferred to the Fund, which shall be available for the purposes of those working funds or allocation accounts.
(e) Limitation.
(1) In general. Amounts made available to the Secretary for maritime activities by this section or any other law may not be used to pay for a vessel described in paragraph (2) unless the compensation to be paid is computed under section 56303 of this title as that section is interpreted by the Comptroller General.
(2) Applicable vessels. Paragraph (1) applies to a vessel--

---

[36] Section 8 of Public Law 109-304, approved October 6, 2006 (120 STAT. 1562).

(A) the title to which is acquired by the Government by requisition or purchase;

(B) the use of which is taken by requisition or agreement; or

(C) lost while insured by the Government.

(3) Nonapplicable vessels. Paragraph (1) does not apply to a vessel under a construction-differential subsidy contract.

(f) Availability for additional purposes. The Fund is available for--

(1) necessary expenses incurred in the protection, preservation, maintenance, acquisition, or use of vessels involved in mortgage foreclosure or forfeiture proceedings instituted by the Government, including payment of prior claims and liens, expenses of sale, or other related charges;

(2) necessary expenses incident to the redelivery and lay-up, in the United States, of vessels chartered as of June 20, 1956, under agreements not calling for their return to the Government;

(3) the activation, repair, and deactivation of merchant vessels chartered for limited emergency purposes during fiscal year 1957 under the jurisdiction of the Secretary; and

(4) payment of expenses of custody and maintenance of Government-owned vessels not in the National Defense Reserve Fleet.

(g) Expenses and receipts related to charter operations. The Fund is available for expenses incurred in activating, repairing, and deactivating merchant vessels chartered under the jurisdiction of the Secretary. Receipts from charter operations of Government-owned vessels under the jurisdiction of the Secretary shall be credited to the Fund.

46 U.S.C. 50302 (2006). Port development.

(a) General requirements. With the objective of promoting, encouraging, and developing ports and transportation facilities in connection with water commerce over which the Secretary of Transportation has jurisdiction, the Secretary, in cooperation with the Secretary of the Army, shall--

(1) investigate territorial regions and zones tributary to ports, taking into consideration the economies of transportation by rail, water, and highway and the natural direction of the flow of commerce;

(2) investigate the causes of congestion of commerce at ports and applicable remedies;

(3) investigate the subject of water terminals, including the necessary docks, warehouses, and equipment, to devise and suggest the types most appropriate for different locations and for the most expeditious and

economical transfer or interchange of passengers or property between water carriers and rail carriers;

(4) consult with communities on the appropriate location and plan of construction of wharves, piers, and water terminals;

(5) investigate the practicability and advantages of harbor, river, and port improvements in connection with foreign and coastwise trade; and

(6) investigate any other matter that may tend to promote and encourage the use by vessels of ports adequate to care for the freight that naturally would pass through those ports.

(b) Submission of findings to Surface Transportation Board. After an investigation under subsection (a), if the Secretary of Transportation believes that the rates or practices of a rail carrier subject to the jurisdiction of the Surface Transportation Board are detrimental to the objective specified in subsection (a), or that new rates or practices, new or additional port terminal facilities, or affirmative action by a rail carrier is necessary to promote that objective, the Secretary may submit findings to the Board for action the Board considers appropriate under existing law.

46 U.S.C. 50303 (2006). Operating property and extending term of notes.

(a) General authority. The Secretary of Transportation may--

(1) operate or lease docks, wharves, piers, or real property under the Secretary's control; and

(2) make extensions and accept renewals of--

(A) promissory notes and other evidences of indebtedness on property; and

(B) mortgages and other contracts securing the property.

(b) Terms of transactions. A transaction under subsection (a) shall be on terms the Secretary considers necessary to carry out the purposes of this subtitle , but consistent with sound business practice.

(c) Availability of amounts. Amounts received by the Secretary from a transaction under this section are available for expenditure by the Secretary as provided in this subtitle.

46 U.S.C. 50304 (2006). Sale and transfer of property.

(a) Authority to sell. The Secretary of Transportation may sell property (other than vessels transferred under section 4 of the Merchant Marine Act, 1920 (ch. 250, 41 Stat. 990)) on terms the Secretary considers appropriate.

(b) Transfers from military to civilian control. When the President considers it in the interest of the United States, the President may transfer to the Secretary of Transportation possession and control of property described in the second paragraph of section 17 of the Merchant Marine Act, 1920 (ch. 250, 41 Stat. 994), as originally enacted, that is possessed and controlled by the Secretary of a military department.

(c) Transfers from civilian to military control. When the President considers it necessary, the President by executive order may transfer to the Secretary of a military department possession and control of property described in section 17 of the Merchant Marine Act, 1920 (ch. 250, 41 Stat. 994), as originally enacted, that is possessed and controlled by the Secretary of Transportation. The President's order shall state the need for the transfer and the period of the need. When the President decides that the need has ended, the possession and control shall revert to the Secretary of Transportation. The property may not be sold except as provided by law.

46 U.S.C. 50305 (2006). Appointment of trustee or receiver and operation of vessels.

(a) Appointment of trustees and receivers.

(1) Appointment of secretary. In a proceeding in a court of the United States in which a trustee or receiver may be appointed for a corporation operating a vessel of United States registry between the United States and a foreign country, on which the United States Government holds a mortgage, the court may appoint the Secretary of Transportation as the sole trustee or receiver (subject to the direction of the court) if--

(A) the court finds that the appointment will--

(i) inure to the advantage of the estate and the parties in interest; and

(ii) tend to carry out the purposes of this subtitle; and

(B) the Secretary expressly consents to the appointment.

(2) Appointment of other person. The appointment of another person as trustee or receiver without a hearing becomes effective when ratified by the Secretary, but the Secretary may demand a hearing.

(b) Operation of vessels.

(1) In general. If the court is unwilling to allow the trustee or receiver to operate the vessel in foreign commerce without financial aid from the Government pending termination of the proceeding, and the Secretary certifies to the court that the continued operation of the vessel is

essential to the foreign commerce of the United States and is reasonably calculated to carry out the purposes of this subtitle, the court may allow the Secretary to operate the vessel, either directly or through a managing agent or operator employed by the Secretary. The Secretary must agree to comply with terms imposed by the court sufficient to protect the parties in interest. The Secretary also must agree to pay all operating losses resulting from the operation. The operation shall be for the account of the trustee or receiver.

(2) Payment of operating losses and other amounts. The Secretary has no claim against the corporation, its estate, or its assets for operating losses paid by the Secretary, but the Secretary may pay amounts for depreciation the Secretary considers reasonable and other amounts the court considers just. The payment of operating losses and the other amounts and compliance with terms imposed by the court shall be in satisfaction of any claim against the Secretary resulting from the operation of the vessel.

(3) Deemed operation by government. A vessel operated by the Secretary under this subsection is deemed to be a vessel operated by the United States under chapter 309 of this title.

46 U.S.C. 50306 (2006). Requiring testimony and records in investigations.

(a) In general. In conducting an investigation that the Secretary of Transportation considers necessary and proper to carry out this subtitle, the Secretary may administer oaths, take evidence, and subpoena persons to testify and produce documents relevant to the matter under investigation. Persons may be required to attend or produce documents from any place in the United States at any designated place of hearing.

(b) Fees and mileage. Persons subpoenaed by the Secretary under subsection (a) shall be paid the same fees and mileage paid to witnesses in the courts of the United States.

(c) Enforcement of subpoenas. If a person disobeys a subpoena issued under subsection (a), the Secretary may seek an order enforcing the subpoena from the district court of the United States for the district in which the person resides or does business. Process may be served in the judicial district in which the person resides or is found. The court may issue an order to obey the subpoena and punish a refusal to obey as a contempt of court.

VESSEL TRANSFER AUTHORITY

Section 3504 of Public Law 109-364, approved October 17, 2006 (120 STAT. 2516), provides:

> **Sec. 3504. Vessel Transfer Authority**. The Secretary of Transportation may transfer or otherwise make available without reimbursement to any other department a vessel under the jurisdiction of the Department of Transportation, upon request by the Secretary of the department that receives the vessels.

ECONOMY ACT

31 U.S.C. 1535 (2006). Agency agreements.
(a) The head of an agency or major organizational unit within an agency may place an order with a major organizational unit within the same agency or another agency for goods or services if--

(1) amounts are available;

(2) the head of the ordering agency or unit decides the order is in the best interest of the United States Government;

(3) the agency or unit to fill the order is able to provide or get by contract the ordered goods or services; and

(4) the head of the agency decides ordered goods or services cannot be provided by contract as conveniently or cheaply by a commercial enterprise.

(b) Payment shall be made promptly by check on the written request of the agency or unit filling the order. Payment may be in advance or on providing the goods or services ordered and shall be for any part of the estimated or actual cost as determined by the agency or unit filling the order. A bill submitted or a request for payment is not subject to audit or certification in advance of payment. Proper adjustment of amounts paid in advance shall be made as agreed to by the heads of the agencies or units on the basis of the actual cost of goods or services provided.

(c) A condition or limitation applicable to amounts for procurement of an agency or unit placing an order or making a contract under this section applies to the placing of the order or the making of the contract.

(d) An order placed or agreement made under this section obligates an appropriation of the ordering agency or unit. The amount obligated is deobligated to the extent that the agency or unit filling the order has not incurred obligations, before the end of the period of availability of the appropriation, in--

(1) providing goods or services; or

(2) making an authorized contract with another person to provide the requested goods or services.
(e) This section does not--
(1) authorize orders to be placed for goods or services to be provided by convict labor; or
(2) affect other laws about working funds.

CHAPTER 505—OTHER GENERAL PROVISIONS - CITIZENSHIP.[37]

46 U.S.C. 50501 (2006). Entities deemed citizens of the United States.[38]

(a) In general. In this subtitle, a corporation, partnership, or association is deemed to be a citizen of the United States only if the controlling interest is owned by citizens of the United States. However, if the corporation, partnership, or association is operating a vessel in the coastwise trade, at least 75 percent of the interest must be owned by citizens of the United States.
(b) Additional requirements for corporations. In this subtitle, a corporation is deemed to be a citizen of the United States only if, in addition to satisfying the requirements in subsection (a)--
(1) it is incorporated under the laws of the United States or a State;
(2) its chief executive officer, by whatever title, and the chairman of its board of directors are citizens of the United States; and
(3) no more of its directors are noncitizens than a minority of the number necessary to constitute a quorum.
(c) Determination of controlling corporate interest. The controlling interest in a corporation is owned by citizens of the United States under subsection (a) only if--
(1) title to the majority of the stock in the corporation is vested in citizens of the United States free from any trust or fiduciary obligation in favor of a person not a citizen of the United States;
(2) the majority of the voting power in the corporation is vested in citizens of the United States;

---

[37] Section 8 of Public Law 109-304, approved October 6, 2006 (120 STAT. 1566).
[38] Note how this Citizenship definition, 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 466.

(3) there is no contract or understanding by which the majority of the voting power in the corporation may be exercised, directly or indirectly, in behalf of a person not a citizen of the United States; and

(4) there is no other means by which control of the corporation is given to or permitted to be exercised by a person not a citizen of the United States.

(d) Determination of 75 percent corporate interest. At least 75 percent of the interest in a corporation is owned by citizens of the United States under subsection (a) only if--

(1) title to at least 75 percent of the stock in the corporation is vested in citizens of the United States free from any trust or fiduciary obligation in favor of a person not a citizen of the United States;

(2) at least 75 percent of the voting power in the corporation is vested in citizens of the United States;

(3) there is no contract or understanding by which more than 25 percent of the voting power in the corporation may be exercised, directly or indirectly, in behalf of a person not a citizen of the United States; and

(4) there is no other means by which control of more than 25 percent of any interest in the corporation is given to or permitted to be exercised by a person not a citizen of the United States.

46 U.S.C. 50502 (2006). Applicability to receivers, trustees, successors, and assigns.

This subtitle applies to receivers, trustees, successors, and assigns of any person to whom this subtitle applies.

46 U.S.C. 50503 (2006). Oceanographic research vessels. An oceanographic research vessel (as defined in section 2101 of this title) is deemed not to be engaged in trade or commerce.

46 U.S.C. 50504 (2006). Sailing school vessels.

(a) Definitions. In this section, the terms "sailing school instructor", "sailing school student", and "sailing school vessel" have the meaning given those terms in section 2101 of this title.

(b) Not seamen. A sailing school student or sailing school instructor is deemed not to be a seaman under--

(1) parts B, F, and G of subtitle II of this title; or

(2) the maritime law doctrines of maintenance and cure or warranty of seaworthiness.

(c) Not merchant vessel or engaged in trade or commerce. A sailing school vessel is deemed not to be--

(1) a merchant vessel under section 11101(a)-(c) of this title; or

(2) a vessel engaged in trade or commerce.

(d) Evidence of financial responsibility. The owner or charterer of a sailing school vessel shall maintain evidence of financial responsibility to meet liability for death or injury to sailing school students and sailing school instructors on a voyage on the vessel. The amount of financial responsibility shall be at least $50,000 for each student and instructor. Financial responsibility under this subsection may be evidenced by insurance or other adequate financial resources.

AMERICAN FISHERIES ACT

TITLE II - FISHERIES.[39]

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 has been codified as 46 U.S.C. 12113, by Section 5 of Public Law 109-304, approved October 6, 2006 (120 STAT. 1495). 46 U.S.C. 12113, is set forth at page 22.**]]**

(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 78.**]]**

SEC. 203. ENFORCEMENT OF STANDARD.

(a) **Effective Date.** The amendments made by section 202 shall take effect on October 1, 2001.

[[Section 203 (b) through (e) have been codified as 46 U.S.C. 12113, by Section 5 of Public Law 109-304, approved October 6, 2006 (120 STAT. 1495). 46 U.S.C. 12113, is set forth at page 22.**]]**

(e) **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, has been codified as 46 U.S.C. 12113, by Section 5 of Public Law 109-304, approved October 6, 2006 (120 STAT. 1495). 46 U.S.C. 12113, is set forth at page 22.**]]**

(f) (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

---

[39] Enacted as Title II of Division C - Other Matters, of Public Law 105-277, approved October 21, 1998 (112 STAT. 2681), the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999

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.[40]

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;

---

[40] 16 U.S.C. 1851, note.

(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)[41] 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.

---

[41] 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.

(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 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:

AMERICAN EMPRESS (United States official number 942347);

(1) PACIFIC SCOUT (United States official number 934772);

(2) PACIFIC EXPLORER (United States official number 942592);

(3) PACIFIC NAVIGATOR (United States official number 592204);

(4) VICTORIA ANN (United States official number 592207);

(5) ELIZABETH ANN (United States official number 534721);

(6) CHRISTINA ANN (United States official number 653045);

(7) REBECCA ANN (United States official number 592205);

(8) 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 con tract 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 calendar 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 Northern 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 pursuant 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.

(C) 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)).

(d) 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, which appears as 46 U.S.C. 1274 note.

SEC. 213. DURATION.

(a)[42] **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

---

[42] 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 supersedes 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) 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 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.

MERCHANT MARINE SERVICE

CHAPTER 511—GENERAL.[43]

46 U.S.C. 51101 (2006). Policy. 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.

46 U.S.C. 51102 (2006). Definitions. In this part:

(1) Academy. The term "Academy" means the United States Merchant Marine Academy located at Kings Point, New York, and maintained under chapter 513 of this title.

(2) Cost of education provided. The term "cost of education provided" means the financial costs incurred by the United States Government for providing training or financial assistance to students at the Academy and the State maritime academies, including direct financial assistance, room, board, classroom academics, and other training activities.

(3) Merchant marine officer. The term "merchant marine officer" means an individual issued a license by the Coast Guard authorizing service as--

(A) a master, mate, or pilot on a documented vessel that--

(i) is of at least 1,000 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; and

(ii) operates on the oceans or the Great Lakes; or

(B) an engineer officer on a documented vessel propelled by machinery of at least 4,000 horsepower.

(4) State maritime academy. The term "State maritime academy" means--

(A) a State maritime academy or college sponsored by a State and assisted under chapter 515 of this title; and

(B) a regional maritime academy or college sponsored by a group of States and assisted under chapter 515 of this title.

46 U.S.C. 51103 (2006). General authority of Secretary of Transportation.

(a) Education and training. The Secretary of Transportation may provide for the education and training of citizens of the United States for the safe and efficient operation of the merchant marine of the United States at all times,

---

[43] Section 8 of Public Law 109-304, approved October 6, 2006 (120 STAT. 1568).

including operation as a naval and military auxiliary in time of war or national emergency.

(b) Surplus property for instructional purposes.

(1) In general. The Secretary may cooperate with and assist the institutions named in paragraph (2) by making vessels, shipboard equipment, and other marine equipment, owned by the United States Government and determined to be excess or surplus, available to those institutions for instructional purposes, by gift, loan, sale, lease, or charter on terms the Secretary considers appropriate.

(2) Institutions. The institutions referred to in paragraph (1) are--

(A) the United States Merchant Marine Academy;

(B) a State maritime academy; and

(C) a nonprofit training institution jointly approved by the Secretary of Transportation and the Secretary of the department in which the Coast Guard is operating as offering training courses that meet Federal regulations for maritime training.

(c) Assistance from other agencies.

(1) In general. The Secretary of Transportation may secure directly from an agency, on a reimbursable basis, information, facilities, and equipment necessary to carry out this part.

(2) Detailing personnel. At the request of the Secretary, the head of an agency (including a military department) may detail, on a reimbursable basis, personnel from the agency to the Secretary to assist in carrying out this part.

(d) Academy personnel. To carry out this part, the Secretary may--

(1) employ an individual as a professor, lecturer, or instructor at the Academy, without regard to the provisions of title 5 governing appointments in the competitive service; and

(2) pay the individual without regard to chapter 51 and subchapter III of chapter 53 of title 5.

46 U.S.C. 51104 (2006). General authority of Secretary of the Navy.

The Secretary of the Navy, in cooperation with the Maritime Administrator and the head of each State maritime academy, shall ensure that--

(1) the training of future merchant marine officers at the United States Merchant Marine Academy and at State maritime academies includes programs for naval science training in the operation of merchant vessels as a naval and military auxiliary; and

(2) naval officer training programs for future officers, insofar as possible, are maintained at designated maritime academies consistent with Navy standards and needs.

CHAPTER 513—UNITED STATES MERCHANT MARINE ACADEMY.[44]

46 U.S.C. 51301 (2006). Maintenance of the Academy.[45] The Secretary of Transportation shall maintain the United States Merchant Marine Academy to provide instruction to individuals to prepare them for service in the merchant marine of the United States.

46 U.S.C. 51302 (2006). Nomination and competitive appointment of cadets.

(a) Requirements. An individual may be nominated for a competitive appointment as a cadet at the United States Merchant Marine Academy only if the individual--

(1) is a citizen or national of the United States; and

(2) meets the minimum requirements that the Secretary of Transportation shall establish.

(b) Nominators. Nominations for competitive appointments for the positions allocated under subsection (c) may be made as follows:

(1) A Senator may nominate residents of the State represented by that Senator.

(2) A Member of the House of Representatives may nominate residents of the State in which the congressional district represented by that Member is located.

(3) A Delegate to the House of Representatives from the District of Columbia, the Virgin Islands, Guam, or American Samoa may nominate residents of the jurisdiction represented by that Delegate.

(4) The Resident Commissioner to the United States from Puerto Rico may nominate residents of Puerto Rico.

(5) The Governor of the Northern Mariana Islands may nominate residents of the Northern Mariana Islands.

(6) The Panama Canal Commission may nominate--

(A) residents, or sons or daughters of residents, of an area or installation in Panama and made available to the United States under 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

(B) sons or daughters of personnel of the United States Government and the Panama Canal Commission residing in Panama.

---

[44] Section 8 of Public Law 109-304, approved October 6, 2006 (120 STAT. 1570).

[45] Reference is made to Assignment of Coast Guard and Merchant Marine Personnel as Sea Marshals (33 U.S.C. 1226), set forth at page 437, and Maritime Security Professional Training at Maritime School, (Section 109 of Public Law 107-295 (116 STAT. 2090)), set forth at page 461.

(c) Allocation of positions. Positions for competitive appointments shall be allocated each year as follows:

(1) Positions shall be allocated for residents of each State nominated by the Members of Congress from that State in proportion to the representation in Congress from that State.

(2) Four positions shall be allocated for residents of the District of Columbia nominated by the Delegate to the House of Representatives from the District of Columbia.

(3) One position each shall be allocated for residents of the Virgin Islands, Guam, and American Samoa nominated by the Delegates to the House of Representatives from the Virgin Islands, Guam, and American Samoa, respectively.

(4) One position shall be allocated for a resident of Puerto Rico nominated by the Resident Commissioner to the United States from Puerto Rico.

(5) One position shall be allocated for a resident of the Northern Mariana Islands nominated by the Governor of the Northern Mariana Islands.

(6) Two positions shall be allocated for individuals nominated by the Panama Canal Commission.

(d) Competitive system for appointment.

(1) Establishment of system. The Secretary shall establish a competitive system for selecting individuals nominated under subsection (b) to fill the positions allocated under subsection (c). The system must determine the relative merit of each individual based on competitive examinations, an assessment of the individual's academic background, and other effective indicators of motivation and probability of successful completion of training at the Academy.

(2) Appointments by jurisdiction. The Secretary shall appoint individuals to fill the positions allocated under subsection (c) for each jurisdiction in the order of merit of the individuals nominated from that jurisdiction.

(3) Remaining unfilled positions. If positions remain unfilled after the appointments are made under paragraph (2), the Secretary shall appoint individuals to fill the positions in the order of merit of the remaining individuals nominated from all jurisdictions.

46 U.S.C. 51303 (2006). Non-competitive appointments. The Secretary of Transportation may appoint each year without competition as cadets at the United States Merchant Marine Academy not more than 40 qualified individuals with qualities the Secretary considers to be of special value to the Academy. In making these appointments, the Secretary shall try to achieve a national demographic balance at the Academy.

46 U.S.C. 51304 (2006).[46] Additional appointments from particular areas.

(a) Other countries in Western Hemisphere. The President may appoint individuals from countries in the Western Hemisphere other than the United States to receive instruction at the United States Merchant Marine Academy. Not more than 12 individuals may receive instruction under this subsection at the same time, and not more than 2 individuals from the same country may receive instruction under this subsection at the same time.

(b) Other countries generally.

(1) Appointment. The Secretary of Transportation, with the approval of the Secretary of State, may appoint individuals from countries other than the United States to receive instruction at the Academy. Not more than 30 individuals may receive instruction under this subsection at the same time.

(2) Reimbursement. The Secretary of Transportation shall ensure that the country from which an individual comes under this subsection will reimburse the Secretary for the cost (as determined by the Secretary) of the instruction and allowances received by the individual.

(c) Panama.

(1) Appointment. The Secretary of Transportation, with the approval of the Secretary of State, may appoint individuals from Panama to receive instruction at the Academy. Individuals appointed under this subsection are in addition to those appointed under any other provision of this chapter.

(2) Reimbursement. The Secretary of Transportation shall be reimbursed for the cost (as determined by the Secretary) of the instruction and allowances received by an individual appointed under this subsection.

(d) Allowances and regulations. Individuals receiving instruction under this section are entitled to the same allowances and are subject to the same regulations on admission, attendance, discipline, resignation, discharge, dismissal, and graduation, as cadets at the Academy appointed from the United States.

46 U.S.C. 51305 (2006). Prohibited basis for appointment.

Preference may not be given to an individual for appointment as a cadet at the United States Merchant Marine Academy because one or more members of the individual's immediate family are alumni of the Academy.

---

[46] Note that Section 342 of Public Law 108-188, approved December 17, 2003 (117 STAT. 2784), the Compact of Free Association Amendments Act of 2003 (48 U.S.C. 1921, note), 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)[sic.], 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." Section 8(b) of Public Law 109-304, approved October 6, 2006 (120 STAT. 1572), codified 46 U.S.C. 1295b(b)(6) as 46 U.S.C. 51304, without recognition to Section 342 of Public Law 108-188. ..

46 U.S.C. 51306 (2006). Cadet commitment agreements.

(a) Agreement requirements. A citizen of the United States appointed as a cadet at the United States Merchant Marine Academy must sign, as a condition of the appointment, an agreement to--

(1) complete the course of instruction at the Academy;

(2) fulfill the requirements for a license as an officer in the merchant marine of the United States before graduation from the Academy;

(3) maintain a valid license as an officer in the merchant marine of the United States for at least 6 years after graduation from the Academy, accompanied by the appropriate national and international endorsements and certification required by the Coast Guard for service aboard vessels on domestic and international voyages;

(4) apply for, and accept if tendered, an appointment as a commissioned officer in the Naval Reserve [Navy Reserve][47] (including the Merchant Marine Reserve, Naval Reserve [Navy Reserve]), the Coast Guard Reserve, or any other reserve unit of an armed force of the United States, and, if tendered the appointment, to serve for at least 6 years after graduation from the Academy;

(5) serve the foreign and domestic commerce and the national defense of the United States for at least 5 years after graduation from the Academy--

(A) as a merchant marine officer on a documented vessel or a vessel owned and operated by the United States Government or by a State;

(B) as an employee in a United States maritime-related industry, profession, or marine science (as determined by the Secretary of Transportation), if the Secretary determines that service under subparagraph (A) is not available to the individual;

(C) 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 Federal employment which serves the national security interests of the United States, as determined by the Secretary; or

(D) by a combination of the service alternatives referred to in subparagraphs (A)-(C); and

(6) report to the Secretary on compliance with this subsection.

---

[47] Section 18(a) of Public Law 109-304, approved October 6, 2006, the Title 46 Codification Act, provides a cutoff date of April 30, 2005, for provisions of law enacted on or before that date. If a law enacted after that date amends or repeals a provision of law replaced by Public Law 109-304, that law is deemed to amend or repeal, as the case may be, the corresponding provision of law enacted by Public Law 109-304. If a law enacted after that date is otherwise inconsistent with Public Law 109-304, it supersedes Public Law 109-304, to the extent of the inconsistency. In either case, the text appears in brackets with recognition given to Section 18(a). In this case, Section 515(g)(2) of Public Law 109-163, approved January 6, 2006, amended 46 App. U.S.C. 1295b by substituting "Navy Reserve" for "Naval Reserve" wherever appearing. Therefore, "Navy Reserve" has been inserted in brackets with recognition given to Section 18(a).

(b) Failure to complete course of instruction.

(1) Active duty. If the Secretary of Transportation determines that an individual who has attended the Academy for at least 2 years has failed to fulfill the part of the agreement described in subsection (a)(1), the individual may be ordered by the Secretary of Defense to serve on active duty in one of the armed forces of the United States for a period of not more than 2 years. In cases of hardship as determined by the Secretary of Transportation, the Secretary of Transportation may waive this paragraph in whole or in part.

(2) Recovery of cost. If the Secretary of Defense is unable or unwilling to order an individual to serve on active duty under paragraph (1), 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 of Transportation may recover from the individual the cost of education provided by the Government.

(c) Failure to carry out other requirements.

(1) Active duty. If the Secretary of Transportation determines that an individual has failed to fulfill any part of the agreement described in subsection (a)(2)-(6), the individual may be ordered to serve on active duty for a period of at least 3 years but not more than the unexpired period (as determined by the Secretary) of the service required by subsection (a)(5). The Secretary of Transportation, in consultation with the Secretary of Defense, shall determine in which service the individual shall serve. In cases of hardship as determined by the Secretary of Transportation, the Secretary of Transportation may waive this paragraph in whole or in part.

(2) Recovery of cost. If the Secretary of Defense is unable or unwilling to order an individual to serve on active duty under paragraph (1), 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 of Transportation may recover from the individual the cost of education provided. The Secretary may reduce the amount to be recovered to reflect partial performance of service obligations and other factors the Secretary determines merit a reduction.

(d) Actions to recover cost. To aid in the recovery of the cost of education provided by the Government under a commitment agreement under this section, the Secretary of Transportation may--

(1) request the Attorney General to bring a civil action against the individual; and

(2) make use of the Federal debt collection procedures in chapter 176 of title 28 or other applicable administrative remedies.

[**(e)** (1) An individual who for the 5-year period following graduation from the Academy, serves as a commissioned officer on active duty in an armed force of the United States or as a commissioned officer of the National Oceanic and Atmospheric Administration or the Public Health Service shall be excused from the requirements of subparagraphs (C), (D), and (E) of paragraph (1).

(2) The Secretary may modify or waive any of the terms and conditions set forth in paragraph (1) through the imposition of alternative service requirements.][48]

[**(f)** (1) Subject to any otherwise applicable restrictions on disclosure in *section 552a of title 5, United States Code*, the Secretary of Defense, the Secretary of the department in which the Coast Guard is operating, the Administrator of the National Oceanic and Atmospheric Administration, and the Surgeon General of the Public Health Service--

(A) shall report the status of obligated service of an individual graduate of the Academy upon request of the Secretary; and

(B) may, in their discretion, notify the Secretary of any failure of the graduate to perform the graduate's duties, either on active duty or in the Ready Reserve component of their respective service, or as a commissioned officer of the National Oceanic and Atmospheric Administration or the Public Health Service, respectively.

(2) A report or notice under subparagraph (A) shall identify any graduate determined to have failed to comply with service obligation requirements and provide all required information as to why such graduate failed to comply.

(3) Upon receipt of such a report or notice, such graduate may be considered to be in default of the graduate's service obligations by the Secretary, and subject to all remedies the Secretary may have with respect to such a default.][49]

46 U.S.C. 51307 (2006). Places of training. The Secretary of Transportation may provide for the training of cadets at the United States Merchant Marine Academy--

(1) on vessels owned or subsidized by the United States Government;

(2) on other documented vessels, with the permission of the owner; [and]

---

[48]Section 18(a) of Public Law 109-304, approved October 6, 2006, the Title 46 Codification Act, provides a cutoff date of April 30, 2005, for provisions of law enacted on or before that date. If a law enacted after that date amends or repeals a provision of law replaced by Public Law 109-304, that law is deemed to amend or repeal, as the case may be, the corresponding provision of law enacted by Public Law 109-304. If a law enacted after that date is otherwise inconsistent with Public Law 109-304, it supersedes Public Law 109-304, to the extent of the inconsistency. In either case, the text appears in brackets with recognition given to Section 18(a). In this case, Sections 3505(a) and 3506(a) of Public Law 109-364, approved October 17, 2006, amended Section 1303(e) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1295b(e)), by the addition of a clause (6) and (7). However, Section 1303(e) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1295b(e)), had previously been codified by Public Law 109-304, as 46 U.S.C. 51306. Therefore, the text of the amendments made by Section 3505(a) and 3506(b) have been included in brackets as 46 U.S.C. 51306(e) and (f).

[49] Note that Section 3505(b) of Public Law 109-364, provides "(b) APPLICATION.—Paragraph (6) of section 1303(e) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1295(e)), as added by this section, applies only to an individual who enrolls as a cadet at the United States Merchant Marine Academy, and signs an agreement under paragraph (1) of that section, after the date of the enactment of this Act. Note also that Section 3506(b) of Public Law 109-264, provides: "(b) Application. The amendment made by this section does not apply with respect to an agreement entered into under section 1303(e) of the Merchant Marine Act, 1936 (46 U.S.C. 1295b(e)) before the date of the enactment of this Act.

(3) in shipyards or plants and with industrial or educational organizations. [; and [(4) on any other vessel considered by the Secretary to be necessary or appropriate or in the national interest.][50]

46 U.S.C. 51308 (2006). Uniforms, textbooks, and transportation allowances. The Secretary of Transportation shall provide cadets at the United States Merchant Marine Academy--

(1) all required uniforms and textbooks; and

(2) allowances for transportation (including reimbursement of traveling expenses) when traveling under orders as a cadet.

46 U.S.C. 51309 (2006). Academic degree.

(a) Bachelor's degree.

(1) In general. The Superintendent of the United States Merchant Marine Academy may confer the degree of bachelor of science on an individual who--

(A) has met the conditions prescribed by the Secretary of Transportation; and

(B) if a citizen of the United States, has passed the examination for a merchant marine officer's license.

(2) Effect of physical disqualification. An individual not allowed to take the examination for a merchant marine officer's license only because of physical disqualification may not be denied a degree for not taking the examination.

(b) Master's degree. The Superintendent of the Academy may confer a master's degree on an individual who has met the conditions prescribed by the Secretary. A master's degree program may be funded through non-appropriated funds. To maintain the appropriate academic standards, the program shall be accredited by the appropriate accreditation body. The Secretary may prescribe regulations necessary to administer such a program.

(c) Graduation not entitlement to hold license. Graduation from the Academy does not entitle an individual to hold a license authorizing service on a merchant vessel.

46 U.S.C. 51310 (2006). Deferment of service obligation under cadet commitment agreements.

The Secretary of Transportation may defer the service commitment of an individual under section 51306(a)(5) of this title (as specified in the cadet commitment agreement) for not more than 2 years if the individual is engaged in a graduate course of study approved by the Secretary. However, deferment of service as a commissioned officer under section 51306(a)(5) must be

---

[50] Similarly, Section 307 of Pubic Law 109-241, approved July 11, 2006, amended former 46 App. U.S.C. 1295b(f), to authorize such training on "any other vessel considered by the Secretary to be necessary or appropriate or in the national interest." Therefore, the text of the amendment made by Section 607 has been included in brackets as 46 U.S.C. 551307(3).

approved by the Secretary of the military department that has jurisdiction over the service or by the Secretary of Commerce for service with the National Oceanic and Atmospheric Administration.

46 U.S.C. 51311 (2006). Midshipman status in the Naval Reserve.

(a) Application requirement. Before being appointed as a cadet at the United States Merchant Marine Academy, a citizen of the United States must agree to apply for midshipman status in the Naval Reserve (including the Merchant Marine Reserve, Naval Reserve).

(b) Appointment.

(1) In general. A citizen of the United States appointed as a cadet at the Academy shall be appointed by the Secretary of the Navy as a midshipman in the Naval Reserve (including the Merchant Marine Reserve, Naval Reserve).

(2) Rights and privileges. The Secretary of the Navy shall provide for cadets of the Academy who are midshipmen in the United States Naval Reserve to be--

(A) issued an identification card (referred to as a "military ID card"); and

(B) 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) Coordination. The Secretary of the Navy shall carry out paragraphs (1) and (2) in coordination with the Secretary of Transportation.

46 U.S.C. 51312. (2006) Board of Visitors.

(a) In general. A Board of Visitors to the United States Merchant Marine Academy shall be established, for a term of 2 years commencing at the beginning of each Congress, to visit the Academy annually on a date determined by the Secretary of Transportation and to make recommendations on the operation of the Academy.

(b) Appointment.

(1) In general. The Board shall be composed of--

(A) 2 Senators appointed by the chairman of the Committee on Commerce, Science, and Transportation of the Senate;

(B) 3 Members of the House of Representatives appointed by the chairman of the Committee on Armed Services 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

(E) the chairmen of the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Armed Services of the House of Representatives, as ex officio members.

(2) Substitute appointment. If an appointed member of the Board is unable to visit the Academy as provided in subsection (a), another individual may be appointed as a substitute in the manner provided in paragraph (1).

(c) Staff. The chairmen of the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Armed Services of the House of Representatives may designate staff members of their committees to serve without reimbursement as staff for the Board.
(d) Travel expenses. When serving away from home or regular place of business, a member of the Board or a staff member designated under subsection (c) shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5.

46 U.S.C. 51313 (2006). Advisory Board.

(a) In general. An Advisory Board to the United States Merchant Marine 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.
(b) Appointment and terms. The Board shall be composed of not more than 7 individuals appointed by the Secretary of Transportation. The individuals must be distinguished in education and other fields related to the Academy. Members of the Board shall be appointed for terms of not more than 3 years and may be reappointed. The Secretary shall designate one of the members as chairman.
(c) Travel expenses. When serving away from home or regular place of business, a member of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5.
(d) Relationship to other law. The Federal Advisory Committee Act (5 App. U.S.C.) does not apply to the Board.

46 U.S.C. 51314 (2006). Limitation on charges and fees for attendance.

(a) Prohibition. Except as provided in subsection (b), no charge or fee for tuition, room, or board for attendance at the United States Merchant Marine Academy may be imposed unless the charge or fee is specifically authorized by a law enacted after October 5, 1994.
(b) Exception. The prohibition specified in subsection (a) 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 subsection.

CHAPTER 515—STATE MARITIME ACADEMY SUPPORT PROGRAM.[51]

46 U.S.C. 51501 (2006). General support program.
(a) Assistance to State maritime academies. The Secretary of Transportation shall cooperate with and assist State maritime academies in providing instruction to individuals to prepare them for service in the merchant marine of the United States.
(b) Course development. 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.

46 U.S.C. 51502 (2006). Detailing of personnel.[52] At the request of the Governor of a State, the President may detail, without reimbursement, personnel of the Navy, the Coast Guard, and the Maritime Service to a State maritime academy to serve as a superintendent, professor, lecturer, or instructor at the academy.

46 U.S.C. 51503 (2006). Regional maritime academies. The Governors of the States cooperating to sponsor a regional maritime academy shall designate in writing one of those States to conduct the affairs of that academy. A regional maritime academy is eligible for assistance from the United States Government on the same basis as a State maritime academy sponsored by a single State.

46 U.S.C. 51504 2006). Use of training vessels.
(a) Applications to use vessels. The Governor of a State sponsoring a State maritime academy (or the Governor of the State designated to conduct the affairs of a regional maritime academy) may apply in writing to the Secretary of Transportation to obtain the use of a training vessel for the academy. A vessel provided under this section remains the property of the United States Government.
(b) General authority. Subject to subsection (c), the Secretary may provide to a State maritime academy, for use as a training vessel, a suitable vessel under the control of the Secretary or made available to the Secretary under subsection (e). If a suitable vessel is not available, the Secretary may build and provide a suitable vessel.

---

[51] Section 8 of Public Law 109-304, approved October 6, 2006 (120 STAT. 1577).
[52] Reference is made to Assignment of Coast Guard and Merchant Marine Personnel as Sea Marshals, page 437, and Maritime Security Professional Training at Maritime Schools, page 461.

(c) Approval requirements. The Secretary may provide a vessel under this section only if--

(1) an application has been made under subsection (a);

(2) the State maritime academy satisfies section 51506(a) of this title; and

(3) a suitable port will be available for the safe mooring of the vessel while the academy is using the vessel.

(d) Preparation and maintenance. A vessel provided under this section shall be--

(1) repaired, reconditioned, and equipped (with all apparel, charts, books, and instruments of navigation) as necessary for use as a training vessel; and

(2) maintained in good repair by the Secretary.

(e) Agency vessels. An agency may provide to the Secretary, for use by a State maritime academy, a vessel (including equipment) that--

(1) is suitable for training purposes; and

(2) can be provided without detriment to the service to which the vessel is assigned.

(f) Fuel costs.[53]

[(1)] The Secretary may pay to a [The Secretary shall, subject to the availability of appropriations, pay to each] State maritime academy the costs of fuel used by a vessel provided under this section while used for training.

[(2) The amount of the payment to a State maritime academy under this paragraph [subsection] shall not exceed--

(A) $100,000 for fiscal year 2006;

(B) $200,000 for fiscal year 2007;

(C) $300,000 for fiscal year 2008 and each fiscal year thereafter.]

(g) Removing vessels from service and vessel sharing. The Secretary may not--

(1) take a vessel, currently in use as a training vessel under this section, out of service to implement an alternative program (including vessel sharing) unless the vessel is incapable of being maintained in good repair as required by subsection (d); or

---

[53] Section 18(a) of Public Law 109-304, approved October 6, 2006, the Title 46 Codification Act, provides a cutoff date of April 30, 2005, for provisions of law enacted on or before that date. If a law enacted after that date amends or repeals a provision of law replaced by Public Law 109-304, that law is deemed to amend or repeal, as the case may be, the corresponding provision of law enacted by Public Law 109-304. If a law enacted after that date is otherwise inconsistent with Public Law 109-304, it supersedes Public Law 109-304, to the extent of the inconsistency. In either case, the text appears in brackets with recognition given to Section 18(a). In this case, Public Law 109-304 codified 46 App. U.S.C. 1295c(C)(2), as 46 U.S.C. 51504(f). Section 3502(b) of Public Law 109-163, enacted January 6, 2006, amended former 46 App. U.S.C. 1295c(c)(2) by substituting, "(A) The Secretary shall, subject to the availability of appropriations, pay to each State maritime academy" for "The Secretary may pay to any State maritime academy" and adding a subparagraph. (B). Therefore, this language in 46 U.S.C. 51504(f) is in brackets.

(2) implement a program requiring a State maritime academy to share its training vessel with another State maritime academy, except with the express consent of Congress.

46 U.S.C. 51505 (2006). Annual payments for maintenance and support.

(a) Payment agreements. The Secretary of Transportation may make an agreement (effective for not more than 4 years) with the following academies to provide annual payments to those academies for their maintenance and support:

(1) One State maritime academy in each State that satisfies section 51506(a) of this title.

(2) Each regional maritime academy that satisfies section 51506(a) of this title.

(b) Payments.

(1) In general. Subject to paragraph (2), an annual payment to an academy under subsection (a) 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, or, for a regional maritime academy, by all States cooperating to sponsor the academy.

(2) Maximum. The amount under paragraph (1) may not be more than $25,000. However, if the academy satisfies section 51506(b) of this title, the amount shall be--

(A) $100,000 for a State maritime academy; and

(B) $200,000 [$300,000 for fiscal year 2006, $400,000 for fiscal year 2007, and $500,000 for fiscal year 2008 and each fiscal year thereafter][54] for a regional maritime academy.

46 U.S.C. 51506 (2006). Conditions to receiving payments and use of vessels.

(a) General conditions. As conditions of receiving an annual payment or the use of a vessel under this chapter, a State maritime academy must--

(1) provide courses of instruction on navigation, marine engineering (including steam and diesel propulsion), the operation and maintenance of new

---

[54] Section 18(a) of Public Law 109-304, approved October 6, 2006, the Title 46 Codification Act, provides a cutoff date of April 30, 2005, for provisions of law enacted on or before that date. If a law enacted after that date amends or repeals a provision of law replaced by Public Law 109-304, that law is deemed to amend or repeal, as the case may be, the corresponding provision of law enacted by Public Law 109-304. If a law enacted after that date is otherwise inconsistent with Public Law 109-304, it supersedes Public Law 109-304, to the extent of the inconsistency. In either case, the text appears in brackets with recognition given to Section 18(a). In this case, Section 3502(a) of Public Law 109-163, approved January 6, 2006, amended 46 App. U.S.C. 1295c(d)(1)(C) by substituting the language in brackets for "$200,000". Therefore, the language has been placed in brackets.

vessels and equipment, and innovations being introduced to the merchant marine of the United States;

(2) agree in writing to conform to the standards for courses, training facilities, admissions, and instruction that the Secretary of Transportation may establish after consultation with the superintendents of State maritime academies; and

(3) 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 pass the examination required for the issuance of a license under section 7101 of this *title*.

(b) Additional condition to payments of more than $25,000. As a condition of receiving an annual payment of more than $25,000 under section 51505 of this title, a State maritime academy also must agree to admit each year a number of citizens of the United States who meet its admission requirements and reside in a State not supporting that academy. The Secretary shall determine the number of individuals to be admitted by each academy under this subsection. The number may not be more than one-third of the total number of individuals attending the academy at any time.

46 U.S.C. 51507 (2006). Places of training. The Secretary of Transportation may provide for the training of students attending a State maritime academy--

(1) on vessels owned or subsidized by the United States Government;

(2) on other documented vessels, with the permission of the owner; and

(3) in shipyards or plants and with industrial or educational organizations.

46 U.S.C. 51508 (2006). Allowances for students. Under regulations prescribed by the Secretary of Transportation, a student at a State maritime academy shall receive from the Secretary allowances for transportation (including reimbursement of traveling expenses) when traveling under orders to receive training under section 51507 of this title.

46 U.S.C. 51509 (2006). Student incentive payment agreements.

(a) General authority. If a State maritime academy has an agreement with the Secretary of Transportation under section 51505 of this title, the Secretary may make an agreement with a student at the academy who is a citizen of the United States to make student incentive payments to the individual. An agreement with a student may not be effective for more than 4 academic years. The Secretary shall allocate payments under this section among the various State maritime academies in an equitable manner.

(b) Payments. Payments under an agreement under this section shall be equal to $4,000 each academic year and be paid, as prescribed by the Secretary,

while the individual is attending the academy. The payments shall be used for uniforms, books, and subsistence.

(c) Midshipman and enlisted reserve status. An agreement under this section shall require the student to accept midshipman and enlisted reserve status in the Naval Reserve [Navy Reserve] (including the Merchant Marine Reserve, Naval Reserve [Navy Reserve]) before receiving any payments under the agreement. [Each agreement entered into under paragraph (1) shall require the individual to accept enlisted reserve status in the United States Naval Reserve (including the Merchant Marine Reserve, United States Naval Reserve) or the United States Coast Guard Reserve before receiving any student incentive payments under this subsection.][55]

(d) Agreement requirements. An agreement under this section shall require the student to--

(1) complete the course of instruction at the academy the individual is attending;

(2) take the examination for a license as an officer in the merchant marine of the United States before graduation from the academy and fulfill the requirements for such a license within 3 months after graduation from the academy;

(3) maintain a valid license as an officer in the merchant marine of the United States for at least 6 years after graduation from the academy, accompanied by the appropriate national and international endorsements and certification required by the Coast Guard for service aboard vessels on domestic and international voyages;

(4) accept, if tendered, an appointment as a commissioned officer in the Naval Reserve [Navy Reserve] (including the Merchant Marine Reserve, Naval Reserve [Navy Reserve]), the Coast Guard Reserve, or any other reserve unit of an armed force of the United States, and, if tendered the appointment, to serve for at least 6 years after graduation from the academy[56];

(5) serve the foreign and domestic commerce and the national defense of the United States for at least 3 years after graduation from the academy--

(A) as a merchant marine officer on a documented vessel or a vessel owned and operated by the United States Government or by a State;

(B) as an employee in a United States maritime-related industry, profession, or marine science (as determined by the Secretary), if the Secretary

---

[55] The sentence beginning "Each agreement . . ." has been inserted in brackets in subsection (c) pursuant to section 8(a) of the Act October 6, 2006, Public Law 109-304, which provides that if a law enacted after April 30, 2005, amends a provision replaced by such Act, that law is deemed to amend the corresponding provision enacted by such Act. Section 3508 of the Act October 17, 2006, Public Law 109-364, which amended former 46 App. U.S.C. *1295c*(g) by substituting such sentence for former paragraph (2)

[56] "Navy Reserve" has been inserted in brackets in subsections (c) and (d)(4) pursuant to section 18(a) of the Act October 6, 2006, Public Law 109-304, which provides that if a law enacted after April 30, 2005, amends a provision replaced by such Act, that law is deemed to amend the corresponding provision enacted by such Act, and pursuant to section 515(g)(2) of the Act January 6, 2006, Public Law 109-163, which amended former 46 App. U.S.C. *1295c* by substituting "Navy Reserve" for "Naval Reserve" wherever appearing.

determines that service under subparagraph (A) is not available to the individual;

(C) 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 Federal employment which serves the national security interests of the United States, as determined by the Secretary; or

(D) by a combination of the service alternatives referred to in subparagraphs (A)-(C); and

(6) report to the Secretary on compliance with this subsection.

(e) Failure to complete course of instruction.

(1) Active duty. If the Secretary of Transportation determines that an individual who has accepted the payments described in subsection (b) for a minimum of 2 academic years has failed to fulfill the part of the agreement described in subsection (d)(1), the individual may be ordered by the Secretary of Defense to serve on active duty in the armed forces of the United States for a period of not more than 2 years. In cases of hardship as determined by the Secretary of Transportation, the Secretary of Transportation may waive this paragraph in whole or in part.

(2) Recovery of cost. If the Secretary of Defense is unable or unwilling to order an individual to serve on active duty under paragraph (1), 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 of Transportation may recover from the individual the amount of student incentive payments, plus interest and attorney fees. The Secretary may reduce the amount to be recovered to reflect partial performance of service obligations and other factors the Secretary determines merit a reduction.

(f) Failure to carry out other requirements.

(1) Active duty. If the Secretary of Transportation determines that an individual has failed to fulfill any part of the agreement described in subsection (d)(2)-(6), the individual may be ordered to serve on active duty for a period of at least 2 years but not more than the unexpired period (as determined by the Secretary) of the service required by subsection (d)(5). The Secretary of Transportation, in consultation with the Secretary of Defense, shall determine in which service the individual shall serve. In cases of hardship as determined by the Secretary of Transportation, the Secretary of Transportation may waive this paragraph in whole or in part.

(2) Recovery of cost. If the Secretary of Defense is unable or unwilling to order an individual to serve on active duty under paragraph (1), 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 of Transportation may recover from the individual the amount of student incentive payments, plus interest and attorney fees. The Secretary may reduce the amount to be recovered to reflect partial performance of service obligations and other factors the Secretary determines merit a reduction.
(g) Actions to recover cost. To aid in the recovery of the cost of education provided by the Government under a commitment agreement under this section, the Secretary of Transportation may--

(1) request the Attorney General to bring a civil action against the individual; and

(2) make use of the Federal debt collection procedures in chapter 176 of title 28 or other applicable administrative remedies.

46 U.S.C. 51510 (2006). Deferment of service obligation under student incentive payment agreements. The Secretary of Transportation may defer the service commitment of an individual under section 51509(d)(5) of this title (as specified in the agreement under section 51509) for not more than 2 years if the individual is engaged in a graduate course of study approved by the Secretary. However, deferment of service as a commissioned officer on active duty must be approved by the Secretary of the affected military department (or the Secretary of Commerce, for service with the National Oceanic and Atmospheric Administration).

46 U.S.C. 51511 (2006). Midshipman status in the Naval Reserve [Navy Reserve]. A citizen of the United States attending a State maritime academy may be appointed by the Secretary of the Navy as a midshipman in the Naval Reserve [Navy Reserve] (including the Merchant Marine Reserve, Naval Reserve [Navy Reserve]).[57]

CHAPTER 517—OTHER SUPPORT FOR MERCHANT MARINE TRAINING.[58]

46 U.S.C. 51701 (2006). United States Maritime Service.
(a) General authority. The Secretary of Transportation may establish and maintain a voluntary organization, to be known as the United States Maritime Service, for the training of citizens of the United States to serve on merchant vessels of the United States [and to perform functions to assist the United States merchant marine, as determined necessary by the Secretary][59].

---

[57] See footnote 47, page 162.
[58] Section 8 of Public Law 109-304, approved October 6, 2006 (120 STAT. 1582).
[59] Section 18(a) of Public Law 109-304, approved October 6, 2006, the Title 46 Codification Act, provides a cutoff date of April 30, 2005, for provisions of law enacted on or before that date. If a law enacted after that date amends or repeals a provision of law replaced by Public Law 109-304, that law is deemed to amend or repeal, as the case may be, the corresponding provision of law enacted by Public Law 109-304. If a law

(b) Specific authority. The Secretary may--

(1) determine the number of individuals to be enrolled for training and reserve purposes in the Service;

(2) fix the rates of pay and allowances of the individuals without regard to chapter 51 or subchapter III of chapter 53 of title 5;

(3) prescribe the course of study and the periods of training for the Service; and

(4) prescribe the uniform of the Service and the rules on providing and wearing the uniform.

(c) Ranks, grades, and ratings. The ranks, grades, and ratings for personnel of the Service shall be the same as those prescribed for personnel of the Coast Guard.

(d) Medals and awards. 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 Service.

46 U.S.C. 51702 (2006). Civilian nautical schools.

(a) Definition. In this section, the term "civilian nautical school" means a school operated in the United States (except the United States Merchant Marine Academy, a State maritime academy, or another school operated by the United States Government) that offers instruction to individuals quartered on a vessel primarily to train them for service in the merchant marine.

(b) Inspection. Each civilian nautical school is subject to inspection by the Secretary of Transportation.

(c) Rating and certification. The Secretary may, under regulations the Secretary may prescribe, provide for the rating and certification of civilian nautical schools as to the adequacy of their course of instruction, the competence of their instructors, and the suitability of the equipment used in their course of instruction.

46 U.S.C. 51703 (2006). Additional training.

(a) General authority. The Secretary of Transportation may provide additional training on maritime subjects to supplement other training opportunities and make the training available to the personnel of the merchant marine of the United States and individuals preparing for a career in the merchant marine of the United States.

---

enacted after that date is otherwise inconsistent with Public Law 109-304, it supersedes Public Law 109-304, to the extent of the inconsistency. In either case, the text appears in brackets with recognition given to Section 18(a). In the case, the words "and to perform functions to assist the United States merchant marine, as determined necessary by the Secretary" have been inserted in brackets in subsection (a), as Section 3509 of Public Law 109-163, approved January 6, 2006, amended former 46 App. U.S.C. 1295e(a) by inserting such language.

(b) Equipment, supplies, and contracts. The Secretary may--

(1) prepare or buy equipment or supplies required for the additional training; and

(2) without regard to section 3709 of the Revised Statutes (41 U.S.C. 5), make contracts for services the Secretary considers necessary to prepare the equipment and supplies and to supervise and administer the additional training.

46 U.S.C. 51704 (2006). Training for maritime oil pollution prevention, response, and clean-up.

(a) Assistance in establishing program. The Secretary of Transportation shall assist maritime training institutions approved by the Secretary in establishing a training program for maritime oil pollution prevention, response, and clean-up.

(b) Providing training vessels. Subject to subsection (c), the Secretary may provide, with title free of all liens, to maritime training institutions that have a program established under subsection (a), offshore supply vessels and tug/supply vessels that were built in the United States and are in the possession of the Maritime Administration because of a default on a loan guaranteed under chapter 537 of this title.

(c) Requirements. In addition to any other requirements the Secretary considers appropriate, the following requirements apply to vessels provided under this section:

(1) The vessel shall be offered to the institution at a location selected by the Secretary.

(2) The institution shall use the vessel to train students and appropriate maritime industry personnel in oil spill prevention, response, clean-up, and related skills.

(3) The institution shall make the vessel and qualified students available to appropriate Federal, State, and local oil spill response authorities when there is a maritime oil spill.

(4) The institution may not sell, trade, charter, donate, scrap, or in any way alter or dispose of the vessel without prior approval of the Secretary.

(5) The institution may not use the vessel in competition with a privately-owned vessel documented under chapter 121 of this title or titled under the law of a State, unless necessary to carry out this section.

(6) When the institution can no longer use the vessel for its training program, the institution shall return the vessel to the Secretary. The Secretary shall take possession at the institution and thereafter may provide the vessel to another institution under this section or dispose of the vessel.

CHAPTER 519—MERCHANT MARINE AWARDS.[60]

46 U.S.C. 51901 (2006). Awards for individual acts or service.

(a) General authority. 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 merchant marine of the United States. The design may be similar to the design of a decoration or medal authorized for members of the armed forces for similar acts or service.

(b) Specific authority. The Secretary 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 that would warrant the award of the Merchant Marine Distinguished Service Medal;

(3) a decoration or medal to an individual for service during a war, national emergency proclaimed by the President or Congress, or operations by the armed forces 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.

46 U.S.C. 51902 (2006). Gallant Ship Award.

(a) Awards to vessels. The Secretary of Transportation may award a Gallant Ship Award and a citation to a vessel (including a foreign vessel) participating in outstanding or gallant action in a marine disaster or other emergency to save life or property at sea. The Secretary may award a plaque to the vessel, and a replica of the plaque may be preserved as a permanent historical record.

(b) Awards to crews. The Secretary of Transportation may award an appropriate citation ribbon bar to the master and each individual serving, at the time of the action, on a vessel issued an award under subsection (a).

(c) Consultation. The Secretary of Transportation shall consult with the Secretary of State before awarding an award or citation to a foreign vessel or its crew under this section.

---

[60] Section 8 of Public Law 109-304, approved October 6, 2006 (120 STAT. 1584).

46 U.S.C. 51903 (2006). Multiple awards. An individual may not be awarded more than one of any type of decoration or medal under this chapter. 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.

46 U.S.C. 51904 (2006). Presentation to representatives. If an individual to be issued an award under this chapter is unable to accept the award personally, the Secretary of Transportation may present the award to an appropriate representative.

46 U.S.C. 51905 (2006). Flags and grave markers. 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 merchant marine of the United States in support of the armed forces of the United States or its allies during a war or national emergency.

46 U.S.C. 51906 (2006). Special certificates for civilian service to armed forces.

(a) General authority. The Maritime Administrator may issue a special certificate to an individual, or the personal representative of an individual, in recognition of service of that individual in the merchant marine of the United States, if the service has been determined to be active duty under section 401 of the GI Bill Improvement Act of 1977 (Public Law 95-202; 38 U.S.C. 106 note).

(b) Relationship to other laws. Issuance of a certificate under subsection (a) does not entitle an individual to any rights, privileges, or benefits under a law of the United States.

46 U.S.C. 51907 (2006). Manufacture and sale of awards and replacements.[61] The Secretary of Transportation may--

(1) authorize private persons to manufacture decorations and medals authorized under this chapter or a prior law; and

(2) provide at cost, or authorize private persons to sell at reasonable prices, replacements for those decorations and medals.

---

[61] The Secretary's authority to provide decorations and medals at cost, or to authorize the sale of decorations and medals at reasonable prices, is restated to apply only to replacement awards because Congress probably did not intend that recipients being honored would pay for their decorations and medals. The bracketed section text has been added pursuant to section 18(a) of the Act of October. 6, 2006, Public Law 109-304, which provides that if a law enacted after April 30, 2005, amends a provision replaced by such Act, that law is deemed to amend the corresponding provision enacted by such Act, and pursuant to section 3510 of the Act of January 6, 2006, Public Law 109-163, which amended former 46 App. U.S.C. 2004(c) by substituting "provide--" for "provide at cost, or authorize for the manufacture and sale at reasonable prices by private persons--".

[The Secretary of Transportation may provide--

(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.]

46 U.S.C. 51908 (2006). Prohibition against unauthorized manufacture, sale, possession, or display of awards.

(a) Prohibition. Except as authorized under this chapter [or by the Secretary of Transportation][62], a person may not manufacture, sell, possess, or display a decoration or medal provided for in this chapter.

(b) Civil penalty. A person violating this section is liable to the United States Government for a civil penalty of not more than $2,000.[63]

---

[62] The words "or by the Secretary of Transportation" have been inserted in brackets in subsection (a) pursuant to section 18(a) of the Act of October 6, 2006, Public Law 109-304, which provides that if a law enacted after April 30, 2005, amends a provision replaced by such Act, that law is deemed to amend the corresponding provision enacted by such Act, and pursuant to section 3510(b) of the Act of October 17, 2006, Public Law 109-364, which amended former 46 App. U.S.C. 2007, by inserting "or the Secretary of Transportation," following "Except as provided by this Act,"

[63] 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 71.

CHAPTER 521—MISCELLANEOUS[64]

46 U.S.C. 52101 (2006). Reemployment rights for certain merchant seamen.

(a) In general. 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 for any member of a reserve component of the armed forces of the United States who is ordered to active duty.

(b) Time for application. An individual may submit an application for certification under subsection (c) to the Secretary 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) Certification determination. Not later than 20 days after the date the Secretary receives from an individual an application for certification under this subsection, the Secretary shall--

(1) determine whether the individual--

(A) was employed in the activation or operation of a vessel--

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

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

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

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

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

(d) Equivalence to Military Selective Service Act certificate. For purposes of reemployment rights and benefits provided by this section, a certification under subsection (c) shall be considered to be the equivalent of a certificate described in section 9(a) of the Military Selective Service Act (50 App. U.S.C. 459(a))[65]

---

[64] Section 8 of Public Law 109-304, approved October 6, 2006 (120 STAT. 1585).

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

46 U.S.C. 2114 (2006) 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 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.

CHAPTER 531 - MARITIME SECURITY FLEET.[66]

46 U.S.C. 53101 (2006). 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 App. U.S.C. 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.

---

[66] Chapter 531 (46 U.S.C. 53101 - 53111), took effect October 1, 2004, pursuant to section 3537(a) of Public Law 108-136, approved November 24, 2003 (117 STAT. 1819). Chapter 531 is not part of Public Law 109-304, approved October 6, 2006 (120 STAT. 1485).

(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 (2006). 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 [enacted Nov. 24, 2003];

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

(2) Vessel owned by section 50501 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 50501 of this title 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 50501 of this title, 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 50501 of this title, 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 chapter 121 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 50501 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 50501 of this title.

(d) Request by Secretary of Defense. The Secretary of Defense shall request the Secretary of Homeland Security to issue any waiver under section 501 of this title 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 [enacted Nov. 24, 2003], is not documented under chapter 121 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 documented under chapter 121; 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 (2006). 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 [effective Oct. 1, 2004], 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 [effective Oct. 1, 2004];

(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 50501 of this title,

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 subparagraph (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 50501 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 50501 of this title*;* 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 50501 of this title.

(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 [effective Oct. 1, 2004]; 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 agreements 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 [effective Oct. 1, 2004], if--

(i) (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); or

(ii) (I) not later than 9 months after the first date amounts are available to carry out this chapter, the operator of the existing tank vessel enters into an agreement to charter one or more tank vessels to be built in the United States and operated as a documented vessel or documented vessels;

(II) the combined tonnage of the vessels required to be chartered under subclause (I) is equal to or greater than the tonnage of the existing tank vessel subject to an operating agreement;

(III) the operator enters into an agreement with the Secretary that is substantially the same as an Emergency Preparedness Agreement under section 53107 of this title, under which the operator shall make available commercial transportation resources as provided in that section;

(IV) if the person that is the owner or operator of the existing tank vessel owns or operates more than one existing tank vessel subject to an operating agreement, the combined tonnage of those vessels required to be chartered under subclause (I) by that person is equal to or greater than the combined tonnage of all such existing tank vessels owned or operated by such person that are subject to operating agreements.

(B) No payment under this chapter may be made for an existing tank vessel with respect to which a binding contract is entered into under subparagraph (A)(i) 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.

(C) For purpose of subparagraph (A)(ii), tonnage shall be 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.

(D) No payment under this chapter may be made for an existing tank vessel with respect to which an agreement is entered into under subparagraph (A)(ii) for any period occurring--

(i) after the date that is 5 years after the first date that amounts became available to carry out this chapter, if the vessel or vessels required to be chartered under subparagraph (A)(ii) have not been delivered; or

(ii) after delivery of the vessel or vessels required to be chartered under such subparagraph, if any of such vessels is not chartered by the operator of the existing 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 (2006). 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 50501 of this title*;* 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 50501 of this title.

(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 56101 of this title*;* and

(3) if chapter 563 of this title 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 chapter 563.

46 U.S.C. 53105 (2006). 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 12111 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 agreement (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.

(1) 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.

(2) Limitation. The Secretary of Defense may not approve under paragraph (1) transfer of an operating agreement to a person that is not a citizen of the United States under section 2 of the Shipping Act, 1916 *(*46 App. U.S.C. 802*)* [Codified as 46 U.S.C. 50501], unless the Secretary of Defense determines that there is no person who is a citizen under such section and is interested in obtaining the operating agreement for a vessel that is otherwise eligible to be included in the Fleet under section 53102(b) and meets the requirements of the Department 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, approves replacement of the vessel.

46 U.S.C. 53106 (2006). 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 55302(a), 55304, 55305, or 55314 of this title, section 2631 of title 10, 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 55302(a), 55305, or 55314 of this title section 901(a), 901(b), or 901b of the Merchant Marine Act, 1936 *(*46 App. U.S.C. 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 50501 of this title, applying the 75 percent ownership requirement of that section.

(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.

(f) Priority in allocation of available amounts. If the amount available for a fiscal year for making payments under operating agreements under this chapter is not sufficient to pay the full amount authorized under each agreement pursuant to this section for such fiscal year, the amount available shall be allocated among such agreements in a manner that gives priority to payments for vessels that are subject to agreements under section 3517 of the Maritime Security Act of 2003 (46 U.S.C. 53101 note).

46 U.S.C. 53107 (2006). 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 nonvessel 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 55302(a), 55304, 55305, or 55314 of this title, and section 2631 of title 10, 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 sections

55302(a), 55304, 55305, and 55314 of this title and section 2631 of title 10 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 (2006). 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 55305(a) of this title 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 (2006). 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 (2006). Regulations.[67] 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 (2006). 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.

MAINTENANCE AND REPAIR REIMBURSEMENT PILOT PROGRAM[68]

Sec. 3517. Maintenance and Repair Reimbursement Pilot Program.
(a) Authority to enter agreements.

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

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

---

[67] Interim rules. Act Nov. 24, 2003, P.L. 108-136, Div C, Title XXXV, Subtitle C, § 3533, 117 Stat. 1818 (effective on enactment, as provided by § 3537(c) of such Act, provides: "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 [effective Oct. 1, 2004].".

[68] Section 3517 of Public Law 108-136, approved November 24, 2003 (117 STAT. 1796), as amended by section 3503 of Public Law 109-163, approved January 6, 2006 (119 STAT. 3548). Section 3517 was not enacted as part of Public Law 109-304, approved October 6, 2006 (120 STAT. 1485).

(b) Terms of agreement. An agreement under this section--

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

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

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

(c) Exception to requirement to perform work in the United States. A contractor shall not be required to have qualified maintenance or repair work performed in the United States under this section if--

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

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

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

(d) Reimbursement.

(1) In general. The Secretary shall, subject to the availability of appropriations, reimburse a contractor for costs incurred by the contractor for qualified maintenance or repair performed in the United States under this section.

(2) Amount. The amount of reimbursement shall be equal to the difference between--

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

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

(3) Determination of fair and reasonable costs. The Secretary shall determine fair and reasonable costs for purposes of paragraph (2).

(e) Notification requirements.

(1) Notification by contractor. The Secretary is not required to pay reimbursement to a contractor under this section for qualified maintenance or repair, unless the contractor--

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

(B) includes in such notification--

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

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

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

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

(2) Certification by Secretary.

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

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

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

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

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

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

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

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

(f) Regulations.

(1) Requirement to issue notice of proposed rule making. The Secretary shall--

(A) by not later than 30 days after the effective date of this subsection, issue a notice of proposed rule making to implement this section;

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

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

(2) Interim rules. Upon expiration of the period for submission of comments pursuant to paragraph (1)(C), the Secretary may prescribe interim

rules necessary to carry out the Secretary's responsibilities under this section. For this purpose, the Secretary is excepted from compliance with the notice and comment requirements of section 553 of title 5, United States Code. At the time interim rules are issued, the Secretary shall solicit comments on the interim rules from the public and other interested persons. Such period for comment shall not be less than 90 days. All interim rules prescribed under the authority of this subsection that are not earlier superseded by final rules shall expire no later than 270 days after the effective date of this subsection.

(g) Qualified maintenance or repair defined. In this section the term "qualified maintenance or repair"--

(1) except as provided in paragraph (2), means--

(A) any inspection of a vessel that is--

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

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

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

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

(2) does not include--

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

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

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

(i) Authorization of appropriations. In addition to the other amounts authorized by this title, 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.

CHAPTER 531 - SUBTITLE D - NATIONAL DEFENSE TANK VESSEL CONSTRUCTION ASSISTANCE.[69]

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;

(2) the shipyard in which the vessel will be constructed has the necessary capacity and expertise to successfully construct the proposed number and type

---

[69] Subtitle D of Public Law 108-136, approved November 24, 2003 (117 STAT. 1820), as amended by Section 3503 of Public Law 108-375, approved October 28, 2004 (118 STAT. 2195), Section 3504 of Public Law 109-163, approved January 6, 2006 (119 STAT. 3551), and Section 3502(b)(2) of Public Law 109-364, approved October 17, 2006 (120 STAT. 2516). Subtitle D was not enacted as part of Public Law 109-304, approved October 6, 2006 (120 STAT. 1485)

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 App. U.S.C. 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, 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.

(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. 3545. Definitions. In this subtitle the definitions set forth in section 53101 of title 46, United States Code, as amended by this Act, shall apply.

Sec. 3546. Authorization of appropriations. There are authorized to be appropriated to the Secretary to carry out this subtitle a total of $250,000,000 for fiscal years after fiscal year 2004.

.

CHAPTER 533—CONSTRUCTION RESERVE FUNDS.[70]

46 U.S.C. 53301 (2006). Definitions.

(a) In General.—In this chapter:

(1) CONSTRUCTION CONTRACT.—The term "construction contract" includes, for a taxpayer constructing a new vessel in a shipyard owned by that taxpayer, an agreement between the taxpayer and the Secretary of Transportation for that construction containing provisions the Secretary considers advisable to carry out this chapter.

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

(A) a vessel—

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

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

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

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

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

(b) Additional Tax-Related Terms.—Other terms used in this chapter have the same meaning as in chapter 1 of the Internal Revenue Code of 1986 (26 U.S.C. ch. 1).

46 U.S.C. 53302 (2006). Authority for construction reserve funds.

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

(b) Application of Certain Laws and Regulations.—The fund shall be established, maintained, expended, and used as provided by this chapter and regulations prescribed jointly by the Secretary of Transportation and the Secretary of the Treasury.

---

[70] Section 8 of Public Law 109-304, approved October 6, 2006 (120 STAT. 1586).

46 U.S.C. 53303 (2006). Persons eligible to establish funds. A construction reserve fund may be established by a citizen of the United States that—
(1) is operating a vessel in the foreign or domestic commerce of the United States or in the fisheries;
(2) owns, in whole or in part, a vessel being operated in the foreign or domestic commerce of the United States or in the fisheries;
(3) was operating a vessel in the foreign or domestic commerce of the United States or in the fisheries when it was bought or requisitioned by the United States Government;
(4) owned, in whole or in part, a vessel being operated in the foreign or domestic commerce of the United States or in the fisheries when it was bought or requisitioned by the Government; or
(5) had acquired or was having constructed a vessel to operate in the foreign or domestic commerce of the United States or in the fisheries when it was bought or requisitioned by the Government.

46 U.S.C. 53304 (2006) Vessel ownership. In this chapter, a vessel is deemed to be constructed or acquired by a taxpayer if constructed or acquired by a corporation when the taxpayer owns at least 95 percent of each class of stock of the corporation.

46 U.S.C. 53305 (2006). Eligible fund deposits. A construction reserve fund may include deposits of—
(1) the proceeds from the sale of a vessel;
(2) indemnities for the loss of a vessel;
(3) earnings from the operation of a documented vessel and from services incident to the operation; and
(4) interest or other amounts accrued on deposits in the fund.

46 U.S.C. 53306 (2006). Recognition of gain for tax purposes.
(a) Definitions.—In this section, the terms "net proceeds" and "net indemnity" mean the sum of—
(1) the adjusted basis of the vessel; and
(2) the amount of gain the taxpayer would recognize without regard to this section.
(b) Recognition of Gain.—In computing net income under the income or excess profits tax laws of the United States, a taxpayer does not recognize a gain on the sale or the actual or constructive total loss of a vessel if the taxpayer—
(1) deposits an amount equal to the net proceeds of the sale or the net indemnity for the loss in a construction reserve fund within 60 days after receiving the payment of proceeds
or indemnity; and

(2) elects under this section not to recognize the gain.
(c) When Election Must be Made.—
(1) IN GENERAL.—Except as provided in paragraph (2), the taxpayer must make the election referred to in subsection (b) in the taxpayer's income tax return for the taxable year in which the gain was realized.
(2) RECEIPT AFTER TAXABLE YEAR.—If the vessel is bought or requisitioned by the United States Government, or is lost, and the taxpayer receives payment for the vessel or indemnity for the loss from the Government after the end of the taxable year in which it was bought, requisitioned, or lost, the taxpayer must make the election referred to in subsection (b) within 60 days after receiving the payment or indemnity, on a form prescribed by the Secretary of the Treasury.
(d) Effect of Statute of Limitation.—If the taxpayer makes an election under subsection (c)(2), and computation or recomputation under this section is otherwise allowable but is prevented by a statute of limitation on the date the election is made or within 6 months thereafter, the computation or recomputation nevertheless shall be made notwithstanding the statute if the taxpayer files a claim for the computation or recomputation within 6 months after the date of making the election.

46 U.S.C. 53307 (2006). Basis for determining gain or loss and for depreciating new vessels. Under the income or excess profits tax laws of the United States, the basis for determining a gain or loss and for depreciation of a new vessel constructed, reconstructed, reconditioned, or acquired by the taxpayer, or for which purchase-money indebtedness is liquidated as provided in section 53310 of this title, with amounts from a construction reserve fund, shall be reduced by that part of the deposits in the fund expended in the construction, reconstruction, reconditioning, acquisition, or liquidation of purchase-money indebtedness of the new vessel that represents a gain not recognized for tax purposes under section 53306 of this title.

46 U.S.C. 53308 (2006). Order and proportions of deposits and withdrawals. In this chapter—
(1) if the net proceeds of a sale or the net indemnity for a loss is deposited in more than one deposit, the amount consisting of the gain shall be deemed to be deposited first;
(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 a deposit consists in part of a gain not recognized under section 53306 of this title, any expenditure, obligation, or withdrawal applied against that deposit shall be deemed to be a gain in the proportion that the part of the deposit consisting of a gain bears to the total amount of the deposit.

46 U.S.C. 53309 (2006). Accumulation of deposits. For any taxable year, amounts on deposit in a construction reserve fund on the last day of the taxable year, for which the requirements of section 53310 of this title have been satisfied (to the extent they apply on the last day of the taxable year), are deemed to have been retained for the reasonable needs of the business within the meaning of section 537(a) of the Internal Revenue Code of 1986 (26 U.S.C. 537(a)).

46 U.S.C. 53310 (2006). Obligation of deposits and period for construction of certain vessels.

(a) Application of Sections 53306 and 53309.—Sections 53306 and 53309 of this title apply to a deposit in a construction reserve fund only if, within 3 years after the date of the deposit (and any extension under subsection (c))—

(1)(A) a contract is made for the construction or acquisition of a new vessel or, with the approval of the Secretary of Transportation, for a part interest in a new vessel or for the

reconstruction or reconditioning of a new vessel;

(B) the deposit is expended or obligated for expenditure under that contract;

(C) at least 12.5 percent of the construction or contract price of the vessel is paid or irrevocably committed for payment; and

(D) the plans and specifications for the vessel are approved by the Secretary to the extent the Secretary considers necessary; or

(2) the deposit is expended or obligated for expenditure for the liquidation of existing or subsequently incurred purchase-money indebtedness to a person not a parent company

of, or a company affiliated or associated with, the mortgagor on a new vessel.

(b) Additional Requirements for Certain Vessels.—In addition to the requirements of subsection (a)(1), for a vessel not constructed under a construction-differential subsidy contract or not bought from the Secretary of Transportation—

(1) at least 5 percent of the construction (or, if the contract covers more than one vessel, at least 5 percent of the construction of the first vessel) must be completed within 6 months after the date of the construction contract (or within the period of an extension under subsection (c)), as estimated by the Secretary and certified by the Secretary to the Secretary of the Treasury; and

(2) construction under the contract must be completed with reasonable dispatch thereafter.

(c) Extensions.—The Secretary of Transportation may grant extensions of the period within which the deposits must be expended or obligated or within which the construction must have progressed to the extent of 5 percent completion under this section. However, the extensions may not be for a total of more than 2 years for the expenditure or obligation of deposits or one year for the progress of construction.

46 U.S.C. 53311 (2006). Taxation of deposits on failure of conditions. A deposited gain, if otherwise taxable income under the law applicable to the taxable year in which the gain was realized, shall be included in gross income for that taxable year, except for purposes of the declared value excess profits tax and the capital stock tax, if—
(1) the deposited gain is not expended or obligated within the appropriate period under section 53310 of this title;
(2) the deposited gain is withdrawn before the end of that period;
(3) the construction related to that deposited gain has not progressed to the extent of 5 percent of completion within the appropriate period under section 53310 of this title; or
‘‘(4) 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 related to that deposited gain is not completed with reasonable dispatch.

46 U.S.C. 53312 (2006). Assessment and collection of deficiency tax. Notwithstanding any other provision of law, a deficiency in tax for a taxable year resulting from the inclusion of an amount in gross income as provided by section 53311 of this title, and the amount to be treated as a deficiency under section 53311 instead of as an adjustment for the declared value excess profits tax, may be assessed or a civil action may be brought to collect the deficiency without assessment, at any time. Interest on a deficiency or amount to be treated as a deficiency does not begin until the date the deposited gain or part of the deposited gain in question is required to be included in gross income under section 51111.

CHAPTER 535—CAPITAL CONSTRUCTION FUNDS.[71]

46 U.S.C. 53501 (2006). Definitions. In this chapter:
(1) AGREEMENT VESSEL.—The term "agreement vessel" means—
(A) an eligible vessel or a qualified vessel that is subject to an agreement under this chapter; and
(B) a barge or container that is part of the complement of a vessel described in subparagraph (A) if provided for in the agreement.
(2) ELIGIBLE VESSEL.—The term "eligible vessel" means—
(A) a vessel—
(i) constructed in the United States (and, if reconstructed, reconstructed in the United States), constructed outside the United States but documented under the laws of the United States on April 15, 1970, or constructed outside the United

[71] Section 8 of Public Law 109-304, approved October 6, 2006 (120 STAT. 1591).

States for use in the United States foreign trade pursuant to a contract made before April 15, 1970;
(ii) documented under the laws of the United States; and
(iii) operated in the foreign or domestic trade of the United States or in the fisheries of the United States; and
(B) a commercial fishing vessel—
(i) constructed in the United States and, if reconstructed, reconstructed in the United States;
(ii) of at least 2 net tons but less than 5 net
tons;
(iii) owned by a citizen of the United States;
(iv) having its home port in the United States; and
(v) operated in the commercial fisheries of the United States.
(3) JOINT REGULATIONS.—The term "joint regulations" means regulations prescribed jointly by the Secretary and the Secretary of the Treasury under section 53502(b) of this title.
(4) NONCONTIGUOUS TRADE.—The term "noncontiguous trade" means—
(A) trade between—
(i) one of the contiguous 48 States; and
(ii) Alaska, Hawaii, Puerto Rico, or an insular territory or possession of the United States; and
(B) trade between—
(i) a place in Alaska, Hawaii, Puerto Rico, or an insular territory or possession of the United States; and
(ii) another place in Alaska, Hawaii, Puerto Rico, or an insular territory or possession of the United States.
(5) QUALIFIED VESSEL.—The term "qualified vessel" means—
(A) a vessel—
(i) constructed in the United States (and, if reconstructed, reconstructed in the United States), constructed outside the United States but documented under the laws of the United States on April 15, 1970, or constructed outside the United States for use in
the United States foreign trade pursuant to a contract made before April 15, 1970;
(ii) documented under the laws of the United States; and
(iii) agreed, between the Secretary and the person maintaining the capital construction fund established under section 53503 of this title, to be operated in the United States foreign, Great Lakes, or noncontiguous domestic trade or in the fisheries of the United States; and
(B) a commercial fishing vessel—
(i) constructed in the United States and, if reconstructed, reconstructed in the United States;
(ii) of at least 2 net tons but less than 5 net tons;
(iii) owned by a citizen of the United States;

(iv) having its home port in the United States; and
(v) operated in the commercial fisheries of the United States.
(6) SECRETARY.—The term "Secretary" means—
(A) the Secretary of Commerce with respect to an eligible vessel or a qualified vessel operated or to be operated in the fisheries of the United States; and
(B) the Secretary of Transportation with respect to other vessels.
(7) UNITED STATES FOREIGN TRADE.—The term "United States foreign trade" includes those areas in domestic trade in which a vessel built with a construction-differential subsidy is allowed to operate under the first sentence of section 506 of the Merchant Marine Act, 1936.
(8) VESSEL.—The term "vessel" includes—
(A) cargo handling equipment that the Secretary determines is intended for use primarily on the vessel; and
(B) an ocean-going towing vessel, an ocean-going barge, or a comparable towing vessel or barge operated on the Great Lakes.

46 U.S.C. 53502 (2006). Regulations.

(a) In General.—Except as provided in subsection (b), the Secretary shall prescribe regulations to carry out this chapter.
(b) Tax Liability.—The Secretary and the Secretary of the Treasury shall prescribe joint regulations for the determination of tax liability under this chapter.

46 U.S.C. 53503 (2006). Establishing a capital construction fund.

(a) In General.—A citizen of the United States owning or leasing an eligible vessel may make an agreement with the Secretary under this chapter to establish a capital construction fund for the vessel.
(b) Allowable Purpose.—The purpose of the agreement shall be to provide 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.

46 U.S.C. 53504 (2006). Deposits and withdrawals.

(a) Required Deposits.—An agreement to establish a capital construction fund shall provide for the deposit in the fund of the amounts agreed to be appropriate to provide for qualified withdrawals under section 53509 of this title.
(b) Applicable Requirements.—Deposits in and withdrawals from the fund are subject to the requirements included in the agreement or prescribed by the Secretary by regulation. However, the Secretary may not require a person to deposit in the fund for a taxable year more than 50 percent of that portion of the person's taxable income for that year (as determined under section

53505(a)(1) of this title) that is attributable to the operation of an agreement vessel.

46 U.S.C. 53505 (2006). Ceiling on deposits.

(a) Maximum Deposits.—The amount deposited in a capital construction fund for a taxable year may not exceed the sum of—

(1) that portion of the taxable income of the owner or lessee for the taxable year (computed under chapter 1 of the Internal Revenue Code of 1986 (26 U.S.C. ch. 1) but without regard to the carryback of net operating loss or net capital loss or this chapter) that is attributable to the operation of agreement vessels in the foreign or domestic trade of the United States or in the fisheries of the United States;

(2) the amount allowable as a deduction under section 167 of such Code (26 U.S.C. 167) for the taxable year for agreement vessels;

(3) if the transaction is not taken into account for purposes of paragraph (1), the net proceeds (as defined in joint regulations) from the disposition of an agreement vessel or from insurance or indemnity attributable to an agreement vessel; and

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

(b) Reductions for Lessees.—For a lessee, the maximum amount that may be deposited for an agreement vessel under subsection (a)(2) for any period shall be reduced by any amount the owner is required or permitted, under the capital construction fund agreement, to deposit for that period for the vessel under subsection (a)(2).

46 U.S.C. 53506 (2006). Investment and fiduciary requirements.

(a) In General.—Amounts in a capital construction fund shall be kept in the depository specified in the agreement and shall be subject to trustee and other fiduciary requirements prescribed by the Secretary. Except as provided in subsection (b), amounts in the fund may be invested only in interest-bearing securities approved by the Secretary.

(b) Stock Investments.—

(1) IN GENERAL.—With the approval of the Secretary, an agreed percentage (but not more than 60 percent) of the assets of the fund may be invested in the stock of domestic corporations that—

(A) is fully listed and registered on an exchange registered with the Securities and Exchange Commission as a national securities exchange; and

(B) would be acquired by a prudent investor seeking a reasonable income and the preservation of capital.

(2) PREFERRED STOCK.—The preferred stock of a corporation is deemed to satisfy the requirements of this subsection, even though it may not be registered and listed because it is nonvoting stock, if the common stock of the

corporation satisfies the requirements and the preferred stock otherwise would satisfy the requirements.
(c) Maintaining Agreed Percentage.—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 a way that tends to restore the fair market value of the stock to not more than the agreed percentage.

46 U.S.C. 53507 (2006). Nontaxation of deposits.

(a) Tax Treatment.—Subject to subsection (b), under the Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.)—
(1) taxable income (determined without regard to this chapter and section 7518 of such Code (26 U.S.C. 7518)) for the taxable year shall be reduced by the amount deposited
for the taxable year out of amounts referred to in section 53505(a)(1) of this title;
(2) a gain from a transaction referred to in section 53505(a)(3) of this title shall not be taken into account if an amount equal to the net proceeds (as defined in joint regulations) from the transaction is deposited in the fund;
(3) the earnings (including gains and losses) from the investment and reinvestment of amounts held in the fund shall not be taken into account;
(4) the earnings and profits of a corporation (within the meaning of section 316 of such Code (26 U.S.C. 316)) shall be determined without regard to this chapter and section 7518 of such Code (26 U.S.C. 7518); and
(5) in applying the tax imposed by section 531 of such Code (26 U.S.C. 531), amounts held in the fund shall not be taken into account.
(b) Condition.—This section applies to an amount only if the amount is deposited in the fund under the agreement within the time provided in joint regulations.

46 U.S.C. 53508 (2006). Separate accounts within a fund.

(a) In General.—A capital construction fund shall have three accounts:
(1) The capital account.
(2) The capital gain account.
(3) The ordinary income account.
(b) Capital Account—The capital account shall consist of—
(1) amounts referred to in section 53505(a)(2) of this title;
(2) amounts referred to in section 53505(a)(3) of this title, except that portion representing a gain not taken into account because of section 53507(a)(2) of this title;
(3) the percentage applicable under section 243(a)(1) of the Internal Revenue Code of 1986 (26 U.S.C. 243(a)(1)) of any dividend received by the fund for which the person maintaining the fund would be allowed (were it not for

section 53507(a)(3) of this title) a deduction under section 243 of such Code (26 U.S.C. 243); and
(4) interest income exempt from taxation under section 103 of such Code (26 U.S.C. 103).
(c) Capital Gain Account.—The capital gain account shall consist of—
(1) amounts representing capital gains on assets held for more than 6 months and referred to in section 53505(a)(3) or (4) of this title; minus
(2) amounts representing capital losses on assets held in the fund for more than 6 months.
(d) Ordinary Income Account.—The ordinary income account shall consist of—
(1) amounts referred to in section 53505(a)(1) of this title;
(2)(A) amounts representing capital gains on assets held for not more than 6 months and referred to in section 53505(a)(3) or (4) of this title; minus
(B) amounts representing capital losses on assets held in the fund for not more than 6 months;
(3) interest (except tax-exempt interest referred to in subsection (b)(4)) and other ordinary income (except any dividend referred to in paragraph (5)) received on assets held in the fund;
(4) ordinary income from a transaction described in section 53505(a)(3) of this title; and
(5) that portion of any dividend referred to in subsection (b)(3) not taken into account under subsection (b)(3).
(e) When Losses Allowed.—Except on termination of a fund, capital losses referred to in subsection (c) or (d)(2) shall be allowed only as an offset to gains referred to in subsection (c) or (d)(2), respectively.

46 U.S.C. 53509 (2006). Qualified withdrawals.

(a) In General.—Subject to subsection (b), a withdrawal from a capital construction fund is a qualified withdrawal if it is made under the terms of the agreement and is for—
(1) the acquisition, construction, or reconstruction of a qualified vessel or a barge or container that is part of the complement of a qualified vessel; or
(2) the payment of the principal on indebtedness incurred in the acquisition, construction, or reconstruction of a qualified vessel or a barge or container that is part of the complement of a qualified vessel.
(b) Barges and Containers.—Except as provided in regulations prescribed by the Secretary, subsection (a) applies to a barge or container only if it is constructed in the United States.
(c) Treatment as Nonqualified Withdrawal.—Under joint regulations, if the Secretary determines that a substantial obligation under an agreement is not being fulfilled, the Secretary, after notice and opportunity for a hearing to the person maintaining the fund, may treat any amount in the fund as an amount withdrawn from the fund in a nonqualified withdrawal.

46 U.S.C. 53510 (2006). Tax treatment of qualified withdrawals and basis of property.

(a) Order of Withdrawals.—A qualified withdrawal from a capital construction fund shall be treated as made—
(1) first from the capital account;
(2) second from the capital gain account; and
(3) third from the ordinary income account.
(b) Ordinary Income Account Withdrawals.—If a portion of a qualified withdrawal for a vessel, barge, or container is made from the ordinary income account, the basis of the vessel, barge, or container shall be reduced by an amount equal to that portion.
(c) Capital Gain Account Withdrawals.—If a portion of a qualified withdrawal for a vessel, barge, or container is made from the capital gain account, the basis of the vessel, barge, or container shall be reduced by an amount equal to that portion.
(d) Withdrawals to Pay Principal..—If a portion of a qualified withdrawal to pay the principal on indebtedness is made from the ordinary income account or the capital gain account, an amount equal to the total reduction that would be required by subsections
(b) and (c) if the withdrawal were a qualified withdrawal for a purpose described in those subsections 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. The remaining amount of the withdrawal shall be treated as a nonqualified withdrawal.
(e) Gain on Property with Reduced Basis.—If property, the basis of which was reduced under subsection (b), (c), or (d), is disposed of, any gain realized on the disposition, to the extent it does not exceed the total reduction in the basis of the property under those subsections, shall be treated as an amount referred to in section 53511(c)(1) of this title withdrawn on the date of disposition of the property. Subject to conditions prescribed in joint regulations, this subsection does not apply to a disposition if there is a redeposit, in an amount determined under joint regulations, that restores the fund as far as practicable to the position it was in before the withdrawal.

46 U.S.C. 53511 (2006). Tax treatment of nonqualified withdrawals.

(a) In General.—Except as provided in section 53513 of this title, a withdrawal from a fund that is not a qualified withdrawal shall be treated as a nonqualified withdrawal.
(b) Order of Withdrawals.—A nonqualified withdrawal shall be treated as made—
(1) first from the ordinary income account;
(2) second from the capital gain account; and
(3) third from the capital account.

(c) Tax Treatment.—For purposes of the Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.)—

(1) a nonqualified withdrawal from the ordinary income account shall be included in income as an item of ordinary income for the taxable year in which the withdrawal is made;

(2) a nonqualified withdrawal from the capital gain account shall be included in income for the taxable year in which the withdrawal is made as an item of gain realized during that year from the disposition of an asset held for more than 6 months; and

(3) for the period through the last date prescribed for payment of tax for the taxable year in which the withdrawal is made—

(A) no interest shall be payable under section 6601 of such Code (26 U.S.C. 6601) and no addition to the tax shall be payable under section 6651 of such Code (26 U.S.C. 6651);

(B) interest on the amount of the additional tax attributable to an amount treated as a nonqualified withdrawal from the ordinary income account or the capital gain account shall be paid at the rate determined under subsection (d) from the last date prescribed for payment of the tax for the taxable year for which the amount was deposited in the fund; and

(C) no interest shall be payable on amounts treated as withdrawn on a last-in-first-out basis under section 53512 of this title.

(d) Interest Rate.—The rate of interest under subsection (c)(3)(B) for a nonqualified withdrawal made in a taxable year beginning after 1971 shall be determined and published jointly by the Secretary and the Secretary of the Treasury. The rate shall be such that its relationship to 8 percent is comparable, as determined by the Secretaries under joint regulations, to the relationship between—

(1) the money rates and investment yields for the calendar year immediately before the beginning of the taxable year; and

(2) the money rates and investment yields for the calendar year 1970.

(e) Nonqualified Withdrawals.—

(1) In General.—The following applicable percentage of any amount that remains in a capital construction fund at the close of the following specified taxable year following the taxable year for which the amount was deposited shall be treated as a nonqualified withdrawal:

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

(2) EARNINGS.—The earnings of a capital construction fund for any taxable year (except net gains) shall be treated under this subsection as an amount deposited for the taxable year.
(3) CONTRACT FOR QUALIFIED WITHDRAWAL.—Under paragraph (1), an amount shall not be treated as remaining in a capital construction fund at the close of a taxable year to the extent there is a binding contract at the close of the taxable year for a qualified withdrawal of the amount for an identified item for which the withdrawal may be made.
(4) EXCESS EARNINGS.—If the Secretary determines that the balance in a capital construction fund exceeds the amount appropriate to meet the vessel construction program objectives of the person that established the fund, the amount of the excess shall be treated as a nonqualified withdrawal under paragraph (1) unless the person develops appropriate program objectives within 3 years to dissipate the excess.
(5) AMOUNTS IN FUND ON JANUARY 1, 1987.—Under this subsection, amounts in a capital construction fund on January 1, 1987, shall be treated as having been deposited in that fund on that date.
(f) Tax Determinations.
(1) IN GENERAL.—For a taxable year for which there is a nonqualified withdrawal (including an amount treated as a nonqualified withdrawal under subsection (e)), the tax imposed by chapter 1 of the Internal Revenue Code of 1986 (26 U.S.C. ch. 1) shall be determined by—
(A) excluding the withdrawal from gross income; and
(B) increasing the tax imposed by chapter 1 of such Code by the product of the amount of the withdrawal and the highest tax rate specified in section 1 (or section 11 for a corporation) of such Code (26 U.S.C. 1, 11).
(2) MAXIMUM TAX RATE.—For that portion of a nonqualified withdrawal made from the capital gain account during a taxable year to which section 1(h) or 1201(a) of such Code (26 U.S.C. 1(h), 1201(a)) applies, the tax rate used under paragraph (1)(B) may not exceed 15 percent (or 34 percent for a corporation).
(3) TAX BENEFIT RULE.—If any portion of a nonqualified withdrawal is properly attributable to deposits (except earnings on deposits) made by the taxpayer in a taxable year that did not reduce the taxpayer's liability for tax

under chapter 1 of such Code (26 U.S.C. ch. 1) for a taxable year before the taxable year in which the withdrawal occurs—
(A) that portion shall not be taken into account under
paragraph (1); and
(B) an amount equal to that portion shall be allowed as a deduction under section 172 of such Code (26 U.S.C. 172) for the taxable year in which the withdrawal occurs.
(4) COORDINATION WITH DEDUCTION FOR NET OPERATING LOSSES.—A nonqualified withdrawal excluded from gross income under paragraph (1) shall be excluded in determining taxable income under section 172(b)(2) of such Code (26 U.S.C. 172(b)(2)).

46 U.S.C. 53512 (2006). FIFO and LIFO withdrawals.
(a) FIFO.—Except as provided in subsection (b), an amount withdrawn from an account under this chapter shall be treated as withdrawn on a first-in-first-out basis.
(b) LIFO.—An amount withdrawn from an account under this chapter shall be treated as withdrawn on a last-in-first-out basis if it is—
(1) a nonqualified withdrawal for research, development, and design expenses incident to new and advanced vessel design, machinery, and equipment; or
(2) an amount treated as a nonqualified withdrawal under section 53510(d) of this title.

46 U.S.C. 53513 (2006). Corporate reorganizations and partnership changes. Under joint regulations—
(1) a transfer of a capital construction fund from one person to another person in a transaction to which section 381 of the Internal Revenue Code of 1986 (26 U.S.C. 381) applies may be treated as if the transaction is not a nonqualified withdrawal; and
(2) a similar rule shall be applied to a continuation of a partnership (within the meaning of subchapter K of chapter 1 of such Code (26 U.S.C. 701 et seq.)).

46 U.S.C. 53514 (2006). Relationship of old fund to new fund.
(a) Definition.—In this section, the term "old fund" means a capital construction fund maintained before October 21, 1970.
(b) Election to Maintain Old Fund.—A person maintaining an old fund may elect to continue the old fund, but may not—
(1) hold amounts in the old fund beyond the expiration date provided in the agreement under which the old fund is maintained (determined without regard to an extension or
renewal made after April 14, 1970); or
(2) maintain simultaneously the old fund and a new fund established under this chapter.

(c) Application of New Fund Agreement to Old Fund Amounts.—If a person makes an agreement under this chapter to establish a new fund, the person may agree to extend the agreement to some or all of the amounts in an old fund. Each item in the old fund to be transferred shall be transferred in a nontaxable transaction to the appropriate account in the new fund. For purposes of section 53511(c)(3) of this title, the date of the deposit of an item so transferred shall be July 1, 1971, or the date of the deposit in the old fund, whichever is later.

46 U.S.C. 53515 (2006). Records and reports. A person maintaining a fund under this chapter shall keep records and make reports as required by the Secretary or the Secretary of the Treasury.

46 U.S.C. 53516 (2006). Termination of agreement after change in regulations. 'If, after an agreement has been made under this chapter, a change is made either in the joint regulations or in the regulations prescribed by the Secretary under this chapter that could have a substantial effect on the rights or duties of a person maintaining a fund under this chapter, that person may terminate the agreement.

46 U.S.C. 53517 (2006). Reports.
(a) In General.—Within 120 days after the close of each calendar year, the Secretary of Transportation and the Secretary of Commerce each shall provide the Secretary of the Treasury a written report on the capital construction funds under the particular Secretary's jurisdiction for the calendar year.
(b) Contents.—The report shall state the name and taxpayer identification number of each person—
(1) establishing a capital construction fund during the calendar year;
(2) maintaining a capital construction fund on the last day of the calendar year;
(3) terminating a capital construction fund during the calendar year;
(4) making a deposit to or withdrawal from a capital construction fund during the calendar year, and the amount of the deposit or withdrawal; or
(5) having been determined during the calendar year to have failed to fulfill a substantial obligation under a capital construction fund agreement to which the person is a party.

CHAPTER 537—LOANS AND GUARANTEES.[72]

NOTE - The reader is advised to exercise diligence when working with the provisions of law set forth in Chapter 537. Section 3507 of Public Law 109-163, approved January 6, 2005 (119 STAT. 3555), made comprehensive substantive and technical amendment to Title XI of the Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1271 -1280b)(Title XI). Thereafter, Title XI was codified as Chapter 537, Loans and Guarantees, by Section 8 of Public Law 109-304, approved October 6, 2006 (120 STAT. 1600). This has resulted in some uncertainty generally identified in this Compilation by the provision being in brackets. Where the law is unclear, the reader is advised to work with the Statutes at Large.

SUBCHAPTER I—GENERAL.

46 U.S.C. 53701 (2006). Definitions. In this chapter:

(1) Actual cost. The term "actual cost" means the sum of--

(A) all amounts paid by or for the account of the obligor as of the date on which a determination is made under section 53715(d)(1) of this title; and

(B) all amounts that the Secretary [or Administrator] reasonably estimates 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 53714 of this title 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.

[(1a) Administrator. The term "Administrator" means the Administrator of the Maritime Administration.]

(2) Construction, reconstruction, and reconditioning. The terms "construction", "reconstruction", and "reconditioning" include designing, inspecting, outfitting, and equipping.

(3) Depreciated actual cost. The term "depreciated actual cost" of a vessel means--

(A) if the vessel was not reconstructed or reconditioned, the actual cost of the vessel depreciated on a straight line basis over the useful life of the vessel as determined by the Secretary [or Administrator], not to exceed 25 years from the date of delivery by the builder; or

(B) if the vessel was reconstructed or reconditioned, the sum of--

(i) the actual cost of the vessel depreciated on a straight line basis from the date of delivery by the builder to the date of the reconstruction or reconditioning, using the original useful life of the vessel, and from the date of

---

[72] Section 8 of Public Law 109-304, approved October 6, 2006 (120 STAT. 1600).

the reconstruction or reconditioning, using a useful life of the vessel determined by the Secretary [or Administrator]; and

(ii) any amount paid or obligated to be paid for the reconstruction or reconditioning, depreciated on a straight line basis using a useful life of the vessel determined by the Secretary [or Administrator].

(4) Eligible export vessel. The term "eligible export vessel" means a vessel that--

(A) is constructed, reconstructed, or reconditioned in the United States for use in world-wide trade; and

(B) will, on delivery or redelivery, become or remain documented under the laws of a country other than the United States.

(5) Fishery facility.

(A) In general. Subject to subparagraph (B), the term "fishery facility" means--

(i) for operations on land--

(I) a 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 a fishery;

(II) the land necessary for the structure or appurtenance; and

(III) equipment that is for use with the structure or appurtenance and that is necessary for performing a function referred to in subclause (I);

(ii) for operations not on land, a vessel built in the United States and used for, equipped to be used for, or of a type normally used for, the processing of fish; or

(iii) for aquaculture, including operations on land or elsewhere--

(I) a structure or appurtenance thereto designed for aquaculture;

(II) the land necessary for the structure or appurtenance;

(III) equipment that is for use with the structure or appurtenance and that is necessary for performing a function referred to in subclause (I); and

(IV) a vessel built in the United States and used for, equipped to be used for, or of a type normally used for, aquaculture.

(B) Required ownership. Under subparagraph (A), the structure, appurtenance, land, equipment, or vessel must be owned by--

(i) an individual who is a citizen of the United States; or

(ii) an entity that is a citizen of the United States under section 50501 of this title and that is at least 75 percent owned (as determined under that section) by citizens of the United States.

(6) Fishing vessel. The term "fishing vessel" has the meaning given that term in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802), and any reference in this chapter to a vessel designed principally for commercial use in the fishing trade or industry is deemed to be a reference to a fishing vessel.

(7) Mortgage. The term "mortgage" includes--

(A) a preferred mortgage as defined in section 31301 of this title; and

(B) a mortgage on a vessel that will become a preferred mortgage when filed or recorded under chapter 313 of this title.

(8) Obligation. The term "obligation" means an instrument of indebtedness issued for a purpose described in section 53706 of this title, except--

(A) an obligation issued by the Secretary [or Administrator] under section 53723 of this title; and

(B) an obligation eligible for investment of funds under section 53715(f) or 53717 of this title.

(9) Obligee. The term "obligee" means the holder of an obligation.

(10) Obligor. The term "obligor" means a party primarily liable for payment of the principal of or interest on an obligation.

(11) Ocean thermal energy conversion facility or plantship. The term "ocean thermal energy conversion facility or plantship" means an at-sea facility or vessel, whether mobile, floating unmoored, moored, or standing on the seabed, that uses temperature differences in ocean water to produce electricity or another form of energy capable of being used directly to perform work, and includes--

(A) equipment installed on the facility or vessel to use the electricity or other form of energy to produce, process, refine, or manufacture a product;

(B) a cable or pipeline used to deliver the electricity, freshwater, or product to shore; and

(C) other associated equipment and appurtenances of the facility or vessel to the extent they are located seaward of the high water mark.

(12) Secretary. The term "Secretary" means--

(A) the Secretary of Commerce with respect to fishing vessels and fishery facilities; [and]

[(B) the Secretary of Transportation with respect to other vessels and general shipyard facilities (as defined in section 53733(a) of this title).]

(13) Vessel. The term "vessel" means any type of vessel, whether in existence or under construction, including--

(A) a cargo vessel;

(B) a passenger vessel;

(C) a combination cargo and passenger vessel;

(D) a tanker;

(E) a tug or towboat;

(F) a barge;

(G) a dredge;

(H) a floating drydock with a capacity of at least 35,000 lifting tons and a beam of at least 125 feet between the wing walls;

(I) an oceanographic research vessel;

(J) an instruction vessel;

(K) a pollution treatment, abatement, or control vessel;

(L) a fishing vessel whose ownership meets the citizenship requirements under section 50501 of this title for documenting vessels to operate in the coastwise trade; and

(M) an ocean thermal energy conversion facility or plantship that is or will be documented under the laws of the United States.

46 U.S.C. 53702 (2006). General authority.

(a) In general. The Secretary [or Administrator], on terms the Secretary [or Administrator] may prescribe, may guarantee or make a commitment to guarantee the payment of the principal of and interest on an obligation eligible to be guaranteed under this chapter. A guarantee or commitment to guarantee shall cover 100 percent of the principal and interest.

(b) Direct loans for fisheries.

(1) In general. Notwithstanding any other provision of this chapter, any obligation involving a fishing vessel, fishery facility, aquaculture facility, individual fishing quota, or fishing capacity reduction program issued under this chapter after October 11, 1996, shall be a direct loan obligation for which the Secretary shall be the obligee, rather than an obligation issued to an obligee other than the Secretary and guaranteed by the Secretary. A direct loan obligation under this subsection shall be treated in the same manner and to the same extent as an obligation guaranteed under this chapter except with respect to provisions of this chapter that by their nature can only be applied to obligations guaranteed under this chapter.

(2) Interest rate. Notwithstanding any other provision of this chapter, the annual rate of interest an obligor shall pay on a direct loan obligation under this subsection is 2 percent plus the additional percent the Secretary must pay as interest to borrow from the Treasury the funds to make the loan.

46 U.S.C. 53703 (2006). Application procedures.

(a) Time for decision.

(1) In general. The Secretary [Administrator] shall approve or deny an application for a loan guarantee under this chapter within 270 days after the date on which the signed application is received by the Secretary [or Administrator].

(2) Extension. On request by an applicant, the Secretary [or Administrator] 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 was received by the Secretary [or Administrator].

(b) Certification of review. The Secretary [or Administrator] may not guarantee or make a commitment to guarantee an obligation under this chapter unless the Secretary [or Administrator] certifies that a full and fair consideration of all the regulatory requirements, including economic soundness and financial requirements applicable to the obligor and related parties, and a

thorough assessment of the technical, economic, and financial aspects of the loan application, has been made.

46 U.S.C. 53704 (2006). Funding limits.

(a) General limitations. The total unpaid principal amount of obligations guaranteed under this chapter and outstanding at one time may not exceed $12,000,000,000. Of that amount--

(1) $850,000,000 shall be limited to obligations related to fishing vessels and fishery facilities; and

(2) $3,000,000,000 shall be limited to obligations related to eligible export vessels.

(b) Additional limitations. Additional limitations may not be imposed on new commitments to guarantee loans for any fiscal year, except in amounts established in advance by annual authorization laws. A vessel eligible for a guarantee under this chapter may not be denied eligibility because of its type.

(c) Limits based on risk factors.

(1) Definition. 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).

(2) System of risk categories. The Secretary [or Administrator] shall--

(A) establish, and update annually, a system of risk categories for obligations guaranteed under this chapter that categorizes the relative risk of guarantees based on the risk factors set forth in paragraph (4);

(B) determine annually for each risk category a subsidy rate equivalent to the cost of obligations in the category, expressed as a percentage of the amount guaranteed 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 are expected to be associated with the loans in the category.

(3) Use of system.

(A) Placing obligation in category. Before making a guarantee under this chapter for an obligation, and annually for projects subject to a guarantee, the Secretary [or Administrator] shall apply the risk factors specified in paragraph (4) to place the obligation in a risk category established under paragraph (2).

(B) Reduction of available amount. The Secretary [or Administrator] shall consider the total amount available to the Secretary [or Administrator] for making guarantees under this chapter to be reduced by the amount determined by multiplying--

(i) the amount guaranteed under this chapter for an obligation; by

(ii) the subsidy rate for the category in which the obligation is placed under subparagraph (A).

(C) Estimated cost. The estimated cost to the United States Government of a guarantee under this chapter for an obligation is deemed to be the amount determined under subparagraph (B) for the obligation.

(D) Restriction on further guarantees. The Secretary [or Administrator] may not guarantee obligations under this chapter after the total amount available to the Secretary [or Administrator] under appropriations laws for the cost of loan guarantees is considered to be reduced to zero under subparagraph (B).

(4) Risk factors. The risk factors referred to in this subsection are--

(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 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;

(E) if applicable, other guarantees related to the project;

(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 chapter is or will be in effect during the construction period of the project; and

(K) the concentration risk presented by an unduly large percentage of loans outstanding by any one borrower or group of affiliated borrowers.

46 U.S.C. 53705 (2006). Pledge of United States Government.

(a) Full faith and credit. The full faith and credit of the United States Government is pledged to the payment of a guarantee made under this chapter, for 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 date of payment in full of the guarantee.

(b) Incontestability. A guarantee or commitment to guarantee made under this chapter is conclusive evidence of the eligibility of the obligation for the guarantee. The validity of a guarantee or commitment to guarantee made under this chapter is incontestable.

46 U.S.C. 53706 (2006). Eligible purposes of obligations.

(a) In general. To be eligible for a guarantee under this chapter, an obligation must aid in any of the following:

(1) (A) Financing (including reimbursement of an obligor for expenditures previously made for) the construction, reconstruction, or reconditioning of a

vessel (including an eligible export vessel) designed principally for research, or for commercial use--

(i) in the coastwise or intercoastal trade;

(ii) on the Great Lakes, or on bays, sounds, rivers, harbors, or inland lakes of the United States;

(iii) in foreign trade as defined in section 109(b) of this title;

(iv) as an ocean thermal energy conversion facility or plantship;

(v) as a floating drydock in the construction, reconstruction, reconditioning, or repair of vessels; or

(vi) as an eligible export vessel in worldwide trade.

(B) A guarantee under subparagraph (A) may not be made more than one year after delivery of the vessel (or redelivery if the vessel was reconstructed or reconditioned) unless the proceeds of the obligation are used to finance the construction, reconstruction, or reconditioning of a vessel or of facilities or equipment related to marine operations.

(2) Financing (including reimbursement of an obligor for expenditures previously made for) the construction, reconstruction, reconditioning, or purchase of a vessel owned by citizens of the United States and designed principally for research, or for commercial use in the fishing industry.

(3) Financing the purchase, reconstruction, or reconditioning of a vessel or fishery facility--

(A) for which an obligation was guaranteed under this chapter; and

(B) that, under subchapter II of this chapter --

(i) is a vessel or fishery facility for which an obligation was accelerated and paid;

(ii) was acquired by the Federal Ship Financing Fund or successor account under section 53717 of this title; or

(iii) was sold at foreclosure begun or intervened in by the Secretary [or Administrator].

(4) Financing any part of the repayment to the United States Government of any amount of a construction-differential subsidy paid for a vessel.

(5) Refinancing an existing obligation (regardless of whether guaranteed under this chapter) issued for a purpose described in paragraphs (1)-(4), including a short-term obligation incurred to obtain temporary funds with the intention of refinancing.

(6) Financing or refinancing (including reimbursement of an obligor for expenditures previously made for) the construction, reconstruction, reconditioning, or purchase of a fishery facility.

(7) Financing or refinancing--

(A) 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)) (including the reimbursement of obligors for expenditures previously made for such a purchase);

(B) activities that assist in the transition to reduced fishing capacity; or

(C) technologies or upgrades designed to improve collection and reporting of fishery-dependent data, to reduce bycatch, to improve selectivity or reduce adverse impacts of fishing gear, or to improve safety.

(b) Non-vessels treated as vessels. An obligation guaranteed under subsection (a)(6) or (7) shall be treated, for purposes of this chapter, in the same manner and to the same extent as an obligation that aids in financing the construction, reconstruction, reconditioning, or purchase of a vessel, except with respect to provisions that by their nature can only be applied to vessels.

(c) Priorities for certain vessels. In guaranteeing or making a commitment to guarantee an obligation under this chapter, the Secretary shall give priority to--

(1) a vessel that is otherwise eligible for a guarantee and is constructed with assistance under subtitle D of the Maritime Security Act of 2003 (46 U.S.C. 53101 note); and

(2) after applying paragraph (1), a vessel that is otherwise eligible for a guarantee and that the Secretary of Defense determines--

(A) is suitable for service as a naval auxiliary in time of war or national emergency; and

(B) meets a shortfall in sealift capacity or capability.

[The Secretary of Defense shall determine whether a vessel satisfies paragraphs (1) and (2) [paragraphs (2)(A) and (2)(B)] by not later than 30 days after receipt of a request from the Administrator for such a determination.]

46 U.S.C. 53707 (2006). Findings related to obligors and operators.

(a) Responsible obligor. The Secretary [or Administrator] may not guarantee or make a commitment to guarantee an obligation under this chapter unless the Secretary [or Administrator] finds that the obligor is responsible and has the ability, experience, financial resources, and other qualifications necessary for the adequate operation and maintenance of each vessel that will serve as security for the guarantee.

(b) Operators of liner vessels. The Secretary of Transportation [Administrator] may not guarantee or make a commitment to guarantee a loan for the construction, reconstruction, or reconditioning of a liner vessel under this chapter unless the Chairman of the Federal Maritime Commission certifies that the operator of the vessel has not been found by the Commission to have committed, within the previous 5 years--

(1) a violation of part A of subtitle IV of this title that 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; or

(2) a violation of part B of subtitle IV of this title.

(c) Operators of fishing vessels. The Secretary of Commerce may not guarantee or make a commitment to guarantee a loan for the construction, reconstruction, or reconditioning of a fishing vessel under this chapter if the operator of the vessel has been--

(1) held liable, or the vessel has been held liable in rem, for a civil penalty under section 308 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1858) and the operator has not paid the penalty;

(2) found guilty of an offense under 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 under 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 under this title or title 33 and not paid the assessed fine.

(d) Waivers concerning financial condition. The Secretary [or Administrator] shall prescribe 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--

(1) the economic soundness requirements in section 53708(a) of this title are met after the waiver of the financial condition requirement; and

(2) [if deemed necessary by the Secretary or Administrator,] the waiver shall provide for the imposition of other requirements on the obligor designed to compensate for the increased [any significant increase in] risk associated with the obligor's failure to meet regulatory requirements applicable to financial condition.

46 U.S.C. 53708 (2006). Findings related to economic soundness.

(a) By Secretary of Transportation [Administrator]. The Secretary of Transportation [Administrator] may not guarantee or make a commitment to guarantee an obligation under this chapter unless the Secretary [Administrator] finds that the property or project for which the obligation will be executed will be economically sound. In making that finding, the Secretary [Administrator] shall consider--

(1) 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 chapter is in effect;

(2) the market potential for employment of the vessel over the life of the guarantee;

(3) projected revenues and expenses associated with employment of the vessel;

(4) any charter, contract of affreightment, transportation agreement, or similar agreement or undertaking relevant to the employment of the vessel;

(5) other relevant criteria; and

(6) for inland waterways, the need for technical improvements, including increased fuel efficiency or improved safety.

(b) By Secretary of Commerce. The Secretary of Commerce may not guarantee or make a commitment to guarantee an obligation under this chapter unless the Secretary finds, at or prior to the time the commitment is made or the guarantee becomes effective, that--

(1) the property or project for which the obligation will be executed will be economically sound; and

(2) for a fishing vessel, the purpose of the financing or refinancing is consistent with--

(A) the wise use of the fisheries resources and the development, advancement, management, conservation, and protection of the fisheries resources; or

(B) the need for technical improvements, including increased fuel efficiency or improved safety.

(c) Used fishing vessels and facilities. The Secretary of Commerce may not guarantee or make a commitment to guarantee an obligation under this chapter for the purchase of a used fishing vessel or used fishery facility unless the vessel or facility will be--

(1) reconstructed or reconditioned in the United States and will contribute to the development of the United States fishing industry; or

(2) used--

(A) in the harvesting of fish from an underused fishery; or

(B) for a purpose described in the definition of "fishery facility" in section 53701 of this title with respect to an underused fishery.

(d) Independent analysis. The Secretary [or Administrator] may make a determination that aspects of an application under this chapter require independent analysis to be conducted by third party experts due to risk factors associated with markets, technology, [or] financial structures[, or other risk factors identified by the Secretary]. Any independent analysis conducted under this subsection shall be performed by a party chosen by the Secretary [or Administrator]. [A third party independent analysis conducted under paragraph (2) [this subsection] shall be performed by a private sector expert in assessing such risk factors who is selected by the Administrator.]

(e) Additional equity because of increased risks. Notwithstanding any other provision of this chapter, the Secretary [or Administrator] may make a determination that an application under this title requires additional equity because of increased risk factors associated with markets, technology, [or] financial structures[, or other risk factors identified by the Secretary].

46 U.S.C. 53709 (2006). Amount of obligations.

(a) In general. The principal of an obligation may not be guaranteed in an amount greater than the amount determined by multiplying the percentage applicable under subsection (b) by--

(1) the amount paid by or for the account of the obligor (as determined by the Secretary [or Administrator], which determination shall be conclusive) for the

construction, reconstruction, or reconditioning of the vessel used as security for the guarantee; or

(2) if the obligor creates an escrow fund under section 53715 of this title, the actual cost of the vessel.

(b) Limitations on amount borrowed.

(1) In general. Except as otherwise provided, the principal amount of an obligation guaranteed under this chapter may not exceed 75 percent of the actual cost or depreciated actual cost, as determined by the Secretary [or Administrator], of the vessel used as security for the guarantee.

(2) Certain approved vessels. The principal amount may not exceed 87.5 percent of the actual cost or depreciated actual cost if--

(A) the size and speed of the vessel are approved by the Secretary [or Administrator];

(B) the vessel is or would have been eligible for mortgage aid for construction under section 509 of the Merchant Marine Act, 1936, or would have been eligible except that the vessel was built with a construction-differential subsidy and the subsidy has been repaid; and

(C) the vessel is of a type described in that section for which the minimum down payment required by that section is 12.5 percent of the cost of the vessel.

(3) Barges. For a barge constructed without a construction-differential subsidy or for which the subsidy has been repaid, the principal amount may not exceed 87.5 percent of the actual cost or depreciated actual cost.

(4) Fishing vessels and fishery facilities. For a fishing vessel or fishery facility, the principal amount may not exceed 80 percent of the actual cost or depreciated actual cost. However, debt for the vessel or facility may not be placed through the Federal Financing Bank.

(5) OTEC. For an ocean thermal energy conversion facility or plantship constructed without a construction-differential subsidy, the principal amount may not exceed 87.5 percent of the actual cost or depreciated actual cost of the facility or plantship.

(6) Eligible export vessels. For an eligible export vessel, the principal amount may not exceed 87.5 percent of the actual cost or depreciated actual cost.

(c) Security involving multiple vessels. The principal amount of an obligation having more than one vessel as security for the guarantee may not exceed the sum of the principal amounts allowable for all the vessels.

(d) Prohibition on uniform percentage limitations. The Secretary [or Administrator] may not establish a percentage under any provision of subsection (b) that is to be applied uniformly to all guarantees or commitments to guarantee made under that provision.

(e) Prohibition on minimum principal amount. The Secretary may not establish, as a condition of eligibility for a guarantee under this chapter, a minimum principal amount for an obligation covering the reconstruction or reconditioning of a fishing vessel or fishery facility. For purposes of this chapter, 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.

46 U.S.C. 53710 (2006). Contents of obligations.

(a) In general. An obligation guaranteed under this chapter must--

(1) provide for payments by the obligor satisfactory to the Secretary [or Administrator];

(2) provide for interest (exclusive of guarantee fees and other fees) at a rate not more than the annual rate on the unpaid principal that the Secretary [or Administrator] determines is reasonable, considering the range of interest rates prevailing in the private market for similar loans and the risks assumed by the Secretary [or Administrator]

(3) have a maturity date satisfactory to the Secretary [or Administrator], but--

(A) not more than 25 years after the date of delivery of the vessel used as security for the guarantee; or

(B) if the vessel has been reconstructed or reconditioned, not more than the later of--

(i) 25 years after the date of delivery of the vessel; or

(ii) the remaining years of useful life of the vessel as determined by the Secretary; and

(4) provide, or a related agreement must provide, that if the vessel used as security for the guarantee is a delivered vessel, the vessel shall be--

(A) in class A-1, American Bureau of Shipping, or meet other standards acceptable to the Secretary [or Administrator], with all required certificates, including marine inspection certificates of the Coast Guard or, in the case of an eligible export vessel, of the appropriate foreign authorities under a treaty, convention, or other international agreement to which the United States is a party, and with all outstanding requirements and recommendations necessary for class retention accomplished, unless the Secretary [or Administrator] permits a deferment of repairs necessary to meet these requirements; and

(B) well equipped, in good repair, and in every respect seaworthy and fit for service.

(b) Provisions for certain passenger vessels.

(1) In general. With the Secretary's [Administrator's] approval, if the vessel used as security for the guarantee is a passenger vessel having the tonnage, speed, passenger accommodations, and other characteristics described in section 503 of the Merchant Marine Act, 1936, an obligation guaranteed under this chapter or a related agreement may provide that--

(A) the only recourse by the United States Government against the obligor for payments under the guarantee will be repossession of the vessel and assignment of insurance claims; and

(B) the obligor's liability for payments under the guarantee will be satisfied and discharged by the surrender of the vessel and all interest in the vessel to the Government in the condition described in paragraph (2).

(2) Surrender of vessel.

(A) In general. On surrender, the vessel must be--

(i) free and clear of all liens and encumbrances except the security interest conveyed to the Secretary [Administrator] under this chapter;

(ii) in class; and

(iii) in as good order and condition (ordinary wear and tear excepted) as when acquired by the obligor.

(B) Covering deficiencies by insurance. To the extent covered by insurance, a deficiency related to a requirement in subparagraph (A) may be satisfied by assignment of the obligor's insurance claims to the Government.

(c) Other provisions to protect security interests. An obligation guaranteed under this chapter and any related agreement must contain other provisions for the protection of the security interests of the Government (including acceleration, assumption, and subrogation provisions and the issuance of notes by the obligor to the Secretary [or Administrator]), liens and releases of liens, payment of taxes, and other matters that the Secretary [or Administrator] may prescribe.

46 U.S.C. 53711 (2006). Security interest.

(a) In general. The Secretary [or Administrator] may guarantee an obligation under this chapter only if the obligor conveys or agrees to convey to the Secretary [or Administrator] a security interest the Secretary [or Administrator] considers necessary to protect the interest of the United States Government.

(b) Multiple vessels and types of security. The security interest may relate to more than one vessel and may consist of more than one type of security. If the security interest relates to more than one vessel, the obligation may have the latest maturity date allowable under section 53710(a)(3) of this title for any of the vessels used as security for the guarantee. However, the Secretary [or Administrator] may require such payments of principal prior to maturity, with respect to all related obligations, as the Secretary [or Administrator] considers necessary to maintain adequate security for the guarantee.

46 U.S.C. 53712 (2006). Monitoring financial condition and operations of obligor.

(a) In general. The Secretary [or Administrator] shall monitor the financial condition and operations of the obligor on a regular basis during the term of the guarantee. The Secretary [or Administrator] shall document the results of the monitoring on an annual or quarterly basis depending on the condition of the obligor. If the Secretary [or Administrator] determines that the financial condition of the obligor warrants additional protections to the Secretary [or Administrator], the Secretary [or Administrator] shall take appropriate action under subsection (b). If the Secretary [or Administrator] determines that the financial condition of the obligor jeopardizes its continued ability to perform its responsibilities in connection with the guarantee of an obligation by the

Secretary [or Administrator], the Secretary [or Administrator] shall make an immediate determination whether default should take place and whether further measures described in subsection (b) should be taken to protect the interests of the Secretary [or Administrator] while ensuring that program objectives are met.

(b) Contract provisions to protect Secretary [or Administrator]. The Secretary [or Administrator] shall include provisions in a loan agreement with an obligor that provides additional authority to the Secretary [or Administrator] to take action to limit potential losses in connection with a defaulted loan or a loan that is in jeopardy due to the deteriorating financial condition of the obligor. These provisions include requirements for additional collateral or greater equity contributions that are effective upon the occurrence of verifiable conditions relating to the obligor's financial condition or the status of the vessel or shipyard project. [If the Secretary of Administrator has waived a requirement under section 1104A(d) [section 53707(d) of this title], the loan agreement shall include requirements for additional payments, collateral, or equity contributions to meet such waived requirement upon the occurrence of verifiable conditions indicating that the obligor's financial condition enables the obligor to meet the waived requirement.]

46 U.S.C. 53713 (2006). Administrative fees.

(a) In general. The Secretary [or Administrator] shall charge and collect from the obligor fees the Secretary [or Administrator] considers reasonable for--

(1) investigating an application for a guarantee;

(2) appraising property offered as security for a guarantee;

(3) issuing a commitment;

(4) providing services related to an escrow fund under section 53715 of this title; and

(5) inspecting property during construction, reconstruction, or reconditioning.

(b) Total fee limitation. The total fees under subsection (a) may not exceed 0.5 percent of the original principal amount of the obligations to be guaranteed.

(c) Fees for independent analysis. The Secretary [or Administrator] may charge and collect fees to cover the costs of independent analysis under section 53708(d) of this title. Notwithstanding section 3302 of title 31, any fee collected under this subsection shall--

(1) be credited as an offsetting collection to the account that finances the administration of the loan guarantee program;

(2) be available for expenditure only to pay the costs of activities and services for which the fee is imposed; and

(3) remain available until expended.

46 U.S.C. 53714 (2006). Guarantee fees.

(a) Regulations. Subject to this section, the Secretary [or Administrator] shall prescribe regulations to assess a fee for guaranteeing an obligation under this chapter.

(b) Computation of fee.

(1) In general. The amount of the fee for a guarantee under this chapter shall be equal to the sum of the amounts determined under paragraph (2) for the years in which the guarantee is in effect.

(2) Present value for each year. The amount referred to in paragraph (1) for a year in which the guarantee is in effect is the present value of the amount calculated under paragraph (3). To determine the present value, the Secretary [or Administrator] shall apply a discount rate determined by the Secretary of the Treasury, considering current market yields on outstanding obligations of the United States Government having periods to maturity comparable to the period to maturity for the guaranteed obligation.

(3) Calculation of amount. The amount referred to in paragraph (2) shall be calculated by multiplying--

(A) the estimated average unpaid principal amount of the obligation that will be outstanding during the year (excluding the average amount, other than interest, on deposit during the year in an escrow fund under section 53715 of this title); by

(B) the fee rate set under paragraph (4).

(4) Setting fee rates. To set the fee rate referred to in paragraph (3)(B), the Secretary [or Administrator] shall establish a formula that--

(A) takes into account the security provided for the guaranteed obligation; and

(B) is a sliding scale based on the creditworthiness of the obligor, using--

(i) the lowest allowable rate under paragraph (5) for the most creditworthy obligors; and

(ii) the highest allowable rate under paragraph (5) for the least creditworthy obligors.

(5) Permissible range of rates. The fee rate set under paragraph (4) shall be--

(A) for a delivered vessel or equipment, at least 0.5 percent and not more than 1 percent; and

(B) for a vessel to be constructed, reconstructed, or reconditioned or equipment to be delivered, at least 0.25 percent and not more than 0.5 percent.

(c) When fee collected. A fee for the guarantee of an obligation under this chapter shall be collected not later than the date on which an amount is first paid on the obligation.

(d) Financing the fee. A fee paid under this section is eligible to be financed under this chapter and shall be included in the actual cost of the obligation guaranteed.

(e) Not refundable. A fee paid under this section is not refundable. However, an obligor shall receive credit for the amount paid for the remaining term of the

obligation if the obligation is refinanced and guaranteed under this chapter after the refinancing.

46 U.S.C. 53715 (2006). Escrow fund.

(a) In general. If the proceeds of an obligation guaranteed under this chapter are to be used to finance the construction, reconstruction, or reconditioning of a vessel that will serve as security for a guarantee under this chapter, the Secretary [or Administrator] may accept and hold in escrow, under an escrow agreement with the obligor, a portion of the proceeds of all obligations guaranteed under this chapter whose proceeds are to be so used which is equal to--

(1) the excess of--

(A) the principal amount of all obligations whose proceeds are to be so used; over

(B) 75 percent or 87.5 percent, whichever is applicable under section 53709(b) of this title, of the amount paid by or for the account of the obligor for the construction, reconstruction, or reconditioning of the vessel; plus

(2) any interest the Secretary [or Administrator] may require on the amount described in paragraph (1).

(b) Security involving both uncompleted and delivered vessels. If the security for the guarantee of an obligation relates both to a vessel to be constructed, reconstructed, or reconditioned and to a delivered vessel, the principal amount of the obligation shall be prorated for purposes of subsection (a) under regulations prescribed by the Secretary [or Administrator].

(c) Disbursement before termination of agreement.

(1) Purposes. The Secretary [or Administrator] shall disburse amounts in the escrow fund, as specified in the escrow agreement, to--

(A) pay amounts the obligor is obligated to pay for--

(i) the construction, reconstruction, or reconditioning of a vessel used as security for the guarantee; and

(ii) interest on the obligations;

(B) redeem the obligations under a refinancing guaranteed under this chapter; and

(C) pay any excess interest deposits to the obligor at times provided for in the escrow agreement.

(2) Manner of payment. If a payment becomes due under the guarantee before the termination of the escrow agreement, the amount in the escrow fund at the time the payment becomes due, including realized income not yet paid to the obligor, shall be paid into the appropriate account under section 53717 of this title. The amount shall be credited against amounts due or to become due from the obligor to the Secretary [or Administrator] on the guaranteed obligations or, to the extent not so required, be paid to the obligor.

(d) Payments required before disbursement.

(1) In general. No disbursement shall be made under subsection (c) 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 12.5 percent, whichever is applicable under section 53709(b) of this title, of the aggregate actual cost of the vessel, as previously approved by the Secretary [or Administrator]. If the aggregate actual cost of the vessel has increased since the Secretary's [or Administrator'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 (c) 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 12.5 percent, as applicable, of the increase, as determined by the Secretary [or Administrator], in the aggregate actual cost of the vessel. This paragraph does not require the Secretary [or Administrator] to consent to finance any increase in actual cost unless the Secretary [or Administrator] determines that such an increase in the obligation meets all the terms and conditions of this chapter or other applicable law.

(2) Documented proof of progress requirement. The Secretary [or Administrator] 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 [or Administrator] 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.

(e) Disbursement on termination of agreement.

(1) In general. If a payment has not become due under the guarantee before the termination of the escrow agreement, the balance of the escrow fund at the time of termination shall be disbursed to--

(A) prepay the excess of--

(i) the principal amount of all obligations whose proceeds are to be used to finance the construction, reconstruction, or reconditioning of the vessel used or to be used as security for the guarantee; over

(ii) 75 percent or 87.5 percent, whichever is applicable under section 53709(b) of this title, of the actual cost of the vessel to the extent paid; and

(B) pay interest on that prepaid amount of principal.

(2) Remaining balance. Any remaining balance of the escrow fund shall be paid to the obligor.

(f) Investment. The Secretary [or Administrator] may invest and reinvest any part of an escrow fund in obligations of the United States Government with maturities such that the escrow fund will be available as required for purposes

of the escrow agreement. Investment income shall be paid to the obligor when received.

(g) Terms to protect Government. The escrow agreement shall contain other terms the Secretary [or Administrator] considers necessary to protect fully the interests of the Government.

46 U.S.C. 53716 (2006). Deposit fund.

(a) In general. There is a deposit fund in the Treasury for purposes of this section. The Secretary [or Administrator], in accordance with an agreement under subsection (b), may deposit into and hold in the fund cash belonging to an obligor to serve as collateral for a guarantee made under this chapter with respect to the obligor.

(b) Agreement. The Secretary [or Administrator] and an obligor shall make 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 fund. The agreement shall contain--

(1) terms and conditions required by this section;

(2) terms that grant to the United States Government a security interest in all amounts deposited into the fund; and

(3) any additional terms considered by the Secretary [or Administrator] to be necessary to protect fully the interests of the Government.

(c) Investment. The Secretary [or Administrator] may invest and reinvest any part of the amounts in the fund in obligations of the Government with maturities such that amounts in the fund will be available as required for purposes of the agreement under subsection (b). Cash balances in the 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. Cash deposited into the fund may not be withdrawn without the consent of the Secretary [or Administrator].

(2) Use of income. Subject to paragraph (3), the Secretary [or Administrator] may pay any income earned on cash of an obligor deposited into the fund in accordance with the agreement with the obligor under subsection (b).

(3) Retention against default. The Secretary [or Administrator] may retain and offset any or all of the cash of an obligor in the fund, and any income realized thereon, as part of the Secretary's [or Administrator's] recovery against the obligor in case of a default by the obligor on an obligation.

46 U.S.C. 53717 (2006). Management of funds in the Treasury.

(a) Definition. In this section, the term "FCRA" means the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.).

(b) Loan guarantees by Secretary of Transportation [Administrator].

(1) When not subject to FCRA. The Secretary of Transportation [Administrator] shall account for payments and disbursements involving

obligations guaranteed under this chapter and not subject to FCRA in an account in the Treasury entitled the Federal Ship Financing Fund Liquidating Account (a liquidating account as defined in FCRA).

(2) When subject to FCRA. The Secretary of Transportation [Administrator] shall account for payments and disbursements involving obligations guaranteed under this chapter and subject to FCRA in a separate account in the Treasury entitled the Federal Ship Financing Guaranteed Loan Financing Account (a financing account as defined in FCRA).

(c) Loan guarantees by Secretary of Commerce.

(1) When not subject to FCRA. The Secretary of Commerce shall account for payments and disbursements involving obligations guaranteed under this chapter and not subject to FCRA in a separate account in the Treasury established for this purpose.

(2) When subject to FCRA. The Secretary of Commerce shall account for payments and disbursements involving obligations guaranteed under this chapter and subject to FCRA in a separate account in the Treasury established for this purpose.

(d) Direct loans by Secretary of Commerce. The Secretary of Commerce shall account for payments and disbursements involving direct loans made under this chapter in a separate account in the Treasury established for this purpose.

46 U.S.C. 53718 (2006). Annual report to Congress. The Secretary of Transportation [Administrator] shall report to Congress annually on the loan guarantee program under this chapter. Each report 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.

SUBCHAPTER II - DEFAULT PROVISIONS.

46 U.S.C. 53721 (2006). Rights of obligee.

(a) Demands by obligees. Except as provided in subsection (c), if an obligor has continued in default for 30 days in the payment of principal or interest on an obligation guaranteed under this chapter, the obligee or the obligee's agent may demand that the Secretary [or Administrator] pay the unpaid principal amount of the obligation and the unpaid interest on the obligation to the date of payment. The demand must be made within the earlier of--

(1) a period that may be specified in the guarantee or a related agreement; or
(2) 90 days from the date of the default.

(b) Payments by Secretary [or Administrator].

(1) In general. If a demand is made under subsection (a), the Secretary [or Administrator] shall pay to the obligee or the obligee's agent the unpaid principal amount of the obligation and the unpaid interest on the obligation to the date of payment. Payment shall be made within the earlier of--

(A) a period that may be specified in the guarantee or a related agreement; or

(B) 30 days from the date of the demand.

(2) If no existing default. The Secretary [or Administrator] is not required to make payment under this subsection if, within the appropriate period under paragraph (1), the Secretary [or Administrator] finds that the obligor was not in default or that the default was remedied before the demand.

(c) Assumption of rights and obligations before demand. An obligee or the obligee's agent may not demand payment under this section if the Secretary [or Administrator], before the demand and on terms that may be provided in the obligation or a related agreement, has assumed the obligor's rights and duties under the obligation and any related agreement and made any payment in default. However, the guarantee of the obligation remains in effect after the Secretary's [or Administrator's] assumption.

46 U.S.C. 53722 (2006). Actions by Secretary [or Administrator].

(a) General authority. On default under an obligation or related agreement between the Secretary [or Administrator] and the obligor, the Secretary [or Administrator], on terms that may be provided in the obligation or agreement, may--

(1) assume the obligor's rights and duties under the obligation or agreement, make any payment in default, and notify the obligee or the obligee's agent of the default and the Secretary's [or Administrator's] assumption; or

(2) notify the obligee or the obligee's agent of the default.

(b) Demands by obligees.

(1) Demand. If the Secretary [or Administrator] proceeds under subsection (a)(2), the obligee or the obligee's agent may demand that the Secretary [or Administrator] pay the unpaid principal amount of the obligation and the unpaid interest on the obligation. The demand must be made within the earlier of--

(A) a period that may be specified in the guarantee or a related agreement; or

(B) 60 days from the date of the Secretary's [or Administrator's] notice.

(2) Payment. If a demand is made under paragraph (1), the Secretary [or Administrator] shall pay to the obligee or the obligee's agent the unpaid principal amount of the obligation and the unpaid interest on the obligation to the date of payment. Payment shall be made within the earlier of--

(A) a period that may be specified in the guarantee or a related agreement; or

(B) 30 days from the date of the demand.

(c) Continued effect of guarantee. A guarantee of an obligation remains in effect after an assumption of the obligation by the Secretary [or Administrator].

(d) Additional responses. If there is a default on an obligation, the Secretary shall conduct operations under this chapter in a manner that--

(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.

46 U.S.C. 53723 (2006). Payments by Secretary [or Administrator] and issuance of obligations.

(a) Cash payment. Amounts required to be paid by the Secretary [or Administrator] under section 53721 or 53722 of this title shall be paid in cash.

(b) Issuance of obligations. If amounts in the appropriate account under section 53717 of this title are not sufficient to make a payment required under section 53721 or 53722 of this title, the Secretary [or Administrator] may issue obligations to the Secretary of the Treasury. The Secretary [or Administrator], with the approval of the Secretary of the Treasury, shall prescribe the form, denomination, maturity, and other terms (except the interest rate) of the obligations. The Secretary of the Treasury shall set the interest rate for the obligations, considering the current average market yield on outstanding marketable obligations of the United States Government of comparable maturities during the month before the obligations are issued.

(c) Purchase of obligations. The Secretary of the Treasury shall purchase the obligations issued under this section. To purchase the obligations, the Secretary of the Treasury may use as a public debt transaction the proceeds from the sale of securities issued under chapter 31 of title 31. The purposes for which securities may be issued under that chapter are extended to include the purchase of obligations under this subsection. The Secretary of the Treasury may sell obligations purchased under this section. A redemption, purchase, or sale of the obligations by the Secretary of the Treasury is a public debt transaction of the Government.

(d) Deposits and redemptions. The Secretary [or Administrator] shall deposit amounts borrowed under this section in the appropriate account under section 53717 of this title and make redemptions of the obligations from that account.

46 U.S.C. 53724 (2006). Rights to secured property.

(a) Acquisition of security rights. When the Secretary [or Administrator] makes a payment on, or assumes, an obligation under section 53721 or 53722 of this title, the Secretary [or Administrator] acquires the rights under the security agreement with the obligor in the security held by the Secretary [or Administrator] to guarantee the obligation.

(b) Use and disposition of secured property. Notwithstanding any other law relating to the acquisition, handling, or disposal of property by the United States Government, the Secretary [or Administrator] has the right, in the Secretary's [or Administrator's] discretion, to complete, reconstruct, recondition, renovate, repair, maintain, operate, charter, or sell any property acquired under a security agreement with an obligor, or to place a vessel so acquired in the National Defense Reserve Fleet. The terms of a sale under this subsection shall be as approved by the Secretary [or Administrator].

46 U.S.C. 53725 (2006). Actions against obligor.

(a) In general. For a default under a guaranteed obligation or related agreement, the Secretary [or Administrator] may take any action against the obligor or another liable party that the Secretary [or Administrator] considers necessary to protect the interests of the United States Government. A civil action may be brought in the name of the United States or the obligee. The obligee shall make available to the Government all records and evidence necessary to prosecute the action.

(b) Title, possession, and purchase.

(1) In general. The Secretary [or Administrator] may--

(A) accept a conveyance of title to and possession of property from the obligor or another party liable to the Secretary [or Administrator]; and

(B) purchase the property for an amount not greater than the unpaid principal amount of the obligation and interest thereon.

(2) Payment of excess. If, through the sale of property, the Secretary [or Administrator] receives an amount of cash greater than the unpaid principal amount of the obligation, the unpaid interest on the obligation, and the expenses of collecting those amounts, the Secretary [or Administrator] shall pay the excess to the obligor.

SUBCHAPTER III - PARTICULAR PROJECTS.

46 U.S.C. 53731 (2006). Commercial demonstration ocean thermal energy conversion facilities and plantships.

(a) In general. Under subchapter I of this chapter, the Secretary [Administrator] may guarantee or make a commitment to guarantee the payment of the principal of and interest on an obligation that aids in financing (including reimbursement of an obligor for expenditures previously made for) the construction, reconstruction, or reconditioning of a commercial

demonstration ocean thermal energy conversion facility or plantship. This section may be used to guarantee obligations for a total of not more than 5 separate facilities and plantships or a demonstrated 400 megawatt capacity, whichever comes first.

(b) Applicability of other provisions. Except as otherwise provided in this section, a guarantee or commitment to guarantee under this section is subject to all the provisions applicable to a guarantee or commitment to guarantee under subchapter I of this chapter.

(c) Economic soundness. The required determination of economic soundness under section 53708 of this title applies to a guarantee or commitment to guarantee for that portion of a facility or plantship not to be supported with appropriated Federal funds.

(d) Reasonableness of risk. A guarantee or commitment to guarantee may not be made under this section unless the Secretary of Energy, in consultation with the Secretary [Administrator], certifies to the Secretary [Administrator] that, for the 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 United States Government to a reasonable level. In deciding whether to issue such a certification, the Secretary of Energy shall consider--

(1) the successful demonstration of the technology to be used in the 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 the facility or plantship.

(e) Amount of obligation. The total principal amount of an obligation guaranteed under this section may not exceed 87.5 percent of--

(1) the actual cost or depreciated actual cost of the facility or plantship; or

(2) if the facility or plantship is supported with appropriated Federal funds, the total principal amount of that portion of the actual cost or depreciated actual cost for which the obligor is obligated to secure financing under the agreement between the obligor and the Department of Energy or other Federal agency.

(f) OTEC Demonstration Fund.

(1) In general. There is a special subaccount, known as the OTEC Demonstration Fund, in the account established under section 53717(b)(1) of this title.

(2) Use and operation. The OTEC Demonstration Fund shall be used for obligation guarantees authorized under this section that do not qualify under subchapter I of this chapter. Except as otherwise provided in this section, the OTEC Demonstration Fund shall be operated in the same manner as the parent account. However--

(A) amounts received by the Secretary [Administrator] under subchapter I of this chapter related to guarantees or commitments to guarantee made under this section shall be deposited only in the OTEC Demonstration Fund; and

(B) when obligations issued by the Secretary [Administrator] under section 53723 of this title related to the OTEC Demonstration Fund are outstanding, any amount received by the Secretary [Administrator] under subchapter I of this chapter related to ocean thermal energy conversion facilities or plantships shall be deposited in the OTEC Demonstration Fund.

(3) Transfers. Assets in the OTEC Demonstration Fund may be transferred to the parent account when and to the extent the balance in the OTEC Demonstration Fund exceeds the total guarantees or commitments to guarantee made under this section then outstanding, plus obligations issued by the Secretary [Administrator] under section 53723 of this title related to the OTEC Demonstration Fund.

(4) Liability. The parent account is not liable for a guarantee or commitment to guarantee made under this section.

(5) Maximum unpaid principal amount. The total unpaid principal amount of the obligations guaranteed with the backing of the OTEC Demonstration Fund and outstanding at any one time may not exceed $1,650,000,000.

(g) Issuance and payment of obligations. Section 53723 of this title applies to the OTEC Demonstration Fund. However, obligations issued by the Secretary [Administrator] under that section related to the OTEC Demonstration Fund shall be payable only from proceeds realized by the OTEC Demonstration Fund.

(h) Taxation of interest. Interest on an obligation guaranteed under this section shall be included in gross income under chapter 1 of the Internal Revenue Code of 1986 *(*26 U.S.C. ch. 1*)*.

46 U.S.C. 53732 (2006). Eligible export vessels.

(a) Applicable terms. The Secretary [Administrator] may guarantee an obligation for an eligible export vessel in accordance with--

(1) the terms applicable under this chapter for vessels documented under the laws of the United States; or

(2) other terms the Secretary [Administrator] determines are more favorable than those terms and compatible with export credit terms offered by foreign governments for the sale of vessels built in foreign shipyards.

(b) Interagency council.

(1) Establishment. There is an interagency council to carry out this section.

(2) Composition. The council is composed of the following individuals or their designees:

(A) The Secretary of Transportation, who is the chairman of the council.

(B) The Secretary of the Treasury.

(C) The Secretary of State.

(D) The Assistant to the President for Economic Policy.

(E) The United States Trade Representative.

(F) The President and Chairman of the Export-Import Bank of the United States.

(3) Functions. The council shall--

(A) obtain information on shipbuilding loan guarantees, direct and indirect subsidies, and other favorable treatment of shipyards provided by foreign governments to shipyards in competition with United States shipyards;

(B) consult regularly with United States shipbuilders to obtain the essential information about international shipbuilding competition on which to set terms for loan guarantees under subsection (a)(2); and

(C) provide guidance to the Secretary [Administrator] in establishing terms for loan guarantees under subsection (a)(2).

(4) Annual report. Not later than January 31 of each year, the Secretary [Administrator] shall submit to Congress a report on activities of the Secretary [Administrator] under this section during the preceding year. The report shall include--

(A) documentation of sources of information about assistance by governments of other countries to shipyards in those countries; and

(B) a summary of recommendations made to the Secretary [Administrator] during the preceding year about applications submitted to the Secretary [Administrator] during that year for loan guarantees to construct eligible export vessels.

(c) Required findings.

(1) Benefit to shipbuilding industry. The Secretary [Administrator] may not guarantee or make a commitment to guarantee an obligation for an eligible export vessel unless the Secretary [Administrator] finds that the construction, reconstruction, or reconditioning of the 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.

(2) Priority of documented vessels. The Secretary [Administrator] may not make a commitment to guarantee an obligation for an eligible export vessel unless the Secretary [Administrator] determines that making the commitment will not result in denial of an economically sound application for a commitment to guarantee an obligation for a vessel documented under the laws of the United States and operating in the domestic or foreign commerce of the United States. The Secretary [Administrator] has sole discretion in making the determination. In making the determination, the Secretary [Administrator] shall consider--

(A) the status and economic soundness of pending applications for commitments to guarantee obligations for vessels documented under the laws of the United States that are operating or will be operating in the domestic or foreign commerce of the United States; and

(B) the amount of guarantee authority available.

(d) Restriction on transfer of vessel. The Secretary [Administrator] may not guarantee or make a commitment to guarantee an obligation for an eligible export vessel unless the owner of the vessel agrees with the Secretary [Administrator] that the vessel will not be transferred to a country designated by the Secretary of Defense as a country whose interests are hostile to the interests of the United States.

(e) Review by Secretary of Defense.

(1) Notification. The Secretary shall promptly notify the Secretary of Defense of the receipt of an application for a loan guarantee for an eligible export vessel.

(2) Disapproval. The Secretary of Defense, within 30 days after receiving the notice, may disapprove the guarantee based on an assessment of the potential use of the vessel in a manner that may harm the national security interests of the United States. The Secretary [Administrator] may not disapprove a guarantee solely because of the type of vessel to be constructed.

(3) Delegation. The authority of the Secretary of Defense to disapprove a guarantee under this subsection may be delegated only to a civilian officer of the Department of Defense appointed by the President by and with the advice and consent of the Senate.

(4) Prohibition. The Secretary [Administrator] may not make a loan guarantee disapproved by the Secretary of Defense under this subsection.

(f) Expiration of authority. The Secretary [Administrator] may not issue a commitment to guarantee an obligation for an eligible export vessel under this chapter after the last date on which such a commitment may be issued under any treaty or convention entered into after November 30, 1993, that prohibits guarantee of such an obligation.

46 U.S.C. 53733 (2006). Shipyard modernization and improvement.

(a) Definitions. In this section:

(1) Advanced shipbuilding technology. 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 that 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) General shipyard facility. The term "general shipyard facility" means--

(A) for operations on land--

(i) a structure or appurtenance thereto designed for the construction, reconstruction, repair, rehabilitation, or refurbishment of a vessel, including a graving dock, building way, ship lift, wharf, or pier crane;

(ii) the land necessary for the structure or appurtenance; and

(iii) equipment that is for use with the structure or appurtenance and that is necessary for performing a function referred to in clause (i); and

(B) for operations not on land, a vessel, floating drydock, or barge built in the United States and used for, equipped to be used for, or of a type normally used for, performing a function referred to in subparagraph (A)(i).

(3) Modern shipbuilding technology. The term "modern shipbuilding technology" means the best available proven technology, techniques, and processes appropriate to enhancing the productivity of shipyards.

(b) General authority. Under subchapter I of this chapter, the Secretary [Administrator] may guarantee or make a commitment to guarantee the payment of the principal of and interest on an obligation for advanced shipbuilding technology and modern shipbuilding technology of a general shipyard facility in the United States. Only a private shipyard is eligible to receive a guarantee.

(c) Applicability of other provisions. Except as otherwise provided in this section, a guarantee or commitment to guarantee under this section is subject to all the provisions applicable to a guarantee or commitment to guarantee under subchapter I of this chapter.

(d) Amount of obligation. The principal amount of an obligation guaranteed under this chapter may not exceed 87.5 percent of the actual cost of the advanced shipbuilding technology or modern shipbuilding technology.

(e) Transfer of amounts. The Secretary [Administrator] may accept the transfer of amounts from a department, agency, or instrumentality of the United States Government and may use those amounts to cover the cost (as defined in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a)) of making guarantees or commitments to guarantee under this section.

46 U.S.C. 53734 (2006). Replacement of vessels because of changes in operating standards.

(a) General authority. Notwithstanding any other provision of this chapter, the Secretary [or Administrator], on terms the Secretary [or Administrator] may prescribe, may guarantee or make a commitment to guarantee the payment of the principal of and interest on an obligation that aids in financing or refinancing (including reimbursement of an obligor for expenditures previously made for) a contract for the construction or reconstruction of a vessel if--

(1) the vessel is designed and to be used for commercial use in coastwise, intercoastal, or foreign trade;

(2) the construction or reconstruction is necessary to replace a vessel that cannot continue to be operated because of a change required by law in the standards for the operation of vessels, and the applicant for the guarantee or

commitment would not otherwise legally be able to continue operating vessels in the trades in which the applicant operated vessels before the change;

(3) 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 the change in operating standards;

(4) the capacity of the vessels to be constructed or reconstructed under this section will not increase the cargo carrying capacity of the vessels being replaced;

(5) the Secretary [or Administrator] has not determined that the market demand for the vessel over its useful life will diminish so as to make granting the guarantee fiduciary imprudent;

(6) the vessel, if to be reconstructed, will have a useful life of at least 15 years after the reconstruction; and

(7) the Secretary [or Administrator] has considered the criteria specified in section 53708(a)(3)-(5) of this title.

(b) Term and amount of obligation.

(1) Term. The term of an obligation guaranteed under this section may not exceed 25 years.

(2) Amount. The amount of an obligation guaranteed under this section may not exceed 87.5 percent of the actual cost or depreciated actual cost to the applicant for the construction or reconstruction of the vessel. The Secretary [or Administrator] may not establish a percentage under this paragraph that is to be applied uniformly to all guarantees or commitments to guarantee made under this section.

(c) Applicability of other provisions. A guarantee or commitment to guarantee under this section is also subject to sections 53701, 53702(a), 53704, 53705, 53707(a), 53708(d) and (e), 53709(a), 53710(a)(1), (2), and (4) and (c), 53711(a), 53713, 53714, 53717, and 53721--53725 of this title.

(d) Security against default. The Secretary [or Administrator] shall require by regulation that an applicant under this section provide adequate security against default.

(e) Guarantee fees. The Secretary [or Administrator] may establish a fee for the guarantee of an obligation under this section that is in addition to the fee established under section 53714 of this title. The fee may be--

(1) an annual fee of not more than an additional 1 percent added to the fee established under section 53714 of this title; or

(2) a fee 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.

46 U.S.C. 53735 (2006). Fisheries financing and capacity reduction.
(a) Definition. In this section, the term "program" means a fishing capacity reduction program established under section 312 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861a).
(b) Guarantee authority. The Secretary may 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 conditions the Secretary considers necessary for this section to achieve the objective of the program and to protect the interest of the United States.
(c) Requirements of obligations. A debt obligation guaranteed under this section shall-- (1) be treated in the same manner and to the same extent as other obligations guaranteed under this chapter, except with respect to provisions of this chapter 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 second sentence of subsection (d)(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.
(d) Fishing Capacity Reduction Fund.
(1) In general. There is a separate account in the Treasury, known as the Fishing Capacity Reduction 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) Availability of amounts. 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. Funds available for this purpose from other amounts available for the program may also be used to pay those debt obligations.
(3) Investment. Amounts 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 Government.
(e) Regulations. The Secretary shall prescribe regulations the Secretary considers necessary to carry out this section.

FEDERAL CREDIT REPORT 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.

CHAPTER 539—WAR RISK INSURANCE.[73]

46 U.S.C. 53901 (2006). Definitions. In this chapter:

(1) AMERICAN VESSEL.—The term "American vessel" includes—
(A) a documented vessel with a registry or coastwise endorsement under chapter 121 of this title;
(B) an undocumented vessel owned or chartered by or made available to the United States Government; and
(C) a tug, barge, or other watercraft (whether or not documented) owned by a citizen of the United States and used in essential water transportation or in the fisheries, except only for sport fishing.
(2) CARGO.—The term "cargo" includes a loaded or empty container on a vessel.
(3) TRANSPORTATION IN THE WATERBORNE COMMERCE OF THE UNITED STATES.—The term "transportation in the waterborne commerce of the United States" includes the operation of a vessel in the fisheries, except only for sport fishing.
(4) WAR RISKS.—The term "war risks" includes, to the extent the Secretary of Transportation determines—
(A) any part of a loss excluded from marine insurance coverage under a 'free of capture or seizure' clause or analogous clause; and
(B) any other loss from a hostile act, including confiscation, expropriation, nationalization, or deprivation.

46 U.S.C. 53902 (2006). Authority to provide insurance.

(a) In General. With the approval of the President, and after such consultation with interested agencies of United States Government as the President may require, the Secretary of Transportation may provide insurance and reinsurance against loss or damage from war risks as provided by this chapter whenever it appears to the Secretary that insurance adequate for the needs of the waterborne commerce of the United States cannot be obtained on reasonable terms and conditions from companies authorized to do insurance business in a State of the United States.
(b) Consideration of Risk. Insurance or reinsurance under this chapter shall be based, insofar as practicable, on consideration of the risk involved.
(c) Availability of Vessel During War or National Emergency. Insurance or reinsurance for a vessel may be provided under this chapter only on the condition that the vessel will be available to the Government in time of war or national emergency.

---

[73] Section 8 of Public Law 109-304, approved October 6, 2006 (120 STAT. 1626).

46 U.S.C. 53903 (2006). Insurable interests.

(a) In General. The Secretary of Transportation may provide insurance and reinsurance under this chapter for—
(1) an American vessel, including a vessel under construction;
(2) a foreign vessel—
(A) owned by a citizen of the United States; or
(B) engaged in transportation in the waterborne commerce of the United States or in such other transportation by water or such other services as the Secretary considers to be in the interest of the national defense or national economy of the United States, when so engaged;
(3) cargo—
(A) shipped or to be shipped on a vessel insurable under this section, including by express or registered mail;
(B) owned by a citizen or resident of the United States;
(C) imported to or exported from the United States, or sold or purchased by a citizen or resident of the United States, under a contract of sale or purchase the terms of which provide that the risk of loss by war risks or the obligation to provide insurance against war risks is on a citizen or resident of the United States; or
(D) shipped between ports in the United States;
(4) disbursements, including advances to masters and general average disbursements, and freight and passage money of a vessel insurable under this section;
(5) personal effects of an individual on a vessel insurable under this section;
(6) loss of life, injury, or detention by an enemy of the United States after capture, with respect to an individual on a vessel insurable under this section; and
(7) statutory or contractual obligations or other liabilities of a vessel insurable under this section or of the owner or charterer of such a vessel, of a nature customarily covered
by insurance.

(b) Considerations for Foreign Vessels. In determining whether to provide insurance or reinsurance for a foreign vessel, the Secretary shall consider the characteristics, employment, and general management of the vessel by the owner or charterer.

(c) Non-War-Risks. Insurance of a risk under subsection (a)(5)–(7), insofar as it involves a liability related to an individual on the vessel, may include risks other than war risks to the extent the Secretary considers advisable.

46 U.S.C. 53904 (2006). Liability insurance for persons involved in war or defense efforts.

(a) In General. The Secretary of Transportation may provide insurance under this chapter against legal liability that a person may incur in providing services or facilities for a vessel if, in the opinion of the Secretary, the insurance—

(1) is required in prosecuting a war or for national defense; and
(2) cannot be obtained at reasonable rates or on reasonable terms and conditions from approved companies authorized to do insurance business in a State of the United States.
(b) Limitations. Employer liability insurance and worker compensation insurance against legal liability to employees may not be provided under this section.

46 U.S.C. 53905 (2006). Agency insurance.[74]

(a) In General. With the approval of the President, an agency of the United States Government may obtain insurance provided for by this chapter from the Secretary of Transportation, except as provided in sections 17302 and 17303 of title 40.
(b) Premium Waivers. With the approval of the President, the Secretary of Transportation may provide insurance under this chapter at the request of the Secretary of Defense and other agencies the President may prescribe, without payment of an insurance premium if the Secretary of Defense or agency agrees to indemnify the Secretary of Transportation against loss covered by the insurance. The Secretary of Defense and agencies may make such an indemnity agreement.
(c) Presidential Approval. The signature of the President (or an official designated by the President) on the agreement shall be treated as the approval required by section 53902(a) of this title.

46 U.S.C. 53906 (2006). Hull insurance valuation.

(a) Stated Valuation. The valuation in a hull insurance policy for actual or constructive total loss of the insured vessel shall be a stated valuation determined by the Secretary of Transportation. The stated valuation—
(1) shall exclude national defense features paid for by the United States Government; and
(2) may not exceed the amount that would be payable if the ownership of the vessel had been requisitioned under chapter 563 of this title at the time the insurance attached
under the policy.
(b) Rejecting Stated Valuation. Within 60 days after the insurance attaches under a policy referred to in subsection (a) or within 60 days after the Secretary determines the valuation, whichever is later, the insured may reject the valuation and pay, at the rate provided in the policy, premiums based on the asserted valuation the insured specifies at the time of rejection. However, the asserted valuation is not binding on the Government in any subsequent action on the policy.

---

[74] See 10 U.S.C. 2645. Indemnification of Department of Transportation for Losses Covered by Vessel War Risk Insurance, set forth on page 255.

(c) Amount of Claim. If a vessel is actually or constructively totally lost and the insured under a policy referred to in subsection (a) has not rejected the stated valuation determined by the Secretary, the amount of a claim adjusted, compromised, settled, adjudged, or paid may not exceed the stated valuation. However, if the insured has rejected the valuation, the insured—
(1) shall be paid, as a tentative advance only, 75 percent of the stated valuation; and
(2) may bring a civil action against the United States in a court having jurisdiction of the claim to recover a valuation equal to the just compensation the court determines would have been payable if the ownership of the vessel had been requisitioned under chapter 563 of this title at the time the insurance attached under the policy.
(d) Adjusting Premiums. If a court makes a determination as provided under subsection (c)(2), premiums paid under the policy shall be adjusted based on the court's determination and the rates provided for in the policy.

46 U.S.C. 53907 (2006). Reinsurance.

(a) In General. To the extent the Secretary of Transportation is authorized to provide insurance under this chapter, the Secretary may provide reinsurance to a company authorized to do insurance business in a State of the United States. The Secretary may obtain reinsurance from such a company for any insurance provided by the Secretary under this chapter.
(b) Rates. The Secretary may not provide reinsurance at rates less than, nor obtain reinsurance at rates more than, the rates established by the Secretary on the same or similar risks or the rates charged by the insurance company for the insurance reinsured, whichever is more advantageous to the Secretary. However, the Secretary may provide an allowance to the insurance company for the costs of services and facilities the company provides, in an amount the Secretary considers reasonable according to good business practice. The allowance to the company may not include any amount for soliciting or stimulating insurance business.

46 U.S.C. 53908 (2006). Additional insurance privately obtained.

With the approval of the Secretary of Transportation, a person having an insurable interest in a vessel may obtain insurance on the vessel with other underwriting agents in addition to the insurance with the Secretary. The Secretary is not entitled to the benefit of the additional insurance.

46 U.S.C. 53909 (2006). War risk insurance revolving fund.

(a) In General. There is a war risk insurance revolving fund in the Treasury.
(b) Deposits. There shall be deposited in the fund amounts appropriated to carry out this chapter and amounts received in carrying out this chapter.

(c) Payments. There shall be paid from the fund amounts for return premiums, losses, settlements, judgments, and all liabilities incurred by the United States Government under this chapter.
(d) Investment. 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. These investments shall be made by the Secretary of the Treasury in public debt securities of the Government, 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 Government of comparable maturity. Interest and benefits from the securities shall be deposited in the fund.

46 U.S.C. 53910 (2006). Administrative.

(a) Accordance with Commercial Practice. In carrying out this chapter, the Secretary of Transportation may act in accordance with commercial practice in the marine insurance business.
(b) Regulations. The Secretary may prescribe regulations the Secretary considers appropriate to carry out this chapter.
(c) Policies, Rates, and Annual Fees. The Secretary may prescribe and change forms and policies, and fix and change the amounts insured and rates of premium, under this chapter.
(d) Annual Fees. The Secretary may charge and collect an annual fee in an amount calculated to cover the expenses of processing applications for insurance, employing underwriting agents, and appointing experts under this chapter.
(e) Payment of Claims and Judgments. The Secretary may settle and pay claims, and pay judgments against the United States, related to insurance under this chapter.
(f) Underwriting Agents.
(1) IN GENERAL. The Secretary may, and when the Secretary finds it practical to do so shall, employ a domestic company or group of domestic companies, authorized to do marine insurance business in a State of the United States, to act as underwriting agent for the Secretary. The services of an underwriting agent may be used in adjusting claims, but a claim may not be paid until approved by the Secretary.
(2) COMPENSATION. The Secretary may allow the company or group of companies reasonable compensation for services as the underwriting agent. The compensation may include an allowance for expenses reasonably incurred by the agent, but may not include any amount for soliciting or stimulating business.
(g) Fees for Arranging Insurance. Except as provided in subsection (f)(2), the Secretary may not pay an insurance broker or other person acting in a

similar intermediary capacity a fee or other consideration for participating in arranging insurance when the Secretary directly insures any of the risk.
(h) Employment of Marine Insurance Experts. The Secretary, without regard to the laws and regulations on the employment of Federal employees, may appoint and prescribe the duties of experts in marine insurance as the Secretary considers necessary to carry out this chapter.
(i) Services of Other Government Agencies. With the consent of another agency of the United States Government, the Secretary may use information, services, facilities, officers, and employees of the agency in carrying out this chapter.
(j) Vessel Location Reporting. The Secretary may prescribe by regulation vessel location reporting requirements for a vessel insured under this chapter.

46 U.S.C. 53911 (2006). Civil actions for losses.

(a) In General. If there is a disagreement about a loss insured under this chapter, a civil action in admiralty may be brought against the United States in the district court of the United States for the district in which the plaintiff or the plaintiff's agent resides. If the plaintiff has no residence in the United States, the action may be brought in the United States District Court for the District of Columbia or in the district court for any district in which the Attorney General agrees to accept service. Any person who may have an interest in the insurance may be made a party, either initially or on the motion of either party.
(b) Exclusive Remedy. A civil action against the United States under this section is exclusive of any other action by reason of the same subject matter against an officer, employee, or agent employed or retained by the Government under this chapter.
(c) Procedure. A civil action under this section shall be heard and determined under chapter 309 of this title.
(d) Tolling of Limitations Period. If a claim is filed with the Secretary of Transportation, the running of the limitations period for bringing a civil action is suspended until the Secretary denies the claim, and for 60 days thereafter. The Secretary is deemed to have denied the claim if the Secretary does not act on the claim within 6 months after the claim is filed, unless the Secretary for good cause shown agrees with the claimant on a different period for the Secretary to act on the claim.
(e) Interpleader. If the Secretary acknowledges the indebtedness of the Government under the insurance and there is a dispute about the persons entitled to receive payment, the Government may bring a civil action interpleading those persons. The action shall be brought in the United States District Court for the District of Columbia or in the district court for the district in which any of those persons resides. A person not residing or found in the district may be made a party by service in any reasonable manner the court directs. If the court is satisfied that unknown persons might make a claim under the insurance, the court may direct service on those unknown persons by

publication in the Federal Register. Judgment after service by publication in the Federal Register discharges the Government from further liability to all persons.

46 U.S.C. 53912 (2006). Expiration date. The authority of the Secretary of Transportation to provide insurance and reinsurance under this chapter expires on December 31, 2010.

INDEMNIFICATION OF DEPARTMENT OF TRANSPORTATION FOR WAR RISK INSURANCE LOSSES.

10 U.S.C. 2645 (2006). Indemnification of Department of Transportation for losses covered by vessel war risk insurance.

(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 maintenance, 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 section 53909(b) of title 46.

(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 [enacted Sept. 23, 1996]) 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 chapter 539 of title 46, 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 section 53909(a) or title 46.

(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.

PROMOTIONAL PROGRAMS

CHAPTER 551—COASTWISE TRADE.[75]

46 U.S.C. 55101 (2006). Application of coastwise laws.

(a) In General. Except as provided in subsection (b), the coastwise laws apply to the United States, including the island territories and possessions of the United States.

(b) Exceptions. The coastwise laws do not apply to—

(1) American Samoa;

(2) the Northern Mariana Islands, except as provided in section 502(b) of the Covenant To Establish a Commonwealth of the Northern Mariana Islands in Political Union With the United States of America (48 U.S.C. 1801 note);

(3) Canton Island until the President declares by proclamation that the coastwise laws apply to Canton Island; or

(4) the Virgin Islands until the President declares by proclamation that the coastwise laws apply to the Virgin Islands.

46 U.S.C. 55102 (2006). Transportation of merchandise.[76]

(a) Definition. In this section, the term "merchandise" includes—

(1) merchandise owned by the United States Government, a State, or a subdivision of a State; and

(2) valueless material.

(b) Requirements. Except as otherwise provided in this chapter or chapter 121 of this title, a vessel may not provide any part of the transportation of merchandise by water, or by land and water, between points in the United States to which the coastwise laws apply, either directly or via a foreign port, unless the vessel—

(1) is wholly owned by citizens of the United States for purposes of engaging in the coastwise trade; and

(2) has been issued a certificate of documentation with a coastwise endorsement under chapter 121 or is exempt from documentation but would otherwise be eligible for such a certificate and endorsement.

(c) Penalty. Merchandise transported in violation of subsection (b) is liable to seizure by and forfeiture to the Government. Alternatively, an amount equal to the value of the merchandise (as determined by the Secretary of Homeland Security) or the actual cost of the transportation, whichever is greater, may be recovered from any person transporting the merchandise or causing the merchandise to be transported.

---

[75] Section 8 of Public Law 109-304, approved October 6, 2006 (120 STAT. 1632).

[76] 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."

46 U.S.C. 55103 (2006). Transportation of passengers.

(a) In General. Except as otherwise provided in this chapter or chapter 121 of this title, a vessel may not transport passengers between ports or places in the United States to which the coastwise laws apply, either directly or via a foreign port, unless the vessel—

(1) is wholly owned by citizens of the United States for purposes of engaging in the coastwise trade; and

(2) has been issued a certificate of documentation with a coastwise endorsement under chapter 121 or is exempt from documentation but would otherwise be eligible for such a certificate and endorsement.

(b) Penalty. The penalty for violating subsection (a) is $300 for each passenger transported and landed.

46 U.S.C. 55104 (2006). Transportation of passengers between Puerto Rico and other ports in the United States.

(a) Definitions. In this section:

(1) CERTIFICATE. The term "certificate" means a certificate of financial responsibility for indemnification of passengers for nonperformance of transportation issued by the Federal Maritime Commission under section 44102 of this title.

(2) PASSENGER VESSEL. The term "passenger vessel" means a vessel of similar size, or offering similar service, as any other vessel transporting passengers under subsection (b).

(b) Exemption. Except as otherwise provided in this section, a vessel not qualified to engage in the coastwise trade may transport passengers between a port in Puerto Rico and another port in the United States.

(c) Expiration of Exemption.—

(1) WHEN COASTWISE-QUALIFIED VESSEL OFFERING SERVICE. On a showing to the Secretary of the department in which the Coast Guard is operating, by the vessel owner or charterer, that a United States passenger vessel qualified to engage in the coastwise trade is offering or advertising passenger service between a port in Puerto Rico and another port in the United States pursuant to a certificate, the Secretary shall notify the owner or operator of each vessel transporting passengers under subsection (b) to terminate that transportation within 270 days after the Secretary's notification. Except as provided in subsection (d), the authority to transport passengers under subsection (b) expires at the end of that 270 day period.

(2) WHEN NON-COASTWISE-QUALIFIED VESSEL OFFERING SERVICE. On a showing to the Secretary, by the vessel owner or charterer, that a United States passenger vessel not qualified to engage in the coastwise trade is offering or advertising passenger service between a port in Puerto Rico and another port in the United States pursuant to a certificate, the Secretary shall notify the owner or operator of each foreign vessel transporting passengers under subsection (b) to terminate that transportation within 270

days after the Secretary's notification. Except as provided in subsection (d), the authority of a foreign vessel to transport passengers under subsection (b) expires at the end of that 270-day period.
(d) Delaying Expiration. If the vessel offering or advertising the service described in subsection (c) has not begun that service within 270 days after the Secretary's notification, the expiration provided by subsection (c) is delayed until 90 days after the vessel offering or advertising the service begins that service.
(e) Reinstatement of Exemption. If the Secretary finds that the service on which an expiration was based is no longer available, the expired authority to transport passengers is reinstated.

46 U.S.C. 55105 (2006). Transportation of hazardous waste.

(a) In General. 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 to sea for incineration is deemed to be transportation of merchandise under section 55102 of this title.
(b) Nonapplication to certain Foreign Vessels.—
(1) IN GENERAL. Subsection (a) does not apply to transportation performed by a foreign ocean incineration vessel owned by or under construction on May 1, 1982, for a corporation wholly owned by citizens of the United States under section 50501(a)–(c) of this title.
(2) STANDARDS FOR INCINERATION EQUIPMENT. Incineration equipment on a vessel described in paragraph (1) must meet standards of the Coast Guard and the Environmental Protection Agency.
(3) INSPECTION. A vessel described in paragraph (1) shall be inspected by the Coast Guard, regardless of whether inspected by the nation in which it is registered. The inspection shall be the same as would be required of a vessel of the United States, including drydock inspection and internal examination of tanks and void spaces. The inspection may be made concurrently with an inspection by that nation or within one year after the initial issuance or next scheduled issuance of the Safety of Life at Sea Safety Construction Certificate. In making the inspection, the Coast Guard shall refer to the condition of the hull and superstructure established by the initial foreign certification as the basis for evaluating the current condition of the hull and superstructure. The Coast Guard shall allow the substitution of fittings, material, apparatus, equipment, and appliances different from those required for vessels of the United States if satisfied they are equivalent and at least as effective as those required for vessels of the United States. A satisfactory inspection under this paragraph shall be certified in writing by the Secretary of the department in which the Coast Guard is operating.
(c) Effective Date. Subsection (a) is not effective until an appropriate vessel has been built and documented under chapter 121 of this title.

46 U.S.C. 55106 (2006). Merchandise transferred between barges.
(a) In General. On terms and conditions the Secretary of Homeland Security may prescribe by regulation, the Secretary may suspend the application of section 55102 of this title to the transportation of merchandise that is transferred, when moving in the foreign trade of the United States, from a barge certified by the owner or operator as designed specifically for carriage on a vessel and carried regularly on a vessel in foreign trade, to another such barge owned or leased by the same owner or operator. However, this subsection does not apply to transportation between the continental United States and noncontiguous States, territories, or possessions to which the coastwise laws apply.
(b) Reciprocity Requirement for Foreign Vessels. This section applies to a vessel of foreign registry only if the Secretary of Homeland Security finds, based on information from the Secretary of State, that the government of the nation of registry extends reciprocal privileges to vessels of the United States.

46 U.S.C. 55107 (2006). Empty cargo containers and barges.
(a) In General. Subject to subsections (b) and (c), and on terms and conditions the Secretary of Homeland Security may prescribe by regulation, section 55102 of this title does not apply to the transportation of—
(1) empty cargo vans, empty lift vans, or empty shipping tanks;
(2) equipment for use with cargo vans, lift vans, or shipping tanks;
(3) empty barges specifically designed for carriage aboard a vessel and equipment (except propulsion equipment) for use with those barges;
(4) empty instruments for international traffic exempted from the customs laws under section 322(a) of the Tariff Act of 1930 (19 U.S.C. 1322(a)); or
(5) stevedoring equipment and material.
(b) Conditions.—
(1) PARAGRAPHS (1)–(4). Paragraphs (1)–(4) of subsection (a) apply only if the items named are owned or leased by the owner or operator of the vessel and transported for its use in handling its cargo in foreign trade.
(2) PARAGRAPH (5). Paragraph (5) of subsection (a) applies only if the items named are—
(A) owned or leased by the owner or operator of the vessel or by the stevedoring company having the contract for the loading or unloading of the vessel; and
(B) transported without charge for use in the handling of cargo in foreign trade.
(c) Reciprocity Requirement for Foreign Vessels. This section applies to a vessel of foreign registry only if the Secretary of Homeland Security finds, based on information from the Secretary of State, that the government of the nation of registry extends reciprocal privileges to vessels of the United States.

46 U.S.C. 55108 (2006). Platform jackets.

(a) Definitions. In this section:

(1) COASTWISE QUALIFIED VESSEL. The term "coastwise qualified vessel" means a vessel that has been issued a certificate of documentation with a coastwise endorsement under chapter 121 of this title.

(2) PLATFORM JACKET. 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—

(A) platform jackets;

(B) tension leg or SPAR platform superstructures (including the deck, drilling rig and support utilities, and supporting structure);

(C) hull (including vertical legs and connecting pontoons or vertical cylinder);

(D) tower and base sections of a platform jacket;

(E) jacket structures; and

(F) deck modules (known as 'topsides').

(b) Authorized Transportation. Section 55102 of this title does not apply to the transportation of a platform jacket in or on a non-coastwise qualified launch barge 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)), if—

(1) the launch barge was built before December 31, 2000, and has a launch capacity of at least 12,000 long tons; and

(2) the Secretary of Transportation makes a determination, in accordance with procedures established under subsection (c), that a suitable coastwise qualified vessel is not available

for use in the transportation and, if needed, launch or installation of a platform jacket.

(c) Procedures to Maximize Use of Coastwise Qualified Vessels. The Secretary of Transportation shall adopt procedures implementing this section that are reasonably designed to provide timely information so as to maximize the use of coastwise qualified vessels. The procedures shall, among other things, establish that for purposes of this section, a coastwise qualified vessel shall be deemed to be not available only if—

(1) on 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—

(A) describing the project and the platform jacket involved;

(B) advising that all relevant information reasonably needed to assess the transportation requirements for the platform jacket will be made available to interested parties on request; and (C) requesting that information on the

availability of coastwise qualified vessels be submitted within 30 days after publication of that notice; and
(2)(A) no information is submitted to the Secretary within that 30 day period; or
(B) 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 the transportation, but the Secretary determines, within 90 days after the notice is first published, that the coastwise qualified vessel is not suitable or reasonably available for the transportation.

****

Certain Legislative History of 46 U.S.C. 55108.

Section 8 of Public Law 109-304, approved October 6, 2006 (120 STAT. 1632) codified the thirteenth proviso of section 27 of the Merchant Marine Act, 1936, as amended (46 App.U.S.C. 883), as 46 U.S.C. 55108. Prior to codification, the thirteenth proviso read as follows:

> *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").

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, 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’.

****

46 U.S.C. 55109 (2006). Dredging.

(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 is wholly owned by citizens of the United States for purposes of engaging in the coastwise trade;
(2) the charterer, if any, is a citizen of the United States for purposes of engaging in the coastwise trade; and
(3) the vessel has been issued a certificate of documentation with a coastwise endorsement under chapter 121 of this title or is exempt from documentation but would otherwise be eligible for such a certificate and endorsement.

(b) Dredging of Gold in Alaska. A documented vessel with a registry endorsement may engage in the dredging of gold in Alaska.
(c) Penalty. If a vessel is operated in knowing violation of this section, the vessel and its equipment are liable to seizure by and forfeiture to the United States Government.

46 U.S.C. 55110 (2006). Transportation of dredged material. Section 55102 of this title applies to the transportation of valueless material or dredged material, regardless of whether it has commercial value, from a point in the United States or on the high seas within the exclusive economic zone, to another point in the United States or on the high seas within the exclusive economic zone.

46 U.S.C. 55111 (2006). Towing.
(a) In General. Except when towing a vessel in distress, a vessel may not do any part of any towing described in subsection (b) unless the towing vessel—
(1) is wholly owned by citizens of the United States for purposes of engaging in the coastwise trade; and
(2) has been issued a certificate of documentation with a coastwise endorsement under chapter 121 of this title or is exempt from documentation but would otherwise be eligible
for such a certificate and endorsement.
(b) Applicable Towing. Subsection (a) applies to the towing of—
(1) a vessel between ports or places in the United States to which the coastwise laws apply, either directly or via a foreign port or place;
(2) a vessel from point to point within the harbors of ports or places to which the coastwise laws apply; or (3) a vessel transporting valueless material or dredged material, regardless of whether it has commercial value, from a point in the United States or on the high seas within the exclusive economic zone, to another point in the United States or on the high seas within the exclusive economic zone.
(c) Penalties[77].
(1) OWNER AND MASTER. The owner and master of a vessel towing another vessel in violation of this section are each liable for a penalty of at least $350 but not more than $1,100. A penalty under this paragraph constitutes a lien on the vessel. The lien is enforceable in a district court of the United States for any district in which the vessel is found. Clearance may not be granted to the vessel until the penalties have been paid.
(2) VESSEL. In addition to the penalties under paragraph (1), the towing vessel is liable for a penalty of $60 per ton based on the tonnage of each towed vessel.

---

[77] Note that the amount of civil penalties may have been changed pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, set forth at page 71.

46 U.S.C. 55112 (2006). 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 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) Escort Vessels. For purposes of this section, an escort vessel is—

(1) 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 circumstance, or in restricted waters where additional assistance in maneuvering the vessel is required to ensure its safe operation; and

(2) in the case of a vessel being towed under section 55111 of this title, any vessel that is assigned and dedicated to the vessel being towed in addition to any towing vessel required under that section.

(c) Relationship to Other Law. This section does not affect section 55111 of this title.

(d) Penalty. A person violating this section is liable to the Government for a civil penalty of not more than $10,000 for each day during which the violation occurs.[78.]

46 U.S.C. 55113 (2006). Use of foreign documented oil spill response vessels. 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—

[78] Note that the amount of this penalty may have been changed pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, set forth at page 71.

(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) the foreign country has by its laws accorded to vessels of the United States the same privileges accorded to vessels of the foreign country under this section.

46 U.S.C. 55114 (2006). Unloading fish from foreign vessels.[79]

(a) Prohibitions. Except as otherwise provided by this section or a treaty or convention to which the United States is a party, a foreign vessel may not unload, in a port of the United States—
(1) its catch of fish taken on board on the high seas or fish products processed from that catch of fish; or
(2) fish or fish products taken on board that vessel on the high seas from a vessel engaged in fishing operations or the processing of fish or fish products.
(b) Regulations on Obtaining Information. The Secretary of Commerce may prescribe regulations 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.
(c) Virgin Islands.—
(1) IN GENERAL. A foreign vessel of not more than 50 feet overall in length may unload its catch of fresh fish (whole or with the heads, viscera, or fins removed, but not frozen, otherwise processed, or further advanced) in a port of the Virgin Islands for immediate consumption in those islands. Fish unloaded under this paragraph may be sold or transferred only for immediate consumption. In the absence of satisfactory evidence that a sale or transfer to an agent, representative, or employee of a freezer or cannery is for immediate consumption, the sale or transfer is deemed not to be for immediate consumption. This paragraph does not prohibit the freezing, smoking, or other processing of fresh fish by the ultimate consumer of the fish.
(2) SEIZURE, FORFEITURE, AND PENALTY. Fish unloaded in the Virgin Islands that are retained, sold, or transferred, except as allowed by paragraph (1), are liable to seizure by and forfeiture to the United States Government. A

---

[79] Note that Sec. 418 of Public Law 109-241, approved July 11, 2006 (120 STAT. 546), provides: **"SEC. 418. MAINE FISH TENDER VESSELS.** The prohibition under section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883) against transportation of fish or shellfish between places in the State of Maine by a vessel constructed in Canada shall not apply to a vessel of less than 5 net tons if— (1) the vessel was engaged in the transportation of fish or shellfish between places in the State of Maine before January 1, 2005; (2) before January 1, 2005, the owner of the vessel transported fish or shellfish pursuant to a valid wholesale seafood license issued under section 6851 of title 12 of the Maine Revised Statutes; (3) the vessel is owned by a person that meets the citizenship requirements of section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802); and (4) not later than 180 days after the date of enactment of this Act, the owner of the vessel submits to the Secretary of the department in which the Coast Guard is operating an affidavit certifying that the vessel and owner meet the requirements of this section."

person retaining, selling, transferring, buying, or receiving the fish is liable to the Government for a civil penalty of not more than $1,000 for each violation. A penalty or forfeiture under this paragraph may be compromised, modified, or remitted under section 2107(b) of this title.
(d) Northern Mariana Islands. Subsection (a) does not apply to the Northern Mariana Islands.

46 U.S.C. 55115 (2006). Supplies on fish processing vessels. Section 55102 of this title does not apply to supplies aboard a United States documented fish processing vessel that are necessary and used for processing or assembling fishery products aboard such a vessel.

46 U.S.C. 55116 (2006). Canadian rail lines. Section 55102 of this title does not apply to the transportation of merchandise between points in the continental United States, including Alaska, over through routes in part over Canadian rail lines and connecting water facilities if the routes are recognized by the Surface Transportation Board and rate tariffs for the routes have been filed with the Board.

46 U.S.C. 55117 (2006). Great Lakes rail route. Section 55102 of this title does not apply to the transportation of merchandise loaded on a railroad car or to a motor vehicle with or without a trailer, and with its passengers or contents when accompanied by the operator, when the railroad car or motor vehicle is transported in a railroad car ferry operated between fixed terminals on the Great Lakes as part of a rail route, if—
(1) the 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;
(2) the stock of the common carrier by water, or its predecessor, was owned or controlled by a common carrier by rail prior to June 5, 1920;
(3) the stock of the common carrier owning the car ferry is, with the approval of the Board, now owned or controlled by a common carrier by rail; and
(4) the car ferry is built in and documented under the laws of the United States.

46 U.S.C. 55118 (2006). Foreign railroads whose road enters by ferry, tugboat, or towboat. A foreign railroad, whose road enters the United States by ferry, tugboat, or towboat, may own and operate a vessel not having a coastwise endorsement in connection with the water transportation of the passenger, freight, express, baggage, and mail cars used by that road, together with the passengers, freight, express matter, baggage, and mails transported in those cars. However, the foreign railroad is subject to the same restrictions imposed by law on a vessel of the United States entering a port of the United States from the same foreign country. Except as otherwise authorized by this chapter, the ferry, tugboat, or towboat may not, under

penalty of forfeiture, be used in the transportation of merchandise between ports or places in the United States to which the coastwise laws apply.

46 U.S.C. 55119 (2006) Yukon River. Section 55102 of this title does not apply to the transportation of merchandise on the Yukon River until the Alaska Railroad is completed and the Secretary of Transportation finds that proper facilities will be available for transportation by citizens of the United States to properly handle the traffic.

46 U.S.C. 55120 (2006). Transshipment of imported merchandise intended for immediate exportation. The Secretary of Homeland Security may prescribe regulations for the transshipment and transportation of merchandise that is imported into the United States by sea for immediate exportation to a foreign port by sea, or by a river, the right to ascend or descend which for the purposes of commerce is secured by treaty to the citizens of the United States and the subjects of a foreign power.

46 U.S.C. 55121 (2006). Transportation of merchandise and passengers on Canadian vessels.

(a) Between Rochester and Alexandria Bay. Until passenger service is 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 Homeland Security may issue annually permits to Canadian passenger vessels to transport passengers between those ports. Canadian vessels holding such a permit are not subject to section 55103 of this title.

(b) Within Alaska or Between Alaska and Other Points in the United States. Until the Secretary of Transportation determines that service by vessels of the United States is available to provide the transportation described in paragraph (1) or (2), sections 55102 and 55103 of this title do not apply to the transportation on Canadian vessels of—

(1) passengers between ports in southeastern Alaska; or

(2) passengers or merchandise between Hyder, Alaska, and other points in southeastern Alaska or in the United States outside Alaska.

COASTWISE TRADE VESSELS

46 U.S.C. 3704 (2006). 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 chapter 551 of this title, 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.[80]

PHASEOUT OF VESSELS SUPPORTING OIL AND GAS DEVELOPMENT.

Section 705 of Public Law 109-347, approved October 13, 2006, made the following exception to 46 U.S.C. 12105(c), that previously had been codified as 46 U.S.C. 12111(d) by Public Law 109-304. This history is set forth in footnote 6 on page 21.

> **Sec. 705. Phaseout of Vessels Supporting Oil and Gas Development.**
> **(a) In General.**--Notwithstanding section 12105(c) of title 46, United States Code, a foreign-flag vessel may be chartered by, or on behalf of, a lessee to be employed for the setting, relocation, or recovery of anchors or other mooring equipment of a mobile offshore drilling unit that is located over the Outer Continental Shelf (as defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a)) for operations in support of exploration, or flow-testing and stimulation of wells, for offshore mineral or energy resources in the Beaufort Sea or the Chukchi Sea adjacent to Alaska--
> (1) until December 31, 2009, if the Secretary of Transportation determines after publishing notice in the Federal Register, that insufficient vessels documented under section 12105(c) of title 46, United States Code, are reasonably available and suitable for these support operations and all such reasonably available and suitable vessels are employed in support of such operations; and
> (2) for an additional 2-year period beginning January 1, 2010, if the Secretary of Transportation determines
> (A) as of December 31, 2009, the lessee has entered into a binding agreement to employ an eligible vessel or vessels to be documented under section 12105(c) of title 46, United States Code, in sufficient numbers and with sufficient suitability to replace any vessel or vessels operating under this section; and

[80] Not part of Chapter 551 - Coastwise Trade.

(B) after publishing notice in the Federal Register, that insufficient vessels documented under section 12105(c) of title 46, United States Code, are reasonably available and suitable for these support operations and all such reasonably available and suitable vessels are employed in support of such operations.

(b) Lessee Defined.--In this section, the term "lessee" means the holder of a lease (as defined in section 1331(c) of title 43, United States Code).

(c) Savings Provision.--Nothing in subsection (a) may be construed to authorize the employment in the coastwise trade of a vessel that does not meet the requirements of section 12106 of title 46, United States Code.

HAWAII 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),[81] (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[82] and the 1992 Amendments to the Safety of Life at Sea 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

---

[81] Section 5 of Public Law 109-304, approved October 6, 2006 (120 STAT. 1492), codified 46 U.S.C. 12102(a), as 46 U.S.C. 12103.

[82] 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) [codified as 46 U.S.C. 106], 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 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."

in section 1136(b) of Public Law 104–324:[83] 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 holding company, subsidiary, or affiliate of such person meeting the citizenship requirements of section 12102(a) of title 46, United States Code [Codified as 46 U.S.C. 108 & 12101], and the term "regular service" means the primary service in which the ship is engaged on an annual basis.[84]

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

---

[83] 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)[codified as 46 U.S.C. 56101, 57109] 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."

[84] 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."

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.

STATUTORY WAIVERS OF THE JONES ACT

FOREIGN-BUILT TANKERS. Section 214 of Public Law 107-295, approved November 25, 2002 (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, 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.

(7) 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) **(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).

EXPORTS OF ALASKAN NORTH SLOPE OIL

Exports of Alaskan North Slope Oil. 30 U.S.C. 185(s).

30 U.S.C. 185 (2006). 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 [enacted Nov. 28, 1995]. 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 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 [enacted Nov. 28, 1995]; 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)*)*.

(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 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.

* * *

MILITARY CARGO PREFERENCE STATUTES

10 U.S.C. 2631 (2006). Supplies: preference to United States vessels.
(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.

10 U.S.C. 2634. (2006). 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.

10 U.S.C. 402 (2006). 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 (2006). 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 manmade 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 (2006). 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.

* * *

CHAPTER 553—PASSENGER AND CARGO PREFERENCES.[85]

SUBCHAPTER I—GENERAL.[86]

46 U.S.C. 55301 (2006). Priority loading for coal. A vessel engaged in the coastwise transportation of coal produced in the United States, from a port in the United States to another port in the United States, shall be given priority in loading at any of those ports ahead of a waiting vessel engaged in the export transportation of coal produced in the United States. However, if the Secretary of Transportation finds that it is in the national interest, the Secretary may eliminate this priority loading at any port. The Secretary shall report to Congress within 30 days an action eliminating priority loading under this section.

46 U.S.C. 55302 (2006). Transportation of United States Government personnel.
(a) In General.—An officer or employee of the United States Government traveling by sea on official business overseas or to or from a territory or possession of the United States shall travel and transport personal effects on a vessel documented under the laws of the United Sates if such a vessel is available, unless the necessity of the mission requires the use of a foreign vessel.
(b) Regulations.—The Administrator of General Services shall prescribe regulations under which agencies may not pay for or reimburse an officer or employee for travel or transportation expenses incurred on a foreign vessel in the absence of satisfactory proof of the necessity of using the vessel.

46 U.S.C. 55303 (2006). Motor vehicles owned by United States Government personnel. Notwithstanding any other law, privately-owned American shipping services may be used to transport motor vehicles owned by personnel of the United States Government whenever transportation of those vehicles at Government expense is otherwise authorized by law.

46 U.S.C. 55304 (2006). Exports financed by the United States Government. It is the sense of Congress that any loans made by an instrumentality of the United States Government to foster the exporting of agricultural or other products shall provide that the products may be transported only on vessels of the United States unless, as to any or all of those products, the Secretary of Transportation, after investigation, certifies to the instrumentality that vessels of the United States are not available in sufficient

---

[85] Section 8 of Public Law 109-304, approved October 6, 2006 (120 STAT. 1641).
[86] The Penalties for Substandard Operations, 46 U.S.C. 2302, are set forth on page 297.

number, in sufficient tonnage capacity, on necessary schedules, or at reasonable rates.

46 U.S.C. 55305 (2006). Cargoes procured, furnished, or financed by the United States Government.

(a) Definition.—In this section, the term "privately-owned commercial vessel of the United States" does not include a vessel that, after September 21, 1961, was built or rebuilt outside the United States or documented under the laws of a foreign country, until the vessel has been documented under the laws of the United States for at least 3 years.

(b) Minimum Tonnage.—When the United States Government procures, contracts for, or otherwise obtains for its own account, or furnishes to or for the account of a foreign country without provision for reimbursement, any equipment, materials, or commodities, within or without the United States, or advances funds or credits, or guarantees the convertibility of foreign currencies in connection with the furnishing of the equipment, materials, or commodities, the appropriate agencies shall take steps necessary and practicable to ensure that at least 50 percent of the gross tonnage of the equipment, materials, or commodities (computed separately for dry bulk carriers, dry cargo liners, and tankers) which may be transported on ocean vessels is transported on privately-owned commercial vessels of the United States, to the extent those vessels are available at fair and reasonable rates for commercial vessels of the United States, in a manner that will ensure a fair and reasonable participation of commercial vessels of the United States in those cargoes by geographic areas.

(c) Waivers.—The President, the Secretary of Defense, or Congress (by concurrent resolution or otherwise) may waive this section temporarily by—

(1) declaring the existence of an emergency justifying a waiver; and

(2) notifying the appropriate agencies of the waiver.

(d) Programs of Other Agencies.—An agency having responsibility under this section shall administer its programs with respect to this section under regulations prescribed by the Secretary of Transportation. The Secretary shall review the administration of those programs and report annually to Congress on their administration.

SUBCHAPTER II—EXPORT TRANSPORTATION OF AGRICULTURAL COMMODITIES.

46 U.S.C. 55311 (2006). Findings and purposes.

(a) Findings.—Congress finds that—

(1) a productive and healthy agricultural industry and a strong and active United States maritime industry are vitally important to the economic well-being and security of the United States;

(2) both industries must compete in international markets increasingly dominated by foreign trade barriers and the subsidization practices of foreign governments; and

(3) increased agricultural exports and the use of merchant vessels of the United States contribute positively to the United States balance of trade and generate employment opportunities in the United States.
(b) Purpose.—The purposes of this subchapter are to—
(1) enable the Secretary of Agriculture to plan export programs effectively, by clarifying the ocean transportation requirements applicable to those programs;
(2) take immediate and positive steps to promote the growth of the cargo-carrying capacity of the United States merchant marine;
(3) expand international trade in United States agricultural commodities and products and develop, maintain, and expand markets for United States agricultural exports;
(4) improve the efficiency of administration of both the commodity purchasing and selling activities and the ocean transportation activities associated with export programs sponsored by the Secretary; 5) stimulate and promote the agricultural and maritime industries of the United States and encourage cooperative efforts by both industries to address their common problems; and
(6) provide for the appropriate disposition of these findings and purposes.

46 U.S.C. 55312 (2006). Determining prevailing world market price.
(a) Agricultural Commodities and Products.—The prevailing world market price for agricultural commodities or their products shall be determined under this subchapter under procedures prescribed by the Secretary of Agriculture. The Secretary shall prescribe the procedures by regulation, with notice and opportunity for public comment under section 553 of title 5.
(b) Services and Non-Agricultural Commodities and Products.—If a determination of the prevailing world market price of any other type of materials, goods, equipment, or service is required to determine whether a barter or exchange transaction is subject to section 55314(b)(6) or (7) of this title, the determination shall be made by the Secretary of Agriculture in consultation with the heads of other appropriate agencies.

46 U.S.C. 55313 (2006). Exemption of certain agricultural exports from cargo. preference provisions. Sections 55304 and 55305 of this title do not apply to export activities of the Secretary of Agriculture or the Commodity Credit Corporation under which—
(1) agricultural commodities or their products acquired by the 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 their products at prevailing world market prices;
(2) payments are made available to United States exporters, users, or processors or, except as provided in section 55314 of this title, cash grants are made available to foreign purchasers, for the purpose described in paragraph (1);

(3) commercial credit guarantees are blended with direct credits from the Corporation to reduce the effective rate of interest on export sales of United States agricultural commodities or their products;
(4) credit or credit guarantees for not more than 3 years are extended by the Corporation to finance or guarantee export sales of United States agricultural commodities or their products; or
(5) agricultural commodities or their products owned or controlled by or under loan from the Corporation are exchanged or bartered for materials, goods, equipment, or services at least equal in value to the agricultural commodities or their products for which they are exchanged or bartered (determined on the basis of prevailing world market prices at the time of the exchange or barter), but this paragraph does not exempt from the cargo preference provisions referred to in section 55314(b) of this title any requirement otherwise applicable to the materials, goods, equipment, or services imported under the transaction.

46 U.S.C. 55314 (2006). Transportation requirements for certain exports sponsored by the Secretary of Agriculture.

(a) Minimum Tonnage.—
(1) IN GENERAL.—In addition to the requirement under section 55305 of this title for the transportation of a percentage of gross tonnage on commercial vessels of the United States, 25 percent of the gross tonnage of agricultural commodities or their products specified in subsection (b) shall be transported each calendar year on commercial vessels of the United States that—
(A) are necessary for national security; and
(B) if more than 25 years old, were rebuilt within the last 5 years and certified by the Secretary of Transportation as having a useful life of at least 5 years after that rebuilding.
(2) CALENDAR YEAR.—To provide for effective and equitable administration of the cargo preference laws, the calendar year for the purpose of compliance with minimum percentage requirements is the 12-month period beginning October 1 of each year.
(b) Applicable Export Activity.—This section applies to export activity (except inspection or weighing activities, other activities carried out for health or safety, or technical assistance provided in the handling of commercial transactions) of the Secretary of Agriculture or the Commodity Credit Corporation—
(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 their products are—
(A) donated through foreign governments or private or public agencies, including intergovernmental organizations; or
(B) sold for foreign currencies or for dollars on credit terms of more than 10 years;
(5) under which agricultural commodities or their products 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 to enable the purchaser to obtain United States agricultural commodities or their products in an amount greater than the difference between the prevailing world market price and the United States market price, free along side vessel at a United States port; or
(7) under which agricultural commodities owned or controlled by or under loan from the Corporation are exchanged or bartered for materials, goods, equipment, or services produced in foreign countries, except export activities described in section 55313(5) of this title.

(c) Additional Requirements.—

(1) APPLICATION OF SECTION 55305.—The requirement for transportation on vessels of the United States under subsection (a) is subject to the same terms and conditions as provided in section 55305 of this title.
(2) ALLOCATION OF COMMODITIES.—Subject to paragraph (3), in carrying out this section and section 55305 of this title, the Corporation shall take steps necessary and practicable, and consistent with this section and section 55305, without detriment to any port range to allocate, on the principle of lowest landed cost without regard to the country of registry of the vessel, 25 percent of the bagged, processed, or fortified commodities provided under title II of the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1721 et seq.).
(3) CALCULATIONS.—In carrying out paragraph (2), first there shall 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 registry of the vessel, and then there shall be allocated to the Great Lakes port range[87] any cargoes for which it has the lowest landed cost under that calculation. The requirements for transportation on vessels of the United States under this section and section 55305 of this title do not apply to commodities allocated to

---

[87] Note that the term "Great Lakes ports" is defined in 7 CFR 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: (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."

the Great Lakes port range under paragraph (2). Commodities allocated to the Great Lakes port range under paragraph (2) 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 paragraph (2) applies that is furnished and transported from the Great Lakes port range[88] is less than 25 percent of the total annual tonnage of the commodities furnished.
(4) AWARDING CONTRACTS.—In awarding a contract for the transportation by vessel of commodities from the Great Lakes port range pursuant to an export activity referred to in subsection (b), an agency—
(A) shall consider expressions of freight interest for any vessel from a vessel operator who meets reasonable requirements for financial and operational integrity; and
(B) 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.
(5) NONAVAILABILITY OF VESSELS.—A determination of nonavailability of vessels of the United States resulting from the application of this subsection may not reduce the gross tonnage of commodities required by this section and section 55305 of this title to be transported on vessels of the United States.

46 U.S.C. 55315 (2006). Minimum tonnage.

(a) Definition.—In this section, the term 'base period' means the 5-year period running from the sixth through the second prior fiscal years.
(b) Requirement.—For each fiscal year, the minimum quantity of agricultural commodities to be exported under programs subject to section 55314 of this title is the average of the tonnage exported under those programs during the base period, discarding the high and low years.
(c) Waivers.—The President may waive the minimum quantity for a fiscal year under this section if the President determines and reports to Congress, together with reasons, that the quantity cannot be used effectively for the purposes of those programs or, based on a certification by the Secretary of Agriculture, that the commodities are not available for reasons that include the unavailability of funds.

46 U.S.C. 55316 (2006). Financing the transportation of agricultural commodities.

(a) Financing of Increased Charges—The Secretary of Transportation shall finance any increased ocean freight charges incurred in any fiscal year that result from the application of section 55314 of this title.

---

[88] Id.

(b) Reimbursement of Increased Charges[89].—
(1) IN GENERAL.—The Secretary of Transportation shall reimburse the Secretary of Agriculture and the Commodity Credit Corporation for the amount by which, in any fiscal year—
(A) the total cost of ocean freight and ocean freight differential for which obligations are incurred by the Secretary of Agriculture and the Corporation on exports of agricultural commodities and their products under the agricultural export programs specified in section 55314(b) of this title; exceeds
(B) 20 percent of the value of the commodities and their products and the cost of the ocean freight and ocean freight differential on which obligations are incurred by
the Secretary of Agriculture and the Corporation during that fiscal year.
(2) COMMODITIES SHIPPED FROM INVENTORY.—For purposes of this subsection, commodities shipped from the inventory of the Corporation shall be valued as provided in section 412(d) of the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1736f(d)).[90]
(c) Issuance and Purchase of Obligations.—
(1) ISSUANCE.—To meet the expenses required to be assumed under subsections (a) and (b), the Secretary of Transportation shall issue obligations to the Secretary of the Treasury. The Secretary of Transportation, with the approval of the Secretary of the Treasury, shall prescribe the form, denomination, maturity, and other terms (except the interest rate) of the obligations. The Secretary of the Treasury shall set the interest rate for the obligations, considering the average market yield on outstanding marketable obligations of the United States Government of comparable maturities during the month before the obligations are issued.
(2) PURCHASE.—The Secretary of the Treasury shall purchase the obligations issued under this subsection. To purchase the obligations, the Secretary of the Treasury may use as a public debt transaction the proceeds from the sale of securities issued under chapter 31 of title 31. The purposes for which securities may be issued under that chapter are extended to include the purchase of obligations under this subsection. A redemption or purchase of the obligations by the Secretary of the Treasury is a public debt transaction of the Government.
(d) Source of Funds for Reimbursement.—Reimbursement of the Secretary of Transportation for costs incurred under this section shall be made with appropriated funds rather than through cancellation of notes.

---

[89] Note that at the end of Chapter 553, Passenger and Cargo Preference, the current Authorization authority and Appropriations for Ocean Freight Differential is set forth at page 297.
[90] Note that 7 U.S.C. 1736f(d) provides: "(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."

(e) Appropriations.—
(1) AUTHORIZATION.—Each fiscal year, there is authorized to be appropriated an amount sufficient to reimburse the Secretary of Transportation for the costs incurred under this section, including administrative expenses and the principal and interest due on obligations issued to the Secretary of the Treasury.
(2) APPROPRIATION FOR ADMINISTRATIVE EXPENSES.—Each fiscal year, such amounts as may be necessary are hereby appropriated to pay interest and to liquidate debt on obligations issued to the Secretary of the Treasury under this section.
(f) **Notification to Congress of Insufficiency**.—If 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 55314(a) of this title, the Secretary shall notify Congress within 10 working days of the discovery of the insufficiency.

46 U.S.C. 55317 (2006). Termination of subchapter. This subchapter terminates 90 days after the date on which a notification is made under section 55316(f) of this title, except for shipments of agricultural commodities and their products subject to contracts made before the end of that 90-day period, unless within that 90-day period the Secretary of Transportation proclaims that funds are available to finance increased freight charges resulting from the requirements of sections 55314(a) and 55316(a) and (b) of this title. On the termination of this subchapter under this section—
(1) this subchapter does not exempt export activities from, or subject export activities to, the cargo preference laws; and
(2) the 50-percent requirement in section 55305 of this title remains in effect.

46 U.S.C. 55318 (2006). Effect on other law. This subchapter does not affect chapter 5 of title 5.

SUBCHAPTER III—AMERICAN GREAT LAKES VESSELS.

46 U.S.C. 55331 (2006). Definitions. In this subchapter:
(1) AMERICAN GREAT LAKES VESSEL.—The term "American Great Lakes vessel" means a vessel so designated under section 55332 of this title, but only during the period the designation is in effect.
(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 each year during which the Saint Lawrence Seaway is open for navigation by vessels, as declared by the Saint Lawrence Seaway Development Corporation.

46 U.S.C. 55332 (2006), Designating American Great Lakes vessels.

(a) Designations.—The Secretary of Transportation shall designate a vessel as an American Great Lakes vessel if—
(1) an application for designation is submitted to the Secretary under regulations prescribed by the Secretary;
(2) the vessel is documented under the laws of the United States;
(3) the vessel, on the effective date of the designation, is—
(A) at least 1, but not more than 6, years old; or
(B) at least 1, but not more than 11, years old if the Secretary finds that suitable vessels are not available to provide the type of service for which the vessel will be used after the designation;
(4) the vessel has not previously been designated as an American Great Lakes vessel; and
(5) the owner makes an agreement as provided under subsection (b).
(b) Agreements.—A vessel may be designated as an American Great Lakes vessel only if the person that will be the owner of the vessel at the time of the designation makes an agreement with the Secretary providing that if the Secretary determines that the vessel is necessary to the defense of the United States, the United States Government will have an exclusive right, during the 120-day period following the date of a revocation of the designation under section 55335 of this title, to purchase the vessel for a price equal to the greater of—
(1) the approximate world market value of the vessel; or
(2) the cost of the vessel to the owner less a reasonable amount for depreciation.
(c) Certain Foreign Documentation and Sale Not Prohibited.—Notwithstanding any other law, if the Government does not exercise its right of purchase under an agreement under subsection (b), the owner of the vessel is not prohibited from—
(1) documenting the vessel under the laws of a foreign country; or
(2) selling the vessel to a person not a citizen of the United States.

(d) Regulations.—The Secretary shall prescribe regulations establishing requirements for submitting applications under this section.

46 U.S.C. 55333 (2006). Exemption from restriction on transporting certain cargo. The 3-year documentation requirement of section 55305(a) of this title does not apply to a vessel designated as an American Great Lakes vessel during the period of its designation.

46 U.S.C. 55334 (2006). Restrictions on operations.
(a) Prohibitions.—Except as provided in subsection (b), an American Great Lakes vessel may not be used to—
(1) 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) transport bulk cargo (as defined in section 40102 of this title) that is subject to section 55305 or 55314 of this title or section 2631 of title 10; or
(3) provide a service (except ocean freight service) as—
(A) a contract carrier; or
(B) a common carrier on a fixed advertised schedule offering frequent sailings at regular intervals in the foreign trade of the United States.
(b) Off-Season Exception.—An American Great Lakes vessel may be used for not more than 90 days during any 12-month period to engage in trade prohibited by subsection (a)(1)(A), except during the Great Lakes shipping season.

46 U.S.C. 55335 (2006). Revocations and terminations of designations.
(a) Revocations.—After notice and an opportunity for a hearing, the Secretary of Transportation may revoke a designation of a vessel as an American Great Lakes vessel if the Secretary finds that—
(1) the vessel does not meet a requirement for the designation;
(2) the vessel has been operated in violation of this subchapter; or
(3) the owner or operator of the vessel has violated an agreement made under section 55332(b) of this title.
(b) Terminations.—On petition and a showing of good cause by the owner of a vessel, the Secretary may terminate the designation of a vessel as an American Great Lakes vessel. The Secretary may impose conditions in a termination order to prevent significant adverse effects on other operators of vessels of the United States.

46 U.S.C. 55336 (2006). Civil penalty. After notice and an opportunity for a hearing, the Secretary of Transportation may impose a civil penalty of not more than $1,000,000 on the owner of an American Great Lakes vessel for any act for which the designation may be revoked under section 55335 of this title.[91]

****

OCEAN FREIGHT DIFFERENTIAL FUNDING

Appropriations FY 2006. Public Law 109-97, approved November 10, 2005 (119 STAT. 2120, 2146), the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2006, appropriated $11,940,000, 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.

Appropriations FY 2007. Programs of the Maritime Administration have been funded by a series of Continuing Resolutions. As of January 1, 2007, funds were provided under Public Law 109-383, approved December 9, 2006 (120 STAT. 2678). The reader is advised to make reference to subsequently enacted Continuing Resolutions.

****

PENALTIES FOR SUBSTANDARD OPERATIONS.[92]

46 U.S.C. 2302 (2006). Penalties for negligent operations and interfering with safe operation.

* * *

(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

---

[91] Note that the amount of this penalty may have been changed pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, set forth at page 71.

[92] Not part of Chapter 553.

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.

CHAPTER 561—RESTRICTIONS ON TRANSFERS.[93]

46 U.S.C. 56101 (2006). Approval required to transfer vessel to noncitizen.

(a) Restrictions.—

(1) IN GENERAL.—Except as otherwise provided in this section, section 12119 of this title, or section 611 of the Merchant Marine Act, 1936, a person may not, without the approval of the Secretary of Transportation—

(A) sell, lease, charter, deliver, or in any other manner transfer, or agree to sell, lease, charter, deliver, or in any other manner transfer, to a person not a citizen of the United States, an interest in or control of—

(i) a documented vessel owned by a citizen of the United States; or

(ii) a vessel last documented under the laws of the United States; or

(B) place under foreign registry, or operate under the authority of a foreign country, a documented vessel or a vessel last documented under the laws of the United States.

(2) EXCEPTIONS.—Paragraph (1)(A) does not apply to a vessel that has been operated only for pleasure or only as a fishing vessel, fish processing vessel, or fish tender vessel

(as defined in section 2101 of this title).

(b) Approval Before Documentation.—To promote financing with respect to a vessel to be documented under chapter 121 of this title, the Secretary may grant approval under subsection (a) before the vessel is documented.

(c) Exceptions.—Notwithstanding any other provision of this subtitle, the Merchant Marine Act, 1936, or any contract with the Secretary made under this subtitle or that Act, a person may place a vessel under foreign registry without the 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 this title by the owner of the vessel placed under foreign registry; and

(B) the replacement vessel is not more than 10 years old on the date of that documentation; or

(2) an operating agreement covering the vessel under chapter 531 of this title has expired.

(d) Status of Prohibited Transaction.—A charter, sale, or transfer of a vessel, or of an interest in or control of a vessel, in violation of this section is void.

---

[93] Section 8 of Public Law 109-304, approved October 6, 2006 (120 STAT. 1651).

(e) Penalties.—
(1) CRIMINAL PENALTY.—A person that knowingly sells, charters, or transfers a vessel, or an interest in or control of a vessel, in violation of this section shall be fined under title 18, imprisoned for not more than 5 years, or both.
(2) CIVIL PENALTY.—A person that sells, charters, 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 for each violation.[94]
(3) FORFEITURE.—A documented vessel may be seized by and forfeited to the Government if, in violation of this section, a person—
(A) knowingly sells, charters, or transfers the vessel or an interest in or control of the vessel; or
(B) places the vessel under foreign registry or operates the vessel under the authority of a foreign country.

46 U.S.C. 56102 (2006). Additional controls during war or national emergency.

(a) In General.—During war, or a national emergency declared by Presidential proclamation,[95] a person may not, without the approval of the Secretary of Transportation—
(1) place under foreign registry a vessel owned in whole or in part by a citizen of the United States or a corporation incorporated under the laws of the United States or of a State;
(2) sell, mortgage, lease, charter, deliver, or in any other manner transfer, or agree to sell, mortgage, lease, charter, deliver, or in any other manner transfer, to a person not a citizen of the United States—
(A) a vessel owned as described in paragraph (1), or an interest therein;
(B) a vessel documented under the laws of the United States, or an interest therein; or
(C) a facility for building or repairing vessels, or an interest therein;
(3) issue, assign, or transfer to a person not a citizen of the United States an instrument of indebtedness secured by a mortgage of a vessel to a trustee, by an assignment of an owner's interest in a vessel under construction to a trustee, or by a mortgage of a facility for building or repairing vessels to a trustee, unless the trustee or a substitute trustee is approved by the Secretary under subsection (b);
(4) enter into an agreement or understanding to construct a vessel in the United States for, or to be delivered to, a person not a citizen of the United States without expressly stipulating that construction will not begin until after the war or national emergency has ended;

---

[94] Note that the amount of this penalty may have been changed pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, set forth at page 71.
[95] See 50 U.S.C. 1621, for the effect of a Presidential declaration of national emergencies, page 379.

(5) enter into an agreement or understanding whereby there is vested in, or for the benefit of, a person not a citizen of the United States the controlling interest in a corporation that is incorporated under the laws of the United States or a State and that owns a vessel or facility for building or repairing vessels; or
(6) cause or procure a vessel, constructed in whole or in part in the United States and never cleared for a foreign port, to depart from a port of the United States before it has been documented under the laws of the United States.
(b) Trustees.—
(1) APPROVAL.—The Secretary shall approve a trustee or substitute trustee under subsection (a)(3) if and only if the trustee is a bank or trust company that—
(A) is organized as a corporation, and is doing business, under the laws of the United States or a State;
(B) is authorized under those laws to exercise corporate trust powers;
(C) is a citizen of the United States;
(D) is subject to supervision or examination by Federal or State authority; and
(E) has a combined capital and surplus (as set forth in its most recent published report of condition) of at least $3,000,000.
(2) DISAPPROVAL.—If a trustee or substitute trustee ceases to meet the conditions in paragraph (1), the Secretary shall disapprove the trustee or substitute trustee. After the disapproval, the restrictions on transfer or assignment without the Secretary's approval in subsection (a)(3) apply.
(3) OPERATION OF VESSEL.—During a period when subsection (a) applies, a trustee referred to in subsection (a)(3), even though approved as a trustee by the Secretary, may not operate the vessel under the mortgage or assignment without the Secretary's approval.
(c) Status of Prohibited Transaction.—A transaction in violation of this section is void.
(d) Recovery of Consideration.—
(1) IN GENERAL.—A person that deposited or paid consideration in connection with a transaction prohibited by this section may recover the consideration after tender of the vessel, facility, stock, or other security, or interest therein, to the person entitled to it, or the forfeiture thereof to the United States Government.
(2) EXCEPTION.—Paragraph (1) does not apply if the person in whose interest the consideration was deposited, or to whom it was paid, entered into the transaction in the belief that the person depositing or paying the consideration was a citizen of the United States.
(e) Penalties.—
(1) CRIMINAL PENALTY.—A person that violates, or attempts or conspires to violate, this section shall be fined under title 18, imprisoned for not more than 5 years, or both.
(2) FORFEITURE.—The following shall be forfeited to the Government:
(A) A vessel, a facility for building or repairing vessels, or an interest in a vessel or such a facility, that is sold, mortgaged, leased, chartered, delivered,

transferred, or documented, or agreed to be sold, mortgaged, leased, chartered, delivered, transferred, or documented, in violation of this section.
(B) Other securities sold or transferred, or agreed to be sold or transferred, in violation of this section.
(C) A vessel departing in violation of subsection (a)(6).

46 U.S.C. 56103. (2006) Conditional approvals.
(a) In General. – In approving an act6 or transaction under section 56101 or 56102 of this title, the Secretary of Transportation may do so absolutely or upon conditions the Secretary considers advisable. The Secretary shall state the conditions in the notice of approval.
(b) Violations. –A violation of a condition of approval is subject to the same penalties as a violation resulting from an act done without the required approval. The violation occurs at the time the condition is violated.

46 U.S.C. 56104. (2006) Penalty for false statements. A person that knowingly makes a false statement of a material fact to the Secretary of Transportation or another officer, employee, or agent of the Department of Transportation, to obtain the Secretary's approval under section 56101 or 56102 of this title, shall be fined under title 18, imprisoned for not more than 5 years, or both.

46 U.S.C. 56105. (2006) Forfeiture procedure.
(a) In General. – A forfeiture under this chapter may be enforced in the same way as a forfeiture under the laws on the collection of duties. However, such a forfeiture may be remitted without seizure of the vessel.
(b) Prior Convictions. –In a proceeding under this chapter to enforce a forfeiture, a prior criminal conviction of a person for a violation of this chapter with respect to the subject matter of the forfeiture is prima facie evidence of the violation against the person convicted.

CHAPTER 563—EMERGENCY ACQUISITION OF VESSELS.[96]

46 U.S.C. 56301 (2006). General authority.[97] During a national emergency declared by Presidential proclamation, or a period for which the President has proclaimed that the security of the national defense makes it advisable, the Secretary of Transportation may requisition or purchase, or requisition or charter the use of, a vessel owned by citizens of the United States, a documented vessel, or a vessel under construction in the United States.

46 U.S.C. 56302 (2006). Charter terms.
(a) In General.—If a vessel is requisitioned for use but not ownership under this chapter, the Secretary of Transportation, at the time of requisition or as soon thereafter as the situation allows, shall offer the person entitled to possession of the vessel a charter containing—
(1) the terms the Secretary believes should govern the relationship between the United States Government and the person; and
(2) the rate of hire the Secretary considers just compensation for the use of the vessel and the services required under the charter.
(b) Refusal to Accept.—If the person does not accept the charter and rate of hire, the parties shall proceed as provided in section 56304 of this title.

46 U.S.C. 56303 (2006). Compensation.
(a) In General.—As soon as practicable, the Secretary of Transportation shall determine and pay just compensation for a vessel requisitioned under this chapter.
(b) Factors Not Affecting Value.—The value of a vessel may not be considered enhanced by the circumstances requiring its requisition. Consequential damages arising from the requisition may not be paid.
(c) Effect of Construction-Differential Subsidy.—
(1) IF PAID.—If a construction-differential subsidy has been paid for the vessel, the value of the vessel at the time of requisition shall be determined under section 802 of the Merchant Marine Act, 1936.
(2) IF NOT PAID.—If a construction-differential subsidy has not been paid for the vessel, the value of any national defense features previously paid for by the United States Government shall be excluded.

---

[96] Section 8 of Public Law 109-304, approved October 6, 2006 (120 STAT. 1654).
[97] Section 8 of Public Law 109-304, approved October 6, 2006 (120 STAT.1654), codified the first two sentences of Section 902(a) of the Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1242(a)), as 46 U.S.C. 56301. 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 379, on existing and future declarations of a national emergency.

(d) Loss or Damage During Charter.—If a vessel is lost or damaged by a risk assumed by the Government under the charter, but a valuation for the vessel or a means of compensation has not been agreed to, the Secretary shall pay just compensation for the loss or damage, to the extent the person is not reimbursed through insurance.

46 U.S.C. 56304 (2006). Disputed compensation. If the person entitled to compensation disputes the amount of just compensation determined by the Secretary of Transportation under this chapter, the Secretary shall pay the person, as a tentative advance, 75 percent of the amount determined. The person may bring a civil action against the United States to recover just compensation. If the tentative advance paid under this section is greater than the amount of the court's judgment, the person shall refund the difference.

46 U.S.C. 56305 (2006). Vessel encumbrances.

(a) In General.—The existence of an encumbrance on a vessel does not prevent the requisition of the vessel under this chapter.

(b) Deposit in Treasury.—

(1) IN GENERAL.—If an encumbrance exists, the Secretary of Transportation may deposit part of the compensation or advance of compensation to be paid under this chapter (but not more than the total amount of all encumbrances) in a fund in the Treasury. The Secretary shall publish notice of the creation of the fund in the Federal Register.

(2) AVAILABILITY OF AMOUNTS DEPOSITED.—Amounts deposited in the fund shall be available to pay the compensation or any of the encumbrances (including encumbrances stipulated to in a court of the United States or a State) existing at the time the vessel was requisitioned.

(c) Civil Action.—

(1) IN GENERAL.—Within 6 months after publication of notice under subsection (b), the holder of an encumbrance may bring a civil action in admiralty, according to the principles of libels in rem, against the fund.

(2) VENUE.—The action must be brought in the district court of the United States—

(A) from whose custody the vessel was or may be requisitioned; or

(B) in whose district the vessel was located when it was requisitioned.

(3) SERVICE OF PROCESS.—Service of process shall be made on the appropriate United States Attorney, the Attorney General, and the Secretary, in the manner provided by the Federal Rules of Civil Procedure (28 App. U.S.C.). Notice of the action shall be given to all interested persons as ordered by the court.

(4) AS BETWEEN PRIVATE PARTIES.—The action shall proceed and be determined according to the principles of law and the rules of practice applicable in like cases between private parties.

46 U.S.C. 56306 (2006). Use and transfer of vessels
(a) In General.—The Secretary of Transportation may repair, recondition, reconstruct, operate, or charter for operation, a vessel acquired under this chapter.
(b) Transfer to Other Agencies.—The Secretary may transfer the possession or control of a vessel acquired under this chapter to another department or agency of the United States Government on terms and conditions approved by the President. The department or agency shall promptly reimburse the Secretary for expenditures for just compensation, purchase price, charter hire, repairs, reconditioning, or reconstruction.

46 U.S.C. 56307 (2006). Return of vessels. When a vessel requisitioned for use but not ownership is returned to the owner, the Secretary of Transportation shall—
(1) return the vessel in a condition at least as good as when taken, less ordinary wear and tear; or
(2) pay the owner an amount sufficient to recondition the vessel to that condition, less ordinary wear and tear.

GOVERNMENT-OWNED MERCHANT VESSELS

CHAPTER 571—GENERAL AUTHORITY.[98]

46 U.S.C. 57101 (2006). Placement of vessels in National Defense Reserve Fleet.

(a) In General.—Any vessel acquired by the Maritime Administration shall be placed in the National Defense Reserve Fleet maintained under section 11 of the Merchant Ship Sales Act of 1946 (50 App. U.S.C. 1744).
(b) Removal from Fleet.—A vessel placed in the Fleet under subsection (a) may not be traded out or sold from the Fleet, except as provided in section 57102, 57103, or 57104 or chapter 533, 537, 573, or 575 of this title.

46 U.S.C. 57102 (2006). Disposition of vessels not worth preserving.

(a) In General.—If the Secretary of Transportation determines that a vessel owned by the Maritime Administration is of insufficient value for commercial or military operation to warrant its further preservation, the Secretary may scrap the vessel or sell the vessel for cash.
(b) Selling Procedure.—The sale of a vessel under subsection (a) shall be made on the basis of competitive sealed bids, after an appraisal and due advertisement. The purchaser does not have to be a citizen of the United States. The purchaser shall provide a surety bond, with a surety approved by the Secretary, to ensure that the vessel will not be operated in the foreign trade of the United States at any time within 10 years after the sale, in competition with a vessel owned by a citizen of the United States and documented under the laws of the United States.

46 U.S.C. 57103 (2006). Sale of obsolete vessels in National Defense Reserve Fleet.

(a) In General.—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 the recipient—
(1) is a non-profit organization, a State, or a municipal corporation or political subdivision of a State;
(2) agrees not to use, or allow others to use, the vessel for commercial transportation purposes;
(3) agrees to make the vessel available to the Government whenever the Secretary indicates that it is needed by the Government;
(4) agrees to hold the Government harmless for any claims arising from exposure to asbestos, polychlorinated biphenyls, lead paint, or other hazardous

[98] Section 8 of Public Law 109-304, approved October 6, 2006 (120 STAT. 1658).

substances after conveyance of the vessel, except for claims arising from use of the vessel by the Government;
(5) has a conveyance plan and a business plan that describes the intended use of the vessel, each of which has been submitted to and approved by the Secretary;
(6) 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
(7) agrees that when the recipient no longer requires the vessel for use as described in the business plan required under paragraph (5)—
(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 section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3)), 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.
(b) Other Equipment.—At the Secretary's discretion, additional equipment from other obsolete vessels of the Fleet may be conveyed to assist the recipient with maintenance, repairs, or modifications.
(c) Additional Terms.—The Secretary may require any additional terms the Secretary considers appropriate.
(d) Delivery of Vessel.—If conveyance is made under this section, 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.
(e) Limitations.—If at any time prior to delivery of the vessel to the recipient, the Secretary determines that a different disposition of the 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.
(f) Reversion.—The Secretary shall include in any conveyance under this section terms under which all right, title, and interest conveyed by the Secretary shall revert to the Government if the Secretary determines the vessel has been used other than as described in the business plan required under subsection (a)(5).

46 U.S.C. 57104 (2006). Acquisition of vessels from sale of obsolete vessels.

(a) In General.—The Secretary of Transportation may acquire suitable documented vessels with amounts in the Vessel Operations Revolving Fund derived from the sale of obsolete vessels in the National Defense Reserve Fleet.

(b) Valuation.—The acquired and obsolete 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 Fleet. However, the value assigned to those vessels shall be determined on the same basis, with consideration given to the fair value of the cost of moving the vessel sold from the Fleet to the place of scrapping.

(c) Costs Incident to Lay-Up. —Costs incident to the layup of the vessel acquired under this section may be paid from amounts in the Fund.

(d) Transfers to Non-Citizens.—A vessel sold from the Fleet under this section may be scrapped in an approved foreign market without obtaining additional separate approval from the Secretary to transfer the vessel to a person not a citizen of the United States.

46 U.S.C. 57105 (2006). Acquisition of vessels for essential services, routes, or lines.

(a) In General.—The Secretary of Transportation may acquire a vessel, by purchase or otherwise, if—

(1) the Secretary considers the vessel necessary to establish, maintain, improve, or serve as a replacement on an essential service, route, or line in the foreign commerce of the United States, as determined under section 50103 of this title;

(2) the vessel was constructed in the United States; and

(3) the Secretary of the Navy has certified to the Secretary of Transportation that the vessel is suitable for economical and speedy conversion into a naval or military auxiliary or otherwise suitable for use by the United States Government in time of war or national emergency.

(b) Price.—The price paid for the vessel shall be based on a fair and reasonable valuation. However, the price may not exceed by more than 5 percent the cost of the 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 for reconditioning, less depreciation based on a 25-year life for a dry-cargo or passenger vessel and a 20-year life for a tanker or other liquid bulk carrier vessel.

(c) Documentation —A vessel acquired under this section that is not documented under the laws of the United States at the time of acquisition shall be so documented as soon as practicable.

46 U.S.C. 57106 (2006). Maintenance, improvement, and operation of vessels.
(a) In General.—The Secretary of Transportation may maintain, repair, recondition, remodel, and improve vessels owned by the United States Government and in the possession or under the control of the Secretary, to equip them adequately for competition in the foreign trade of the United States. The Secretary may operate such a vessel or charter the vessel on terms and conditions the Secretary considers appropriate to carry out the purposes of this subtitle.
(b) Documentation and Restrictions on Operation.—A vessel reconditioned, remodeled, or improved under subsection (a) shall be documented under the laws of the United States and remain so documented for at least 5 years after completion of the reconditioning, remodeling, or improvement. During that period, it shall be operated on voyages that are not exclusively coastwise.

46 U.S.C. 57107 (2006). Vessels for other agencies.
(a) In General.—The Secretary of Transportation may construct, reconstruct, repair, equip, and outfit, by contract or otherwise, vessels or parts thereof, for any other department or agency of the United States Government to the extent the other department or agency is authorized by law to do so for its own account.
(b) Effect on Contact Authorization.—An obligation incurred or expenditure made by the Secretary under this section does not affect any contract authorization of the Secretary, but instead shall be charged against the existing appropriation or contract authorization of the department or agency.

46 U.S.C. 57108 (2006). Consideration of ballast and equipment in determining. selling price. The Maritime Administration may not sell a vessel until its ballast and equipment have been inventoried and their value considered in determining the selling price of the vessel.

46 U.S.C. 57109 (2006). Operation of vessels purchased, chartered, or leased from Secretary of Transportation. Unless otherwise authorized by the Secretary of Transportation, a vessel purchased, chartered, or leased from the Secretary may be operated only under a certificate of documentation with a registry or coastwise endorsement. Such a vessel, while employed solely as a merchant vessel, is subject to the laws, regulations, and liabilities governing merchant vessels, whether the United States Government has an interest in the vessel as an owner or holds a mortgage, lien, or other interest.

MERCHANT SHIP SALES ACT, 1946

50 U.S.C. App. 1735 (2006). Declaration of policy.

(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.

50 U.S.C. App. 1736 (2006). Definitions. 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.

50 U.S.C. App. 1738 (2006). Charter of vessels.

(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.

(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 [enacted June 30, 1950] 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) [subsec. (e)(1) of this section]: 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.

50 U.S.C. App. 1741 (2006). Exchange of vessels.

(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.

50 U.S.C. App. 1744 (2006). National Defense Reserve Fleet.

(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) 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--

(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.

(d) Applicability of limitations on overhaul, repair, and maintenance in foreign shipyards.

(1) Application of limitation. The provisions of section 7310 of title 10, United States Code, shall apply to vessels specified in subsection (b), and to the Secretary of Transportation with respect to those vessels, in the same manner as those provisions apply to vessels specified in subsection (b) of such section, and to the Secretary of the Navy, respectively.

(2) Covered vessels. Vessels specified in this paragraph are vessels maintained by the Secretary of Transportation in support of the Department of Defense, including any vessel assigned by the Secretary of Transportation to the Ready Reserve Force that is owned by the United States.

(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.

50 U.S.C. App. 1745 (2006). Reconversion of vessels for normal commercial operation; applicability of other laws to construction contracts; coastwise trade; disposition of moneys; Great Lakes trade.
(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.

CHAPTER 573—VESSEL TRADE-IN PROGRAM.[99]

46 U.S.C. 57301 (2006). Definitions. In this chapter:
(1) NEW VESSEL.—The term "new vessel" means a vessel—
(A) constructed under this subtitle and acquired within 2 years after the date of completion; or
(B) constructed in a domestic shipyard on private account and not under this subtitle, and documented under the laws of the United States.
(2) OBSOLETE VESSEL.—The term "obsolete vessel" means a vessel that—
(A) is of at least 1,350 gross tons;
(B) the Secretary of Transportation believes should, because of its age, obsolescence, or other reasons, be replaced in the public interest; and
(C) has been owned by a citizen of the United States for at least 3 years immediately before its acquisition under this chapter.

46 U.S.C. 57302 (2006). Authority to acquire vessels. To promote the construction of new, safe, and efficient vessels to carry the domestic and foreign waterborne commerce of the United States, the Secretary of Transportation may acquire an obsolete vessel in exchange for an allowance of credit toward the cost of construction or purchase of a new vessel as provided in this chapter.

46 U.S.C. 57303 (2006). Utility value and tonnage requirements.
(a) Utility Value.—The utility value of a new vessel to be acquired under this chapter for operation in the domestic or foreign commerce of the United States may not be substantially less than that of the obsolete vessel acquired in exchange under this chapter.

---

[99] Section 8 of Public Law 109-304, approved October 6, 2006 (120 STAT. 1662).

(b) Tonnage.—If the Secretary of Transportation finds that the new vessel will have a utility value at least equal to that of the obsolete vessel, the new vessel may be of lesser gross tonnage than the obsolete vessel. However, the gross tonnage of the new vessel must be at least one-third the gross tonnage of the obsolete vessel.

46 U.S.C. 57304 (2006). Eligible acquisition dates. At the option of the owner, the acquisition of an obsolete vessel under this chapter shall occur—
(1) when the owner contracts for the construction or purchase of a new vessel; or
(2) within 5 days of the actual date of delivery of the new vessel to the owner.

46 U.S.C. 57305 (2006). Determination of trade-in allowance.
(a) In General.—The Secretary of Transportation shall determine the trade-in allowance for an obsolete vessel at the time of acquisition of the vessel. The allowance shall be the fair value of the vessel. In determining the value, the Secretary shall consider—
(1) the scrap value of the obsolete vessel in American and foreign markets;
(2) the depreciated value based on a 20-year or 25-year life, whichever applies to the obsolete vessel; and
(3) the market value of the obsolete vessel for operation in world commerce or in the domestic or foreign commerce of the United States.
(b) Use of Obsolete Vessels.—If acquisition of the obsolete vessel occurs when the owner contracts for the construction of the new vessel, and the owner uses the obsolete vessel during the period of construction of the new vessel, the Secretary shall reduce the trade-in allowance by an amount representing the fair value of that use. The Secretary shall establish the rate for use of the obsolete vessel when the contract for construction of the new vessel is made.

46 U.S.C. 57306 (2006). Payment of trade-in allowance.
(a) Acquisition at Time of Contract.—If acquisition of an obsolete vessel under this chapter occurs when the owner contracts for the construction or purchase of the new vessel, the Secretary of Transportation shall apply the trade-in allowance to the purchase price of the new vessel rather than paying it to the owner. If the new vessel is constructed under this subtitle, the Secretary may apply the trade-in allowance to the required cash payments on terms and conditions the Secretary may prescribe. If the new vessel is not constructed under this subtitle, the Secretary shall pay the trade-in allowance to the builder of the vessel for the account of the owner when the Secretary acquires the obsolete vessel.
(b) Acquisition at Time of Delivery.—If acquisition of the obsolete vessel occurs when the new vessel is delivered to the owner, the Secretary shall deposit the trade-in allowance in the owner's capital construction fund.

46 U.S.C. 57307 (2006). Recognition of gain for tax purposes. The owner of an obsolete vessel does not recognize a gain under the Federal income tax laws when the vessel is transferred to the Secretary of Transportation in exchange for a trade-in allowance under this chapter. The basis of the new vessel acquired with the allowance is the same as the basis of the obsolete vessel—

(1) increased by the difference between the cost of the new vessel and the trade-in allowance of the obsolete vessel; and

(2) decreased by the amount of loss recognized on the transfer.

46 U.S.C. 57308 (2006). Use of vessels at least 25 years old. An obsolete vessel acquired under this chapter that is or becomes at least 25 years old may not be used for commercial operation. However, the vessel may be used—

(1) during a period in which vessels may be requisitioned under chapter 563 of this title; or

(2) except as otherwise provided in this subtitle, on trade routes serving only the foreign trade of the United States.

VESSEL SCRAPPING

SCRAPPING OF NDRF VESSELS.

NATIONAL MARITIME HERITAGE ACT.

Public Law 103-451, approved November 2, 1994 (108 STAT. 4769), the National Maritime Heritage Act of 1994 (16 U.S.C. 5401- 5408), established the National Maritime Heritage Program.

Section 7(4) of the National Maritime Heritage Act (Act) (16 U.S.C. 5406), defines "Program" to mean the National Maritime Heritage Grants Program established under Section 4 of the Act (16 U.S.C. 5403). Section 4 of the Act is comprehensive legislation that established within the Department of Interior the National Maritime Education Grants Program, to foster in the American public a greater awareness and appreciation of the role of maritime endeavors in our Nation's history and culture. The program generally assists State and local governments and private nonprofit organizations to carry out their maritime heritage activities by funding appropriate heritage projects. Of particular interest to the Maritime Administration is the vessel scrapping provisions contained in Section 6 of the Act. Note that reference to Section 4 is made in Section 6 (b)(1), and (b)(3)(16 U.S.C. 5405(b)(1) & (3)). These matters do not pertain to the vessel scrapping provisions of the Act, and are not commented on.

SEC. 6 OF THE NATIONAL MARITIME HERITAGE ACT.

Section 6 of the National Maritime Heritage Act, as amended (16 U.S.C. 5405), provides

> **16 U.S.C. 5405 (2006). Funding.**
> **(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, 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).

(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 [Appendix] 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.

SECTION 3502 OF PUBLIC LAW 106-398 - SCRAPPING OF NDRF VESSELS.

Section 3502 of Public Law 106-398-Appendix, approved October 30, 2000 (114 STAT. 1654A-490), the National Defense Authorization Act, Fiscal Year 2001, as amended by Section 3505(a) of Public Law 109-163 (119 STAT. 3551), the National Defense Authorization Act, Fiscal Year 2006, provides

Section 3502. Scrapping of National Defense Reserve Fleet Vessels.
(a) Extension of Scrapping Authority Under National Maritime Heritage Act of 1994. Section 6(c)(1) of the National Maritime Heritage Act of 1994 (16 U.S.C. 5405(c)(1)) is amended-"(1) in subparagraph (A) by striking '2001' and inserting '2006'; and "(2) by striking subparagraph (B) and inserting the following:
(b) Selection 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) Comprehensive management plan.

(1) Requirement to develop plan. The Secretary of Transportation shall prepare, publish, and submit to the Congress by not later than 180 days after the date of the enactment of this Act [probably a reference to Jan. 6, 2006, the date of enactment of this subsection] a comprehensive plan for management of the vessel disposal program of the Maritime

Administration in accordance with the recommendations made in the Government Accountability Office in report number GAO-05-264, dated March 2005.

(2) Contents of plan. The plan shall--

(A) include a strategy and implementation plan for disposal of obsolete National Defense Reserve Fleet vessels (including vessels added to the fleet after the enactment of this paragraph) in a timely manner, maximizing the use of all available disposal methods, including dismantling, use for artificial reefs, donation, and Navy training exercises;

(B) identify and describe the funding and other resources necessary to implement the plan, and specific milestones for disposal of vessels under the plan;

(C) establish performance measures to track progress toward achieving the goals of the program, including the expeditious disposal of ships commencing upon the date of the enactment of this paragraph [enacted Jan. 6, 2006];

(D) develop a formal decisionmaking framework for the program; and

(E) identify external factors that could impede successful implementation of the plan, and describe steps to be taken to mitigate the effects of such factors.

(d) Implementation of management plan.

(1) Requirement to implement. Subject to the availability of appropriations, the Secretary shall implement the vessel disposal program of the Maritime Administration in accordance with--

(A) the management plan submitted under subsection (c); and

(B) the requirements set forth in paragraph (2).

(2) Utilization of domestic sources. In the procurement of services under the vessel disposal program of the Maritime Administration, the Secretary shall--

(A) use full and open competition; and

(B) utilize domestic sources to the maximum extent practicable.

(e) Failure to submit plan.

(1) Private management contract for disposal of maritime administration vessels. The Secretary of Transportation, subject to the availability of appropriations, shall promptly award a contract using full and open competition to expeditiously implement all aspects of disposal of obsolete National Defense Reserve Fleet vessels.

(2) Application. This subsection shall apply beginning 180 days after the date of the enactment of this subsection [enacted Jan. 6, 2006], unless the Secretary of Transportation has submitted to the Congress the comprehensive plan required under subsection (c).

(f) Report. No later than 1 year after the date of the enactment of this subsection [enacted Jan. 6, 2006], 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, the Committee on Resources, and the Committee on Armed Services of the House of Representatives, and to the Committee on Commerce, Science, and Transportation and the Committee on Armed Services of the Senate, on the progress made in implementing the vessel disposal plan developed under subsection (c). In particular, the report shall address the performance measures required to be established under subsection (c)(2)(C)..

ARTIFICIAL REEFS

REEFS FOR MARINE LIFE CONSERVATION.

16 U.S.C. 1220 (2006). 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 (2006). 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 1220(c)(1) of this title) with the State taking delivery of such obsolete ships and titles in an "as-is--where-is" condition at such place and time designated as may be determined by the Secretary of Transportation.

16 U.S.C. 1220b (2006). 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 (2006). 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 (2006). Financial assistance to State to prepare transferred ship.

(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 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. (2006) 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, 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.

* * * * * * *

TRANSFER OF VESSELS STRICKEN FROM THE NAVAL VESSEL REGISTER FOR USE AS ARTIFICIAL REEFS.

10 U.S.C. 7306b (2006). 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 3(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 vessels, or other disposals of such vessels, under this chapter or other applicable authority.

ADDITIONAL AUTHORITY.

Section 3507 of Public Law 109-364 - Combatant Vessels. Section 3505(b) of Public Law 109-163 (120 STAT. 2517), provides:

> **(b) Temporary Authority to Transfer Obsolete Combatant Vessels to Navy for Disposal.**—The Secretary of Transportation shall, subject to the availability of appropriations and consistent with section 1535 of title 31, United States Code, popularly known as the Economy Act,

transfer to the Secretary of the Navy during fiscal year 2006 for disposal by the Navy, no fewer than 4 combatant vessels in the nonretention fleet of the Maritime Administration that are acceptable to the Secretary of the Navy.

Section 3505(c) of Public Law 109-163 - Artificial Reefs. Section 3505(c) of Public Law 109-163 (119 STAT. 3552), amended paragraph (4) of 16 U.S.C. 1220a, the Artificial Reef Program, to read as set forth on page 321.

Section 3504(c) of Public Law 107-314 - Pilot Program. Section 3504(c) of Public Law 107-314, approved December 2, 2002 (116 STAT. 2755), the Bob Stump DOD Authorization Act for FY 2003, provides:

(c) **Pilot Program on Export of Obsolete Vessels for Dismantlement and Recycling**.-(1)(A) The Secretary of Transportation, Secretary of State, and Administrator of the Environmental Protection Agency shall jointly carry out one or more pilot programs through the Maritime Administration to explore the feasibility and advisability of various alternatives for exporting obsolete vessels in the National Defense Reserve Fleet for purposes of the dismantlement and recycling of such vessels.
(B) The pilot programs shall be carried out in accordance with applicable provisions of law and regulations.
(2)(A) The pilot programs under paragraph (1) shall be carried out during fiscal year 2003.
(B) The pilot programs shall include a total of not more than four vessels.
(C) The authority provided by this subsection is in addition to any other authority available to Maritime Administration for exporting obsolete vessels in the National Defense Reserve Fleet.
(3) Activities under the pilot programs under paragraph (1) shall include the following:
(A) Exploration of the feasibility and advisability of a variety of alternatives (developed for purposes of the pilot programs) for exporting obsolete vessels in the National Defense Reserve Fleet for purposes of the dismantlement and recycling of such vessels.
(B) Response by the Maritime Administration to proposals from the international ship recycling industry for innovative and cost-effective disposal solutions for obsolete vessels in the National Defense Reserve Fleet, including an evaluation of the feasibility and advisability of such proposals.
(C) Demonstration of the extent to which the cost-effective dismantlement or recycling of obsolete vessels in the National Defense Reserve Fleet can be accomplished abroad in manner that appropriately addresses concerns regarding worker health and safety and the environment.

(D) Opportunities to transfer abroad processes, methodologies, and technologies for ship dismantlement and recycling in order to support the pilot programs and to improve international practices and standards for ship dismantlement and recycling.
(E) Exploration of cooperative efforts with foreign governments (under a global action program on ship recycling or other program) in order to foster economically and environmentally sound ship recycling abroad.
(4) The Secretary of Transportation shall submit to Congress a report on the pilot programs 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. The report shall include a description of the activities under the pilot programs, and such recommendations for further legislative or administrative action as the Secretary considers appropriate.

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."

Public Law 109-115. Public Law 109-115, approved November 30, 2005 (119 STAT. 2396, 2422). the Department of Transportation Appropriations Act, 2006, provides: "SHIP DISPOSAL. For necessary expenses related to the disposal of obsolete vessels in the National Defense Reserve Fleet of the Maritime Administration, $21,000,000 to remain available until expended."

TITLE 40 - PUBLIC BUILDINGS, PROPERTY, AND WORKS

40 U.S.C. 102 (2006). 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; and

* * *

40 U.S.C. 111 (2006). 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.):

* * *

(3) Section 113 of this title..

* * *

(22) Section 558(a) of this title.

* * *

40 U.S.C. 113 (2006). 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.

* * *

(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 (2006). 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 part F of subtitle V of title 46, and other laws authorizing the sale of such vessels.

40 U.S.C. 554 (2006). 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" has the meaning given that term in section 101(a)(17) 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 consultation 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.

(2) Conveyance requirements. A transfer of property may be made under this section only after the Secretary of Transportation has--

(A) determined, after consultation with the Secretary of Labor, that the property to be conveyed is located in an area of serious economic disruption;

(B) received and, after consultation with the Secretary of Commerce, approved an economic development plan submitted by an eligible grantee and based on assured use of the property to be conveyed as part of a necessary economic development program; and

(C) transmitted to Congress an explanatory statement that contains information substantially similar to the information contained in statements prepared under section 545(e) of this title.

(d) No monetary consideration. A conveyance under this section shall be made without monetary consideration to the Federal Government.

(e) Deed of conveyance. The deed of conveyance of any surplus real and related personal property disposed of under this section shall--

(1) provide that all of the property be used and maintained for the purpose for which it was conveyed in perpetuity, and that if the property ceases to be used or maintained for that purpose, all or any portion of the property shall, in its then existing condition, at the option of the Government, revert to the Government; and

(2) contain additional terms, reservations, restrictions, and conditions that the Secretary of Transportation shall by regulation require to ensure use of the property for the purposes for which it was conveyed and to safeguard the interests of the Government.

(f) Enforcement and revision of instruments transferring property under this section. The Secretary of Transportation shall determine and enforce compliance with the terms, conditions, reservations, and restrictions contained in an instrument by which a transfer or conveyance under this section is made. The Secretary shall reform, correct, or amend the instrument if necessary to correct the instrument or to conform the transfer to the requirements of law. The Secretary shall grant a release from any term, condition, reservation or restriction contained in the instrument, and shall convey, quitclaim, or release to the grantee any right or interest reserved to the Government by the instrument, if the Secretary determines that the property no longer serves the purpose for which it was transferred or that a release, conveyance, or quitclaim deed will not prevent accomplishment of that purpose. The release, conveyance, or quitclaim deed may be made subject to terms and conditions that the Secretary considers necessary to protect or advance the interests of the Government.

40 U.S.C. 556 (2006). 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.

40 U.S.C. 558 (2006). 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.

40 U.S.C. 1306 (2006). 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.

* * *

(h) Administrative.

* * *

(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.

* * *

40 U.S.C. 3134 (2006). Waivers for certain contracts.

(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 (Subchapter III. Bonds. 40 U.S.C. 3131-3134) 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, subtitle V of title 46, 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.

CHAPTER 575—CONSTRUCTION, CHARTER, AND SALE OF VESSELS.[100]

SUBCHAPTER I—GENERAL.

46 U.S.C. 57501 (2006). Completion of long-range program.

Whenever the Secretary of Transportation determines that the objectives and policies declared in sections 50101 and 50102 of this title cannot be fully realized within a reasonable time under titles V and VI of the Merchant Marine Act, 1936, and the President approves the determination, the Secretary, in accordance with this chapter, shall complete the long-range program described in section 50102 of this title.

46 U.S.C. 57502 (2006). Construction, reconditioning, and remodeling of vessels.

(a) In General.—The Secretary of Transportation may have new vessels constructed, and have old vessels reconditioned or remodeled, as the Secretary determines necessary to carry out the objectives of this subtitle.

(b) Place of Work.—Construction, reconditioning, and remodeling of vessels under subsection (a) shall take place in shipyards in the continental United States (including Alaska and Hawaii). However, if satisfactory contracts cannot be obtained from private shipbuilders, the Secretary may have the work done in navy yards.

(c) Applicability of Construction-Differential Subsidy Provisions.—Contracts for the construction, reconstruction, or reconditioning of a vessel by a private shipbuilder under this chapter are subject to the provisions of title V of the Merchant Marine Act, 1936, applicable to a contract with a private shipbuilder for the construction of a vessel under title V of that Act.

46 U.S.C. 57503 (2006). Competitive bidding.

(a) Advertisement and Bidding.—The Secretary of Transportation may make a contract with a private shipbuilder for the construction of a new vessel, or for the reconstruction or reconditioning of an existing vessel, only after due advertisement and upon sealed competitive bids.

(b) Opening of Bids.—Bids required under this section shall be opened at the time and place stated in the advertisement for bids. All interested persons, including representatives of the press, shall be permitted to attend. The results of the bidding shall be publicly announced.

---

[100] Section 8 of Public Law 109-304, approved October 6, 2006 (120 STAT. 1664).

46 U.S.C. 57504 (2006). Charter or sale of vessels acquired by Department of Transportation. Vessels transferred to or otherwise acquired by the Department of Transportation in any manner may be chartered or sold by the Secretary of Transportation as provided in this chapter.

46 U.S.C. 57505 (2006). Employment of vessels on foreign trade routes.

(a) In General.—The Secretary of Transportation 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 determines are essential for the development and maintenance of the commerce of the United States and the national defense. However, the Secretary shall first determine that those routes 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.

(b) Policy to Encourage Private Operation.—The Secretary shall have a policy of encouraging private operation of each essential steamship line now owned by the United States Government by—

(1) selling the line to a citizen of the United States; or

(2) demising the Secretary's vessels on bareboat charter to citizens of the United States who agree to maintain the line in the manner provided in this chapter.

46 U.S.C. 57506 (2006). Minimum selling price of vessels.

(a) In General.—A vessel constructed under this subtitle or the Merchant Marine Act, 1936, may not be sold by the Secretary of Transportation for less than the price specified in this section.

(b) Operation in Foreign Trade.—If the vessel is to be operated in foreign trade, the minimum price is the estimated foreign construction cost (exclusive of national defense features) determined as of the date the construction contract is executed, less depreciation under subsection (d).

(c) Operation in Domestic Trade.—If the vessel is to be operated in domestic trade, the minimum price is the cost of construction in the United States (exclusive of national defense features), less depreciation under subsection (d).

(d) Depreciation.—Depreciation under subsections (b) and (c) shall be based on—

(1) a 25-year life for dry-cargo and passenger vessels; and

(2) a 20-year life for tankers and other bulk liquid carrier vessels.

SUBCHAPTER II—CHARTERS.

46 U.S.C. 57511 (2006). Demise charters. A charter by the Secretary of Transportation under this chapter shall demise the vessel to the charterer subject to all usual conditions contained in a bareboat charter. The charter shall

be for a term the Secretary considers to be in the best interest of the United States Government and the merchant marine.

46 U.S.C. 57512 (2006). Competitive bidding.
(a) In General.—The Secretary of Transportation may charter a vessel of the Department of Transportation to a private operator only on the basis of competitive sealed bidding. The bids must be submitted in strict compliance with the terms and conditions of a public advertisement soliciting the bids.
(b) Advertisement for Bids.—An advertisement for bids shall state—
(1) the number, type, and tonnage of the vessels being offered for bareboat charter for operation as a steamship line on a designated trade route;
(2) the minimum number of sailings required;
(3) the length of time of the charter;
(4) the right of the Secretary to reject all bids; and
(5) other information the Secretary considers necessary for the information of prospective bidders.
(c) Opening of Bids.—Bids required under this section shall be opened at the time and place stated in the advertisement for bids. All interested persons, including representatives of the press, shall be permitted to attend. The results of the bidding shall be publicly announced.

46 U.S.C. 57513 (2006). Minimum bid. The Secretary of Transportation shall reject any bid for the charter under this subchapter of a vessel constructed under this subtitle or the Merchant Marine Act, 1936, if the charter hire offered is lower than the minimum charter hire would be if the vessel were chartered under section 57531 of this title.

46 U.S.C. 57514 (2006). Qualifications of bidders.
(a) Considerations.—In deciding whether to award a charter to a bidder, the Secretary of Transportation shall consider—
(1) the bidder's financial resources, credit standing, and practical experience in operating vessels; and
(2) other factors a prudent business person would consider in entering into a transaction involving a large capital investment.
(b) Disqualifications.—The Secretary may not charter a vessel to a person appearing to lack sufficient capital, credit, and experience to operate the vessel successfully over the period covered by the charter.

46 U.S.C. 57515 (2006). Awarding of charters.
(a) In General.—The Secretary of Transportation shall award the charter to the bidder proposing to pay the highest monthly charter hire. However, the Secretary may reject the highest or most advantageous or any other bid if the Secretary considers the charter hire offered too low or determines that the bidder lacks the qualifications required by section 57514 of this title.

(b) Highest Bid Rejected —If the Secretary rejects the highest bid, the Secretary may—
(1) award the charter to the next highest bidder; or
(2) reject all bids and either readvertise the line or operate the line until conditions appear more favorable to reoffer the line for private charter.
(c) Reason for Rejection.—On request of a bidder, the reason for rejection shall be stated in writing to the bidder.

46 U.S.C. 57516 (2006). Operating-differential subsidies. If the Secretary of Transportation considers it necessary, the Secretary may make a contract with a charterer of a vessel owned by the Secretary for payment of an operating-differential subsidy, on the same terms and conditions, and subject to the same limitations and restrictions, as otherwise provided with respect to payment of operating-differential subsidies to operators of privately-owned vessels.

46 U.S.C. 57517 (2006). Recovery of excess profits.
(a) In General.—A charter under this chapter shall provide that if, at the end of a calendar year subsequent to the execution of the charter, the cumulative net voyage profit (after payment of the charter hire reserved in the charter and payment of the charterer's fair and reasonable overhead expenses applicable to operation of the chartered vessel) exceeds 10 percent a year of the charterer's capital necessarily employed in the business of the chartered vessel, the charterer shall pay to the Secretary of Transportation, as additional charter hire, half the cumulative net voyage profit in excess of 10 percent a year. However, any cumulative net voyage profit accounted for under this subsection is not to be included in the calculation of cumulative net voyage profit in any subsequent year.
(b) Terms to be Defined and Used.—The Secretary shall define the terms "net voyage profit", "fair and reasonable overhead expenses", and "capital necessarily employed" for this section. Each advertisement for bids and each charter shall contain these definitions, stating the formula for determining each of these three amounts.

46 U.S.C. 57518 (2006). Performance bond. The Secretary of Transportation shall require a charterer of a vessel of the Secretary to deposit with the Secretary an undertaking, with approved sureties, in such amount as the Secretary may require as security for the faithful performance of the terms of the charter, including indemnity against liens on the chartered vessel.

46 U.S.C. 57519 (2006). Insurance. A charter under this chapter shall require the charterer to carry, at the charterer's expense, insurance on the chartered vessel covering all marine and port risks, protection and indemnity risks, and all other hazards and liabilities, adequate to cover damages claimed against and losses sustained by the chartered vessel arising during the term of the charter. The insurance shall be in such form, in such amount, and with such companies as the Secretary of Transportation may require. In accordance with law, any of the insurance risks may be underwritten by the Secretary.

46 U.S.C. 57520 (2006). Vessel maintenance.
(a) In General.—A charter under this chapter shall require the charterer, at the charterer's expense, to—
(1) keep the chartered vessel in good repair and efficient operating condition; and
(2) make any repairs required by the Secretary of Transportation.
(b) Inspection.—The charter shall provide that the Secretary has the right to inspect the vessel at any time to ascertain its condition.

46 U.S.C. 57521 (2006). Termination of charter during national emergency. A charter under this chapter shall provide that during a national emergency proclaimed by the President or a period for which the President has proclaimed that the security of the national defense makes it advisable, the Secretary of Transportation may terminate the charter without cost to the United States Government on such notice to the charterer as the President determines.

SUBCHAPTER III—MISCELLANEOUS.

46 U.S.C. 57531 (2006). Construction and charter of vessels for unsuccessful routes.
(a) In General.—If the Secretary of Transportation finds that a trade route determined to be essential under section 50103 of this title cannot be successfully developed and maintained and the Secretary's replacement program cannot be achieved under private operation of the trade route by a citizen of the United States with vessels documented under chapter 121 of this title, without further aid by the United States Government in addition to the financial aid authorized under titles V and VI of the Merchant Marine Act, 1936, the Secretary, without advertisement or competition, may—
(1) have constructed, in private shipyards or in navy yards, vessels of the types necessary for the trade route; and
(2) demise charter those new vessels to the operator of vessels of the United States established on the trade route.

(b) Amount of Charter Hire.—
(1) IN GENERAL.—The annual charter hire under subsection (a) shall be at least 4 percent of the price (referred to in this section as the 'foreign cost') at which the vessel would be sold if constructed under title V of the Merchant Marine Act, 1936, plus—
(A) a percentage of the depreciated foreign cost computed annually determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the Government with remaining periods to maturity comparable to the term of the charter, adjusted to the nearest one-eighth percent; and
(B) an allowance adequate in the judgment of the Secretary of Transportation to cover administrative costs.
(2) DEPRECIATION.—Depreciation under paragraph (1)(A) shall be based on—
(A) a 25-year life for dry-cargo and passenger vessels; and
(B) a 20-year life for tankers and other bulk liquid carrier vessels.
(c) Option to Purchase.—The charter may contain an option to the charterer to purchase the vessels from the Secretary of Transportation within 5 years after delivery under the charter, on the same terms and conditions as provided in title V of the Merchant Marine Act, 1936, for the purchase of new vessels from the Secretary. However—
(1) the purchase price shall be the foreign cost less depreciation to the date of purchase based on the useful life specified in subsection (b)(2);
(2) the required cash payment payable at the time of the purchase shall be 25 percent of the purchase price;
(3) the charter may provide that 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 the purchase;
(4) the balance of the purchase price shall be paid within the remaining years of useful life (as specified in subsection (b)(2)) after the date of delivery of the vessel under the charter and in approximately equal annual installments, except that the first installment, which shall be payable on the next ensuing anniversary date of the delivery under the charter, shall be a proportionate part of the annual installment; and
(5) interest shall be payable on the unpaid balances from the date of purchase, at a rate not less than—
(A) a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the
Government with remaining periods to maturity comparable to the average maturities of the loans, adjusted to the nearest one-eighth percent; plus
(B) an allowance adequate in the judgment of the Secretary of Transportation to cover administrative costs.

(**d) Operation of Vessel**.—
(1) PERMISSIBLE VOYAGES.—The charter shall provide for operation of the vessel exclusively—
(A) in foreign trade;
(B) on a round-the-world voyage;
(C) on a round voyage from the west coast of the United States to a European port that includes an intercoastal port of the United States;
(D) on a round voyage from the Atlantic coast of the United States to the Orient that includes an intercoastal port of the United States; or
(E) on a voyage in foreign trade on which the vessel may stop at Hawaii or an island territory or possession of the United States.
(2) DOMESTIC TRADE.—The charter shall provide if the vessel is operated in domestic trade on any of the services specified in paragraph (1), the charterer will pay annually to the Secretary of Transportation that proportion of $^{1}/_{25}$ of the difference between the domestic and foreign cost of the 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.

46 U.S.C. 57532 (2006). Operation of experimental vessels.

(a) Definition.—In this section, the term 'experimental vessel' means a vessel owned by the United States Government (including a vessel in the National Defense Reserve Fleet) that has been constructed, reconditioned, or remodeled for experimental or testing purposes.
(b) Authority to Operate.—The Secretary of Transportation, for the purpose of practical development, trial, and testing, may operate an experimental vessel under a bareboat charter or general agency agreement in the foreign or domestic trade of the United States or for use for the account of a department or agency of the Government, without regard to other provisions of this subtitle and other laws related to chartering and general agency operations. Not more than 10 vessels may be operated and tested under this section in any one year.
(c) Terms of Operation.—Operation of a vessel under this section shall be on terms the Secretary considers appropriate to carry out the purposes of this subtitle. A bareboat charter under this section shall be at reasonable rates and include restrictions the Secretary considers appropriate to protect the public interest, including provisions for recapture of profits under section 57517 of this title. A charter or general agency agreement under this section shall be reviewed annually to determine whether conditions exist to justify continuance of the charter or agreement.
(d) Rights of Seamen.—A seaman engaged in vessel operations of the Secretary under this section and employed through a general agent in connection with a charter or agreement under this section is entitled to all the rights and remedies provided in sections 1(a) and (c), 3(c), and 4 of the Act of March 24, 1943 (50 App. U.S.C. 1291(a), (c), 1293(c), 1294).

MILITARY PROGRAMS

FAST SEALIFT PROGRAM

SEC. 1424. FAST SEALIFT PROGRAM.[101]

(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--

---

[101] Section 1424 of Public Law 101-510, approved November 5, 1990 (104 STAT. 1485, 1683), 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)); 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 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..

SEC. 1021. PROCUREMENT OF SHIPS FOR THE FAST SEALIFT PROGRAM.[102]

(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. CONSIDERATION OF VESSEL LOCATION FOR THE AWARD OF LAYBERTH CONTRACTS FOR SEALIFT VESSELS.[103]

(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."

---

[102] Section 1021 of Public Law 102-484, approved October 23, 1992 (106 STAT. 2485) (10 U.S.C. 7291, note)

[103] Section 375 of Public Law 102-484, approved October 23, 1992 (106 STAT. 2385)(10 U.S.C. 7291, note)

NATIONAL DEFENSE SEALIFT FUND.

10 U.S.C. 2218 (2006). 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, 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 57101-57104 and chapter 573 of title 46.

(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).

(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) A vessel built in a foreign ship yard may not be purchased with funds in the National Defense Sealift Fund pursuant to subsection (c)(1), unless specifically authorized by law.

(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) [10 U.S.C. *7291* note].

(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.

(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 contract under paragraph (1) in a lump sum, in annual payments, 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) (10 U.S.C. 7291 note).

(B) A maritime prepositioning ship.

(C) An afloat prepositioning 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..

NATIONAL DEFENSE SEALIFT FUND FUNDING.

AUTHORIZATIONS. FY 2007.

Section 302 of Public Law 109-364 (120 STAT. 2136), the John Warner National Defense Authorization Act for Fiscal Year 2007, provides:

SEC. 302. WORKING CAPITAL FUNDS.
Funds are hereby authorized to be appropriated for fiscal year 2007 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, $1,071,932,000.

* * *

SUPPLEMENTAL APPROPRIATIONS. FY 2006.

Public Law 109-234, approved June 15, 2006 (120 STAT. 418), the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006, provides at 120 STAT. 451:

NATIONAL DEFENSE SEALIFT FUND.
For an additional amount for ''National Defense Sealift Fund'', $10,000,000, to remain available until expended, for necessary expenses related to the consequences of Hurricane Katrina and other hurricanes of the 2005 season: *Provided,* That the amount provided under this heading is designated as an emergency requirement pursuant to section 402 of H. Con. Res. 95 (109th Congress), the concurrent resolution on the budget for fiscal year 2006.

APPROPRIATIONS. FY 2007.

Public Law 109-289, approved September 29, 2006 (120 STAT. 1257), the Department of Defense Appropriations Act, 2007, provides at 120 STAT. 1269.

NATIONAL DEFENSE SEALIFT FUND.
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, $1,071,932,000, 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.

PURCHASE OF MARITIME PREPOSITIONING SHIPS WITH NDSF FUNDS.

Section 1018 of Public Law 109-163, approved January 06, 2006 (119 STAT. 3426), the National Defense Authorization Act of 2006, provides:

SEC. 1018. AUTHORITY TO USE NATIONAL DEFENSE SEALIFT FUND TO PURCHASE CERTAIN MARITIME PREPOSITIONING SHIPS CURRENTLY UNDER CHARTER TO THE NAVY.

(a) Fiscal Year 2006 Limitation.—The authority provided by subsection (c)(1) of section 2218 of title 10, United States Code, may not be used for the purchase of more than six vessels described in subsection (c) using funds appropriated to the National Defense Sealift Fund for fiscal year 2006.

(b) Authority.—The Secretary of Defense may purchase any vessel described in subsection (c) through the use of the authority in subsection (c)(1) of section 2218 of title 10, United States Code, without regard to the limitation in subsection (f)(1) of that section.

(c) Covered Vessels.—Subsections (a) and (b) apply with respect to any vessel that as of the date of the enactment of this Act—

(1) is chartered by the Department of Defense under a 25-year lease; and
(2) is used by the Navy as a maritime prepositioning ship.

NAVY SHIPBUILDING AND CONVERSION

NAVY SHIPBUILDING AND CONVERSION FUNDING.

AUTHORIZATIONS FY 2007.

Section 102(a)(3) of Public Law 109-364, approved October 17, 2006 (120 STAT. 2101), the John Warner National Defense Authorization Act for Fiscal Year 2007, authorized $11,021,553,000, for fiscal year 2007.

APPROPRIATIONS FY 2006.

Supplemental Appropriations Act, FY 2006. Public Law 109-234, approved June 15, 2006 (120 STAT. 418), provides at 120 STAT. 450

SHIPBUILDING AND CONVERSION, NAVY
(INCLUDING TRANSFER OF FUNDS)

For an additional amount for ''Shipbuilding and Conversion, Navy'', $775,236,000, to remain available until September 30, 2010, for necessary expenses related to the consequences of Hurricane Katrina and other hurricanes of the 2005 season, which shall be available for transfer within this account to replace destroyed or damaged equipment; prepare and recover naval vessels under contract; and provide for cost adjustments for naval vessels for which funds have been previously appropriated: *Provided,* That this transfer authority is in addition to any other transfer authority available to the Department of Defense: *Provided further,* That the Secretary of Defense shall, not fewer than 15 days prior to making transfers within this appropriation, notify the congressional defense committees in writing of the details of any such transfer: *Provided further,* That the amount provided under this heading is designated as an emergency requirement pursuant to section 402 of H. Con. Res. 95 (109th Congress), the concurrent resolution on the budget for fiscal year 2006.

Gulf Coast Shipyards with Navy Contracts. Section 2203 of Public Law 109-234 (120 STAT. 453), earmarked $140 million for such shipyards, as follows:.

SEC. 2203. Notwithstanding any other provision of law, of the amounts appropriated or otherwise made available under the heading ‘‘Shipbuilding and Conversion, Navy’’ in chapter 2 of title II of this Act, or under said heading in chapter 2 of title I of the Emergency Supplemental Appropriations Act to Address Hurricanes in the Gulf of Mexico and Pandemic Influenza, 2006 (division B of Public Law 109–148; 119 Stat. 2757), not less than $140,000,000 shall be made available for infrastructure improvements at Gulf Coast shipyards that have existing Navy shipbuilding contracts and that were damaged by Hurricane Katrina in calendar year 2005.

APPROPRIATIONS FY 2007.

Public Law 109-289, approved September 29, 2006 (120 STAT. 1257), provides at 120 STAT. 1265"

SHIPBUILDING AND CONVERSION, NAVY

For expenses necessary for the construction, acquisition, or conversion of vessels as authorized by law, including armor and armament thereof, plant equipment, appliances, and machine tools and installation thereof in public and private plants; reserve plant and Government and contractor-owned equipment layaway; procurement of critical, long leadtime components and designs forvessels to be constructed or converted in the future; and expansion of public and private plants, including land necessary therefor, and such lands and interests therein, may be acquired, and construction prosecuted thereon prior to approval of title, as follows:

. . . In all: $10,579,125,000, to remain available for obligation until September 30, 2011: *Provided,* That additional obligations may be incurred after September 30, 2011, for engineering 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 NAVY SHIPYARD FUNDING.

Section 322 of Public law 109-163, approved January 06, 2006 (119 STAT. 3191), provides:

SEC. 322. LIMITATION ON TRANSITION OF FUNDING FOR EAST COAST SHIPYARDS FROM FUNDING THROUGH NAVY WORKING CAPITAL FUND TO DIRECT FUNDING.

(a) LIMITATION.—The Secretary of the Navy may not convert funding for the shipyards of the Navy on the east coast of the United States from funding through the working capital fund of the Navy to funding on a direct basis (also known as ‘‘mission funding’’) before October 1, 2006.

(b) REPORT ON DIRECT FUNDING FOR PUGET SOUND NAVAL SHIPYARD.—

(1) REPORT REQUIRED.—Not later than March 1, 2006, the Secretary shall submit to the congressional defense committees a report that contains the assessment of the Secretary on the effects on Puget Sound Naval Shipyard, Washington, of the conversion of that shipyard from funding through the working capital fund of the Navy to funding on a direct basis.

(2) MATTERS TO BE INCLUDED.—The report under paragraph (1) shall address the effect of the conversion of Puget Sound Naval Shipyard to direct funding on each of the following:

(A) The cost visibility of specific work performed.

(B) The total cost of consolidated ship maintenance operations on an ongoing basis.

(C) The ability to distinguish between depot and intermediate work of consolidated ship maintenance activities.

(D) The costs associated with buyout expenses for the transfer of the shipyards of the Navy on the east coast of the United States from funding through the working capital fund of the Navy to funding on a direct basis.

(E) The flexibility of the shipyard to continue routine ship maintenance operations during a potential funding gap at the beginning of a fiscal year or when expected maintenance costs exceed annual appropriations.

(F) Operational and financial flexibility and responsiveness of funding on a direct basis compared to funding through the working capital fund of the Navy.

(G) Long-term funding for the capital improvement programs of the shipyard.

(H) Compliance with section 2460 of title 10, Unite States Code, which defines the work that is considered to be depot-level maintenance and repair versus work that is considered to be a major modification of a weapons system.

(I) Compliance with section 2466 of title 10, United States Code, which limits the amount of depot-level maintenance and repair workload of the Department of Navy that is performed by non-Federal Government personnel in any fiscal year to not more than 50 percent of the total depot workload reported to the Department in that fiscal year. (J) Compliance with sections 1115 and 1116 of title 31, United States Code, which require agencies to set annual performance goals, measure performance toward the achievement of those goals, and publicly report on progress.

(K) Compliance with chapter 35 of title 31, United States Code, which requires audited financial statements to include the ability to properly charge and account for reimbursable workload.

(3) GOVERNMENT ACCOUNTABILITY OFFICE REVIEW.— Not later than 60 days after the date on which the report required under paragraph (1) is submitted, the Comptroller General shall submit to the congressional defense committees a review of the report, which shall include the Comptroller General's assessment of whether the report adequately addresses each of the matters specified under paragraph (2).

(c) REPORT ON PROPOSED CONGRESSIONAL BUDGET EXHIBIT FOR NAVY MISSION-FUNDED SHIPYARDS.—

(1) REPORT REQUIRED.—Not later than March 1, 2006, the Secretary shall submit to the congressional defense committees a report that proposes congressional budget exhibits for use in connection with the funding of Navy shipyards on a direct basis.

(2) MATTERS TO BE INCLUDED.—The report under paragraph (1) shall comprehensively address the following: (A) The establishment of annual categories, metrics, and measurements to objectively compare the performance of each shipyard over time with respect to the following:

(i) Schedule adherence.

(ii) Quality of work.

(iii) Cost management.

(iv) Administrative efficiency.

(v) Number of hulls for which repairs are completed during the fiscal year.

(vi) Number of hulls that are in the process of being repaired at the end of the fiscal year.

(B) Capital replenishment for each shipyard.

(C) Workload indicators to determine whether each shipyard is

effectively utilized.

(D) Annual budget management reports to enable effective monitoring of each shipyard with respect to the following:

(i) Obligation authority from Department of the Navy accounts, including operation and maintenance funds for the Atlantic Fleet, the Pacific Fleet, and the Naval Sea Systems Command and procurement funds for the Navy shipbuilding and conversion account and the other procurement accounts.

(ii) Obligation authority provided by reimbursement from non-Department of the Navy sources, including other Department of Defense accounts, foreign military sales accounts, other Federal Government agency accounts, and non-Federal Government sources.

(iii) Costs and expenses of military personnel, civilian personnel, materiels, contracts, travel, supplies, overhead, and other costs. (iv) Capital expenditures. (v) Military construction. (vi) Base operating support.

(vii) Facilities sustainment, restoration, and modernization. (viii) Personnel and labor management, including military end strengths, civilian end strengths, military man-days, and civilian man-days.

(3) CONGRESSIONAL BUDGET OFFICE REVIEW.—Not later than 60 days after the date on which the report required under paragraph (1) is submitted, the Director of the Congressional Budget Office shall submit to the congressional defense committees a review of the report, which shall include the Director's assessment of whether the report comprehensively addresses each of the matters specified in subparagraphs (A) through (D) of paragraph (2).

NAVY SHIPYARD CAPABILITY PRESERVATION.

10 U.S.C. 7315 (2006). Preservation of Navy shipbuilding capability
(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:

(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.

(1) 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.

10 U.S.C. 7310 (2006). Overhaul, repair, etc. of vessels in foreign shipyards: restrictions.

(a) Vessels with homeport in United States or Guam. A naval vessel (or any other vessel under the jurisdiction of the Secretary of the Navy) the homeport of which is in the United States or Guam may not be overhauled, repaired, or maintained in a shipyard outside the United States or Guam, other than in the case of voyage repairs.

(b) Vessel changing homeports.

(1) In the case of a naval vessel the homeport of which is not in the United States (or a territory of the United States), the Secretary of the Navy may not during the 15-month period preceding the planned reassignment of the vessel

to a homeport in the United States (or a territory of the United States) begin any work for the overhaul, repair, or maintenance of the vessel that is scheduled to be for a period of more than six months.

(2) In the case of a naval vessel the homeport of which is in the United States (or a territory of the United States), the Secretary of the Navy shall during the 15-month period preceding the planned reassignment of the vessel to a homeport not in the United States (or a territory of the United States) perform in the United States (or a territory of the United States) any work for the overhaul, repair, or maintenance of the vessel that is scheduled--

(A) to begin during the 15-month period; and

(B) to be for a period of more than six months.

DOD MISCELLANEOUS PROVISIONS

COMPETITION BETWEEN DOD MAINTENANCE ACTIVITIES AND PRIVATE FIRMS. Section 8026 of Public Law 109-289, approved September 29, 2006 (120 STAT. 1279), provides:

> SEC. 8026. 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.

DOD EXPORT LOAN GUARANTEE PROGRAM

10 U.S.C. 2540 (2006). 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 (2006). Transferability. A guarantee issued under this subchapter shall be fully and freely transferable.

10 U.S.C. 2540b (2006). Limitations.

(a) Terms and conditions of loan guarantees. In issuing a guarantee under this subchapter for a medium-term or long-term loan, the 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 (2006). 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 (2006). 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).

DOD 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 OBTAINING CARRIAGE BY VESSELS.

Criterion Regarding Overhaul, Repair, and Maintenance of Vessels in the United States. Section 1017 of Public Law 109-364 (120 STAT. 2379) provides:

Sec. 1017. Obtaining Carriage by Vessels: Criterion Regarding Overhaul, Repair, and Maintenance of Vessels in the United States.

(a) Acquisition Policy.—In order to maintain the national defense industrial base, the Secretary of Defense shall issue an acquisition policy that establishes, as a criterion required to be considered in obtaining carriage by vessel of cargo for the Department of Defense, the extent to which an offeror of such carriage had overhaul, repair, and maintenance work for covered vessels of the offeror performed in shipyards located in the United States.

(b) Covered Vessels.—A vessel is a covered vessel of an offeror under this section if the vessel is—

(1) owned, operated, or controlled by the offeror; and

(2) qualified to engage in the carriage of cargo in the coastwise or non-contiguous trade under section 27 of the Merchant Marine Act, 1920 (46 U.S.C. 883), section 12106 of title 46, United States Code, and section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802).

(c) Application of Policy—The acquisition policy shall include rules providing for application of the policy to covered vessels as expeditiously as is practicable based on the nature of carriage obtained, and by no later than June 1, 2007.

(d) Regulations.—
(1) IN GENERAL.—The Secretary shall prescribe regulations as necessary to carry out the acquisition policy and submit such regulations to the Committees on Armed Services of the Senate and the House of Representatives, by not later than June 1, 2007.
(2) INTERIM REGULATIONS.—
(A) IN GENERAL.—The Secretary may prescribe interim regulations as necessary to carry out the acquisition policy. For this purpose, the Secretary is excepted from compliance with the notice and comment requirements of section 553 of title 5, United States Code.
(B) SUBMISSION TO CONGRESS.—Upon the issuance of interim regulations under this paragraph, the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives the interim regulations and a description of the acquisition policy developed (or being developed) under subsection (a).
(C) EXPIRATION.—All interim regulations prescribed under the authority of this paragraph that are not earlier superseded by final regulations shall expire no later than June 1, 2007.
(e) Annual Report.—The Secretary, acting through the United States Transportation Command, shall annually submit to the Committees on Armed Services of the Senate and the House of Representatives a report regarding overhaul, repair, and maintenance performed on covered vessels of each offeror of carriage to which the acquisition policy applies.
(f) Definitions.—In this section:
(1) FOREIGN SHIPYARD.—The term ‘‘foreign shipyard’’ means a shipyard that is not located in the United States.
(2) UNITED STATES.—The term ‘‘United States’’ means—
(A) any State of the United States; and
(B) Guam.

DOD RIDING GANG MEMBER REQUIREMENTS. Section 1018 of Public Law 109-364 (120 STAT. 2380), set forth at page 50.

DOD SUPPORT FOR TRANSFERS OF DECOMMISSIONED VESSELS AND SHIPBOARD EQUIPMENT.

10 U.S.C. 7316 (2006). **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 VESSELS.

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.

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 (SUR-TASS) program: Provided, That funding for this lease shall be from within funds provided in this Act and future appropriations Acts."

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.

VESSEL TRANSFER BETWEEN DEPARTMENTS

10 U.S.C. 2578 (2006). 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.

REVITALIZATION OF UNITED STATES SHIPBUILDING INDUSTRY.[104]

(a) In general. The Secretary of Defense shall require that all sealift ships built under the fast sealift program established in section 1424 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510; 104 Stat. 1683) shall be constructed and designed to commercial specifications.

(b) Interagency working group to formulate a program to preserve shipyard industrial base.

(1) Not later than March 1, 1993, the President shall establish an interagency working group for the sole purpose of developing and implementing a comprehensive plan to enable and ensure that domestic shipyards can compete effectively in the international shipbuilding market.

(2) The working group shall include representatives from all appropriate agencies, including the Department of Defense, the Department of State, the Department of Commerce, the Department of Transportation, the Department of Labor, the Office of the United States Trade Representative, and the Maritime Administration.

(3) The President shall submit to Congress the comprehensive plan developed by the working group not later than October 1, 1993.

(c) Report on ship dumping practices. The Secretary of Transportation shall prepare a report on the countries that provide subsidies for the construction or repair of vessels in foreign shipyards or that engage in ship dumping practices.

(d) Report on defense contracts. The Secretary of Defense shall prepare a report on–

(1) the amount of Department of Defense contracts that were awarded to companies physically located or headquartered in the countries identified in the Secretary of Transportation's report under subsection (d) for the most recent year for which data is available; and

(2) the effect on defense programs of a prohibition of awarding contracts to companies physically located or headquartered in the countries identified in the Secretary of Transportation's report under subsection (d).

(e) Report on adequacy of United States shipbuilding industry. The Secretary of Defense shall prepare a report on–

(1) the adequacy of United States shipbuilding industry to meet military requirements, including sealift, during the period of 1994 through 1999; and

(2) the causes of any inadequacy identified and actions that could be taken to correct such inadequacies.

---

[104]Section 1031 of Public Law 102-484, approved October 23, 1992 (106 STAT. 2489).

(f) Submission of reports. The reports under subsections (c), (d), and (e) shall be submitted to Congress with the President's budget for fiscal year 1994.

(g) Penalty for failure to comply.

(1) Except as provided in paragraph (2), if the President fails to submit to Congress a comprehensive plan as required by subsection (b) by October 1, 1993, no funds appropriated to the Department of Defense for fiscal year 1994 may be used to enter into a contract for the construction, repair, or purchase of any product or service with any company that has headquarters in any country that continues to provide a subsidy to a foreign shipyard for the construction or repair of vessels or that engages in ship dumping practices.

(2) Paragraph (1) shall not apply if the President–

(A) notifies Congress that he is unable to submit the plan by the time required under subsection (c); and

(B) includes with the notice a brief explanation of the reasons for the delay and a statement that the plan will be submitted by April 15, 1994.

(h) Definitions. For purposes of subsection (c):

(1) The term "foreign shipyard" includes a ship construction or repair facility located in a foreign country that is directly or indirectly owned, controlled, managed, or financed by a foreign shipyard that receives or benefits from a subsidy.

(2) The term "subsidy" includes any of the following:

(A) Officially supported export credits and development assistance.

(B) Direct official operating support to the commercial shipbuilding and repair industry, or to a related entity that favors the operation of shipbuilding and repair, including–

(i) grants;

(ii) loans and loan guarantees other than those available on the commercial market;

(iii) forgiveness of debt;

(iv) equity infusions on terms inconsistent with commercially reasonable investment practices;

(v) preferential provision of goods and services; and

(vi) public sector ownership of commercial shipyards on terms inconsistent with commercially reasonable investment practices.

(C) Direct official support for investment in the commercial ship building and repair industry, or to a related entity that favors the operation of shipbuilding and repair, including the kinds of support listed in clauses (i) through (v) of subparagraph (B), and any restructuring support, except public support for social purposes directly and effectively linked to shipyard closures.

(D) Assistance in the form of grants, preferential loans, preferential tax treatment, or otherwise, that benefits or is directly related to shipbuilding and repair for purposes of research and development that is not equally open to domestic and foreign enterprises.

(E) Tax policies and practices that favor the shipbuilding and repair industry, directly or indirectly, such as tax credits, deductions, exemptions and preferences, including accelerated depreciation, if the benefits are not generally available to persons or firms not engaged in shipbuilding or repair.

(F) Any official regulation or practice that authorizes or encourages persons or firms engaged in shipbuilding or repair to enter into anticompetitive arrangements.

(G) Any indirect support directly related, in law or in fact, to shipbuilding and repair at national yards, including any public assistance favoring shipowners with an indirect effect on shipbuilding or repair activities, and any assistance provided to suppliers of significant inputs to shipbuilding, which results in benefits to domestic ship builders.

(H) Any export subsidy identified in the Illustrative List of Export Subsidies in the Annex to the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade or any other export subsidy that may be prohibited as a result of the Uruguay Round of trade negotiations.

(3) The term "vessel"' means any self-propelled, sea-going vessel--

(A) of not less than 100 gross tons, as measured under the International Convention of Tonnage Measurement of Ships, 1969; and

(B) not exempt from entry under section 441 of the Tariff Act of 1930 (19 U.S.C. 1431).

SEC. 3506. ASSISTANCE FOR SMALL SHIPYARDS AND MARITIME COMMUNITIES.[105]

(a) Establishment of Program—Subject to the availability of appropriations, the Administrator of the Maritime Administration shall establish a program to provide assistance to State and local governments—

(1) to provide assistance in the form of grants, loans, and loan guarantees to small shipyards for capital improvements; and

(2) for maritime training programs in communities whose economies are substantially related to the maritime industry.

(b) Awards.—In providing assistance under the program, the Administrator shall—

(1) take into account—

[2] Section 3506 of Public Law 109-163, approved January 6, 2006 (119 STAT. 3553), the National Defense Authorization Act, FY 2006.

(A) the economic circumstances and conditions of maritime communities; and

---

[105] Section 3506 of Public Law 109-163, approved January 6, 2006 (120 STAT. 3553), the National Defense Authorization Act, 2006.

(B) the local, State, and regional economy in which the communities are located; and

(2) strongly encourage State, local, and regional efforts to promote economic development and training that will enhance the economic viability of and quality of life in maritime communities.

(c) Use of Funds.—Assistance provided under this section may be used—

(1) to make capital and related improvements in small shipyards located in or near maritime communities;

(2) to encourage, assist in, or provide training for residents of maritime communities that will enhance the economic viability of those communities; and

(3) for such other purposes as the Administrator determines to be consistent with and supplemental to such activities.

(d) Prohibited Uses.—Grants awarded under this section may not be used to construct buildings or other physical facilities or to acquire land unless such use is specifically approved by the Administrator in support of subsection (c)(3).

(e) Matching Requirements.—

(1) ***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.—Paragraph (1) shall not apply to grants under this section for stand alone projects costing not more than $25,000. The amount under this subparagraph shall be indexed to the consumer price index and modified each fiscal year after the annual publication of the consumer price index.

(B) Reduction in Matching Requirement.—If the Administrator determines that a proposed project merits support and cannot be undertaken without a higher percentage of Federal financial assistance, the Administrator may award a grant for such project with a lesser matching requirement than is described in paragraph (1).

(f) Application.—

(1) ***In General***.—The Administrator shall determine who, as an eligible applicant, may submit an application, at such time, in such form, and containing such information and assurances as the Administrator may require.

(2) ***Minimum Standards for Payment or Reimbursement***.—Each application submitted under paragraph (1) shall include—

(A) a comprehensive description of— (i) the

need for the project;

(ii) the methodology for implementing the project; and (iii) any existing

programs or arrangements that can be used to supplement or leverage assistance under the program.

(3) ***Procedural Safeguards***.—The Administrator, in consultation with the Office of the Inspector General, shall issue guidelines to establish appropriate accounting, reporting, and review procedures to ensure that—

(A) grant funds are used for the purposes for which they were made available;

(B) grantees have properly accounted for all expenditures of grant funds; and

(C) grant funds not used for such purposes and amounts not obligated or expended are returned.

(4) ***Project Approval Required***.—The Administrator may not award a grant under this section unless the Administrator determines that—

(A) sufficient funding is available to meet the matching requirements of subsection (e);

(B) the project will be completed without unreasonable delay; and

(C) the recipient has authority to carry out the proposed project.

(g) Audits and Examinations.—All grantees under this section shall maintain such records as the Administrator may require and make such records available for review and audit by the Administrator.

(h) Small shipyard Defined.—In this section, the term ''small shipyard'' means a shipyard that—

(1) is a small business concern (within the meaning of section 3 of the Small Business Act (15 U.S.C. 632); and

(2) does not have more than 600 employees.

(i) **Authorization of Appropriations**.—There are authorized to be appropriated to the Administrator of the Maritime Administration for each of fiscal years 2006 through 2010 to carry out this section—

(1) $5,000,000 for training grants; and

(2) $25,000,000 for capital and related improvement grants.

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; SALE OF NAVY SHIPYARD ARTICLES AND SERVICES TO PRIVATE SHIPYARDS.

10 U.S.C. 7300 (2006). 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. (10 U.S.C. 7291, note), provides: "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.

DEFENSE PRODUCTION ACT
[Excerpts]

50 U.S.C. App. 2071 (2006). 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.

50 U.S.C. App. 2158 (2006). 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 [15 U.S.C. *12*], except that such term includes section 5 of the Federal Trade Commission Act [15 U.S.C. 45] 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.

NATIONAL EMERGENCIES ACT

50 U.S.C. 1601 (2006). Termination of existing declared emergencies.

(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 [enacted Sept. 14, 1976] 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.

50 U.S.C. 1621 (2006). Declaration of national emergency by President; publication in Federal Register; effect on other laws; superseding legislation.

(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 [enacted Sept. 14, 1976] shall supersede this title [this section and 50 U.S.C.1622] unless it does so in specific terms, referring to this title, and declaring that the new law supersedes the provisions of this title.

50 U.S.C. 1622 (2006). National emergencies.

(a) Termination methods. Any national emergency declared by the President in accordance with this title [this section and *50 USCS § 1621*] shall terminate if--

(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 [this section and 50 U.S.C. 1621], 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.

50 U.S.C. 1631 (2006). Declaration of national emergency by Executive order; authority; publication in Federal Register, transmittal to Congress. 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.

50 U.S.C. 1641 (2006). Accountability and reporting requirements of the President.

(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.

50 U.S.C. 1651 (2006). Other laws, powers and authorities conferred thereby, and actions taken thereunder; Congressional studies.

(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;[.]
(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 [enacted Sept. 14, 1976].

VESSELS IN TERRITORIAL WATERS OF THE UNITED STATES

50 U.S.C. 191 (2006). Regulation of anchorage and movement of vessels during national emergency.

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;

(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 (2006). 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 (2006). 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 for each violation. Each day of a continuing violation shall constitute a separate violation.[106]

(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. 195 (2006). "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.

---

[106] Note that the amount of this penalty may have been changed pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, set forth at page 71.

(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 (2006). 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[107], 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[108], 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 (2006). 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 (2006). 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

---

[107] Section 902 of the Merchant Marine Act, 1936, has been codified as 46 U.S.C. 56301 - 56306.
[108] Id.

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[109], 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.

[109] Section 9 of the Shipping Act, 1916, has been codified as 46 U.S.C. 56101, 57109.

(d) Reconditioning of vessels. The Secretary of Transportation without regard to the provisions of section 3709 of the Revised Statutes [41 U.S.C. 5] 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 [41 U.S.C. 5], 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".

TITLE 49, SUBTITLE IV—
INTERSTATE TRANSPORTATION.
[EXCERPTS]

TITLE II - SURFACE TRANSPORTATION BOARD.
CHAPTER 7 - SURFACE TRANSPORTATION BOARD.

49 U.S.C. 701 (2006). 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 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 (2006). 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 (2006). 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 mem-

bers, 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 (2006). ANNUAL REPORT. The Board shall annually transmit to the Congress a report on its activities.

49 U.S.C. 705 (2006). 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 (2006). 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.

* * * * *

49 U.S.C. 721 (2006). 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 I V.

(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.

* * * * * * * *

CHAPTER 131. GENERAL PROVISIONS.

49 U.S.C. 13101 (2006). 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;

* * * * * *

(K) promote intermodal transportation;

* * * * * *

(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 (2006). 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.

* * * * * *

(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.

* * * * *

(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.

* * * * *

(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.

* * * * *

(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.

* * * * *

(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.

* * * * *

CHAPTER 133. ADMINISTRATIVE PROVISIONS.

49 U.S.C. 13301 (2006). 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.

* * * * *

(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.

* * * * *

CHAPTER 135. JURISDICTION.

* * * * *

SUBCHAPTER II. WATER CARRIER TRANSPORTATION.

49 U.S.C. 13521 (2006). 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.

* * * * *

SUBCHAPTER III. FREIGHT FORWARDER SERVICE.

49 U.S.C. 13531 (2006). 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.

* * * * *

SUBCHAPTER IV. AUTHORITY TO EXEMPT.

49 U.S.C. 13541 (2006). 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 (2006). 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 (2006). 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. [110]. *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.

(1) *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.

(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.

* * * * * *

---

[110] 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.

49 U.S.C. 13707 (2006). 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.

* * * * * *

49 U.S.C. 13712 (2006). 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 (2006). 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.

* * * * * *

CHAPTER 147. ENFORCEMENT; INVESTIGATIONS; RIGHTS; REMEDIES.

49 U.S.C. 14701 (2006). 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.

* * * * * *

49 U.S.C. 14704 (2006). 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) Enforcement by Civil Action. 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 (2006). 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 (2006). LIABILITY OF CARRIERS UNDER RECEIPTS AND BILLS OF LADING.

* * * * *

(c) Special Rules.

* * * * *

(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.

* * * * * *

(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 (2006). GENERAL CIVIL PENALTIES.

* * * * * *

(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 (2006). 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 (2006). 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.[111]

(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.

* * * * *

49 U.S.C. 14906 (2006). 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.

* * * * * *

49 U.S.C. 14908 (2006). 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

---

[111] Note that the amount of this penalty may have been changed pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, set forth at page 71.

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.

* * * * * *

49 U.S.C. 14913 (2006). 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 (2006). 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.

* * * * * *

GI BILL IMPROVEMENT ACT OF 1977. Section 401 of Public Law 95-202, approved November 23, 1977 (91 STAT. 1449), provides:

Sec. 401. (a)(1) Notwithstanding any other provision of law, the service of any person as a member of the Women's Air Forces Service Pilots (a group of Federal civilian employees attached to the United States Army Air Force during World War II), or the service of any person in any other similarly situated group the members of which rendered service to the Armed Forces of the United States in a capacity considered civilian employment or contractual service at the time such service was rendered, shall be considered active duty for the purposes of all laws administered by the Veterans' Administration if the Secretary of Defense, pursuant to regulations which the Secretary shall prescribe--,

(A) after a full review of the historical records and all other available evidence pertaining to the service of any such group, determines, on the basis of judicial and other appropriate precedent, that the service of such group consituted active military service, and

(B) in the case of any such group with respect to which such Secretary has made an affirmative determination that the service of such group constituted active military service, issues to each member of such group a discharge from such service under honor and conditions where the nature and duration of the service of such member so warrants.

Discharges issued pursuant to the provisions of the first sentence of this paragraph shall designate as the date of discharge that date, as determined by the Secretary of Defense, on which such service by the person concerned was terminated.

(2) In making a determination under clause (A) of paragraph (1) of this subsection with respect to any group described in such paragraph, the Secretary of Defense may take into consideration the extent to which–

(A) such group received military training and acquired a military capability or the service performed by such group was critical to the success of a military mission,

(B) the members of such group were subject to military justice, discipline, and control,

(C) the members of such group were permitted to resign,

(D) the members of such group were susceptible to assignment for duty in a combat zone, and

(E) the members of such group had reasonable expectations that their service would be considered to be active military service.

(b)(1) No benefits shall be paid to any person for any period prior to the date of enactment of this title as a result of the enactment of subsection (a) of this section.

(2) The provisions of section 106(a)(2) of title 388 United States Code, relating to election of benefits, shall be applicable to persons made eligible for benefits, under laws administered by the Veterans' Administration, as a result of implementation of the provisions of subsection (a) of this section."

Administrative Action.

On January 19, 1988, the Secretary of the Air Force, Edward C. Aldridge, Jr., determined that the service of the "American Merchant Marine in Oceangoing Service during the Period of Armed Conflict, December 7, 1941, to August 15, 1945," shall be considered "active duty" under the provisions of Public Law 95-202 for the purpose of laws administered by the Veteran Administration. Although technically not part of the United States Merchant Marine, Civil Service vessels in ocean going service on foreign waters are also included as part of this approved group.

Applicable Regulations

38 CFR 3.7 Individuals and groups considered to have performed active military, naval, or air service. The following individuals and groups are considered to have performed active military, naval, or air service:

* * *

(x) Active military service certified as such under section 401 of Pub. L. 95-202. Such service if certified by the Secretary of Defense as active military service and if a discharge under honorable conditions is issued by the Secretary. The effective dates for an award based upon such service shall be as provided by § 3.400(z), except that in no event shall such an award be made effective earlier than November 23, 1977. Service in the following groups has been certified as active military service.

* * *

(14) United States Merchant Seamen Who Served on Blockships in Support of Operation Mulberry.

(15) American Merchant Marine in Oceangoing Service during the Period of Armed Conflict, December 7, 1941, to August 15, 1945.

* * *

VETERANS PROGRAMS ENHANCEMENT ACT OF 1998, AS AMENDED

CHAPTER 112. MERCHANT MARINE BENEFITS.

46 U.S.C. 11201 (2006). 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.

(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 [enacted Nov. 11, 1998].

(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 [enacted Nov. 11, 1998], 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 (2006). 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 (2006). 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 (2006). 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.

CHAPTER 23. BURIAL BENEFITS.

38 U.S.C. 2301 (2006). Flags.

(a) The Secretary shall furnish a flag to drape the casket of each--

(1) deceased veteran who--

(A) was a veteran of any war, or of service after January 31, 1955;

(B) had served at least one enlistment; or

(C) had been discharged or released from the active military, naval, or air service for a disability incurred or aggravated in line of duty; and

(2) deceased individual who at the time of death was entitled to retired pay under chapter 67 of title 10 [10 U.S.C. *1331* et seq.] or would have been entitled to retired pay under that chapter but for the fact that the person was under 60 years of age.

(b) After the burial of the veteran the flag so furnished shall be given to the veteran's next of kin. If no claim is made for the flag by the next of kin, it may be given, upon request, to a close friend or associate of the deceased veteran. If a flag is given to a close friend or associate of the deceased veteran, no flag shall be given to any other person on account of the death of such veteran.

(c) For the purpose of this section, the term "Mexican border period" as defined in paragraph (30) of section 101 of this title includes the period beginning on January 1, 1911, and ending on May 8, 1916.

(d) In the case of any person who died while in the active military, naval, or air service after May 27, 1941, the Secretary shall furnish a flag to the next of kin, or to such other person as the Secretary considers most appropriate, if such next of kin or other person is not otherwise entitled to receive a flag under this section or under section 1482(a) of title 10.

(e) The Secretary shall furnish a flag to drape the casket of each deceased person who is buried in a national cemetery by virtue of eligibility for burial in such cemetery under section 2402(6) of this title. After the burial, the flag shall be given to the next of kin or to such other person as the Secretary considers appropriate.

(f) (1) The Secretary shall furnish a flag to drape the casket of each deceased member or former member of the Selected Reserve (as described in section 10143 of title 10) who is not otherwise eligible for a flag under this section or section 1482(a) of title 10 --

(A) who completed at least one enlistment as a member of the Selected Reserve or, in the case of an officer, completed the period of initial obligated service as a member of the Selected Reserve;

(B) who was discharged before completion of the person's initial enlistment as a member of the Selected Reserve or, in the case of an officer, period of

initial obligated service as a member of the Selected Reserve, for a disability incurred or aggravated in line of duty; or

(C) who died while a member of the Selected Reserve.

(2) A flag may not be furnished under subparagraph (A) or (B) of paragraph (1) in the case of a person whose last discharge from service in the Armed Forces was under conditions less favorable than honorable.

(3) After the burial, a flag furnished under paragraph (1) shall be given to the next of kin or to such other person as the Secretary considers appropriate.

(g) A flag may not be furnished under this section in the case of a person described in section 2411(b) of this title.

(h) (1) The Secretary may not procure any flag for the purposes of this section that is not wholly produced in the United States.

(2) (A) The Secretary may waive the requirement of paragraph (1) if the Secretary determines--

(i) that the requirement cannot be reasonably met; or

(ii) that compliance with the requirement would not be in the national interest of the United States.

(B) The Secretary shall submit to Congress in writing notice of a determination under subparagraph (A) not later than 30 days after the date on which such determination is made.

(3) For the purpose of paragraph (1), a flag shall be considered to be wholly produced in the United States only if--

(A) the materials and components of the flag are entirely grown, manufactured, or created in the United States;

(B) the processing (including spinning, weaving, dyeing, and finishing) of such materials and components is entirely performed in the United States; and

(C) the manufacture and assembling of such materials and components into the flag is entirely performed in the United States.

38 U.S.C. 2302 (2006). Funeral expenses.

(a) In the case of a deceased veteran--

(1) who at the time of death was in receipt of compensation (or but for the receipt of retirement pay would have been entitled to compensation) or was in receipt of pension, or

(2) who was a veteran of any war or was discharged or released from the active military, naval, or air service for a disability incurred or aggravated in line of duty, whose body is held by a State (or a political subdivision of a State), and with respect to whom the Secretary determines--

(A) that there is no next of kin or other person claiming the body of the deceased veteran, and

(B) that there are not available sufficient resources to cover burial and funeral expenses,

the Secretary, in the Secretary's discretion, having due regard to the circumstances in each case, may pay a sum not exceeding $300 to such person as the Secretary prescribes to cover the burial and funeral expenses of the

deceased veteran and the expense of preparing the body and transporting it to the place of burial. For the purpose of this subsection, the term "veteran" includes a person who died during a period deemed to be active military, naval, or air service under section 106(c) of this title.

(b) Except as hereafter provided in this subsection, no deduction shall be made from the burial allowance because of the veteran's net assets at the time of the death of such veteran, or because of any contribution from any source toward the burial and funeral expenses (including transportation) unless the amount of expenses incurred is covered by the amount actually paid therefore by the United States, a State, any agency or political subdivision of the United States or of a State, or the employer of the deceased veteran. No claim shall be allowed (1) for more than the difference between the entire amount of the expenses incurred and the amount paid by any or all of the foregoing, or (2) when the burial allowance would revert to the funds of a public or private organization or would discharge such an organization's obligation without payment. The burial allowance or any part thereof shall not be paid in any case where specific provision is otherwise made for payment of expenses of funeral, transportation, and interment under any other Act.

38 U.S.C. 2303 (2006). Death in Department facility; plot allowance.

(a)

(1) When a veteran dies in a facility described in paragraph (2), the Secretary shall--

(A) pay the actual cost (not to exceed $300) of the burial and funeral or, within such limits, may make contracts for such services without regard to the laws requiring advertisement for proposals for supplies and services for the Department; and

(B) when such a death occurs in a State, transport the body to the place of burial in the same or any other State.

(2) A facility described in this paragraph is--

(A) a facility of the Department (as defined in section 1701(3) of this title) to which the deceased was properly admitted for hospital, nursing home, or domiciliary care under section 1710 or 1711(a) of this title; or

(B) an institution at which the deceased veteran was, at the time of death, receiving--

(i) hospital care in accordance with section 1703 of this title;

(ii) nursing home care under section 1720 of this title; or

(iii) nursing home care for which payments are made under section 1741 of this title

(b) In addition to the benefits provided for under section 2302 of this title and subsection (a) of this section, in the case of a veteran who is eligible for burial in a national cemetery under section 2402 of this title and who is not buried in a national cemetery or other cemetery under the jurisdiction of the United States--

(1) if such veteran is buried (without charge for the cost of a plot or interment) in a cemetery, or a section of a cemetery, that (A) is used solely for the interment of persons who are (i) eligible for burial in a national cemetery, and (ii) members of a reserve component of the Armed Forces not otherwise eligible for such burial or former members of such a reserve component not otherwise eligible for such burial who are discharged or released from service under conditions other than dishonorable, and (B) is owned by a State or by an agency or political subdivision of a State, and Secretary shall pay to such State, agency, or political subdivision the sum of $300 as a plot or interment allowance for such veteran; and

(2) if such veteran is eligible for a burial allowance under section 2302 of this title or under subsection (a) of this section, or was discharged from the active military, naval, or air service for a disability incurred or aggravated in line of duty, and such veteran is buried in a cemetery, or a section of a cemetery, other than as described in clause (1) of this subsection, the Secretary shall pay a sum not exceeding $300 as a plot or interment allowance to such person as the Secretary prescribes, except that if any part of the plot or interment costs of a burial to which this clause applies has been paid or assumed by a State, an agency or political subdivision of a State, or a former employer of the deceased veteran, no claim for such allowance shall be allowed for more than the difference between the entire amount of the expenses incurred and the amount paid or assumed by any or all of the foregoing entities.

38 U.S.C. 2304 (2006). Claims for reimbursement. Applications for payments under section 2302 of this title must be filed within two years after the burial of the veteran. If the burial allowance was not payable at the death of the veteran because of the nature of the veteran's discharge from the service, but after the veteran's death the veteran's discharge has been corrected by competent authority so as to reflect a discharge from the service under conditions other than dishonorable, then the burial allowance may be paid if a claim is filed within two years from the date of correction of the discharge. If a claimant's application is incomplete at the time it is originally submitted, the Secretary shall notify the applicant of the evidence necessary to complete the application. If such evidence is not received within one year from the date of such notification, no allowance may be paid.

38 U.S.C. 2305 (2006). Persons eligible under prior law. The death of any person who had a status which would, under the laws in effect on December 31, 1957, afford entitlement to the burial benefits and other benefits provided for in this chapter, but who did not meet the service requirements contained in this chapter, shall afford entitlement to such benefits, notwithstanding the failure of such person to meet such service requirements.

38 U.S.C. 2306 (2006). Headstones, markers, and burial receptacles.
(a) The Secretary shall furnish, when requested, appropriate Government headstones or markers at the expense of the United States for the unmarked graves of the following:

(1) Any individual buried in a national cemetery or in a post cemetery.

(2) Any individual eligible for burial in a national cemetery (but not buried there), except for those persons or classes of persons enumerated in section 2402(4), (5), and (6) of this title.

(3) Soldiers of the Union and Confederate Armies of the Civil War.

(4) Any individual described in section 2402(5) of this title who is buried in a veterans' cemetery owned by a State.

(5) Any individual who at the time of death was entitled to retired pay under chapter 1223 of title 10 or would have been entitled to retired pay under that chapter but for the fact that the person was under 60 years of age.

(b)

(1) The Secretary shall furnish, when requested, an appropriate memorial headstone or marker for the purpose of commemorating an eligible individual whose remains are unavailable. Such a headstone or marker shall be furnished for placement in a national cemetery area reserved for that purpose under section 2403 of this title, a veterans' cemetery owned by a State, or, in the case of a veteran, in a State, local, or private cemetery.

(2) For purposes of paragraph (1), an eligible individual is any of the following:

(A) A veteran.

(B) The spouse or surviving spouse of a veteran.

(C) An eligible dependent child of a veteran.

(3) For purposes of paragraph (1), the remains of an individual shall be considered to be unavailable if the individual's remains--

(A) have not been recovered or identified;

(B) were buried at sea, whether by the individual's own choice or otherwise;

(C) were donated to science; or

(D) were cremated and the ashes scattered without interment of any portion of the ashes.

(4) For purposes of this subsection:

(A) The term "veteran" includes an individual who dies in the active military, naval, or air service.

(B) The term "surviving spouse" includes an unremarried surviving spouse whose subsequent remarriage was terminated by death or divorce.

(5) For purposes of this section, the term "eligible dependent child" means a child--

(A) who is under 21 years of age, or under 23 years of age if pursuing a course of instruction at an approved educational institution; or

(B) who is unmarried and became permanently physically or mentally disabled and incapable of self-support before reaching 21 years of age, or

before reaching 23 years of age if pursuing a course of instruction at an approved educational institution.

(c) A headstone or marker furnished under subsection (a), (b), or (d) of this section may be of any material, including but not limited to marble, granite, bronze, or slate, requested by the person entitled to request such headstone or marker if the material requested is determined by the Secretary (1) to be cost effective, and (2) in a case in which the headstone or marker is to be placed in a national cemetery, to be aesthetically compatible with the area of the cemetery in which it is to be placed.

(d) (1) The Secretary shall furnish, when requested, an appropriate Government headstone or marker at the expense of the United States for the grave of an individual described in paragraph (2) or (5) of subsection (a) who is buried in a private cemetery, notwithstanding that the grave is marked by a headstone or marker furnished at private expense. Such a headstone or marker may be furnished only if the individual making the request for the Government headstone or marker certifies to the Secretary that the headstone or marker will be placed on the grave for which the headstone or marker is requested, or, if placement on the grave is impossible or impracticable, as close as possible to the grave within the grounds of the cemetery in which the grave is located.

(2) Any headstone or marker furnished under this subsection shall be delivered by the Secretary directly to the cemetery where the grave is located or to a receiving agent for delivery to the cemetery.

(3) The authority to furnish a marker under this subsection expires on December 31, 2007.

(4) The headstone or marker furnished under this subsection shall be the headstone or marker selected by the individual making the request from among all the headstones and markers made available by the Government for selection.

(e)

(1) The Secretary of Veterans Affairs shall provide an outer burial receptacle for each new grave in an open cemetery under the control of the National Cemetery Administration in which remains are interred in a casket. The Secretary of the Army may provide an outer burial receptacle for such a grave in the Arlington National Cemetery.

(2) The use of outer burial receptacles in a cemetery under the control of the National Cemetery Administration or in the Arlington National Cemetery shall be in accordance with regulations or procedures approved by the Secretary of Veterans Affairs or Secretary of the Army, respectively.

(3) Regulations or procedures under paragraph (2) may specify that--

(A) an outer burial receptacle other than a grave liner be provided in lieu of a grave liner at the election of the survivors of the interred veteran; and

(B) if an outer burial receptacle other than a grave liner is provided in lieu of a grave liner upon an election of such survivors, such survivors be required--

(i) to pay the amount by which the cost of the outer burial receptacle exceeds the cost of the grave liner that would otherwise have been provided in the absence of the election; and

(ii) to pay the amount of the administrative costs incurred by the Secretary (or, with respect to Arlington National Cemetery, the Secretary of the Army) in providing the outer burial receptacle in lieu of such grave liner.

(4) Regulations or procedures under paragraph (2) may provide for the use of a voucher system, or other system of reimbursement approved by the Secretary (or, with respect to Arlington National Cemetery, the Secretary of the Army), for payment for outer burial receptacles other than grave liners provided under such regulations or procedures.

(f) (1) When the Secretary has furnished a headstone or marker under subsection (a) for the unmarked grave of an individual, the Secretary shall, if feasible, add a memorial inscription to that headstone or marker rather than furnishing a separate headstone or marker under that subsection for the surviving spouse or eligible dependent child of such individual.

(2) When the Secretary has furnished a memorial headstone or marker under subsection (b) for purposes of commemorating a veteran or an individual who died in the active military, naval, or air service, the Secretary shall, if feasible, add a memorial inscription to that headstone or marker rather than furnishing a separate memorial headstone or marker under that subsection for the surviving spouse or eligible dependent child of such individual.

(g)

(1) A headstone or marker may not be furnished under subsection (a) for the unmarked grave of a person described in section 2411(b) of this title.

(2) A memorial headstone or marker may not be furnished under subsection (b) for the purpose of commemorating a person described in section 2411(b) of this title.

(3) A headstone or marker may not be furnished under subsection (d) for the grave of a person described in section 2411(b) of this title.

38 U.S.C. 2307 (2006). Death from service-connected disability. In any case in which a veteran dies as the result of a service-connected disability or disabilities, the Secretary, upon the request of the survivors of such veteran, shall pay the burial and funeral expenses incurred in connection with the death of the veteran in an amount not exceeding the greater of (1) $2,000, or (2) the amount authorized to be paid under section 8134(a) of title 5 in the case of a Federal employee whose death occurs as the result of an injury sustained in the performance of duty. Funeral and burial benefits provided under this section shall be in lieu of any benefits authorized under sections 2302 and 2303(a)(1) and (b)(2) of this title.

38 U.S.C. 2308 (2006). Transportation of deceased veteran to a national cemetery. Where a veteran dies as the result of a service-connected disability, or is in receipt of (but for the receipt of retirement pay or pension under this title would have been entitled to) disability compensation, the Secretary may pay, in addition to any amount paid pursuant to section 2302 or 2307 of this title, the cost of transportation of the deceased veteran for burial in a national cemetery. Such payment shall not exceed the cost of transportation to the national cemetery nearest the veteran's last place of residence in which burial space is available.

TAX PROVISIONS OF INTEREST

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 (2006). 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.

* * *

(c) Exemptions.

(1) Deep-draft ocean-going vessels. The tax imposed by subsection (a) shall not apply with respect to any vessel designed primarily for use on the high seas which has a draft of more than 12 feet.

(2) Passenger vessels. The tax imposed by subsection (a) shall not apply with respect to any vessel used primarily for the transportation of persons.

(3) Use by State or local government in transporting property in a State or local business. Subparagraph (B) of subsection (d)(1) shall not apply with respect to use by a State or political subdivision thereof.

(4) Use in moving LASH and SEABEE ocean-going barges. The tax imposed by subsection (a) shall not apply with respect to use for movement by tug of exclusively LASH (Lighter-aboard-ship) and SEABEE ocean-going barges released by their ocean-going carriers solely to pick up or deliver international cargoes.

(d) Definitions. For purposes of this section--

(1) Commercial waterway transportation. The term "commercial waterway transportation" means any use of a vessel on any inland or intracoastal waterway of the United States--

(A) in the business of transporting property for compensation or hire, or

(B) in transporting property in the business of the owner, lessee, or operator of the vessel (other than fish or other aquatic animal life caught on the voyage).

(2) Inland or intracoastal waterway of the United States. The term "inland or intracoastal waterway of the United States" means any inland or intracoastal waterway of the United States which is described in section 206 of the Inland Waterways Revenue Act of 1978.

(3) Person. The term "person" includes the United States, a State, a political subdivision of a State, or any agency or instrumentality of any of the foregoing.

(e) Date for filing return. The date for filing the return of the tax imposed by this section for any calendar quarter shall be the last day of the first month following such quarter.

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. Some of these provisions have been amended by Public law 109-135, approved December 21, 2005 (119 STAT. 2646), and Public Law 109-222, approved May 17, 2006 (120 STAT. 350). As so amended, these provisions provide:

26 U.S.C. 1352 (2006). 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.

26 U.S.C. 1353 (2006). Notional 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, charter, and operating agreement interests in such vessel or on such other basis as the Secretary may prescribe by regulations.

26 U.S.C. 1354 (2006). 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 on or 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.

26 U.S.C. 1355 (2006). 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 6,000 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.

(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--

(A) (i) such vessel is owned by, or chartered (including a time charter) to, the person, or

(ii) the person provides services for such vessel pursuant to an operating agreement, and

(B) such vessel 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 by treating all members of such group as 1 person.

(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, charter, or operating agreement interest in any vessel operated by 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) Great Lakes domestic shipping to not disqualify vessel.

(1) In general. If the electing corporation elects (at such time and in such manner as the Secretary may require) to apply this subsection for any taxable year to any qualifying vessel which is used in qualified zone domestic trade during the taxable year--

(A) solely for purposes of subsection (a)(4), such use shall be treated as use in United States foreign trade (and not as use in United States domestic trade), and

(B) subsection (f) shall not apply with respect to such vessel for such taxable year.

(2) Effect of temporarily operating vessel in United States domestic trade. In the case of a qualifying vessel to which this subsection applies--

(A) In general. An electing corporation shall be treated as using such vessel in qualified zone domestic trade during any period of temporary use in the United States domestic trade (other than qualified zone domestic trade) if the electing corporation gives timely notice to the Secretary stating--

(i) that it temporarily operates or has operated in the United States domestic trade (other than qualified zone domestic trade) a qualifying vessel which had been used in the United States foreign trade or qualified zone domestic trade, and

(ii) its intention to resume operation of the vessel in the United States foreign trade or qualified zone domestic trade.

(B) 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.

(C) Period disregard in effect. The period of temporary use under subparagraph (A) continues until the earlier of the date of which--

(i) the electing corporation abandons its intention to resume operations of the vessel in the United States foreign trade or qualified zone domestic trade, or

(ii) the electing corporation resumes operation of the vessel in the United States foreign trade or qualified zone domestic trade.

(D) No disregard if domestic trade use exceeds 30 days. Subparagraph (A) shall not apply to any qualifying vessel which is operated in the United States domestic trade (other than qualified zone domestic trade) for more than 30 days during the taxable year.

(3) Allocation of income and deductions to qualifying shipping activities. In the case of a qualifying vessel to which this subsection applies, the Secretary shall prescribe rules for the proper allocation of income, expenses, losses, and deductions between the qualified shipping activities and the other activities of such vessel.

(4) Qualified zone domestic trade. For purposes of this subsection--

(A) In general. The term "qualified zone domestic trade" means the transportation of goods or passengers between places in the qualified zone if such transportation is in the United States domestic trade.

(B) Qualified zone. The term "qualified zone" means the Great Lakes Waterway and the St. Lawrence Seaway.

(h) Regulations. The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.

26 U.S.C. 1356 (2006). 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.

Such term shall not include any 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.

26 U.S.C. 1357 (2006). Items not subject to regular 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 [enacted Oct. 22, 2004].

(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.

26 U.S.C. 1358 (2006). 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.

26 U.S.C. 1359 (2006). 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 person 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.

SHIPYARD ACCOUNTING CHANGE

Section 708 of Public Law 108-357, approved October 22, 2004 (118 STAT. 1550), as amended (26 U.S.C. 460, note), 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 construction 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) Certain adjustments not to apply. Section 481 of the Internal Revenue Code of 1986 shall not apply with respect to any change in the method of accounting which is required by this section.
(e) 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..

MISCELLANEOUS MARITIME PROVISIONS

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."

AMERICAN NATIONAL MARITIME MUSEUM DESIGNATION.

16 U.S.C. 5409 (2006). 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 [enacted Oct. 17, 1998] 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.

ARCTIC SEA ROUTE STUDY/MARITIME ADMINISTRATION.

Section 412 of Public Law 109-241, approved July 11, 2006 (120 STAT. 540), provides:

> **SEC. 412. ASSESSMENT AND PLANNING.**
> There is authorized to be appropriated to the Maritime Administration $400,000 to carry out an assessment of, and planning for, the impact of an Arctic Sea Route on the indigenous people of Alaska.

Conference Report (109-413), page 75

ASSIGNMENT OF COAST GUARD AND MERCHANT MARINE PERSONNEL AS AT SEA MARSHALS

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. (2006) 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:

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.

CUSTOMS DUTY ON VESSEL EQUIPMENT AND REPAIRS

19 U.S.C. 1466 (2006). Equipment and repairs 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 [16 U.S.C. 1374].

(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 foreign 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, in foreign waters, or in a foreign port, and does not involve foreign shipyard repairs by foreign labor.

Declaration and entry shall not be required with respect to the installation, equipment, parts, and materials described in paragraph (4).

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.

46 U.S.C. 3703a (2006). 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 as a wrecked vessel under section 12112 of this title.

(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 as a wrecked vessel under section 12112 of this title 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 as a wrecked vessel under section 12112 of this title 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, (46 U.S.C. 3703 note) 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), (46 U.S.C. 3703a note) 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 designs.

GAMBLING SHIPS

18 U.S.C. 1081 (2006). Definitions. 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.

18 U.S.C. 1082 (2006). Gambling ships.

(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.

18 U.S.C. 1083 (2006). Transportation between shore and ship; penalties.[112]

(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

---

[112] Note that the amount of civil penalties may have been changed pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, set forth at page 71.

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. 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.

18 U.S.C. 1084 (2006). Transmission of wagering information; penalties.

(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 assisting 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.

MERCHANT MARINER DOCUMENTS - GAMBLING VESSELS.

46 U.S.C. 7302 (2006). 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 section 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 (2006). 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

(10) the Secretary may prescribe the individuals required to hold a merchant mariner's document serving onboard an oil spill response vessel.

GAMBLING DEVICES - THE JOHNSON ACT.

15 U.S.C. 1171 (2006). Definitions. 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 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

(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 [43 U.S.C. 1301].

15 U.S.C. 1172 (2006). Transportation of gambling devices as unlawful; exceptions; authority of Federal Trade Commission.

(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 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 [15 U.S.C. 1175(b)], not a violation of that section; and

(2) the gambling device remains on board that vessel while in that State.

15 U.S.C. 1173 (2006). Registration of manufacturers and dealers.

(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.

15 U.S.C. 1174 (2006). Labeling and marking of shipping packages. 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.

15 U.S.C. 1175 (2006). Specific jurisdictions within which manufacturing, repairing, selling, possessing, etc., prohibited.

(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. 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.

15 U.S.C. 1176 (2006). Penalties. Whoever violates any of the provisions of sections 2, 3, 4, or 5 of this Act shall be fined not more than $5,000 or imprisoned not more than two years, or both.[113]

15 U.S.C. 1177 (2006). Confiscation of gambling devices and means of transportation; laws governing. 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.

---

[113] Note that the amount of this penalty may have been changed pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, set forth at page 71.

15 U.S.C. 1178 (2006). Nonapplicability of Chapter to certain machines and devices. 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.

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) <u>In General</u>.—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.

MARITIME SECURITY PROFESSIONAL TRAINING AT MARITIME SCHOOLS.[114]

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

[114] See also Section 113 of Public Law 109-347, approved October 13, 2006 (120 STAT. 1895), set forth at page 528.

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*[115].—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.

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.
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

[115] Emphasis added.

PREVENTION OF DEPARTURE.

46 U.S.C. 3505 (2006). 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.

REQUIREMENT TO NOTIFY COAST GUARD OF RELEASE OF OBJECTS INTO THE NAVIGABLE WATERS OF THE UNITED STATES.

Section 602 of Public Law 109-241, approved July 11, 2006 (120 STAT. 553), amended the Ports and Waterways Safety Act (33 U.S.C. 1221, et seq.), by the addition of the following:

> **SEC. 15. REQUIREMENT TO NOTIFY COAST GUARD OF RELEASE OF OBJECTS INTO THE NAVIGABLE WATERS OF THE UNITED STATES.**
> (a) REQUIREMENT.—As soon as a person has knowledge of any release from a vessel or facility into the navigable waters of the United States of any object that creates an obstruction prohibited under section 10 of the Act of March 3, 1899, popularly known as the Rivers and Harbors Appropriations Act of 1899 (33 U.S.C. 403), such person shall notify the Secretary and the Secretary of the Army of such release.
> (b) RESTRICTION ON USE OF NOTIFICATION.—Any notification provided by an individual in accordance with subsection (a) may not be used against such individual in any criminal case, except a prosecution for perjury or for giving a false statement..

SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION APPROPRIATIONS

Fiscal Year 2006.

Public Law 109-115, approved November 30, 2005 (119 STAT. 2396), the Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act, 2006, provides at 119 STAT 2421:

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.

OPERATIONS 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, $16,284,000, to be derived from the Harbor Maintenance Trust Fund, pursuant to Public Law 99–662.

Fiscal Year 2007.

The Saint Lawrence Seaway Development Corporation has been operating under a series of Continuing Resolutions. As of January 1, 2007, it was operating under Public Law 109-383, approved December 9, 2006 (120 STAT. 2678). The reader is advised to make reference to subsequently enacted Continuing Resolutions.

VICTORY SHIP INSPECTION EXEMPTION

46 U.S.C. 3302 (2006). 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.

* * *

PORT MATTERS

DEEPWATER PORT ACT

33 U.S.C. 1501 (2006). 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 [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 (2006). 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 terminal for the transportation, storage, or further handling of oil or natural gas for transportation to any State, except as otherwise provided in section 23, 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, natural gas liquids, liquefied petroleum gas, and condensate recovered from 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 (2006). License for ownership, construction, and operation of deepwater port.

(a) Requirement. 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 [33 U.S.C. 2716][;]

(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 [*42* U.S.C. 7401 et seq.], 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.

(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) [33 U.S.C. 403], 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.
(i) To promote the security of the United States, the Secretary shall give top priority to the processing of a license under this Act for liquefied natural gas facilities that will be supplied with liquefied natural gas by United States flag vessels.

33 U.S.C. 1504 (2006). 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; exemption.
(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) the nation of registry for, and the nationality or citizenship of officers and crew serving on board, vessels transporting natural gas that are reasonably anticipated to be servicing the deepwater port;[116]

(L) 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

(M) 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

---

[116] 33 U.S.C. 1504(c)(2)(K) was inserted by Section 304(c)(1) of Public Law 109-241 (120 STAT. 527). Section 304(c)(2) provides: "(2) Information to be Provided. When the Coast Guard is operating as a contributing agency in the Federal Energy Regulatory Commission's shoreside licensing process for a liquefied natural gas or liquefied petroleum gas terminal located on shore or within State seaward boundaries, the Coast Guard shall provide to the Commission the information described in section 5(c)(2)(K) of the Deepwater Port Act of 1974 (33 U.S.C. 1504(c)(2)(K) with respect to vessels reasonably anticipated to be servicing that port."

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 (2006). 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. 1507 (2006). 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 [49 U.S.C. 10101 et seq.], 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 [15 U.S.C. 717 et seq.] or any regulation or rule issued thereunder.

33 U.S.C. 1508 (2006). 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 [16 U.S.C. 1454].

(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 (2006). 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 (2006). 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 (2006). 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 (2006). 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 (2006). 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 (2006). 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,[117] 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

---

[117] Note that the amount of this penalty may have been changed pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, set forth at page 71.

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 (2006). 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 (2006). 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. 1518 (2006). 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. 1520 (2006). 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.

33 U.S.C. 1521(2006). 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 (2006). Limitations on export provisions of 30 U.S.C. 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 [30 U.S.C. 185(u)], as amended by Public Law 93-153.

33 U.S.C. 1523 (2006). 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 (2006). 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.

LNG TANKER PROGRAM.

Section 304(a) of Public Law 109-241, approved July 11, 2006 (120 STAT. 527), provides:

> "(a) Program-The Secretary of Transportation shall develop and implement a program to promote the transportation of liquefied natural gas to the United States on United States flag vessels."

HIGHWAY BILL PROVISIONS [118]

ADMINISTERED BY THE MARITIME ADMINISTRATION.

Hawaii Port Infrastructure Expansion Program - Maritime Administration. Section 9008 of Public Law 109-59 (119 STAT. 1926), requires that funds made available for an intermodal or marine facility under the Hawaii Port Infrastructure Expansion Program, shall be transferred to and administered by the Maritime Administration.[119] Section 9008 reads as follows:

> **Sec. 9008. Hawaii Port Infrastructure Expansion Program**
>
> **(a) In General**.—Amounts appropriated or otherwise made available for any fiscal year for an intermodal or marine facility comprising a component of the Hawaii Port Infrastructure Expansion Program, and any non-Federal contributions made available for that program, shall be—
>
> (1) transferred to and administered by the Administrator of the Maritime Administration; and
>
> (2) subject only to such conditions and requirements as may be required by the Maritime Administration.
>
> **b) Intermodal Authorizations**.[120]—
>
> (1)INTERMODAL CENTERS.—Notwithstanding any other provision of law, an intermodal or marine facility described in subsection (a) is eligible for funding under paragraphs (1)(C) and (2)(C) of section 5309(m) of title 49, United States Code.
>
> (2) INTERMODAL SURFACE FREIGHT TRANSFER FACILITY ELIGIBILITY.—
>
> Notwithstanding any other provision of law, an intermodal or marine facility described in subsection (a) is deemed to be eligible to be an intermodal surface freight transfer facility for the purposes of section 181(8)(D) of title 23, United States Code.
>
> **(c) Authorization of Appropriations**.—
>
> (1) IN GENERAL.—There are authorized to be appropriated to the Secretary of Transportation such sums as may be necessary to carry out this section.
>
> (2) NO LIMITATION.—Nothing in paragraph (1) shall be construed—
>
> (A) to limit or prevent the transfer or administration under subsection (a) of any funds appropriated or otherwise made available pursuant to any

---

[118] SAFTEA-LU. [HIGHWAY BILL] Public Law 109-59, approved August 10, 2005 (119 STAT. 1144)
[119] Conference Report (109-203), page 1096
[120] As amended by the Section 3508. Technical Corrections, of Public Law 109-163, approved January 6, 2006 (119 STAT 3557), the National Defense Authorization Act, FY 2006.

other authorization of appropriations or by any appropriations Act; or

(B) to limit the application of subsection (b) to title 49, United States Code.

****

Note: Section 3510(c) of Public Law 109-364, approved October 17, 2006 (120 STAT. 2520 provides:

(c) INTERMODAL CENTERS.—

(1) IN GENERAL.—Notwithstanding section 5309(m)(6)(B) of title 49, United States Code, half of the amounts appropriated or made available under subsections (b) and (c) of section 5338 of title 49, United States Code, for capital projects under section 5309(m)(6)(B) of that title for fiscal years 2006 through 2009 shall be made available and used, in accordance with section 9008(a) of Public Law 109–59, for an intermodal or marine facility comprising a component of the Hawaii Port Infrastructure Expansion Program.

(2) SUPPLEMENTARY FUNDING.—Any amount made available under paragraph (1) shall be in addition to any amounts authorized to be appropriated under subsections (b) and (c) of section 9008 of Public Law 109–59.

****

Anchorage Intermodal Transportation Maritime Facility - Maritime Administration. Section 10205 of Public Law 109-59 (119 STAT. 1934), requires that funds provided for an intermodal transportation maritime facility at the Port of Anchorage, or for access to that facility shall be transferred to and administered by the Maritime Administration. Section 10205 reads as follows:

Sec. 10205. Intermodal Transportation Facility Expansion.

Any funds provided for the Federal share, and any funds provided for the non-Federal share, for an intermodal transportation maritime facility at the Port of Anchorage, Alaska, or for access to that facility shall be transferred to and administered by the Administrator of the ***Maritime Administration***.[121]

[121] Emphasis added.

OF INTEREST TO THE MARITIME ADMINISTRATION

Ferry Boats - Authorization of Appropriations. Section 1101(13) of Public Law 109-59, (119 STAT 1155),[122] authorizes funds for the construction of Ferry Boats and Ferry Terminal Facilities, under 23 U.S.C. 147, as follows:

> **(13) Construction of Ferry Boats and Ferry Terminal Facilities.** For construction of ferry boats and ferry terminal facilities under section 147 of such title-.
> (A) $#38,000,000 for fiscal year 2005;
> (B) $55,000,000 for fiscal year 2006;
> (C) $60,000,000 for fiscal year 2007;
> (D) $65,000,000 for fiscal year 2008; and
> (E) $67,000,000 for fiscal year 2009

Ferry Boats - Territorial Highway Program. Section 1118 of Public Law 109-59 (119 STAT. 1179), amended 23 U.S.C. 215, to provide in part that Territorial Highway Program funds can be used as set forth in 23 U.S.C. 215(f)(1)(C), for "Ferry boats, terminal facilities and approaches" 23 U.S.C. 129 (b) & (c).: Conference Report (109-203), page 847.

Construction of Ferry Boats and Ferry Terminal Facilities. Section 1801 of Public Law 109-59 (119 STAT. 1455), generally codifies in 23 U.S.C. 147, the Ferry Boat Program and requires the Secretary to carry out a program for the construction of ferry boats and ferry facilities in accordance with 23 U.S.C. 129(c). Section 1801(d) of Public Law 109-59, provides set asides for construction within the marine highway systems that are part of the National Highway System, including Alaska, New Jersey, and Washington State. As so amended, 23 U.S.C. 147, provides:

> **23 U.S.C. 147 (2006). Construction of ferry boats and ferry terminal facilities**
> **(a) In general**. The Secretary shall carry out a program for construction of ferry boats and ferry terminal facilities in accordance with section 129(c).
> **(b) Federal share**. The Federal share of the cost of construction of ferry boats, ferry terminals, and ferry maintenance facilities under this section shall be 80 percent.
> **(c) Allocation of funds.** The Secretary shall give priority in the allocation of funds under this section to those ferry systems, and public entities responsible for developing ferries, that--

---

[122] Conference Report (109-203), page 833 - 835

(1) provide critical access to areas that are not well-served by other modes of surface transportation;

(2) carry the greatest number of passengers and vehicles; or

(3) carry the greatest number of passengers in passenger-only service.

(d) Set-aside for projects on NHS.

(1) In general. $20,000,000 of the amount made available to carry out this section for each of fiscal years 2005 through 2009 shall be obligated for the construction or refurbishment of ferry boats and ferry terminal facilities and approaches to such facilities within marine highway systems that are part of the National Highway System.

(2) Alaska. $10,000,000 of the $20,000,000 for a fiscal year made available under paragraph (1) shall be made available to the State of Alaska.

(3) New Jersey. $5,000,000 of the $20,000,000 for a fiscal year made available under paragraph (1) shall be made available to the State of New Jersey.

(4) Washington. $5,000,000 of the $20,000,000 for a fiscal year made available under paragraph (1) shall be made available to the State of Washington.

(e) Period of availability. Notwithstanding section 118(b), funds made available to carry out this section shall remain available until expended.

(f) Applicability. All provisions of this chapter that are applicable to the National Highway System, other than provisions relating to apportionment formula and Federal share, shall apply to funds made available to carry out this section, except as determined by the Secretary to be inconsistent with this section.

Section 1801 of Public Law 109-59 further provides:

Section 1801(d). Authorization of Appropriations.—In addition to amounts made available to carry out section 147 of title 23, United States Code, by section 1101 of this Act, there are authorized to be appropriated such sums as may be necessary to carry out such section 147 for fiscal year 2006 and each fiscal year thereafter. Such funds shall remain available until expended.

Section 1801(e). National Ferry Database.—

(1) ESTABLISHMENT.—The Secretary, acting through the Bureau of Transportation Statistics, shall establish and maintain a national ferry database

CONTENTS.—The database shall contain current information regarding ferry systems, including information regarding routes, vessels, passengers and vehicles carried, funding sources and such other information as the Secretary considers useful.

(2) UPDATE REPORT.—Using information collected through the database, the Secretary shall periodically modify as appropriate the report submitted under section 1207(c) of the Transportation Equity Act for the 21st Century (23 U.S.C. 129 note; 112 Stat. 185–186).

(3) REQUIREMENTS.—The Secretary shall—

(A) compile the database not later than 1 year after the date of enactment of this Act and update the database every 2 years thereafter;

(B) ensure that the database is easily accessible to the public; and

(C) make available, from the amounts made available for the Bureau of Transportation Statistics by section 5101 of this Act, not more than $500,000 for each of fiscal years 2006 through 2009 to establish and maintain the database.

Section 1801(f). Territory Ferries.—Section 129(c)(5) of title 23, United States Code, is amended by striking ‘‘the Commonwealth of Puerto Rico’’ each place it appears and inserting ‘‘any territory of the United States’’.

Conference Report (109-203), page 880.

Ferry Boats - Capital Investment Grants. Section 3011 of Public Law 109-59 (119 STAT. 1573), made comprehensive amendment to 49 U.S.C. 5309. Of particular interest, are the following: (1) 49 U.S.C. 5309(m)(6), providing: "(A) $10,400,000 shall be available in fiscal year 2005 for capital projects in Alaska and Hawaii for new fixed guideway systems and extension projects utilizing ferry boats, ferry boat terminals, or approaches to ferry boat terminals; (B) $15,000,000 shall be available in each of fiscal years 2006 through 2009 for capital projects in Alaska and Hawaii for new fixed guideway ferry systems and extension projects utilizing ferry boats, ferry boat terminals, or approaches to ferry boat terminals;". (2) 49 U.S.C. 5309(m)(7) providing: "(A) FERRY BOAT SYSTEMS.—$10,000,000 shall be available in each of fiscal years 2006 through 2009 for ferry boats or ferry terminal facilities. Of such funds, the following amounts shall be set aside for each fiscal year: (i) $2,500,000 for the San Francisco Water Transit Authority. (ii) $2,500,000 for the Massachusetts Bay Transportation Authority Ferry System. (iii) $1,000,000 for the Camden, New Jersey Ferry System. (iv) $1,000,000 for the Governor’s Island, New York Ferry System (v) $1,000,000 for the

Philadelphia Penn’s Landing Ferry Terminal. (vi) $1,000,000 for the Staten Island Ferry. (vii) $650,000 for the Maine State Ferry Service, Rockland. (viii) $350,000 for the Swans Island, Maine Ferry Service." Conference Report. (109-203), page 935. Silent on Ferry activities.

CHAPTER 701 - PORT SECURITY

46 U.S.C. 70101 (2006). 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. In this paragraph, the term "economic disruption" does not include a work stoppage or other employee-related action not related to terrorism and resulting from an employee-employer dispute.

46 U.S.C. 70102 (2006). 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 by 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 (2006). 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;

(F) include a salvage response plan--

(i) to identify salvage equipment capable of restoring operational trade capacity; and

(ii) to ensure that the waterways are cleared and the flow of commerce through United States ports is reestablished as efficiently and quickly as possible after a maritime transportation security incident; and

(G) be updated at least every 5 years by the Federal Maritime Security Coordinator.[123]

(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.[124]

(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--

---

[123] Section 111 of Public Law 109-347, approved October 13, 2006 (120 STAT. 1894), provides: "In updating Area Maritime Security Plans required under section 70103(b)(2)(F) of title 46, United States Code, and in applying for grants under section 70107 of such title, the Secretary of the Department in which the Coast Guard is operating shall make available, and Area Maritime Security Committee may use a risk assessment tool that used standardized risk criteria, such as the Maritime Security Risk Assessment Tool used by the Coast Guard."

[124] Section 415 of Public Law 109-241, approved July 11, 2006 (120 STAT. 540), provides: "SEC. 415. Port Richmond. The Secretary of the department in which the Coast Guard is operating, acting through the Commandant of the Coast Guard, may not approve a security plan under section 70103(c) of title 46, United States Code, for a liquefied natural gas import facility at Port Richmond in Philadelphia, Pennsylvania, until the Secretary conducts a vulnerability assessment under section 70102(b) of such title."

(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, including access by persons engaged in the surface transportation of intermodal containers in or out of a port 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) provide a strategy and timeline for conducting training and periodic unannounced drills;

(G) be updated at least every 5 years;

(H) be resubmitted for approval of each change to the vessel or facility that may substantially affect the security of the vessel or facility; and

(I) in the case of a security plan for a facility, be resubmitted for approval of each change in the ownership or operator of the facility that may substantially affect the security of the 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) subject to the availability of appropriations, verify the effectiveness of each such facility security plan periodically, but not less than 2 times per year, at least 1 of which shall be an inspection of the facility that is conducted without notice to the facility.

(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.

(8) (A) The Secretary shall require that the qualified individual having full authority to implement security actions for a facility described in paragraph (2) shall be a citizen of the United States.

(B) The Secretary may waive the requirement of subparagraph (A) with respect to an individual if the Secretary determines that it is appropriate to do so based on a complete background check of the individual and a review of all terrorist watch lists to ensure that the individual is not identified on any such terrorist watch list.

(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.

****

Port Security Training Program

Section 113 of Public Law 109-347, approved October 13, 2006 (120 STAT. 1895)[125], provides:

> **(a) In General**.--The Secretary, acting through the Under Secretary for Preparedness and in coordination with the Commandant of the Coast Guard, shall establish a Port Security Training Program (referred to in this section as the "Training Program") for the purpose of enhancing the capabilities of each facility required to submit a plan under section 70103(c) of title 46, United States Code, to prevent, prepare for, respond to, mitigate against, and recover from threatened or actual acts of terrorism, natural disasters, and other emergencies.
> **(b) Requirements**.--The Training Program shall provide validated training that--

[125] 6 U.S.C. 911.

(1) reaches multiple disciplines, including Federal, State, and local government officials, commercial seaport personnel and management, and governmental and nongovernmental emergency response providers;

(2) provides training at the awareness, performance, and management and planning levels;

(3) utilizes multiple training mediums and methods;

(4) addresses port security topics, including--

(A) facility security plans and procedures, including how security plans and procedures are adjusted when threat levels increase;

(B) facility security force operations and management;

(C) physical security and access control at facilities;

(D) methods of security for preventing and countering cargo theft;

(E) container security;

(F) recognition and detection of weapons, dangerous substances, and devices;

(G) operation and maintenance of security equipment and systems;

(H) security threats and patterns;

(I) security incident procedures, including procedures for communicating with governmental and nongovernmental emergency response providers; and

(J) evacuation procedures;

(5) is consistent with, and supports implementation of, the National Incident Management System, the National Response Plan, the National Infrastructure Protection Plan, the National Preparedness Guidance, the National Preparedness Goal, the National Maritime Transportation Security Plan, and other such national initiatives;

(6) is evaluated against clear and consistent performance measures;

(7) addresses security requirements under facility security plans; and

(8) educates, trains, and involves individuals in neighborhoods around facilities required to submit a plan under section 70103(c) of title 46, United States Code, on how to observe and report security risks.

(c) [Provides for an amendment to 46 U.S.C. 70103(c)(3), set forth above].

(d) Consultation.--The Secretary shall ensure that, in carrying out the Program, the Office of Grants and Training shall consult with commercial seaport personnel and management.

(e) Training Partners.--In developing and delivering training under the Training Program, the Secretary, in coordination with the ***Maritime***

Administration[126] of the Department of Transportation, and consistent with section 109 of the Maritime Transportation Security Act of 2002 (46 U.S.C. 70101 note), shall--

(1) work with government training facilities, academic institutions, private organizations, employee organizations, and other entities that provide specialized, state-of-the-art training for governmental and nongovernmental emergency responder providers or commercial seaport personnel and management; and

(2) utilize, as appropriate, government training facilities, courses provided by community colleges, public safety academies, State and private universities, and other facilities.

Port Security Exercise Program

Section 114 of Public Law 109-347, approved October 13, 2006 (120 STAT. 1896)[127], provides:

(a) In General.--The Secretary, acting through the Under Secretary for Preparedness and in coordination with the Commandant of the Coast Guard, shall establish a Port Security Exercise Program (referred to in this section as the "Exercise Program") for the purpose of testing and evaluating the capabilities of Federal, State, local, and foreign governments, commercial seaport personnel and management, governmental and nongovernmental emergency response providers, the private sector, or any other organization or entity, as the Secretary determines to be appropriate, to prevent, prepare for, mitigate against, respond to, and recover from acts of terrorism, natural disasters, and other emergencies at facilities required to submit a plan under section 70103(c) of title 46, United States Code.

(b) Requirements.--The Secretary shall ensure that the Exercise Program--

(1) conducts, on a periodic basis, port security exercises at such facilities that are--

(A) scaled and tailored to the needs of each facility;

(B) live, in the case of the most at-risk facilities;

(C) as realistic as practicable and based on current risk assessments, including credible threats, vulnerabilities, and consequences;

(D) consistent with the National Incident Management System, the National Response Plan, the National Infrastructure Protection Plan, the National Preparedness Guidance, the National Preparedness

---

[126] Emphasis added.
[127] 6 U.S.C. 912

Goal, the National Maritime Transportation Security Plan, and other such national initiatives;

(E) evaluated against clear and consistent performance measures;

(F) assessed to learn best practices, which shall be shared with appropriate Federal, State, and local officials, commercial seaport personnel and management, governmental and nongovernmental emergency response providers, and the private sector; and

(G) followed by remedial action in response to lessons learned; and

(2) assists State and local governments and facilities in designing, implementing, and evaluating exercises that--

(A) conform to the requirements of paragraph (1); and

(B) are consistent with any applicable Area Maritime Transportation Security Plan and State or Urban Area Homeland Security Plan.

(c) Improvement Plan.--The Secretary shall establish a port security exercise improvement plan process to--

(1) identify and analyze each port security exercise for lessons learned and best practices;

(2) disseminate lessons learned and best practices to participants in the Exercise Program;

(3) monitor the implementation of lessons learned and best practices by participants in the Exercise Program; and

(4) conduct remedial action tracking and long-term trend analysis."

Facility Exercise Requirements

Section 115 of Public Law 109-347, approved October 13, 2006 (120 STAT. 1897)[128], provides:

> The Secretary of the Department in which the Coast Guard is operating shall require each high risk facility to conduct live or full-scale exercises described in section 105.220(c) of title 33, Code of Federal Regulations, not less frequently than once every 2 years, in accordance with the facility security plan required under section 70103(c) of title 46, United States Code.

****

[128] 6 U.S.C. 913

46 U.S.C. 70104 (2006). 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 [Administrator] 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 [Administrator] 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 (2006). Transportation security cards.[129]

(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 vessel 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

---

[129] Section 104(c) of Public Law 109-347, approved October 13, 2006 (120 STAT. 1891), provides: "Not later than January 1, 2007, the Secretary shall promulgate final regulations implementing the requirements for issuing transportation security cards under section 70105 of title 46, united States Code. The regulations shall include a background check process to enable newly hired workers to begin working unless the Secretary makes an initial determination that the worker poses a security risk. Such process shall include a check against the consolidated and integrated terrorist watch list maintained by the Federal Government."

Section 106 of Public Law 109-347, approved October 13, 2006 (120 STAT. 1891), provides: "The Secretary, in issuing a final rule pursuant to section 70105 of title 46, United States Code, shall provide for the disqualification of individuals who have been found guilty or have been found not guilty by reason of insanity of a felony, involving- (1) treason, or conspiracy to commit treason; (2) Espionage, or conspiracy to commit espionage; (3) sedition, or conspiracy to commit sedition; or (4) a crime listed in chapter 113B of title 18, United States Code, a comparable State law, or conspiracy to commit such crime."

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;

(F) other individuals engaged in port security activities as determined by the Secretary; and

(G) other individuals as determined appropriate by the Secretary including individuals employed at a port not otherwise covered by this subsection.

(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 subparagraph (A), (B), or (D) [of] 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) Denial of waiver review.

(A) In general. The Secretary shall establish a review process before an administrative law judge for individuals denied a waiver under paragraph (2).

(B) Scope of review. In conducting a review under the process established pursuant to subparagraph (A), the administrative law judge shall be governed by the standards of section 706 of title 5. The substantial evidence standard in section 706(2)(E) of title 5 shall apply whether or not there has been an agency hearing. The judge shall review all facts on the record of the agency.

(C) Classified evidence. The Secretary, in consultation with the National Intelligence Director, shall issue regulations to establish procedures by which the Secretary, as part of a review conducted under this paragraph, may provide to the individual adversely affected by the determination an unclassified summary of classified evidence upon which the denial of a waiver by the Secretary was based.

(D) Review of classified evidence by administrative law judge.

(i) Review. As part of a review conducted under this section, if the decision of the Secretary was based on classified information (as defined in section 1(a) of the Classified Information Procedures Act (18 U.S.C. App.)), such information may be submitted by the Secretary to the reviewing administrative law judge, pursuant to appropriate security procedures, and shall be reviewed by the administrative law judge ex parte and in camera.

(ii) Security clearances. Pursuant to existing procedures and requirements, the Secretary, in coordination (as necessary) with the heads of other affected departments or agencies, shall ensure that administrative law judges reviewing negative waiver decisions of the Secretary under this paragraph possess security clearances appropriate for such review.

(iii) Unclassified summaries of classified evidence. As part of a review conducted under this paragraph and upon the request of the individual adversely affected by the decision of the Secretary not to grant a waiver, the Secretary shall provide to the individual and reviewing administrative law judge, consistent with the procedures established under clause (i), an unclassified summary of any classified information upon which the decision of the Secretary was based.

(E) New evidence. The Secretary shall establish a process under which an individual may submit a new request for a waiver, notwithstanding confirmation by the administrative law judge of the Secretary's initial denial of the waiver, if the request is supported by substantial evidence that was not available to the Secretary at the time the initial waiver request was denied.

(4) 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.

(5) 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.[130]

(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)).[".]

(g) Applications for merchant mariners' documents. The Assistant Secretary of Homeland Security for the Transportation Security Administration and the Commandant of the Coast Guard shall concurrently process an application from an individual for merchant mariner's documents under chapter 73 of title 46, United States Code, and an application from that individual for a transportation security card under this section.

(h) Fees. The Secretary shall ensure that the fees charged each individual applying for a transportation security card under this section who has passed a background check under section 5103a(d) of title 49, United States Code, and

---

[130] Section 105 of Public Law 109-347, approved October 13, 2006 (120 STAT. 1891), provides: "**Sec.. 105. Study to Identify Redundant Background Records Checks .** (a) STUDY.—The Comptroller General of the United States shall conduct a study of background records checks carried out for the Department that are similar to the background records check required under section 5103a of title 49, United States Code, to identify redundancies and inefficiencies in connection with such checks. (b) REPORT.—Not later than 6 months after the date of the enactment of this Act, the Comptroller General of the United States shall submit a report to Congress on the results of the study, including—(1) an identification of redundancies and inefficiencies referred to in subsection (a); and (2) recommendations for eliminating such redundancies and inefficiencies."

who has a current hazardous materials endorsement in accordance with section 1572 of title 49, Code of Federal Regulations, and each individual with a current merchant mariners' document who has passed a criminal background check under section 7302(d) --

(1) are for costs associated with the issuance, production, and management of the transportation security card, as determined by the Secretary; and

(2) do not include costs associated with performing a background check for that individual, except for any incremental costs in the event that the scope of such background checks diverge.

(i) Implementation schedule. In implementing the transportation security card program under this section, the Secretary shall--

(1) establish a priority for each United States port based on risk, including vulnerabilities assessed under section 70102; and

(2) implement the program, based upon such risk and other factors as determined by the Secretary, at all facilities regulated under this chapter at--

(A) the 10 United States ports that the Secretary designates top priority not later than July 1, 2007;

(B) the 40 United States ports that are next in order of priority to the ports described in subparagraph (A) not later than January 1, 2008; and

(C) all other United States ports not later than January 1, 2009.

(j) Transportation security card processing deadline. Not later than January 1, 2009, the Secretary shall process and issue or deny each application for a transportation security card under this section for individuals with current and valid merchant mariners' documents on the date of the enactment of the SAFE Port Act [enacted Oct. 13, 2006].

(k) Deployment of transportation security card readers.

(1) Pilot program.

(A) In general. The Secretary shall conduct a pilot program to test the business processes, technology, and operational impacts required to deploy transportation security card readers at secure areas of the marine transportation system.

(B) Geographic locations. The pilot program shall take place at not fewer than 5 distinct geographic locations, to include vessels and facilities in a variety of environmental settings.

(C) Commencement. The pilot program shall commence not later than 180 days after the date of the enactment of the SAFE Port Act [enacted Oct. 13, 2006].

(2) Correlation with transportation security cards.

(A) In general. The pilot program described in paragraph (1) shall be conducted concurrently with the issuance of the transportation security cards described in subsection (b) to ensure card and card reader interoperability.

(B) Fee. An individual charged a fee for a transportation security card issued under this section may not be charged an additional fee if the Secretary determines different transportation security cards are needed based on the results of the pilot program described in paragraph (1) or for other reasons

related to the technology requirements for the transportation security card program.

(3) Regulations. Not later than 2 years after the commencement of the pilot program under paragraph (1)(C), the Secretary, after a notice and comment period that includes at least 1 public hearing, shall promulgate final regulations that require the deployment of transportation security card readers that are consistent with the findings of the pilot program and build upon the regulations prescribed under subsection (a).

(4) Report. Not later than 120 days before the promulgation of regulations under paragraph (3), the Secretary shall submit a comprehensive report to the appropriate congressional committees (as defined in section 2(1) of SAFE Port Act [6 U.S.C. 901(1)]) that includes--

(A) the findings of the pilot program with respect to technical and operational impacts of implementing a transportation security card reader system;

(B) any actions that may be necessary to ensure that all vessels and facilities to which this section applies are able to comply with such regulations; and

(C) an analysis of the viability of equipment under the extreme weather conditions of the marine environment.

(l) Progress reports. Not later than 6 months after the date of the enactment of the SAFE Port Act [enacted Oct. 13, 2006], and every 6 months thereafter until the requirements under this section are fully implemented, the Secretary shall submit a report on progress being made in implementing such requirements to the appropriate congressional committees (as defined in section 2(1) of the SAFE Port Act [6 U.S.C. 901(1)]).

(m) Limitation. The Secretary may not require the placement of an electronic reader for transportation security cards on a vessel unless--

(1) the vessel has more individuals on the crew that are required to have a transportation security card than the number the Secretary determines, by regulation issued under subsection (k)(3), warrants such a reader; or

(2) the Secretary determines that the vessel is at risk of a severe transportation security incident.

46 U.S.C. 70106 (2006). 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 any other missions of the Coast Guard 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 (2006). Grants.[131]

(a) In general. The Secretary shall establish a grant program for the allocation of funds based on risk 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, energy, and strategic defense concerns based upon the most current risk assessments available.

(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

---

[131] Section 111 of Public Law 109-347, approved October 13, 2006 (120 STAT. 1894), provides: "In updating Area Maritime Security Plans required under section 70103(b)(2)(F) of title 46, United States Code, and in applying for grants under section 70107 of such title, the Secretary of the Department in which the Coast Guard is operating shall make available, and Area Maritime Security Committee may use a risk assessment tool that used standardized risk criteria, such as the Maritime Security Risk Assessment Tool used by the Coast Guard."

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. Grants awarded under this section may not be used to construct buildings or other physical facilities, except those which are constructed under terms and conditions consistent with the requirements under section 611(j)(8) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121(j)(8)), including those facilities in support of this paragraph, and specifically approved by the Secretary. Costs eligible for funding under this paragraph may not exceed the greater of--

(A) $1,000,000 per project; or

(B) such greater amount as may be approved by the Secretary, which may not exceed 10 percent of the total amount of the grant.

(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.

(5) The cost of conducting exercises or training for prevention and detection of, preparedness for, response to, or recovery from terrorist attacks.

(6) The cost of establishing or enhancing mechanisms for sharing terrorism threat information and ensuring that the mechanisms are interoperable with Federal, State, and local agencies.

(7) The cost of equipment (including software) required to receive, transmit, handle, and store classified information.

(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) Multiple-year projects.

(1) Letters of intent. The Secretary may execute letters of intent to commit funding to such authorities, operators, and agencies.

(2) Limitation. Not more than 20 percent of the grant funds awarded under this subsection in any fiscal year may be awarded for projects that span multiple years.

(f) Consistency with plans. The Secretary shall ensure that each grant awarded under subsection (e)--

(1) is used to supplement and support, in a consistent and coordinated manner, the applicable Area Maritime Transportation Security Plan; and

(2) is coordinated with any applicable State or Urban Area Homeland Security Plan.

(g) Applications. Any entity subject to an Area Maritime Transportation Security Plan may submit an application for a grant under this section, at such time, in such form, and containing such information and assurances as the Secretary may require.

(h) Reports. Not later than 180 days after the date of the enactment of the SAFE Port Act [enacted Oct. 13, 2006], the Secretary, acting through the Commandant of the Coast Guard, shall submit a report to Congress, in a secure format, describing the methodology used to allocate port security grant funds on the basis of risk.

(i) Administration.

(1) In general. The Secretary 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.

(j) 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.

(k) 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.

(l) Authorization of appropriations. There are authorized to be appropriated $400,000,000 for each of the fiscal years 2007 through 2011 to carry out this section.

(m) 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. 70107A. Interagency operational centers for port security. [132]

(a) In general. The Secretary shall establish interagency operational centers for port security at all high-priority ports not later than 3 years after the date of the enactment of the SAFE Port Act [enacted Oct. 13, 2006].

(b) Characteristics. The interagency operational centers established under this section shall--

(1) utilize, as appropriate, the compositional and operational characteristics of existing centers, including--

(A) the pilot project interagency operational centers for port security in Miami, Florida; Norfolk/Hampton Roads, Virginia; Charleston, South Carolina; and San Diego, California; and

(B) the virtual operation center of the Port of New York and New Jersey;

(2) be organized to fit the security needs, requirements, and resources of the individual port area at which each is operating;

(3) in addition to the Coast Guard, provide, as the Secretary determines appropriate, for participation by representatives of the United States Customs and Border Protection, the United States Immigration and Customs Enforcement, the Transportation Security Administration, the Department of Justice, the Department of Defense, and other Federal agencies, State and local law enforcement or port security personnel, members of the Area Maritime Security Committee, and other public and private sector stakeholders adversely affected by a transportation security incident or transportation disruption; and

(4) be incorporated in the implementation and administration of--

(A) maritime transportation security plans developed under section 70103;

(B) maritime intelligence activities under section 70113 and information sharing activities consistent with section 1016 of the National Security Intelligence Reform Act of 2004 (6 U.S.C. 485) and the Homeland Security Information Sharing Act (6 U.S.C. 481 et seq.*)*;

(C) short- and long-range vessel tracking under sections 70114 and 70115;

(D) protocols under section 201(b)(10) of the SAFE Port Act (6 U.S.C. *941*(b)(10));

---

[132]Section 108(b) of Public Law 109-347, approved October 13, 2006 (120 STAT. 1893), provides: "Nothing in this section or the amendments made by this section relieves the Commandant of the Coast Guard from complying with the requirements of section 807 of the Coast Guard and Maritime Transportation Act of 2004 [unclassified] (Public Law 108-293; 118 Stat. 1082). The Commandant shall utilize the information developed in making the report required by that section in carrying out the requirements of this section."

Section 108(c) of Public Law 109-347, approved October 13, 2006 (120 STAT. 1893), provides: "Not later than 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 to the appropriate congressional committees a proposed budget analysis for implementing section 70107A of title 46, United States Code, as added by subsection (a), including cost-sharing arrangements with other Federal departments and agencies involved in the interagency operation of the centers to be established under such section."

(E) the transportation security incident response plans required by section 70104; and

(F) other activities, as determined by the Secretary.

(c) Security clearances. The Secretary shall sponsor and expedite individuals participating in interagency operational centers in gaining or maintaining their security clearances. Through the Captain of the Port, the Secretary may identify key individuals who should participate. The port or other entities may appeal to the Captain of the Port for sponsorship.

(d) Security incidents. During a transportation security incident on or adjacent to waters subject to the jurisdiction of the United States, the Coast Guard Captain of the Port designated by the Commandant of the Coast Guard in a maritime security command center described in subsection (a) shall act as the incident commander, unless otherwise directed by the President.

(e) Rule of construction. Nothing in this section shall be construed to affect the normal command and control procedures for operational entities in the Department, unless so directed by the Secretary.

(f) Authorization of appropriations. There are authorized to be appropriated $60,000,000 for each of the fiscal years 2007 through 2012 to carry out this section.

46 U.S.C. 70108 (2006). Foreign port assessment.

(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.

(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.
(d) Periodic reassessment. The Secretary, acting through the Commandant of the Coast Guard, shall reassess the effectiveness of antiterrorism measures maintained at ports as described under subsection (a) and of procedures described in subsection (b) not less than once every 3 years.

46 U.S.C. 70109 (2006). Notifying foreign authorities.

(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 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 (2006). Actions and assistance for foreign ports and United States territories

(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.

(e) Assistance for Foreign ports and United States territories.

(1) In general. The Secretary, in consultation with the Secretary of Transportation, the Secretary of State, and the Secretary of Energy, shall identify assistance programs that could facilitate implementation of port security antiterrorism measures in foreign countries and territories of the United States. The Secretary shall establish a program to utilize the programs that are capable of implementing port security antiterrorism measures at ports in foreign countries and territories of the United States that the Secretary finds to lack effective antiterrorism measures.

(2) Caribbean Basin. The Secretary, in coordination with the Secretary of State and in consultation with the Organization of American States and the Commandant of the Coast Guard, shall place particular emphasis on utilizing programs to facilitate the implementation of port security antiterrorism measures at the ports located in the Caribbean Basin, as such ports pose unique security and safety threats to the United States due to--

(A) the strategic location of such ports between South America and the United States;

(B) the relative openness of such ports; and

(C) the significant number of shipments of narcotics to the United States that are moved through such ports.

46 U.S.C. 70111 (2006). Enhanced crewmember identification.

(a) Requirement. Not later than 1 year after the date of enactment of the SAFE Port Act [enacted Oct. 13, 2006], 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. Not later than 1 year after the date of enactment of the SAFE Port Act [enacted Oct. 13, 2006], 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 (2006). 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 (2006). 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 (2006). 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 (2006). Long-range vessel tracking system.

Not later than April 1, 2007, 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 (2006). 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 (2006).[133] **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 (2006).[134] **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.

---

[133] Note that a prior 46 U.S.C. 70117, providing for a civil penalty, was redesignated 46 U.S.C. 70119, and that another prior 46 U.S.C. 70117, relating to in rem liability for civil penalties, was redesignated 46 U.S.C. *70120*. Section 901(l) (1) of Public Law 109-241, approved July 11, 2006 (120 STAT. 565) redesignated this section, formerly *46 U.S.C. 70118*, as *46 U.S.C. 70117*.

[134] Note that a prior 46 U.S.C. 70118, relating to firearms, arrests, and seizure of property, was redesignated 46 U.S.C. 70117, *and that a*nother prior 46 U.S.C. 70118, relating to withholding of clearance, was redesignated 46 U.S.C. 70121. Public Law 109-241, approved July 11, 2006 (120 STAT. 565) redesignated this section, formerly 46 U.S.C. 70119, as 46 U.S.C. 70118.

46 U.S.C. 70119[135] (2006). Civil penalty.[136]

(a) In general. 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 day during which the violation continues.

(b) Continuing violations. The maximum amount of a civil penalty for a violation under this section shall not exceed $50,000.

46 U.S.C. 70120 (2006).[137] 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 70119 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--

---

[135] Note that a prior 46 U.S.C. 70119, relating to enforcement by State and local officers, was redesignated 46 U.S.C. 70118. Public Law 109-241, approved July 11, 2006 (120 STAT. 565) redesignated this section, formerly 46 U.S.C. 70117, as 46 U.S.C. 70119.

Section 306(a) of Public Law 109-242 (120 STAT. 528), amended 46 U.S.C. 70119 to read as set forth.

Section 306(b) amended 46 U.S.C. 2107 to read as follows: "**46 U.S.C. 2107 (2006). Civil penalty procedures.**

(a) After notice and an opportunity for a hearing, a person found by the Secretary to have violated this subtitle or subtitle VII [46 U.S.C. 2101 et seq. or 70101 et seq.] or a regulation prescribed under this subtitle or subtitle VII 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 under this subtitle of subtitle VII 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."

[136] Note that the amount of civil penalties may have been changed pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, set forth at page 71.

[137] Public Law 109-241, approved July 11, 2006 (120 STAT. 565), redesignated this section, formerly 46 U.S.C. 70117, as 46 U.S.C. 70120; and, in subsection . (a), substituted "70119" for "70120".

(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. 70121 (2006).[138] 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, agent, master, officer, or person in charge may be subject to a penalty under section 70119, the Secretary may, with respect to such vessel, refuse or revoke any clearance required by section 60105 of this title.

(b) 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.

[138] Public Law 109-241, approved July 11, 2006 (120 STAT. 565), . redesignated this section, formerly 46 U.S.C. 70118, as 46 U.S.C. 70121; and, in subsection . (a), substituted "70119, the Secretary" for "70120, the Secretary".

SAFE PORT ACT

[Public Law 109-347, approved October 13, 2006 (120 STAT. 1884), the Security and Accountability for Every Port Act of 2006]

TITLE I - SECURITY OF UNITED STATES SEAPORTS

Subtitle A - General Provisions

Sec. 101 - Salvage Response Plan Included in Area Maritime Transportation Security Plan. Section 101 of Public Law 109-347 (120 STAT. 1887), amended subsection (b)(2) of 46 U.S.C. 70103. Maritime Transportation Security Plans, set forth at page 497.

Sec. 102 - Requirements for Maritime Facility Officers. Section 102 of Public Law 109-347 (120 STAT. 1888), amended 46 U.S.C. 70103(c)). Maritime Transportation Security Plans, Vessel and facility security plans, set forth at page 498.

Sec. 103 - Unannounced Inspections of Maritime Facilities. Section 103 of Public Law 109-347 (120 STAT. 1888), amended 46 U.S.C. 70103(c). Unannounced Inspections of Maritime Facilities, Vessel and facility security plans, set forth at page 498.

Sec 104 - TWIC Program Implementation. Section 104 of Public Law 109-347 (120 STAT. 1888), amended 46 U.S.C. 70105. Transportation Security Card, set forth at page 504.

Sec. 105 - GAO Study of Background Record Checks. Section 105 of Public Law 109-347 (120 STAT. 1891) requires the Comptroller General to conduct a study of background records checks carried out for the Department that are similar to the background records check required under 49 U.S.C. 5103a, to identify redundancies and inefficiencies in connection with such checks, and to report to the Congress within six months. Set forth as a footnote to 46 U.S.C. 70105(d), at page 507.

Sec. 106 - Disqualification of Felons. Section 106 of Public Law 109-347 (120 STAT. 1891), provides for the disqualification of individuals who have been convicted of a felony. Set forth as a footnote to 46 U.S.C. 70105, on page 504.

Sec. 107 - Deadline for Automated Long-Range Vessel Tracking System. Section 107 of Public Law 109-437 (120 STAT. 1891), amended 46 U.S.C. 70115 Long Range Vessel Tracking System, set forth at page 523.

Sec. 108 - Establishment of Interagency Operational Centers for Port Security. Section 108 of Public Law 109-437 (120 STAT. 1892), added 46 U.S.C. 70107A Interagency Operational centers for port security, set forth at page 516.

Sec. 109 - Notice of Arrival for Foreign Vessels on the Outer Continental Shelf. Section 109 of Public Law 109-437 (120 STAT. 1893), directs the Coast Guard to update and finalize its rulemaking on this subject.

Sec. 110 - Enhanced Crewmember Identification. Section 110 of Public Law 109-347 (120 STAT. 1893), amended 46 U.S.C. 70111 Enhanced Crewmember identification, set forth at page 520.

Subtitle B - Port Security Grants; Training and Exercise Programs:

Sec. 111 - Risk Assessment Tool. Section 111 of Public Law 109-437 (120 STAT. 1894) provides

> **SEC. 111. RISK ASSESSMENT TOOL.**
> In updating Area Maritime Security Plans required under section 70103(b)(2)(F) of title 46, United States Code, and in applying for grants under section 70107 of such title, the Secretary of the Department in which the Coast Guard is operating shall make available, and Area Maritime Security Committees may use a risk assessment tool that uses standardized risk criteria, such as the Maritime Security Risk Assessment Tool used by the Coast Guard.

Sec. 112 - Port Security Grants. Section 112 of Public Law 109-437 (120 STAT. 1894), made comprehensive amendments to 46 U.S.C. 70107. Grants, set forth at page 510.

Sec 113 - Port Security Training Program/Maritime Administration Section 113 of Public Law 109-473 (120 STAT. 1895)(6 U.S.C. 911), set forth at page 500.

Sec. 114 - Port Security Exercise Program. Section 114 of Public Law 109-347 (120 STAT. 1896)(6 U.S.C. 912), set forth at page 502.

Sec. 115 - Facility Exercise Requirements Section 115 of Public Law 109-347 (120 STAT. 1897)(6. U.S.C. 913), set forth at page 503.

Subtitle C - Port Operations

Section 121 of Public Law 109-347 (120 STAT. 1898), provides:

> **6 U.S.C. 921 (2006). Domestic radiation detection and imaging**
> **(a) Scanning containers**. Subject to section 1318 of title 19, United States Code, not later than December 31, 2007, all containers entering the United States through the 22 ports through which the greatest volume of containers enter the United States by vessel shall be scanned for radiation. To the extent practicable, the Secretary shall deploy next generation radiation detection technology.
> **(b) Strategy**. The Secretary shall develop a strategy for the deployment of radiation detection capabilities that includes--
> (1) a risk-based prioritization of ports of entry at which radiation detection equipment will be deployed;
> (2) a proposed timeline of when radiation detection equipment will be deployed at each port of entry identified under paragraph (1);
> (3) the type of equipment to be used at each port of entry identified under paragraph (1), including the joint deployment and utilization of radiation detection equipment and nonintrusive imaging equipment;
> (4) standard operating procedures for examining containers with such equipment, including sensor alarming, networking, and communications and response protocols;
> (5) operator training plans;
> (6) an evaluation of the environmental health and safety impacts of nonintrusive imaging technology and a radiation risk reduction plan, in consultation with the Nuclear Regulatory Commission, the Occupational Safety and Health Administration, and the National Institute for Occupational Safety and Health, that seeks to minimize radiation exposure of workers and the public to levels as low as reasonably achievable;
> (7) the policy of the Department for using nonintrusive imaging equipment in tandem with radiation detection equipment; and
> (8) a classified annex that--
> (A) details plans for covert testing; and
> (B) outlines the risk-based prioritization of ports of entry identified under paragraph (1).
> **(c) Report.** Not later than 90 days after the date of the enactment of this Act [enacted Oct. 13, 2006], the Secretary shall submit the strategy developed under subsection (b) to the appropriate congressional committees.

(d) Update. Not later than 180 days after the date of the submission of the report under subsection (c), the Secretary shall provide a more complete evaluation under subsection (b)(6).

(e) Other weapons of mass destruction threats. Not later than 180 days after the date of the enactment of this Act [enacted Oct. 13, 2006], the Secretary shall submit to the appropriate congressional committees a report on the feasibility of, and a strategy for, the development of equipment to detect and prevent shielded nuclear and radiological threat material and chemical, biological, and other weapons of mass destruction from entering the United States.

(f) Standards. The Secretary, acting through the Director for Domestic Nuclear Detection and in collaboration with the National Institute of Standards and Technology, shall publish technical capability standards and recommended standard operating procedures for the use of nonintrusive imaging and radiation detection equipment in the United States. Such standards and procedures--

(1) should take into account relevant standards and procedures utilized by other Federal departments or agencies as well as those developed by international bodies; and

(2) shall not be designed so as to endorse specific companies or create sovereignty conflicts with participating countries.

(g) Implementation. Not later than 3 years after the date of the enactment of this Act [enacted Oct. 13, 2006], the Secretary shall fully implement the strategy developed under subsection (b).

(h) Expansion to other United States ports of entry.

(1) In general. As soon as practicable after--

(A) implementation of the program for the examination of containers for radiation at ports of entry described in subsection (a); and

(B) submission of the strategy developed under subsection (b) (and updating, if any, of that strategy under subsection (c)),

but not later than December 31, 2008, the Secretary shall expand the strategy developed under subsection (b), in a manner consistent with the requirements of subsection (b), to provide for the deployment of radiation detection capabilities at all other United States ports of entry not covered by the strategy developed under subsection (b).

(2) Risk assessment. In expanding the strategy under paragraph (1), the Secretary shall identify and assess the risks to those other ports of entry in order to determine what equipment and practices will best mitigate the risks.

(i) Intermodal Rail Radiation Detection Test Center.

(1) Establishment. In accordance with subsection (b), and in order to comply with this section, the Secretary shall establish an Intermodal Rail Radiation Detection Test Center (referred to in this subsection as the "Test Center").

(2) Projects. The Secretary shall conduct multiple, concurrent projects at the Test Center to rapidly identify and test concepts specific to the challenges posed by on-dock rail.

(3) Location. The Test Center shall be located within a public port facility at which a majority of the containerized cargo is directly laden from (or unladen to) on-dock, intermodal rail.

Section 122 of Public Law 109-347 (120 STAT. 1899), provides:

6 U.S.C. 922 (2006). Inspection of car ferries entering from abroad.
Not later than 120 days after the date of the enactment of this Act [enacted Oct. 13, 2006], the Secretary, acting through the Commissioner, and in coordination with the Secretary of State and in cooperation with ferry operators and appropriate foreign government officials, shall seek to develop a plan for the inspection of passengers and vehicles before such passengers board, or such vehicles are loaded onto, a ferry bound for a United States facility required to submit a plan under section 70103(c) of title 46, United States Code.

Section 123 of Public law 109-347 (120 STAT. 1899), provides:

6 U.S.C. 923 (2006). Random searches of containers.
Not later than 1 year after the date of the enactment of this Act [enacted Oct. 13, 2006], the Secretary, acting through the Commissioner, shall develop and implement a plan, utilizing best practices for empirical scientific research design and random sampling, to conduct random searches of containers in addition to any targeted or preshipment inspection of such containers required by law or regulation or conducted under any other program conducted by the Secretary. Nothing in this section shall be construed to mean that implementation of the random sampling plan precludes additional searches of containers not inspected pursuant to the plan.

Section 124 of Public Law 109-347 (120 STAT. 1900), provides:

SEC 124. Work stoppages and employee-employer disputes.
Section 70101(6) of title 46, United States Code, is amended by adding at the end the following: ‘‘In this paragraph, the term ‘economic disruption’ does not include a work stoppage or other employee-related action not related to terrorism and resulting from an employee-employer dispute.’’.

Section 125 of Public Law 109-347 (120 STAT. 1900), provides:

> **6 U.S.C. 924 (2006). Threat assessment screening of port truck drivers.**
> Not later than 90 days after the date of the enactment of this Act [enacted Oct. 13, 2006], the Secretary shall implement a threat assessment screening, including name-based checks against terrorist watch lists and immigration status check, for all port truck drivers with access to secure areas of a port who have a commercial driver's license but do not have a current and valid hazardous materials endorsement issued in accordance with section 1572 of title 49, Code of Federal Regulations, that is the same as the threat assessment screening required for facility employees and longshoremen by the Commandant of the Coast Guard under Coast Guard Notice USCG-2006-24189 (Federal Register, Vol. 71, No. 82, Friday, April 28, 2006).

Section 126 of Public Law 109-347 (120 STAT. 1900), provides:

> **6 U.S.C. 925 (2006). Border Patrol unit for United States Virgin Islands.**
> **(a) In general**. The Secretary may establish at least 1 Border Patrol unit for the United States Virgin Islands.
> **(b) Report**. Not later than 180 days after the date of the enactment of this Act [enacted Oct. 13, 2006], the Secretary shall submit a report to the appropriate congressional committees that includes the schedule, if any, for carrying out subsection (a).

Section 127 of Public Law 109-347 (120 STAT. 1900), provides:

> **SEC. 127. REPORT ON ARRIVAL AND DEPARTURE MANIFESTS FOR CERTAIN COMMERCIAL VESSELS IN THE UNITED STATES VIRGIN ISLANDS.** Not later than 90 days after the date of the enactment of
> this Act, the Secretary shall submit to the appropriate congressional committees a report on the impact of implementing the requirements of section 231 of the Immigration and Nationality Act (8 U.S.C. 1221) (relating to providing United States border officers with arrival and departure manifests) with respect to commercial vessels that are fewer than 300 gross tons and operate exclusively between the territorial waters of the United States Virgin Islands and the territorial waters of the British Virgin Islands.

Section 128 of Public Law 109-347 (120 STAT. 1900), provides:

6 U.S.C. 926 (2006). Center of Excellence for Maritime Domain Awareness.

(a) Establishment. The Secretary shall establish a university-based Center for Excellence for Maritime Domain Awareness following the merit-review processes and procedures that have been established by the Secretary for selecting university program centers of excellence.

(b) Duties. The Center established under subsection (a) shall--

(1) prioritize its activities based on the "National Plan To Improve Maritime Domain Awareness" published by the Department in October 2005;

(2) recognize the extensive previous and ongoing work and existing competence in the field of maritime domain awareness at numerous academic and research institutions, such as the Naval Postgraduate School;

(3) leverage existing knowledge and continue development of a broad base of expertise within academia and industry in maritime domain awareness; and

(4) provide educational, technical, and analytical assistance to Federal agencies with responsibilities for maritime domain awareness, including the Coast Guard, to focus on the need for interoperability, information sharing, and common information technology standards and architecture.

TERRORISM RISK INSURANCE ACT[139]

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 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--

---

[139] Title I of Public Law 107-297, approved November 26, 2002 (116 STAT. 2322), the Terrorism Risk Insurance Act of 2002, as amended by Sections 2 through 8 of Public Law 109-144, approved December 22, 2005 (119 STAT. 2660), the Terrorism Risk Insurance Act of 2005 (15 U.S.C. 6701, note).

(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;

(E) for Program Year 4, the value of an insurer's direct earned premiums over the calendar year immediately preceding Program Year 4, multiplied by 17.5 percent;

(F) for Program Year 5, the value of an insurer's direct earned premiums over the calendar year immediately preceding Program Year 5, multiplied by 20 percent; and

(G) notwithstanding subparagraphs (A) through (F), for the Transition Period or any Program Year, 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.

(E) Program Year 4. The term "Program Year 4" means the period beginning on January 1, 2006 and ending on December 31, 2006.

(F) Program Year 5. The term "Program Year 5" means the period beginning on January 1, 2007 and ending on December 31, 2007.

(12) Property 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 directors and officers liability 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.);

(vii) reinsurance or retrocessional reinsurance;

(viii) commercial automobile insurance;

(ix) burglary and theft insurance;

(x) surety insurance;

(xi) professional liability insurance; or

(xii) farm owners multiple peril insurance.

(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. During each Program Year, each entity that meets the definition of an insurer under section 102--

(1) shall make available, in all of its property and casualty insurance policies, coverage for insured losses; and

(2) 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.

(d) State residual market insurance entities.

(1) In 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 through Program Year 4 shall be equal to 90 percent, and during Program Year 5 shall be equal to 85 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) Program trigger. In the case of a certified act of terrorism occurring after March 31, 2006, no compensation shall be paid by the Secretary under subsection (a), unless the aggregate industry insured losses resulting from such certified act of terrorism exceed--

(i) $50,000,000, with respect to such insured losses occurring in Program Year 4; or

(ii) $100,000,000, with respect to such insured losses occurring in Program Year 5.

(C) 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 any of Program Years 2 through 5 (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 any of Program Years 2 through 5, 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;

(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;

(D) for Program Year 4, the lesser of--

(i) $25,000,000,000; and

(ii) the aggregate amount, for all insurers, of insured losses during such Program Year; and

(E) for Program Year 5, the lesser of--

(i) $27,500,000,000; 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) through (E) 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 any of subparagraphs (A) through (E) 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 any of subparagraphs (A) through (E) 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 commercial 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.[140] 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.

---

[140] Note this amount may have been changed pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, set forth at page 71.

(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 terrorism, 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.

(6) Authority of the Secretary. Procedures and requirements established by the Secretary under section 50.82 of part 50 of title 31 of the Code of Federal Regulations (as in effect on the date of issuance of that section in final form) shall apply to any cause of action described in paragraph (1) of this subsection.

(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, 2007.

(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.".

(e) Analysis of market conditions for terrorism risk insurance.

(1) In general. The President's Working Group on Financial Markets, in consultation with the National Association of Insurance Commissioners, representatives of the insurance industry, representatives of the securities industry, and representatives of policy holders, shall perform an analysis regarding the long-term availability and affordability of insurance for terrorism risk, including--

(A) group life coverage; and

(B) coverage for chemical, nuclear, biological, and radiological events.

(2) Report. Not later than September 30, 2006, the President's Working Group on Financial Markets shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on

Financial Services of the House of Representatives on its findings pursuant to the analysis conducted under subsection (a)..

PORT SECURITY FUNDING

2006 - Public Law 109-90.

Public Law 109-90, approved October 18, 2005 (119 STAT. 2064), the Department of Homeland Security Appropriations Act, 2006, provides at 119 STAT. 2075:

OFFICE FOR DOMESTIC PREPAREDNESS[141]

* * *

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, $2,501,300,000, which shall be allocated as follows:

* * *

(2) $1,155,000,000 for discretionary grants, as determined by the Secretary of Homeland Security,of which—

* * *

(B) $175,000,000 shall be for port security grants pursuant to the purposes of 46 United States Code 70107(a) through (h), which shall be awarded based on risk and threat notwithstanding subsection (a), for eligible costs as defined in subsections (b)(2)–(4);

* * *

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 subparagraphs (B), (E), and (F) of paragraph (2) of this heading: . .

---

[141] Conference Report (109-241), pages 40 & 56. Senate Report (109-83), pages 11, 53, 56 & 67. House Report (109-79), pages 80, 129 & 175.

2007 - Public Law 109-295.

Public Law 109-295, approved October 4, 2006 (120 STAT. 1368), provides:

.

"OFFICE OF GRANTS AND TRAINING
"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, $2,531,000,000, which shall be allocated as follows:

* * *

"(2) $1,229,000,000 for discretionary grants, as determined by the Secretary of Homeland Security, of which—

* * *

(B) $210,000,000 shall be for port security grants pursuant to the purposes of section 70107(a) through (h) of title 46, United States Code, which shall be awarded based on risk notwithstanding subsection (a), for eligible costs as described in subsections (b)(2) through (4);

* * *

Provided, . . . *Provided further*, That no less than 80 percent of any grant under this paragraph
to a State shall be made available by the State to local governments within 60 days after the receipt of the funds: *Provided further*, That for grants under subparagraphs (B) through (F), the applications for such grants shall be made available to eligible applicants not later than 75 days after the date of enactment of this Act, eligible applicants shall submit applications not later than 45 days after the date of the grant announcement, and the Office of Grants and Training shall act on such applications not later than 60 days after the date on which such an application is received.

* * *

Provided, . . . Provided
further, That the Government Accountability Office shall report on the validity, relevance, reliability, timeliness, and availability of the risk factors (including threat, vulnerability, and consequence) used by the Secretary for the purpose of allocating discretionary grants funded under this heading, and the application of those factors in the allocation of funds to the Committees on Appropriations of the Senate and the House of Representatives on its findings not later than 45 days after the date of enactment of this Act: Provided further, That within seven days after the date of enactment of this Act, the Secretary shall provide the Government Accountability Office with the risk methodology and other factors that will be used to allocate discretionary grants funded under this heading.

Limitation of Discretionary Grants

Note that Section 508 of Public Law 109-295, approved October 4, 2006 (120 STAT. 1378), provides:

> SEC. 508. None of the funds in this Act may be used to make a grant allocation, discretionary grant award, discretionary contract award, or to issue a letter of intent totaling in excess of $1,000,000, or to announce publicly the intention to make such an award, unless the Secretary of Homeland Security notifies the Committees on Appropriations of the Senate and the House of Representatives at least three full business days in advance: *Provided*, That no notification shall involve funds that are not available for obligation: *Provided further*, That the Office of Grants and Training shall brief the Committees on Appropriations of the Senate and the House of Representatives five full business days in advance of announcing publicly the intention of making an award of formula-based grants; law enforcement terrorism prevention grants; or high-threat, high-density urban areas grants.

EXTENSION OF TERRITORIAL JURISDICTION

Section 104 of Public Law 107-295. Section 104(a) 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 (2005). "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][142].

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.[143]

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

---

[142] **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."

[143] 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 71.

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. 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:

> **50 U.S.C. 192 (2005). 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[1] 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.

PHILADELPHIA MILITARY CARGO TERMINAL.

Section 1017 of Public Law 109-13 (119 STAT. 250), the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, amended Section 115 of division H of Public Law 108-199, approved January 23, 2004 (118 STAT. 439), the Consolidated Appropriations Act, 2004, to read as follows:

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, notwithstanding section 2218(c)(1) of title 10, United States Code, for a grant to Philadelphia Regional Port Authority, to be used solely for the purpose of construction, by and for a Philadelphia based company established to operate high-speed, advanced-design vessels for the transport of high-value, time-sensitive cargoes in the foreign commerce of the United States, of a marine cargo terminal and IT network for high-speed commercial vessels that is capable of supporting military sealift requirements.: *Provided*, That of the funds provided in Public Law 108–287 under the heading "Operation and

Maintenance, Army" for Woody Island and Historic Structure, $1,000,000 shall be made available in the form of a grant for these purposes.[144]

AUTOMATIC IDENTIFICATION SYSTEM.

Section 419 of Public Law 109-241, approved July 11, 2006 (120 STAT. 546), provides:

> **Sec. 419. Automatic Identification System.**
> **(a) Prevention of Harmful Interference**.—Not later than 60 days after the date of enactment of this Act, the Secretary of the department in which the Coast Guard is operating, acting through the Commandant of the Coast Guard, may transfer $1,000,000 to the National Telecommunications and Information Administration of the Department of Commerce for the purposes of awarding, not later than 120 days after such date of enactment, a competitive grant to design and develop a prototype device that integrates a Class B Automatic Identification System transponder (International Electrotechnical Commission standard 62287) with a wireless maritime data device approved by the Federal Communications Commission with channel throughput greater than 19.2 kilobits per second to enable such wireless maritime data device to provide wireless maritime data services, concurrent with the operation of the transponder, on frequency channels adjacent to the frequency channels on which the transponder operates, while minimizing or eliminating the harmful interference between the transponder and such wireless maritime data device. The design of the device developed under this subsection shall be available for public use.
> **(b) Implementation of ALS**.—It is the sense of the Senate, not later than 60 days after the date of enactment of this Act, that the Federal Communications Commission should resolve the disposition of its rulemaking on the Automatic Information System and licensee use of frequency bands 157.1875–157.4375 MHz and 161.7875–162.0375 MHz (RM–10821, WT Docket Number 04–344). Deadlines. The implementation of this section shall not delay the implementation of an Automatic Identification System as required by section 70114 of title 46, United States Code, and international convention.

---

[144] Conference Report (109-72), page 125. Senate Report (109-52), page 30

APPENDIX

PUBLIC LAWS OF THE 109TH CONGRESS SECOND SESSION

PROVIDING OR AMENDING CERTAIN MARITIME LAWS

Note -

1. Where the text indicates in brackets that a provision of law has been codified, the reference is to the amendments made by Public Law 109-304, approved October 6, 2006 (120 STAT. 1485), an Act to complete the codification of title 46, United States Code, "Shipping", as positive law.

2. Section 18(a) of Public Law 109-304 (120 STAT. 1709), provides:

> **SEC. 18. TRANSITIONAL AND SAVINGS PROVISIONS.**
> (a) CUTOFF DATE.—This Act replaces certain provisions enacted on or before April 30, 2005. If a law enacted after that date amends or repeals a provision replaced by this Act, that law is deemed to amend or repeal, as the case may be, the corresponding provision enacted by this Act. If a law enacted after that date is otherwise inconsistent with this Act, it supersedes this Act to the extent of the inconsistency.

Where this occurs, the text appears in brackets, with recognition given to Section 18(a), above.

TEMPORARY INCREASE OF VESSEL TONNAGE DUTIES. Section 4001 of Public Law 109-171, approved February 8, 2006 (120 STAT. 27), the Deficit Reduction Act of 2005, amended 46 App. U.S.C. 121. Amount of tonnage duties, [Codified as 46 U.S.C. 60301, 60302, 60304, 60305, 60306, 60312], and 46 App. U.S.C. 132. Vessels not entering by sea [Codified as 46 U.S.C. 60301], - to temporarily increase, for fiscal years 2006 through 2010, the vessel tonnage fees paid by vessels arriving in the United States. These codified sections do not appear to give recognition to the amendments made by Section 4001 of Public Law 109-171. Conference Report (109-362), page 360. House Report (109-276), page 910.

USA PATRIOT IMPROVEMENT AND REAUTHORIZATION ACT OF 2005. Public Law 109-177, approved March 9, 2006 (120 STAT. 192), contains the following provisions of particular interest.

Definition for Forfeiture Provisions under Section 806 of the Patriot Act. Section 120 of Public Law 109-177 (120 STAT. 221), amended subsection (a)(1)(G) of 18 U.S.C. 981. Civil Forfeiture, to replaced the reference to the broad definition under 18 U.S.C. 2331. Definitions, with the definition of a Federal crime of terrorism under subsection (g)(5) of 18 U.S.C. 2332b. Acts of terrorism transcending national boundaries. Conference Report **(**109-333), page 97. House Report **(**109-174), Pt 1, page 79.

Reducing Crime and Terrorism at America's Seaports, Title III of Public Law 109-177 (120 STAT. 233), consists of Sections 301 through 311 (18 U.S.C. 1 note). Conference Report (109-333), page 102 - 105.

TONNAGE TAX TONNAGE REDUCTION, Section 205 of Public law 109-222, approved May 17, 2006 (120 STAT. 350), the Tax Increase Prevention and Reconciliation Act of 2005, amended 26 U.S.C. 1355. Definitions and special rules. subsection (a)(4), to expand the definition of ‘‘qualifying vessel’’ to include self-propelled (or a combination of self-propelled and non-self-propelled) U.S. flag vessels of not less than 6,000 deadweight tons used exclusively in the United States foreign trade. The modified definition applies for taxable years beginning after December 31, 2005 and ending before January 1, 2011. 26 U.S.C. 1355(a)(4) was further amended by Public Law 109-432, approved December 20, 2006 (120 STAT. 2922), the Tax Relief and Health Care Act of 2006." As so amended, it is set forth at page 424. Conference Report (109-455), page 94. House Report (109-304), page 57.

SUPPLEMENTAL APPROPRIATIONS ACT, FY 2006. Public Law 109-234, approved June 15, 2006 (120 STAT. 418), contains the following provisions of particular interest:

Shipbuilding & Conversion Navy. At 120 STAT. 450, appropriated an additional $775,236,000. Set forth at page 350**.** Senate Report **(**109-230), page 62. House Report **(**109-388), pages 54, 71 73.

National Defense Sealift Fund. AT 120 STAT. 451, appropriated an additional, $10 million. Set forth at page 348. Conference Report (109-494), page 112. Senate Report **(**109-230), page 64**.** House Report **(**109-388), page 56.

Gulf Coast Shipyards with Navy Contracts. Section 2203 of Public Law 109-234 (120 STAT. 453), earmarked $140 million for such shipyards. Set forth at page 350**.** Conference Report **(**109-494), page 113. Senate Report **(**109-230), page 65.

COAST GUARD AND MARITIME TRANSPORTATION ACT OF 2006. Public Law 109-241, approved July 11 2006 (120 STAT. 516), contains the following provisions of particular interest:

Extension of Coast Guard Vessel Anchorage and Movement Authority. Section 201 of Public Law 109-241(120 STAT. 519), amended 14 U.S.C. 91. Safety of Naval Vessels, relating to the Coast Guard's authority to establish security areas to ensure the safety and security of naval vessels. A subsection (d) was added, providing: "(d) As used in this section 'navigable waters of the United States' includes all waters of the territorial sea of the United States as described in Presidential Proclamation No. 5928 of December 27, 1988.'' This amendment conformed the authority of the Coast Guard under 14 U.S.C. 91, with the expansion of U.S. territorial waters from 3 nautical miles to 12 nautical miles from shore that was made by Presidential Proclamation No. 5928. Conference Report (109-413), page 61. Senate Report (109-114), page 15. House Report (109-204, Part 1), page 13.

Coast Guard Icebreaker Planning. Section 210 of Public Law 109-241(120 STAT. 523), requires the Coast Guard to submit to the Congress, within 90 days, a plan for the operation and maintenance after fiscal year 2006 of the polar icebreakers, POLAR STAR, POLAR SEA, and HEALY, that does not rely on other than Coast Guard funds. The Coast Guard is required to maintain it current ice breaking vessel capacity until it has implemented this plan. $100 million is authorized, and the Coast Guard is not prohibited from seeking reimbursement from other Federal agencies for icebreaking services. Conference Report (109-413), page 63. Senate Report (109-114), page 16.

Treatment of Ferries as Passenger Vessels. Section 301 of Public Law 109-241 (120 STAT. 526), made three amendments to 46 U.S.C. 2101, General definitions, to amend the definition of "passenger vessel" and "small passenger vessels" to include ferries that carry passengers with or without charge. Conference Report (109-413), page 66. House Report (109-204, Part 1), page 15.

Promotion of U.S.-flag LNG Vessels. Section 304 of Public Law 109-241 (120 STAT. 527), requires the Secretary of Transportation to develop and implement a program to promote the transportation of LNG to the United States in U.S.-flag vessels. In addition, two amendments are made to the Deepwater Port Act of 1974. 33 U.S.C. 1503, is amended by the addition of a subsection (i), directing the Secretary to prioritize the processing of licenses for LNG facilities that would be supplied by U.S.-flag LNG vessels. 33 U.S.C. 1504(c)(2) is amended by the addition of a paragraph (K), requiring the applicant to include, as part of the application, information regarding the registry and crew nationality of the vessels transporting LNG that are reasonably anticipate to be servicing the deepwater port. Finally, the Coast Guard is required to provide the same information to the Federal Energy Regulatory Commission as part of the Coast Guard's contribution to the Environmental Impact Statement for landside LNG and liquefied petroleum facilities. Set forth at page 488. Conference Report (109-413), page 67. House Report (109-204, Part 1), page 15.

Authority of Maritime Security Teams. Section 305 of Public Law 109-241 (120 STAT. 528), amended 46 U.S.C. 70106(b)(8), to expand the authority of such teams to include "any other missions of the Coast Guard." Set forth at page 510. Conference Report (109-413), page 67.

Enhanced Civil Penalties for Certain Maritime Violations. Section 306 of Public Law 109-241 (120 STAT. 528), amended 46 U.S.C. 70119. Civil Penalty, and 46 U.S.C. 2107. Civil penalty procedures, to enhance these civil penalties for certain maritime violations. Set forth at page 525. Conference Report (109-413), at page 67. Senate Report (109-114), page 16.

Kings Point Cadet Training on Foreign-flag LNG Vessels. Section 307 of Public Law 109-241 (120 STAT. 528), amended 46 App. U.S.C. 1295b(f), Places of Training, [Codified as 46 U.S.C. 51307], to authorize such training on "any other vessel considered by the Secretary to be necessary or appropriate or in the national interest." Previously, such cadets were prohibited from training aboard foreign-flagged vessels. As there are no U.S.-flagged LNG vessels currently in operation, this authority will allow Kings Point cadets to gain such training in the interim before U.S.-flagged LNG vessels come into operation. Set forth at page 164. Conference Report (109-413), page 68. House Report (109-204, Part 1), page 16.

Reports from Mortgagees of Vessels Section 308 of Public Law 109-241 (120 STAT. 528), amended 46 U.S.C. 12120. Reports, [Codified as 46 U.S.C. 12139(a)] to expand the authority of the Secretary to require mortgagees to submit reports, in addition to owners, masters, and charterers, of vessels engaged in the coastwise trade and the fisheries in order to ensure compliance with the vessel documentation laws.. Set forth at page 37. Conference Report

(109-362), page 360. House Report (109-276), page 910.. Senate Report (109-114), page 17. House Report (109-204, Part 1), page 17.

Appeal Process for Denial of Transportation Security Card. Section 309 of Public Law 109-241 (120 STAT. 528), amended 46 U.S.C. 70105(c), to generally require the Coast Guard to establish a review process before Administrative Law Judges to consider an appeal of a denial of an application for a Transportation Security Card. Set forth at page 505. Conference Report (109-413), page 68.

U.S.-flag Vessels Required to Service OCS Mobile Offshore Drilling Units. Section 310 of Public Law 109-241 (120 STAT. 529), amended 46 U.S.C. 12105. Registry Endorsements, [Codified as 46 U.S.C. 12111] to generally restrict this trade to U.S.-flag vessels. This includes anchor work on mobile offshore drilling rigs, and the transportation of merchandise or personnel to or from such rigs on the Outer Continental Shelf and a point in the U.S. Set forth at page 20. Conference Report (109-413), page 69. Senate Report (109-114), page 18.

Exemption from Coast Guard Inspection of certain Aleutian Fish Tender Vessels. Section 311 of Public Law 109-241 (120 STAT. 530), amended 46 U.S.C. 3302. Exemptions, to apply the current exemption from Coast Guard inspection for certain fish tender vessels that are 500 gross tons or less, as measured under the regulatory tonnage system and engaged in the Aleutian trade, to such vessels that are 2,500 gross tons or less, as measured under the International Tonnage Convention. Conference Report (109-413), page 69.

Riding Gangs. Section 312(a) of Public Law 109-241 (120 STAT. 530), added 46 U.S.C. 8106. Riding gangs, that would generally authorize, subject to the enumerated conditions, the use of foreign citizens, who are not considered seamen and who do not carry out watchstanding functions, to perform certain repair work on underway U.S.-flag vessels when U.S. citizens or residents are unavailable to complete the work. Such individuals are generally limited to not more than 60 days in each calendar year. Set forth at page 47. Section 312(b) defined "riding gang member" in 46 U.S.C. 2101. Definitions. Section 312(c) made conforming amendments to 46 U.S.C. 8103. Citizenship and Naval Reserve Requirements, set forth at page 40, and 46 U.S.C. 10301(b), providing: "(b) This chapter [46 U.S.C. 10301 et seq.] does not apply to a vessel on which the seamen are entitled by custom or agreement to share in the profit or result of a voyage or to riding gang members." Conference Report (109-413), page 70.

MARAD Arctic Sea Route Study. Section 412 of Public Law 109-241 (120 STAT. 540), authorized $400,000 to the Maritime Administration to carry out an assessment of, and planning for, the impact of an Arctic Sea Route on the indigenous people of Alaska. Set forth at page 8. Conference Report (109-413), page 75.

Port Richmond, Philadelphia, LNG Vulnerability Study. Section 415 of Public Law 109-241 (120 Stat. 540), prohibits the Coast Guard from approving a 46 U.S.C. 70103(c) security plan for this LNG facility, until the completion of a vulnerability assessment under 46 U.S.C. 70102(b). Set forth as a footnote at page 498. Conference Report (109-413), page 75.

Jones Act Exemption for Canadian built vessel transportation of fish or shellfish between places in Maine. Section 418 of Public Law 109-241 (120 STAT. 546), provides for such a waiver subject to the enumerated conditions. Set forth as a footnote to 46 U.S.C. 55114, at page 267. Conference Report (109-413), page 80. Senate Report (109-114), page 17.

Automatic Identification System. Section 419 of Public Law 109-241 (120 STAT. 546), generally authorizes the Coast Guard to transfer $1 million to the National Telecommunications and Information Administration for a competitive grant to design and develop a prototype transponder.

Requirement to Notify Coast Guard of Release of Objects into the Navigable Waters of the United States. Section 602 of Public Law 109-241 (120 STAT. 553), amended the Ports and Waterways Safety Act (33 U.S.C. 1221, et seq.), by adding this requirement as Section 15 of that Act.

Oil Pollution Act of 1990 Adjustment of Liability Limits. Section 603 of Public Law 109-241 (120 STAT. 553), amended Sections 1004 of the Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.), to adjust the liability limits of certain vessels.

Hurricane Katrina Extension for Licenses, Certificates of Registry, and Merchant Mariners' Documents. Section 702 of Public Law 109-241 (120 STAT. 560), authorizes the Coast Guard, subject to the enumerated conditions, to extend the duration of such documents for up to one year. This authority terminates on April 1, 2007. Set forth as a footnote to 46 U.S.C. 7302, at page 53. Conference Report (109-413), page 86.

Extension for Vessel Certificates of Inspection. Section 703 of Public Law 109-241 (120 STAT. 560), authorizes the Coast Guard, subject to the enumerated conditions, to extend for up to six months a vessel Certificate of

Inspection. This authority expires on April 1, 2007. Conference Report (109-413), page 87.

Jones Act technical amendment. Section 902(o) of Public Law 109-241 (120 STAT. 566), provides: "(o) MERCHANT MARINE ACT, 1920.—Section 27 of the Merchant Marine Act, 1920 (46 U.S.C. App. 883) is amended in the matter following the ninth proviso (pertaining to transportation of a foreign-flag incineration vessel) by striking ‘‘Satisfactory inspection shall be certified in writing by the Secretary of Transportation’’ and inserting ‘‘Satisfactory inspection shall be certified, in writing, by the Secretary of Homeland Security.’’ 46 U.S.C. App. 883 has been codified by Public Law 109-304, but it is not clear whether the ninth proviso has been codified.

WAIVER OF VESSEL REPAIR DUTIES. Public Law 109-280, approved August 17, 2006 (120 STAT. 780), the Pension Protection Act of 2006, is comprehensive legislation that generally reforms and modernizes the U.S. pension system. Section 1631(a) of Public Law 109-280 (120 STAT. 1164), generally amended Section 466(h)(4) of the Tariff Act of 1930 (19 U.S.C. 1466(h)(4)), so that effective April 25, 2001, the waiver of the 50 percent ad valorum duty imposed on shipboard repairs was expanded from repairs made on the "high seas" to include "in foreign waters, or in a foreign port, and does not involve foreign shipyard repairs by foreign labor." Set forth at page 441.

DEPARTMENT OF DEFENSE APPROPRIATIONS ACT FY 2007. Public Law 109-289, approved September 29, 2006 (120 STAT. 1257), contains the following provisions of particular interest.

Shipbuilding and Conversion, Navy. At 120 STAT. 1265, Public Law 109-289 appropriated $10,579,125,000, for this purpose. Set forth at page 351. Conference Report (109-676), page 180. Senate Report (109-292), page 113. House Report 109-504), page 137.

National Defense Sealift Fund. At 120 STAT. 1269, Public Law 109-289, appropriates $1,071,932,000, for this purpose. Set forth at page 348. Conference Report (109-676), page 348, Senate Report (109-292), page 220: House Report 109-504), page 299.

Multiyear Contracts. Section 8008 of Public Law 109-289 (120 STAT. 1273), prohibits funds appropriated by Public Law 109-289, to be used to initiate the enumerate multiyear contracts, subject to certain exceptions. Senate Report (109-292), page 229

DOD Humanitarian and Civic Assistance. Very generally, Section 8009 of Public Law 109-289 (120 STAT. 1274), appropriates funds pursuant to 10 U.S.C. 401, for humanitarian and civic assistance costs under chapter 20 of title 10, United States Code. This includes a provision authorizing the Secretary of the Army to provide medical services at facilities in Hawaii, 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. Senate Report (109-292), page 229.

See also, Section 8057 of Public Law 109-289 (120 STAT. 1286), providing: "SEC. 8057. Notwithstanding any other provision of law, funds available to the Department of Defense in this Act 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." Senate Report (109-292), page 231.

Competition Between DOD Maintenance Activities and Private Firms. Section 8026 of Public Law 109-289 (120 STAT. 1279), generally prohibits such competition. Senate Report (109-292), page 230. Set forth at page 356.

Prior Year Shipbuilding Costs, Section 8080 of Public Law 109-289 (120 STAT. 1292), provides in part: "SEC. 8080. Of the amounts appropriated in this Act under the heading ‘‘Shipbuilding and Conversion, Navy’’, $512,849,000 shall be available until September 30, 2007, to fund prior year shipbuilding cost increases:. . . ". Conference Report (109-676), page 355.

USS GREENEVILLE-EHIME MARU. Section 8081 of Public Law 109-289 (120 STAT. 1292), provides: "SEC. 8081. The Secretary of the Navy may settle, or compromise, and pay any and all admiralty claims under section 7622 of title 10, United States Code, arising out of the collision involving the U.S.S. GREENEVILLE and the EHIME MARU, in any amount and without regard to the monetary limitations in subsections (a) and (b) of that section: *Provided,* That such payments shall be made from funds available to the Department of the Navy for operation and maintenance. Senate Report (109-292), page 232.

DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT 2007. Public Law 109-295, approved October 4, 2006 (120 STAT. 1355), contains the following provisions of particular interest:

Office of the Secretary of Homeland Security. At 120 STAT. 1355, appropriates $94,470,000. One of the provisos states that $5,000,000 shall not be available for obligation until the Secretary of Homeland Security submits a comprehensive port, container, and cargo security strategic plan to various Congressional Committees that requires screening all inbound cargo, doubles the percentage of inbound cargo currently inspected, sets minimum standards for securing inbound cargo, and includes the fiscal year 2007 performance requirements for port, container, and cargo security as specified in the joint explanatory statement accompanying this Act: Conference Report (109-699), pages 113. 114.

Port Security Grants - Office of Grants and Training - State and Local Programs. At 120 STAT. 1369, appropriates $1,229,000,000 for discretionary grants, as determined by the Secretary of Homeland Security, of which $210,000,000 shall be for port security grants pursuant to the purposes of section 70107(a) through (h) of title 46, United States Code, which shall be awarded based on risk notwithstanding subsection (a), for eligible costs as described in subsections (b)(2) through (4). The applications for such grants shall be made available to eligible applicants not later than 75 days after the date of enactment of this Act, eligible applicants shall submit applications not later than 45 days after the date of the grant announcement, and the Office of Grants and Training shall act on such applications not later than 60 days after the date on which such an application is received. The Government Accountability Office is required to report on the validity, relevance, reliability, timeliness, and availability of the risk factors (including threat, vulnerability, and consequence) used by the Secretary for the purpose of allocating discretionary grants funded under this heading, and the application of those factors in the allocation of funds to the Committees on Appropriations of the Senate and the House of Representatives on its findings not later than 45 days after the date of enactment of this Act. Within seven days after enactment, the Secretary shall provide the Government Accountability Office with the risk methodology and other factors that will be used to allocate discretionary grants funded under this heading. Set forth at page 551. Conference Report (109-699), pages 116, 126, 152, 155.

Discretionary Grants Over $1 million. Section 508 of Public Law 109-295 (120 STAT. 1378) requires notice to the Senate and House Appropriations Committees three business days in advance of such action. Set forth at page 552. Conference Report (109-699), page 174.

Pilot Integrated Scanning System. Section 558 of Public Law 109-295 (120 STAT. 1392), generally requires the Secretary of Homeland Security to designate three foreign seaports through which containers pass or are transshipped to the United States to pilot an integrated scanning system that couples nonintrussive imaging equipment and radiation**.** The Secretary shall collaborate with the Secretary of Energy and cooperate with the private sector and host foreign governments to implement this pilot program. Conference Report (109-699), page 179.

CODIFICATION OF TITLE 46. Public Law 109-304, approved October 6, 2006 (120 STAT. 1485), is meant to complete the codification of title 46, United States Code, "Shipping", as positive law, by reorganizing and restating the laws currently in the appendix to title 46. The intent is to conform to the understood policy, intent, and purpose of the Congress in the original enactments, with such amendments and corrections as will remove ambiguities, contradictions, and other imperfections, in accordance with section 205(c)(1) of House Resolution No. 988, 93d Congress, as enacted into law by Public Law 95-554 (2 U.S.C. 285b(1)). This Compilation of Maritime Laws gives recognition to the changes made by Public Law 109-304.

SAFE PORT ACT. Public Law 109-347, approved October 13, 2006 (120 STAT. 1884), the Security and Accountability for Every Port Act of 2006 [SAFE Port Act]. .

Title I - Security of United States Seaports.

Subtitle A. General Provisions, consists of Sections 101 through 110 of Public Law 109-347, as follows:

Salvage Response Plan Included in Area Maritime Transportation Security Plan. Section 101 of Public Law 109-347 (120 STAT. 1887), amended subsection (b)(2) of 46 U.S.C. 70103. Maritime Transportation Security Plans, to include a salvage response plan that would identify equipment capable of restoring operational trade capacity and to ensure that waterways are cleared after a maritime transportation security incident. As so amended, 46 U.S.C. 70103 is set forth at page 496. Conference Report (109-711), page 82.

Requirements for Maritime Facility Officers. Section 102 of Public Law 109-347 (120 STAT. 1888), amended 46 U.S.C. 70103(c)). Maritime Transportation Security Plans, Vessel and facility security plans,, to set security requirements for such officers. As so amended, 46 U.S.C. 70103 is set forth at page 496. Conference Report (109-711), page 82.

Unannounced Inspections of Maritime Facilities. Section 103 of Public Law 109-347 (120 STAT. 1888), amended 46 U.S.C. 70103(c). Unannounced Inspections of Maritime Facilities, Vessel and facility security plans., to require the Coast Guard, subject to available appropriations, to verify the effectiveness of Area Maritime Security Plans by conducting at least two inspections of a facility per year, one of which shall be without prior notice. As so amended, 46 U.S.C. 70103 is set forth at page 496. Conference Report (109-711), page 82.

TWIC Program Implementation. Section 104 of Public Law 109-347 (120 STAT. 1888), amended 46 U.S.C. 70105. Transportation Security Cards, by the addition of a subsections (g) through (k), generally providing for the implementation of the Transportation Worker Identification Credential (TWIC) Program.. As so amended, 46 U.S.C. 70105 is set forth at page 504. Conference Report (109-711), at page 82.

GAO Study of Background Record Checks. Section 105 of Public Law 109-347 (120 STAT. 1891) requires the Comptroller General to conduct a study of background records checks carried out for the Department that are similar to the background records check required under 49 U.S.C. 5103a, to identify redundancies and inefficiencies in connection with such checks, and to report to the Congress within six months. Set forth as a footnote to 46 U.S.C. 70105(d), at page 507. Conference Report (109-711), page 83.

Disqualification of Felons. Section 106 of Public Law 109-347 (120 STAT. 1891), provides for the disqualification of individuals who have been convicted of a felony. Set forth as a footnote to 46 U.S.C. 70105, on page 504. Conference Report (109-711), page 83.

Deadline for Automated Long-Range Vessel Tracking System. Section 107 of Public Law 109-347 (120 STAT. 1891), amended 46 U.S.C. 70115, to establishes a deadline of April 1, 2007, for the Coast Guard to implement this program. As so amended, 46 U.S.C. 70115, is set forth at page 523. Conference Report (109-711), page 83.

Establishment of Interagency Operational Centers for Port Security. Section 108 of Public Law 109-347 (120 STAT. 1892), added 46 U.S.C. 70107A, a comprehensive provision of law for this purpose. 46 U.S.C. 70107A is set forth at page 517. (109-711), page 83.

Notice of Arrival for Foreign Vessels on the Outer Continental Shelf. Section 109 of Public Law 109-347 (120 STAT. 1893), directs the Coast Guard to update and finalize its rulemaking on this subject. Conference Report (109-711), page 84.

Enhanced Crewmember Identification. Section 110 of Public Law 109-347 (120 STAT. 1893), amended 46 U.S.C. 70111, to set a deadline of October 13, 2007, for it to be implemented by the Coast Guard. 46 U.S.C. 70111 is set forth at page 520. Conference Report (109-711), page 84.

Subtitle B - Port Security Grants; Training and Exercise Programs, consists of Sections 111 through 115 of Public Law 109-347, as follows:

Risk Assessment Tool. Section 111 of Public Law 109-347 (120 STAT. 1894), provides that in updating Area Maritime Security Plans required under 46 U.S.C. 70103(b)(2)(G), and in applying for grants under 46 U.S.C. 70107, the Coast Guard shall make available, and Area Maritime Security Committees may use a risk assessment tool that uses standardized risk criteria, such as the Maritime Security Risk Assessment Tool used by the Coast Guard. Set forth as a footnote to 46 U.S.C. 70103(b)(2)(G), at page 498 and 46 U.S.C. 70107, at page 510. Conference Report (109-711), at page 84.

Port Security Grants. Section 112 of Public Law 109-347 (120 STAT. 1894), made comprehensive amendments to 46 U.S.C. 70107. Grants, very generally to require the Coast Guard to allocate such grants based on risk, allow for letters of intent to be issued for multiple-year projects, and authorizes funds for this purpose. As so amended, 47 U.S.C. 70107 commences at page 510. Conference Report (109-711), at page 85.

Port Security Training Program/Maritime Administration Section 113 of Public Law 109-347 (120 STAT. 1895)(6 U.S.C. 911), generally requires the Coast Guard to establish a Training Program to enhance the capabilities of U.S. commercial seaports [required to submit a plan under 46 U.S.C. 70103(c)] to prevent, prepare for, respond to, mitigate against, and recover from threatened or actual acts of terrorism, natural disasters, and other emergencies. Section 113(e) of Public Law 109-347, provides that in developing and delivering training under the Training Program, the Secretary, in coordination with the Maritime Administration, and consistent with section 109 of the Maritime Transportation Security Act of 2002 (46 U.S.C. 70101 note), shall—
"(1) work with government training facilities, academic institutions, private organizations, employee organizations, and other entities that provide specialized, state-of-the-art training for governmental and nongovernmental emergency responder providers or commercial seaport personnel and management; and (2) utilize, as appropriate, government training facilities, courses provided by community colleges, public safety academies, State and private universities, and other facilities." Also includes an amendment to 46 U.S.C. 70103(c)(3). Set forth following 46 U.S.C. 70103, at page 500. Conference Report (109-711), page 85.

Port Security Exercise Program. Section 114 of Public Law 109-347 (120 STAT. 1896)(6 U.S.C. 912), generally authorizes the Under Secretary for Preparedness, and in coordination with the Coast Guard, to establish an exercise program to test and evaluate the capabilities of Federal, State, local, private sector, and other relevant stakeholders to coordinate appropriate response and recovery from threats at commercial seaports. Set forth following 46 U.S.C. 70103, at page 502. Conference Report (109-711), page 86.

Facility Exercise Requirements Section 115 of Public Law 109-347 (120 STAT. 1897)(6. U.S.C. 913), directs the Coast Guard to require each high risk facility to conduct live or full scale exercises not less than once every two years in accordance with the 46 U.S.C. 70103(c) facility security plan. Set forth following 46 U.S.C. 70103, at page 503. Conference Report (109-711), page 86.

Subtitle C - Port Operations, consists of Section 121 through 128 of Public Law 109-347, as follows:

Domestic Radiation Detection and Imaging. Section 121 of Public Law 109-347 (120 STAT. 1898)(6 U.S.C. 921), is comprehensive legislation that generally requires the Secretary of Homeland Security to deploy nuclear and radiological detection systems at the 22 busiest United States seaports not later than September 30, 2007, and to utilize advanced technology. Within 90 days, the Secretary must submit a strategy on the deployment of nuclear and radiological detection systems at all remaining maritime ports of entry including a risk-based deployment schedule, description of equipment to be used, standard operating procedures for examining containers, and evaluation of the health effects of using radiation equipment. Lastly, the provision requires the Director of the Domestic Nuclear Detection Office (DNDO) to coordinate with other appropriate Federal agencies to deploy nuclear and radiological detection systems at foreign ports. Set forth at page 529. Conference Report (109-711), page 86.

Inspection of Car Ferries Entering from Abroad. Section 122 of Public Law 109-347 (120 STAT. 1899)(6 U.S.C. 922). requires the Secretary of Homeland Security, in coordination with Department of State, to develop a plan for the inspection of passengers and vehicles prior to loading onto ferries bound for a United States port. Set forth at page 531. Conference Report (109-711), page 87.

Random Searches of Containers. Section 123 of Public Law 109-347 (120 STAT. 1899)(6.U.S.C. 923), requires the Secretary [Customs] to develop and implement a plan to conduct random searches of containers in addition to any targeted or required preshipment inspection of such containers Set forth at page 531. Conference Report (109-711), page 87.

Work Stoppages and Employee-Employer Disputes. Section 124 of Public Law 109-347 (120 STAT. 1900), amended 46 U.S.C. 70101(6) to clarify that "economic Disruption" "does not include a work stoppage or other employee-related action not related to terrorism and resulting from an employee-employer dispute." As so amended, 46 U.S.C. 70101, is set forth at page 495. Conference Report (109-711), page 87.

Threat Assessment Screening of Port Truck Drivers.. Section 125 of Public Law 109-347 (120 STAT. 1900)(6 U.S.C. 924), requires the Secretary of Homeland Security to implement within 90 days a threat assessment screening for all port truck drivers with access to secure areas who do not have a current hazardous materials endorsement that is the same screening required for facility employees and longshoremen. Set froth at page 532. Conference Report (109-711), page 88.

Border Patrol Unit for the U.S. Virgin Islands. Section 126 of Public Law 109-347 (120 STAT. 1900)(6 U.S.C. 925), generally authorizes the Secretary of Homeland Security to establish at least one such unit. Set forth at page 532. Conference Report (109-711), page 88.

Report on Virgin Island Vessel Arrival/Departure Manifests, Section 127 of Public Law 109-347 (120 STAT. 1900), requires the Secretary of Homeland Security to submit to the Congress a report on the impact of implementing the requirements of section 231 of the Immigration and Nationality Act (8 U.S.C. 1221) (relating to providing United States border officers with arrival and departure manifests) with respect to commercial vessels that are fewer than 300 gross tons and operate exclusively between the territorial waters of the United States Virgin Islands and the territorial waters of the British Virgin Islands. Set forth at page 532. Conference Report (109-711)**,** page 88.

Center of Excellence for Maritime Domain Awareness. Section 128 of Public Law 109-347 (120 STAT. 1900)(6 U.S.C. 926), requires the Secretary of Homeland Security to establish a university-based Center of Excellence for Maritime Domain Awareness. The Center shall— (1) prioritize its activities based on the ‘‘National Plan to Improve Maritime Domain Awareness’’ published by the Department in October 2005; (2) recognize the extensive previous and ongoing work and existing competence in the field of maritime

domain awareness at numerous academic and research institutions, such as the Naval Postgraduate School; (3) leverage existing knowledge and continue development of a broad base of expertise within academia and industry in maritime domain awareness; and (4) provide educational, technical, and analytical assistance to Federal agencies with responsibilities for maritime domain awareness, including the Coast Guard, to focus on the need for interoperability, information sharing, and common information technology standards and architecture." Set forth at page 533. Conference Report (109-711), page 88.

Title II - Security of the International Supply Chain.

Subtitle A - General Provisions, consists of Section 210 through 205 of Public Law 109-347, as follows:

Strategic Plan to Enhance the Security of the International Supply Chain. Section 201 of Public Law 109-347 (120 STAT. 1901)(6 U.S.C. 941), generally requires the Secretary of Homeland Security to develop and implement a plan to identify and address gaps; provide improvements and goals; establish protocols for the resumptions of trade including identification of the initial incident commander; consider international standards for container security; and allow for communication with stakeholders. Conference Report (109-711), page 89.

Post-Incident Resumption of Trade. Section 202 of Public Law 109-347 (109 STAT. 1903)(6 U.S.C. 942), is comprehensive legislation requiring the Secretary of Homeland Security to develop and update, as necessary, protocols for the resumption of trade in accordance with section 201(b)(10) of Public Law 109-347, in the event of a transportation disruption or a transportation security incident. Conference Report (109-711), page 89.

Automated Targeting System. Section 203 of Public Law 109-347 (109 STAT. 1904)(6 U.S.C. 943), is comprehensive legislation requiring the Secretary of Homeland Security to request and identify additional data (non-manifest and entry data elements) of container cargo moving thought the international supply chair. Data would be analyzed to identify high-risk cargo for inspection. Conference Report (109-711), page 90.

Container Security Standards and Procedures. Section 204 of Public Law 109-347 (109 STAT. 1905)(6 U.S.C. 944), generally requires the Secretary of Homeland Security to promulgate a rule to establish minimum standards and procedures for securing containers in transit to the United States, and encourages all Federal agencies to promote international cargo security standards. Conference Report (109-711), page 90.

Container Security Initiative. Section 205 of Public Law 109-347 (109 STAT. 1906)(6 U.S.C. 945), is comprehensive legislation that generally authorizes the Container Security Initiative (CSI) program to identify, examine, or search maritime containers before cargo bound for the United States is loaded in a foreign port. The Secretary of Homeland Security is authorized to designate foreign ports as part of the CSI program based upon criteria including risk, trade volume of cargo, U.S. Coast Guard assessments, and the commitment of the host nation to comply with data sharing requirements. The Secretary is also required to develop standards for the use of nonintrusive imaging and radiation detection equipment at CSI ports. Conference Report (109-711), page 91.

Subtitle C - Miscellaneous Provisions, consists of Section 231 through 236 of Public Law 109-347, as follows:

Pilot Integrated Scanning System. Section 231 of Public Law 109-347 (120 STAT. 1915)(6 U.S.C. 981), generally authorizes the development by the Secretary of Homeland Security of a pilot program in three foreign seaports, each with unique features and varying levels of trade volume to test integrated scanning systems using nonintrusive inspection and radiation detection equipment. Conference Report (109-711), at page 96.

Screening and Scanning of Cargo Containers. Section 232 of Public Law 109-347 (120 STAT. 1916)(6 U.S.C. 982), requires the Secretary of Homeland Security to ensure that 100 percent of cargo containers originating outside the United States and unloaded at a U.S. seaport undergo a screening to identify high-risk containers. One hundred percent of "high-risk containers" must be scanned or searched before such containers leave a U.S. seaport facility. Finally, as soon as possible, the Secretary, with the Secretary of Energy and foreign partners, as appropriate, shall ensure integrated scanning systems are fully deployed to scan all containers entering the Untied States before such containers arrive in the United States. Conference Report (109-711), page 96.

International Cooperation and Coordination. Section 233(a) of Public Law 109-347 (120 STAT. 1917)(6 U.S.C. 983), generally authorizes the Secretary of Homeland Security, in coordination with the Secretaries of State, Energy, and appropriate representatives of other Federal agencies, to provide technical assistance, equipment, and training to facilitate the implementation of supply chain security measures at ports designed under the CSI. Section 233(b) amended 46 U.S.C. 70110. Actions and assistance for foreign ports and United States territories, by the addition of a subsection (e). Assistance for Foreign Ports and United States territories,. providing that the Secretary of Homeland

Security "in consultation with the **Secretary of Transportation**[145], the Secretary of State, and the Secretary of Energy, shall identify assistance programs that could facilitate implementation of port security antiterrorism measures in foreign countries and territories of the untied States." The Secretary of Homeland Security is required to establish a program to utilize the programs that are capable of implementing port security antiterrorism measures at ports in foreign countries and territories of the United States that the Secretary finds to lack effective antiterrorism measures. Particular emphasis is required to be placed on security at ports in the Caribbean Basis. Conference Report (109-711), at page 97.

Foreign Port Assessments. Section 234 of Public Law 109-347 (120 STAT. 1918), amended 46 U.S.C. 70108. Foreign port assessment. 46 U.S.C. 70108, generally 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. Section 234 of Public Law 109-347, added a subsection (d) requiring the Coast Guard to reassess the effectiveness of such antiterrorism measures and procedures at these ports every three years. 46 U.S.C. 70108, is set forth at page 518. Conference Report (109-711), page 97.

Pilot Program to Improve the Security of Empty Containers. Section 235 of Public Law 109-347 (120 STAT. 1919)(6 U.S.C. 984), generally requires the Secretary of Homeland Security to conduct a one year pilot program to assess the risk posed by and improve the security of empty containers at U.S. seaports Conference Report (109-711), at page 97.

Information Sharing Relating to Supply Chain Security Cooperation. Section 236 of Public Law 109-347 (120 STAT. 1919)(6 U.S.C. 985), generally establishes continuing liaison and provides for supply chain security cooperation between Homeland Security and the private sector. Conference Report (109-711), page 98.

---

[145] Emphasis added.

Title VII - Other Matters. contains the following provision of particular interest:

Phaseout of Vessels Supporting Oil and Gas Development. Section 705 of Public Law 109-347 (120 STAT. 1945), provides that notwithstanding 46 U.S.C. 12105. Issuance of Documentation, subsection (c), Information to be included in certificate, a foreign-flag vessel may be chartered by, or on behalf of, a lessee to be employed for the setting, relocation, or recovery of anchors or other mooring equipment of a mobile offshore drilling unit that is located over the Outer Continental Shelf, for operations in support of exploration or flow-testing and stimulation of well for offshore mineral or energy resources in the Beaufort Sea or the Chukchi Sea until December 31, 2009, if the Secretary of Transportation determines that insufficient documented vessels are reasonably available and suitable for these support operations and all such reasonably available and suitable vessels are employed in support of such operations. Provision is made for an additional 2-year period beginning January 1, 2010, upon the same findings by the Secretary of Transportation. Set forth at a footnote to 46 U.S.C. 12111, at page 21. Conference Report (109-711), page 109.

JOHN WARNER NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2007. Public Law 109-364, approved October 17, 2006 (120 STAT. 2083), contains the following provisions of particular interest.

Navy Shipbuilding and Conversion. Section 102(a)(3) of Public Law 109-364 (120 STAT. 2101), authorizes $11,021,553,000, for fiscal year 2007. Set forth at page 350.

National Defense Sealift Fund. Section 302 of Public Law 109-364 (120 STAT. 2136), authorizes $1,071,932,000, for fiscal year 2007. Set forth at page 347.

Overhaul, Repair, and Maintenance of Vessels in Foreign Shipyards. Section 1014 of Public Law 109-364 (120 STAT. 2376), amended 10 U.S.C. 7310(a), to require naval vessels homeported in Guam to be overhauled, repaired, or maintained in a shipyard in the United States or Guam. Set forth at page 355. Conference Report (109-702), page 806.

Report on Options for Future Lease Arrangement for Guam Shipyard. Section 1015 of Public Law 109-364 (120 STAT. 2376), requires the Navy to submit such a report to the Congress. The Comptroller General is required to submit a report to the Congress evaluating the Navy's report. Conference Report (109-702), page 806.

Assessments of Naval Vessel Construction Efficiencies and of Effectiveness of Special Contractor Incentives. Section 1016 of Public Law 109-364 (120 STAT. 2378), requires the Navy to undertake such a study. Conference Report (109-702), page 806

DOD Obtaining Carriage by Vessel - Criterion Regarding Overhaul, Repair, and Maintenance of Vessels in the United States. Section 1017 of Public Law 109-364 (120 STAT. 2379), generally directs the Secretary of Defense to issue an acquisition policy that establishes, as a criterion required to be considered in the ocean shipping of DOD cargo, the extent to which a vessel offeror had overhaul, repair, and maintenance work for covered vessels of the offeror performed in U.S. shipyards.. "Covered vessels" are defined as vessel owned, operated, or controlled by the offeror, and qualified to operate in the Jones Act trades. Set forth at page 359. Conference Report (109-702), page 807.

DOD Riding Gang Member Requirements. Section 1018 of Public Law 109-364 (120 STAT. 2380), sets forth the Riding Gang requirements for vessels chartered by or that transport cargo for DOD.

Section 1018(a). Requirements for Charters and Contracts (120 STAT. 2380) Section 1018(a) prohibits DOD from chartering a U.S.-flag vessel or ship DOD cargoes on a U.S.-flag vessel, unless provision is made in such contract for riding gangs to perform work on such vessel. Each Riding Gang member, as that term is used in 46 U.S.C. 8106. Riding Gangs[146], must hold a merchant mariner's document under chapter 73 of title 46, and perform work substantially in accordance with 46 U.S.C. 8106, with certain exceptions. The following provisions of 46 U.S.C. 8106 do not apply: (a) the U.S. citizenship requirements of 46 U.S.C. 8106(a), the 60 day work limit of 46 U.S.C. 8106(c), and the exceptions for warranty work set forth in 46 U.S.C. 8106(d).

Section 1018(b) Exceptions by Secretary of Defense.
Section 1018(b) of Public Law 109-364 (120 STAT. 2381), authorizes the Secretary to issue regulations that exempt from the requirements of Section 1018(a), any individual who is on the vessel for purposes other than engaging in the operation or maintenance of the vessel, including an individual who (a)

[146] Note- Not defined in 46 U.S.C. 8106.

is a Supercargo; (b) for force protection, (c) a specialized repair technician, or (d) otherwise required by the Secretary of Defense. A background check is required for individuals not holding a merchant mariners document under chapter 73 of title 46, and such individuals are not counted in addition to the crew under 46 U.S.C. 3304. Transporting individuals in addition to crew. Set forth at page 50. Conference Report (109-702), page 808.

Authority to Transfer SS ARTHUR M. HUDDELL to the Government of Greece. Section 1019 of Public Law 109-364 (120 STAT. 2381), authorizes the President to transfer this vessel to Greece, and to convey additional equipment from other obsolete vessels in the National Defense Reserve Fleet. To the extent practicable, U.S. shipyards are to be used for work necessary to ensure the safe transfer of the vessel. Conference Report (109-702), page 809.

Maritime Administration Authorization of Appropriations, FY 2007. Section 3501 of Public Law 109-364 (120 STAT. 2514), provides:

> **SEC. 3501. AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEAR 2007.**
> Funds are hereby authorized to be appropriated for fiscal year 2007, to be available without fiscal year limitation if so provided in appropriations Acts, for the use of the Department of Transportation for the Maritime Administration as follows:
> (1) For expenses necessary for operations and training activities, $116,442,000.
> (2) For paying reimbursement under section 3517 of the Maritime Security Act of 2003 (46 U.S.C. 53101 note), $19,500,000.
> (3) For assistance to small shipyards and maritime communities under section 3506 of the National Defense Authorization Act for Fiscal Year 2006 (46 U.S.C. App. 1249), $15,000,000.
> (4) For expenses to dispose of obsolete vessels in the National Defense Reserve Fleet, including provision of assistance under section 7 of Public Law 92–402, $25,740,000.
> (5) For administrative expenses related to the implementation of the loan guarantee program under title XI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1271 et seq.), administrative expenses related implementation of the reimbursement program under section 3517 of the Maritime Security Act of 2003 (46 U.S.C. 53101 note), and administrative expenses related to the implementation of the small shipyards and maritime

communities assistance program under section 3506 of the National Defense Authorization Act for Fiscal Year 2006 (46 U.S.C. App. 1249), $3,317,000.

Set forth at page 7. Conference Report (109-702), page 978.

Amendments Relating to the Maritime Security Fleet Program. Section 3502 of Public Law 109-364 (120 STAT. 2514), made several amendments to the Program. Conference Report (109-702), page 978.

Section 3502(a). Limitation on Transfer of Operating Agreements, of Public Law 109-364 (120 STAT. 2514), amended 46 U.S.C. 53105. Obligations and rights under operating agreements, Subsection (e) Transfer of operating agreements, to prohibit the Secretary of Defense to transfer an operating agreement to a person who is not a citizen of the United States under section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802) [Codified as 46 U.S.C. 50501], unless he determines that no such citizen is interested in obtaining the operating agreement for a vessel that is otherwise eligible to be included in the Fleet under 46 U.S.C. 53102(b), and meets the requirements of the Department of Defense. 46 U.S.C. 53105 is set forth at page 191.

Section 3502(b)(1). Maritime Security Fleet Program Tank Vessels, of Public Law 109-364 (120 STAT. 2515), amended 46 U.S.C. 53103. Award of Operating Agreements; Subsection (c). Priority for Awarding; (4) Treatment of tank vessel to be replaced, to provide an alternative approach for operators of Maritime Security Fleet program tankers to meet U.S.-built replacement vessel requirements. The alternative approach would include the construction and operation of equivalent domestic trade tank vessels. 46 U.S.C. 53103 is set forth at page 187.

Section 3502(b)(2). Assistance Authority, of Public Law 109-364 (120 STAT. 2516), amended Section 3543(a) of Public Law 108-136 (117 STAT. 1821), as follows:

> 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 **[[shall to the extent of the availability of appropriations[147]]]** 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.

Set forth on page 202.

[147] Emphasis added.

Section 3502(c) of Public Law 109-364 (120 STAT. 2516), Priority in Allocation of Amounts Available for Annual Payments, amended 46 U.S.C. 53106. Payments, by the addition of subsection (f) providing for the allocation of payments to vessels, in the event that the amounts available for payments under operating agreements are not sufficient to pay the full amount under each agreement. Set forth at page 194.

Applicability to Certain Maritime Administration Vessels of Limitations on Overhaul, Repair, and Maintenance of Vessels in Foreign Shipyards. Section 3503 of Public Law 109-364 (120 STAT. 2516), amended Section 11 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1744), by the addition of a subsection (d) requiring that NDRF vessels activated in support of DOD missions to be subject to 10 U.S.C. 7310. Overhaul, repair, etc. of vessels in foreign shipyards: restrictions Set forth at page 313. Conference Report (1090-702), page 979.

Vessel Transfer Authority. Section 3504 of Public Law 109-364 (120 STAT. 2516), authorizes the Secretary of Transportation to transfer any NDRF vessels to another Federal agency. Set forth at page 135. Conference Report (109-702), page 979.

United States Merchant Marine Academy Graduates: Service Requirements. Section 3505 of Public Law 109-364 (120 STAT. 2516), amended Section 1303(e) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1295b(e)[Codified as 46 U.S.C. 51306], by adding the following:

> [(e) (1) An individual who for the 5-year period following graduation from the Academy, serves as a commissioned officer on active duty in an armed force of the United States or as a commissioned officer of the National Oceanic and Atmospheric Administration or the Public Health Service shall be excused from the requirements of subparagraphs (C), (D), and (E) of paragraph (1).
>
> (2) The Secretary may modify or waive any of the terms and conditions set forth in paragraph (1) through the imposition of alternative service requirements.]

Set forth at page 163. Conference Report (109-702), page 979.

United States Merchant Marine Academy Graduates: Service Obligation Performance Reporting Requirements. Section 3506 of Public Law 109-364 (120 STAT. 2517), further amended Section 1303(e) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1295b(e)[Codified as 46 U.S.C. 51306], by adding the following:

> [(f) (1) Subject to any otherwise applicable restrictions on disclosure in section 552a of title 5, United States Code, the Secretary of Defense,

the Secretary of the department in which the Coast Guard is operating, the Administrator of the National Oceanic and Atmospheric Administration, and the Surgeon General of the Public Health Service-

(A) shall report the status of obligated service of an individual graduate of the Academy upon request of the Secretary; and

(B) may, in their discretion, notify the Secretary of any failure of the graduate to perform the graduate's duties, either on active duty or in the Ready Reserve component of their respective service, or as a commissioned officer of the National Oceanic and Atmospheric Administration or the Public Health Service, respectively.

(2) A report or notice under subparagraph (A) shall identify any graduate determined to have failed to comply with service obligation requirements and provide all required information as to why such graduate failed to comply.

(3) Upon receipt of such a report or notice, such graduate may be considered to be in default of the graduate's service obligations by the Secretary, and subject to all remedies the Secretary may have with respect to such a default.]

Set forth at page 164. Conference Report (109-702), page 979.

Temporary Authority to Transfer Obsolete Combatant Vessels to Navy for Disposal. Section 3507 of Public Law 109-364 (120 STAT. 2517), provides for the transfer of not less than three such vessels. Set forth at page 325. Conference Report (109-702), page 980.

Qualifying Reserve Duty for Receipt of Student Incentive Payments. Section 3508 of Public Law 109-364 (120 STAT. 2517), amended Section 1304(g)(2) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1295c(g)(2))[Codified as 46 U.S.C. 51509], to include service in the U.S. Coast Guard Reserve as fulfillment of enlisted reserve requirement for receipt of student incentive payments. Set forth at page 171. Conference Report (109-702), page 980.

Large Passenger Ship Crew Requirements. Section 3509 of Public Law 109-364 (120 STAT. 2518), amended 46 U.S.C. 8103, Citizenship and Navy Reserve requirements, by the addition of subsection (k), Crew requirements for large passenger vessels, to expand the pool of non-citizens that can be employed on U.S.-flag large passenger vessels to include certain non-resident alien visa holders. The subsection would also establish rules, restrictions, and background check requirements for non-resident alien employees, that have been deem necessary by the Department of Homeland Security. Set forth at page 43. Conference Report (109-702), page 980.

Miscellaneous Maritime Administration Provisions. Section 3510 of Public Law 109-364 (120 STAT. 2520), contains four unrelated amendments. Conference Report (109-702), page 981.

1. War Risk Insurance. Section 3510(a) of Public Law 109-364, amended Section 1208(a) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1288(a))[Codified as 46 U.S.C. 53909], concerning the investment of funds in the War Risk Insurance Revolving Fund. Set forth at page 253.

2. Right to Use Maritime Administration Decoration Section 3510(b) of Public Law 109-364, amended Section 8 of the Merchant Marine Decorations and Medals Act)(46 U.S.C. 2007)[Codified as 46 U.S.C. 51908]. to authorize the Secretary of Transportation to permit such activity. Set forth at page 179.

3. Intermodal Centers**.** Section 3510(c) of Public Law 109-364 (120 STAT. 2520), would generally authorize funding for an intermodal or marine facility comprising a component of the Hawaii Port Infrastructure Expansion Program, as follows:

> (c) INTERMODAL CENTERS.—(1) IN GENERAL.—Notwithstanding section 5309(m)(6)(B) of title 49, United States Code, half of the amounts appropriated or made available under subsections (b) and (c) of section 5338 of title 49, United States Code, for capital projects under section 5309(m)(6)(B) of that title for fiscal years 2006 through 2009 shall be made available and used, in accordance with section 9008(a) of Public Law 109–59, for an intermodal or marine facility comprising a component of the Hawaii Port Infrastructure Expansion Program (2) SUPPLEMENTARY FUNDING.—Any amount made available under paragraph (1) shall be in addition to any amounts authorized to be appropriated under subsections (b) and (c) of section 9008 of Public Law 109–59.

Set forth at page 490.

4. Technical Corrections. Section 3510(d)(1) of Public Law 109-364 (120 STAT. 2520), substitued "Merchant Marine Act, 1936" for "Maritime Education and Training Act of 1980" in Section 3509 of Public Law 109-163 (119 STAT. 3557), effective January 6, 2006.

TAX RELIEF AND HEALTH CARE ACT OF 2006. Public Law 109-432, approved December 20, 2006 (120 STAT. 2922), contains two amendments of particular interest:

Section 413(a) of Public Law 109-432 (120 STAT. 2963), amended 26 U.S.C. 1355(a)(4), as amended by Public Law 109-222, by substituting "6,000" for "10,000 (6,000, in the case of taxable years beginning after December 31, 2005, and ending before January 1, 2011." Section 413(b) provides that 26 U.S.C. 1355(A)(4), as so amended, applies for taxable years beginning after December 31, 2005, and ending before January 1, 2011. 26 U.S.C. 1355 is set forth at page 427.

Section 415 of Public law 109-432 (120 STAT. 2963), amended 46 U.S.C. 1355, effective after the date of enactment, redesignated subsection (g) as subsection (h), and inserted a new (g), generally providing that Great Lakes domestic shipping to not disqualify vessels from the tonnage tax. 46 U.S.C. 1355(g) is set forth at page 429.

INDEX

Alaska North Slope Oil.
Citation. 30 U.S.C. 185(s) 279

American Fisheries Act.
Title II of Division C - Other Matters, Public Law 105-277, approved October 21, 1998 (112 STAT. 2681-616) 139

American Great Lakes Vessels.
Old Citation. 46 App. U.S.C. 1241q-1241v
New Citation. 46 U.S.C. 55331 – 55336..... 295

American Merchant Marine Memorial Wall of Honor.
Citation. Sec. 203 of Public Law 107-29 435

Anchorage Intermodal Transportation - Maritime Facility - Marad Authority.
Citation. Section 10205 of Public Law 109-59..... 490

Arctic Sea Route Study - Marad Authority.
Citation Sec. 412 of Public Law 109-241. 437

Artificial Reefs for Marine Life Conservation.
Citation. 16 U.S.C. 1220 - 1220d. 321

Assistance for Small Shipyards and Maritime Communities.
Citation. Section 3506 of Public Law 109-163..... 366

Automatic Identification Systems.
Citation. 46 U.S.C. 70114 522

Bowaters Amendment.
Old Citation. Sec. 27A of the 20 Act (46 App. U.S.C. 883-1).
New Citation. 46 U.S.C. 12118..... 27

Capital Construction Fund.
Old Citation. Sec. 607 of the 36 Act (46 App. U.S.C. 1177).
New Citation. 46 U.S.C. 53501 – 53735..... 208

Cargo Preference Act of 1954.
Old Citation. Sec. 901(b) of the 36 Act (46 App. U.S.C. 1241(b)).
New Citation. 46 U.S.C. 55305 288

Civilian Nautical School.
Old Citation. Sec. 1307 of the 36 Act (46 App. U.S.C. 1295f).
New Citation. 46 U.S.C. 51702 175

Civil Procedures/Hobbs Act.
Citation. 49 U.S.C. 336/28 U.S.C. 2342-2351..... 67

Coastwise Laws Extended to Island Territories and Possessions.
Old Citation. Sec. 21 of the 20 Act (46 App. U.S.C. 877).
New Citation. 46 U.S.C. 55101..... 257

Coastwise Trade Restrictions.
Old Citation. Various.
New Citation. 46 U.S.C. 55101 – 55121..... 257

Commercial Instruments and Maritime Liens.
Chapter 313..... 74

Construction-differential Subsidy.
Old Citation. Title V of the 36 Act [less Sec. 607] (46 App. U.S.C. 1151 - 1162 [less 1161]).
New Citation. 46 U.S.C. 53101, note. [Not in Compilation].

Construction Reserve Fund.
Old Citation. Sec. 511 of the 36 Act (46 App. U.S.C. 1161).
New Citation. 46 U.S.C. 53301 – 53312..... 204

Contracts for Nuclear Ships; Sales of Navy Shipyard Articles and Services to Private Shipyards. Citation. 10 U.S.C. 7300..... 369

Customs Duty on Vessel Equipment and Repairs.
Citation. 19 U.S.C. 1466..... 438

Death or Injury to Passengers.
Old Citation. 46 App. U.S.C. 817d.
New Citation. 46 U.S.C. 44101 – 44106..... 120

Deepwater Port Act.
Citation. 33 U.S.C. 1501 – 1524..... 466

Defense Production Act. [Excerpts].
Citation. 50 U.S.C. 2071 & 2158..... 371

Definitions.
Old Provision. Varous.
New Citation. 46 U.S.C. 101 – 116 1

DOD Export Loan Guarantee Program.
Citation. 10 U.S.C. 2540-2540d. 356

DOD Riding Gang Member Requirements.
New Citation. Sec. 1018 of Public Law 109-364 50

Double Hull Provisions.
Citations 46 U.S.C. 3703a, 46 U.S.C. 3703a note, Sec. 1134 of Public Law 104-424. 442

Economy Act.
Citation. 31 U.S.C. 1535 135

Emergency Foreign Vessels Acquisition Act.
Citation. 50 U.S.C. 196. 385

Encouragement of Construction in U.S. Shipyards of Combatant Vessels for U.S. Allies. Citation. Sec. 1455 of Public Law 99-145 369

Exoneration and Limitation of Liability.
Chapter 305 57

Extension of Admiralty and Maritime Jurisdiction.
Old Citation. 46 App. U.S.C. 740.
New Citation. 46 U.S.C. 30101 55

Farm Bill.
Old Citation. Sec. 901a-Sec. 901f of the 36 Act. (46 App. U.S.C. 1241e - 1241j).
New Citation. 46 U.S.C. 55311 – 55318..... 288
Old Citation. Sec. 901k of the 36 Act. (46 App. U.S.C. 1241(o)).
New Citation. 46 U.S.C. 55314 290

Fast Sealift Program.
Citation. Sec. 1424 of Public Law 101-510, as amended (10 U.S.C. 7291, note). 341

Fast Sealift Program - Procurement of Ships.
Citation. Sec. 1021 of Public Law 102-484..... 343

Fast Sealift Program - Vessel Location for Layberth Contracts.
Citation. Sec. 375 of Public Law 102-484.....343

Federal Civil Penalty Inflation Adjustment Act.
Citation. Public Law 101-410, as amended (28 U.S.C. 2461, note) 71

Federal Credit Reform Act - Section 661c(b).
Citation. 2 U.S.C. 661c(b).....248

Federal Maritime Commission.
New Citation 46 U.S.C. 301 – 307..... 11
[See also Reorganization Plan No. 7 of 1961, 26 Fed. Reg. 7315, sections 103, 301 (Transfer of Functions to the Commission and Conflicts of Interest for Commissioners - not in Compilation].

Federal Ship Financing Guarantees.
Old Citation. Title XI of the 36 Act (46 App. U.S.C. 1271 - 1280b).
New Citation. 46 U.S.C. 53701 – 53735.....219

Foreign Shipping Practices Act. [See Regulation of Ocean Shipping}.

Gambling Devices - the Johnson Act.
Citation. 15 U.S.C. 1171 – 1178.....452

Gambling Ships.
Citation. 18 U.S.C. 1081-1084.....447

General Liability Provisions.
Chapter 301..... 55

Government Owned Merchant Vessels
Old Citation. Various provisions of law
New Citation. 46 U.S.C. 57101 – 57109.....306

Great Lakes National Maritime Enhancement Institute.
Citation. Sec. 605 of Public Law 108-293.....458

Hawaii Cruise Trade.
Citation. Sec. 211 of Public Law 108-7.....271

Hawaii Port Infrastructure Expansion Program - Marad Authority.
Section 9008 of Public Law 109-59.....489

Highway Bill Provisions.
Citation. Public Law 109-59 489

Interstate Water Carrier Transportation
Citation. Title 49 [Excerpts] 388

Jones Act - Merchandise.
Old Citation. Sec. 27 of the 20 Act (46 App. U.S.C. 883).
New Citation. 46 U.S.C. 12101, 12118, 12120, 12132, 55102, 55105, 55106, 55107, 55108, 55110, 55115, 55116, 55117, 55119 257

Jones Act - Seamen Death or Injury.
Old Citation. Sec. 33 of the 20 Act (46 App. U.S.C. 688).
New Citation. 46 U.S.C. 30104, 30105 56

LNG Vessels - Documentation.
New Citation. 46 U.S.C. 12120 33

LNG Tanker Program.
Citation. Sec. 304(a) of Public Law 109-241 488

Manning of Vessels.
Citation. 46 U.S.C. 8101 – 8105 39

Manning & Wage Scales, Subsidy Contracts.
Old Citation. Sec. 301 of the 36 Act (46 App. U.S.C. 1131).
New Citation. 46 U.S.C. 53101, note [Not in Compilation].

Manufacturing Extension Program.
Citation. Sec. 8062 of Public Law 108-87 368

Maritime Administration - Authorization Authority.
Old Citation. Sec. 209 of the 36 Act (46 App. U.S.C. 1119).
New Citation. 49 U.S.C. 109 6

Maritime Administration - Funding.
Authorizations**.** Sec. 3501 of Public Law 109-364 7
Appropriations**.** Public Law 109-383, Continuing Resolution 8

Maritime Administration - Obsolete Vessel Acquisition Authority.
Old Citation. Sec. 510 of the 36 Act (46 App. U.S.C. 1160).
New Citation. 46 U.S.C. 57101, 57104, & 57301 – 57308 …… 306, 308, 314

Maritime Administration - Organization.
Citation. 49 U.S.C. 109 5

Maritime Administration - Port Development.
Old Citation. Sec 8 of the 20 Act (46 App. U.S.C. 867).
New Citation. 46 U.S.C. 50302 131

Maritime Administration - Title 40 Authority.
Citation. 40 U.S.C. 102, 111, 113, 548, 554, 556, 558, 1306, 3134 328

Maritime Administration - Vessel Disposal Authority.
Old Citation. Sec. 508 of the 36 Act (46 App. U.S.C. 1158).
New Citation. 46 U.S.C. 57102, 57103.....306

Maritime Administration - Vessel Transfer Authority.
Old Citation. Sec. 9 and 37 of the 16 Act (46 App. U.S.C. 808 & 835).
New Citation. 46 U.S.C. 56101, 56102, 57109 …… 299, 300, 309

Maritime Policy.
Old Citation. Sec. 101 of the 36 Act (46 App. U.S.C. 1101); Sec. 1 of the 20 Act (46 App. U.S.C. 861), and Sec. 1 of the 28 Act (46 App. U.S.C. 891).
New Citation. 46 U.S.C. 50101 123

Maritime Security Fleet.
Citation. 46 U.S.C. 53101-53111.....182

Merchant Marine Decorations and Medals.
Old Citation. 46 App. U.S.C. 2001-2007.
New Citation. 46 U.S.C. 51901 – 51908.....177

Merchant Ship Sales Act of 1946.
Citation. 50 U.S.C. App. 1735 – 1745.....310

Military Cargo Preference Act of 1904.
Citation. 10 U.S.C. 2631 281

National Defense Reserve Fleet.
Citation. 50 U.S.C. App. 1744.....312

National Defense Sealift Fund.
Citation. 10 U.S.C. 2218 344

National Defense Tank Vessel Construction Assistance.
Citation. Public Law 108-136, Sections 3541 – 3546.....201

National Emergencies Act.
Citation. 50 U.S.C. 1601 – 1651 379

National Maritime Enhancement Institutes.
Old Citation. 46 App U.S.C. 1121-2
New Citation. 46 U.S.C. 50112 128

National Maritime Museum.
Citation. 16 U.S.C. 5409 436

Naval Vessels Not to be Maintained by Foreign Shipyard.
New Citation. 10 U.S.C. 7291, note 369

Notice to Coast Guard of Release of Objects in U.S. Navigable Waters.
New Citation. Sec. 602 of Public Law 109-241 463

Operating-differential Subsidy.
Old Citation**.** Title VI of the 36 Act [less Sec. 607])(6 App. U.S.C. 1171 - 1185a [less 1177])
New Citation. 46 U.S.C. 53101, note [Not in Compilation].

Ocean Freight Differential Funding.
Appropriations FY 2006. Public Law 109-97 297
Appropriations FY 2007**.** Public Law 109-383, Continuing Resolution.

Passenger and Cargo Preferences.
Chapter 553 287

Passenger Vessel Act.
Old Citation. 46 App. U.S.C. 289.
New Citation. 46 U.S.C. 55103 258

Passenger Vessel Financial Responsibility. [See Regulation of Ocean Shipping].

Penalties for Substandard Vessel Operation.
Citation. 46 U.S.C. 2302 297

Philadelphia Military Cargo Terminal.
Citation. Sec. 115 of Public Law 108-199, as amended..... 555

Port Development.
Old Citation. 46 App. U.S.C. 867.
New Citation. 46 U.S.C. 50302. 131

Port Security, Ch. 701
Citation. 46 U.S.C. 70101 – 70121 495

Port Security - Training Program.
New Citation. Sec. 113 of Public Law 109-347.....500

Port Security - Exercise Program.
New Citation. Sec. 114 of Public Law 109-347.....502

Port Security - Facility Exercise Requirements.
New Citation. Sec. 115 of Public Law 109-347 503

Preferred Mortgage.
Citation. 46 U.S.C. 31322..... 78

Private Charter Operation.
Old Citation. Title VII of the 36 Act (46 App. U.S.C. 1191 - 1205).
New Citation. 46 U.S.C. 57501 - 57532.....334

Promotional Programs.
Chapter 551.....257

Public Resolution 17 - 73d Congress.
Old Citation. 46 App. U.S.C. 1241-1.
New Citation. 46 U.S.C. 55304 287

Public Vessels Act.
Old Citation. 46 App. U.S.C. 781-790.
New Citation. 46 U.S.C. 31101 – 31113..... 65

Puerto Rico Passenger Ship Act.
Old Citation. 46 App. U.S.C. 289c.
New Citation. 46 U.S.C. 55104 258

Regulations Affecting Shipping in Foreign Trade. [See Regulation of Ocean Shipping].

Regulation of Ocean Shipping.
Shipping Act of 1984.
Old Citation. 46 App. U.S.C. 1701 - 1719.
New Citation. 46 U.S.C. 40101 – 41309 87

Regulations Affecting Shipping in Foreign Trade.
Old Citation. Sec. 19 of the 20 Act. (46 App. U.S.C. 876).
New Citation. 46 U.S.C. 42101 – 42109 114

Foreign Shipping Practices Act.
Old Citation. 46 App. U.S.C. 1710a.
New Citation. 46 U.S.C. 42301 – 42307 117

Passenger Vessel Financial Responsibility.
Old Citation. 46 App. U.S.C. 817d & 817e..
New Citation. 46 U.S.C. 44101 – 44106 120

Revitalization of U.S. Shipbuilding Industry.
Citation. Sec. 1031 of Public Law 102-484. 364

Riding Gangs.
New Citation. 46 U.S.C. 8106 47

Safe Port Act.
New Citation. Public Law 109-347 527

Saint Lawrence Seaway Development Corporation.
Citation. Public Law 109-115 (119 STAT. 2421) 463

Scrapping of NDRF Vessels.
Citation. 16 U.S.C. 5405 & Sec. 3502 of Public Law 106-398,
as amended 317

Seamen's Reemployment Rights.
Old Citation. Sec. 302 of the 36 Act (46 App. U.S.C. 1132).
New Citation. 46 U.S.C. 52101 180

Section 2 Citizen of the 16 Act.
Old Citation. 46 App. U.S.C. 802, 803.
New Citation. 46 U.S.C. 50501, 50502 136

Section 901(a) of the 36 Act [Gov't employees travel on American ships].
Old Citation. 46 App. U.S.C. 1241(a).
New Citation. 46 U.S.C. 55302 287

Section 901(c) of the 36 Act [Gov't employees autos transported on American ships].
Old Citation. 46 App. U.S.C. 1241(c).
New Citation. 46 U.S.C. 55303 287

Shipping Act of 1984. [See Regulation of Ocean Shipping]

Shipyard Accounting Change.
Citation. Section 708 of Public Law 108-357.....434

Small Passenger Vessel Administrative Waivers.
Old Citation. Title V of Public Law 105-383, as amended.
New Citation. 46 U.S.C. 12121 34

State Maritime Academies.
Old Citation. Sec. 1304 of the 36 Act (46 App. U.S.C. 1295c).
New Citation. 46 U.S.C. 51501 – 51511 168

Suits in Admiralty Act.
Old Citation. 46 App. U.S.C. 741 - 752.
New Citation. 46 U.S.C. 30901 – 30918 61

Tax - International Shipping Tonnage Tax.
Citation. 26 U.S.C. 1352 -1359.....425

Tax - Shipyard Accounting Change.
Citation. Sec. 708 of Public Law 108-357.....434

Terrorism Risk Insurance Act.
Citaton. 15 U.S.C. 6701, note 534

Title XI Financing.
Old Citation 46 App. U.S.C. 1271 - 1280b.
New Citation. 46 U.S.C. 53701 – 53735 219

Title 49 - Subtitle IV - Interstate Transportation [excerpts].....388

U.S. Commercial Shipyards. 364

U.S. Merchant Marine Academy.
Old Citation. Sec. 1303 of the 36 Act (46 App. U.S.C. 1295b).
New Citation. 46 U.S.C. 51301 – 51314 159

U.S. Maritime Service.
Old Citation. Sec. 1306 of the 36 Act (46 App. U.S.C. 1295e).
New Citation. 46 U.S.C. 51701 174

Vessel Definition - General.
Citation. 1 U.S.C. 3 3

Vessel Documentation.
Old Citation. 46 U.S.C. 12101 - 12124.
New Citation. 46 U.S.C. 12101 – 12152 17

Vessel - Dredging Qualifications.
Old Citation. 46 App. U.S.C. 292.
New Citation. 46 U.S.C. 55109 264

Vessel Manning.
Citation. 46 U.S.C. 8101 – 8105 39

Vessel Operations Revolving Fund.
Old Citation. 46 App. U.S.C. 1241a-1241c.
New Citation. 46 U.S.C. 50301 130

Vessel Repair and Operation.
Old Citation. Sec. 12 of the 20 Act (46 App. U.S.C. 871).
New Citation. 46 U.S.C. 57106 309

Vessel Requisition or Purchase.
Old Citation. Sec. 902 of the 36 Act (46 App. U.S.C. 1242).
New Citation. 46 U.S.C. 56301 – 56307 303

Vessel Scrapping.
Citation. 16 U.S.C. 5405 and Sec. 3502 of Public Law 106-398,
as amended 317

Vessel Trade-In Programs.
Old Citation. Sec. 510 of the 36 Act (46 App. U.S.C. 1160).
New Citation. 46 U.S.C. 57301 – 57308 314

Vessel Transfers Between Departments
DOD Authority. 10 U.S.C. 2578 363
Marad Authority. New Citation. Sec. 3504 of Public Law 109-364 135

Vessel Transfers Foreign.
Old Citation. 46 App. U.S.C. 808, 835
New Citation. 46 U.S.C. 56101 – 56105.....299

Vessels in U.S. Territorial Waters.
Citation. 50 U.S.C. 191 -198 382

Veterans Burial Benefits.
Citation. 38 U.S.C. 2301 – 2308.....415

Veterans Programs Enhancement Act of 1998.
Citation. 46 U.S.C. 11201- 11204.....413

Waiver of Navigation and Vessel Inspection Laws.
Old Citation. Public Law 81-891 (Note preceding 46 App. U.S.C. 1).
New Citation. 46 U.S.C. 501. 15

War Risk Insurance.
Old Citation. Title XII of the 36 Act (46 App. U.S.C. 1281 - 1294).
New Citation. 46 U.S.C. 53901 – 53912.....249

Wrecked Vessels Act.
Old Citation. 46 App. U.S.C. 14.
New Citation. 46 U.S.C. 12107, 12151 ……19, 38