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# 89-70 MARITIME LEGISLATION

(Consolidation of Shipping Laws; Restricting Cargo Preference Shipments to U.S. Vessels)

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## HEARINGS BEFORE THE SUBCOMMITTEE ON MERCHANT MARINE AND FISHERIES OF THE COMMITTEE ON COMMERCE UNITED STATES SENATE

EIGHTY-NINTH CONGRESS

SECOND SESSION

ON

**S. 3446**

A BILL TO CONSOLIDATE AND REENACT CERTAIN OF THE SHIPPING LAWS OF THE UNITED STATES, AND FOR OTHER PURPOSES

JUNE 27, 1966

**S. 2600**

A BILL TO PREVENT VESSELS BUILT OR REBUILT OUTSIDE THE UNITED STATES OR DOCUMENTED UNDER FOREIGN REGISTRY FROM CARRYING CARGOES RESTRICTED TO VESSELS OF THE UNITED STATES

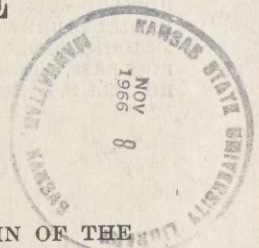
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MARITIME LEGISLATION  
(Consolidation of Shipping Laws; Restricting Cargo Preference Shipments to U.S. Vessels)

HEARINGS

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## MARITIME LEGISLATION

MONDAY, JUNE 27, 1966

U.S. SENATE,  
SUBCOMMITTEE ON MERCHANT MARINE AND FISHERIES  
OF THE COMMERCE COMMITTEE,  
Washington, D.C.

The subcommittee met at 10:40 a.m., pursuant to call, in room 5110, New Senate Office Building, Senator Vance Hartke presiding.

Senator HARTKE. Good morning, gentlemen.

The purpose of the hearing this morning on S. 3446 is to hear witnesses on this legislation which will consolidate and reenact certain shipping laws of the United States.

For many years, many of us interested in promoting the future of our merchant marine have realized the need to organize rationally and reenact the numerous scattered statutes affecting U.S. maritime programs. This undertaking was begun last year.

The initial draft was widely circulated and reviewed by all concerned. On the basis of the earlier comments received, the chairman introduced, on June 2, S. 3446, which reflected the work that had been accomplished at that time. I would hope that the hearings today will obtain the information necessary to make all final corrections so the committee can consider it in the very near future in executive session. Any comment received from agencies or departments will be placed in the record at this point.

(The agency comments follows:)

FEDERAL MARITIME COMMISSION,  
OFFICE OF THE CHAIRMAN,  
July 27, 1966.

Hon. WARREN G. MAGNUSON,  
Chairman, Committee on Commerce,  
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: The Federal Maritime Commission is pleased to offer its comments on S. 3446, a bill "To consolidate and reenact certain of the Shipping laws of the United States, and for other purposes."

In our letter of March 31, 1966, a copy of which is enclosed, we furnished our views on the draft of this bill and many of our comments set forth in that letter have been adopted. Additional comments which we would make at this time are as follows:

1. Page 22 of the Act—Section 1202a, replacing section 14 of the Shipping Act, 1916, omits a description of the trade involved. While this is not an important point we do bring it to your attention.

2. Section 1304a authorizes the issuance of subpoenas by members of the Commission or any officer or employee designated by it. However, enforcement in the courts is authorized only as to subpoenas issued "by the Commission." We would suggest that the phrase "or any officer or employee designated by it" be inserted after the words "by the Commission" in line 1, page 54.

3. Section 36 of the 1916 Act authorizes the Secretary of the Treasury to refuse clearance to a vessel destined for either a foreign or domestic port whenever he

Staff counsel assigned to this hearing: William C. Foster.

shall have sufficient reason to believe that that vessel has refused to accept or receive freight or cargo tendered in good condition by a United States citizen for the port of destination or an intermediate port unless the vessel has no suitable space or accommodations for the freight or cargo offered. Although the bill does not contain this section we would deem it appropriate to include it.

If we can provide further information we shall be happy to do so upon your request.

The Bureau of the Budget has advised that there would be no objection to the submission of this letter from the standpoint of the Administration's program.

Sincerely yours,

JOHN HARLLEE,  
Rear Admiral, U.S. Navy (Retired),  
Chairman.

FEDERAL MARITIME COMMISSION,  
OFFICE OF THE CHAIRMAN,  
March 31, 1966.

Hon. WARREN G. MAGNUSON,  
Chairman, Committee on Commerce,  
U.S. Senate, Washington, D.C.

Dear Mr. CHAIRMAN: The Federal Maritime Commission is pleased to offer its comments and views on the draft of the Merchant Marine Act of 1966, submitted by your Committee.

The Commission believes the draft has a meritorious objective and has been, in the main, rationally organized into a comprehensive code of maritime law. Our substantive views and comments on the draft are confined to its treatment of laws affecting the Federal Maritime Commission.

Enactment of the Merchant Marine Act of 1966, in its present form would embrace into a single statute legislation, affecting *inter alia*, promotional functions and activities exercised by the Maritime Administration and the domestic and foreign commerce regulatory functions and activities exercised by the Federal Maritime Commission. However, Section 1101 of Title I, Policy and Organization, while spelling out promotional policy, nowhere mentions policy concerning domestic and foreign commerce regulated under the Shipping Act, 1916, as amended.

We note that the policy statement of the draft is identical with the Declaration of Policy of the Merchant Marine Sales Act of 1946, which in no way affected the functions and activities now within the purview of the Federal Maritime Commission. The Commission presently is under the mandate of the residual policy statement contained in the preamble to the Shipping Act, 1916, *to wit*, "to regulate carriers by water engaged in the foreign and interstate commerce of the United States, and for other purposes."

Inclusion of the 1916 Act as it pertains to the Federal Maritime Commission under the policy statement of Section 1101, may work a change in law by construction and application in a way that places the Federal Maritime Commission under an active mandate to promote the United States Merchant Marine. This has not heretofore been the case. Reorganization Plan No. 7 of 1961 (75 Stat. 840) clearly removed the Federal Maritime Commission from nonregulatory promotional functions such as subsidies, shipbuilding, and the like. However, this is not to say that the Commission is disinterested in promoting the foreign commerce of the United States. It is implicit in the purpose of the Shipping Act, 1916 that one of the functions of this Commission is to protect the United States Merchant Marine from predatory and otherwise unlawful competitive practices, and thus the Commission's functions are "promotional" in that sense.

The Federal Maritime Commission acting as an independent quasi-legislative and quasi-judicial administrative agency must, of necessity, conduct its activities on an independent and nondiscriminatory basis, otherwise its administrative process may be rendered nugatory. The Commission regulates the activities of foreign and domestic carriers and, therefore, domestic merchant marine promotional policy is a contradiction to the Commission's role. Additionally, the interests of the United States ports, exporters and importers, among others, are of concern to the Federal Maritime Commission under the mandate of the 1916 Act. The Commission is, therefore, concerned with the omission of specific reference of policy affecting these interests in Section 1101, which may result in doubt being cast on the role of these interests in shaping regulatory policy.

For the foregoing reasons, the Federal Maritime Commission is opposed to the draft. Our position would be otherwise if, for example, the policy declaration of Section 1101 were amended to take into consideration our comments, or a separate

and distinct Shipping Act, 1966, which would codify domestic and foreign commerce regulations under an appropriate statement of policy, were created and annexed to the proposed draft. We recommend the latter.

Our remaining comments deal with the substance of specific provisions of the draft.

Section 2106(b) should be amended to delete the phrase "which ever is later" found in the last line of page 25 of the draft. The phrase has no meaning since the alternative, 30 days after enactment, has been deleted from the draft.

Section 7104(a) is in part a duplication of the powers contained in part (b) of the section. It may be in order to delete part (a) since part (b) has all of the requisite provisions for the Commission's subpoena power.

We concur in the editor's note on page 198 of the draft suggesting that sections 7150 (a) and (b) on immunity of witnesses be combined.

We note in the draft a misquote from Reorganization Plan No. 7 of 1961. The editor's note on page 7 dealing with Section 103(a) of the Reorganization Plan states that all functions under sections "22-23" of the 1916 Act are transferred to the Commission. It should read sections "22-33."

We also note, within the definition of Section 2101, the omission of the term "common carrier in intercoastal commerce" as used in Section 1 of the Intercoastal Shipping Act, 1933.

Title II treats Rates, Agreements and Practices of Carriers and other Persons. Section 2101 of that title contains definitions "as used in this title" and it apparently was intended to include all definitions rather than have the individual sections within the title contain separate definitions pertaining to any term. In order that this theme be carried out, it would appear logical that the definitions presently included in certain of the other sections in Title II be eliminated from said sections and included in Section 2101. For instance, Section 2102(a)(2) includes the definition of the term "fighting ship." This should be eliminated from Section 2102 and included in Section 2101. Likewise, the definition of the term "softwood lumber" included in Section 2109(a) of the draft should be deleted from said section and included in Section 2101. Similarly, Section 2104(e) which is merely a definition of the term "contract shipper" should be eliminated in its entirety and the term included as a definition under Section 2101.

Section 36 of the 1916 Act authorizes the Secretary of the Treasury to refuse clearance to a vessel destined for either a foreign or domestic port whenever he shall have sufficient reason to believe that that vessel has refused to accept or receive freight or cargo tendered in good condition by a United States citizen for the port of destination or an intermediate port unless the vessel has no suitable space or accommodations for the freight or cargo offered. The attached draft does not include this section in any of its titles.

Sincerely yours,

JOHN HARLLEE,  
Rear Admiral, U.S. Navy (Retired),  
Chairman.

COMPTROLLER GENERAL OF THE UNITED STATES,  
Washington, D.C., July 20, 1966.

B-159377.

HON. WARREN G. MAGNUSON,  
Chairman, Committee on Commerce, U.S. Senate.

DEAR MR. CHAIRMAN: Your letter of June 7, 1966, requests our comments on S. 3446, a bill to consolidate and reenact certain of the shipping laws of the United States, and for other purposes.

The purpose of the bill is to consolidate and reenact the various merchant marine laws including the related reorganization plans and public resolutions. Although a completely new organizational arrangement is proposed, no substantive change in the current laws is intended.

We have not made a detailed sectional analysis of the bill in relation to the many statutory provisions which they would supersede. However, we have analyzed the sections of the bill which relate to functions of this Office and find that no changes have been effected, except that on line 18, page 63 (section 2207) the word "many" should be "may."

Sincerely yours,

FRANK H. WEITZEL,  
Assistant Comptroller General of the United States.

## MARITIME LEGISLATION

UNITED STATES DEPARTMENT OF JUSTICE,  
OFFICE OF THE DEPUTY ATTORNEY GENERAL,  
Washington, D.C., July 5, 1966.

Hon. WARREN G. MAGNUSON,  
Chairman, Committee on Commerce,  
U.S. Senate, Washington, D.C.

DEAR SENATOR: This is in response to your request for the views of the Department of Justice on S. 3446, a bill "To consolidate and reenact certain of the shipping laws of the United States, and for other purposes."

This bill has been examined, but since its subject matter does not directly affect the activities of the Department of Justice we would prefer not to offer any comment concerning it.

Sincerely,

RAMSEY CLARK, Deputy Attorney General.

---

DEPARTMENT OF THE NAVY,  
OFFICE OF LEGISLATIVE AFFAIRS,  
Washington, D.C., August 2, 1966.

Hon. WARREN G. MAGNUSON,  
Chairman, Committee on Commerce,  
U.S. Senate, Washington, D.C.

MY DEAR MR. CHAIRMAN: Your request for comment on S. 3446, a bill "To consolidate and reenact certain of the shipping laws of the United States, and for other purposes," has been assigned to this Department by the Secretary of Defense for the preparation of a report thereon expressing the views of the Department of Defense.

This bill would update and reorganize into a more orderly presentation the basic merchant marine policies and legislation of the United States.

For greater technical accuracy, it is suggested that the words "navy yard," where appearing (including Sections 3103(d), 3106(e), 3302 and 3313(a)), be changed to "naval shipyards." Also, in order to bring the wording of the bill in conformity with the responsibilities assigned to the Secretary of Defense under the National Security Act of 1947, as amended, the following changes should be made:

Page 67, lines 21 and 22; page 84, line 19: For the words, "Navy Department," substitute the words, "Department of Defense."

Page 85, line 1; page 86, line 5; page 90, lines 4 and 14; page 202, line 19: For the words, "Secretary of the Navy," substitute the words, "Secretary of Defense or his designee."

Subject to the foregoing comments, the Department of the Navy, on behalf of the Department of Defense, interposes no objection to the enactment of S. 3446.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Bureau of the Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report on S. 3446 for the consideration of the Committee.

Sincerely yours,

M. K. DISNEY,  
Captain, U.S. Navy,  
Director, Legislative Division  
(For the Secretary of the Navy).

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ATOMIC ENERGY COMMISSION,  
Washington, D.C., August 3, 1966.

Hon. WARREN G. MAGNUSON,  
Chairman, Committee on Commerce,  
U.S. Senate.

DEAR SENATOR MAGNUSON: The Atomic Energy Commission is pleased to have been afforded the opportunity to comment on S. 3446, a bill "(t)o consolidate and reenact certain of the shipping laws of the United States and for other purposes." Since the changes in existing law proposed by the bill do not appear to affect the AEC, we have no substantive comments on the bill.

We do note, however, typographical errors in Section 7105(b)(2) of the bill amending the Atomic Energy Act of 1954, as amended. The references in this

section, necessitated by the reenactment and renumbering of Section 716 of the Merchant Marine Act of 1936, to subsection 170(l) and 42 U.S.C. 2210(1) should be to 170(l) and 42 U.S.C. 2210(1) respectively.

The Bureau of the Budget had advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

E. J. BLOCH, *Deputy General Manager.*

---

PANAMA CANAL COMPANY,  
*Balboa Heights, C.Z., August 1, 1966.*

HON. WARREN G. MAGNUSON,  
*Chairman, Committee on Commerce,  
U.S. Senate, Washington, D.C.*

DEAR SENATOR MAGNUSON: This is in response to your request for comments of the Panama Canal organization on S. 3446, a bill "To consolidate and reenact certain of the shipping laws of the United States, and for other purposes."

It appears that enactment of this legislation would not affect the operation of the Panama Canal Company and Canal Zone Government.

The Bureau of the Budget has advised that there is no objection to the submission of this report to your Committee.

Sincerely yours,

ROBERT J. FLEMING, Jr., *President.*

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DEPARTMENT OF STATE,  
*Washington, July 29, 1966.*

HON. WARREN G. MAGNUSON,  
*Chairman, Committee on Commerce,  
U.S. Senate.*

DEAR MR. CHAIRMAN: The Secretary has asked me to reply to your letter of June 7, 1966 requesting comments on S. 3446, a bill "To consolidate and reenact certain of the shipping laws of the United States, and for other purposes."

The Department understands that S. 3446 is intended as a consolidation of existing legislation without any modification of the substance of the laws to be replaced. Since the implementation of these laws is not primarily the Department's responsibility, we have not reviewed the legislation in detail to confirm that there is in fact no change of substance. If there is no change of substance, the Department has no objection to the enactment of the bill. The Department also believes that the consolidation of the shipping laws into one piece of legislation is of considerable practical value.

The Bureau of the Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

Sincerely yours,

DOUGLAS MACARTHUR II,  
*Assistant Secretary for Congressional Relations.*

---

[S. 3446, 89th Cong., 2d sess.]

A BILL To consolidate and reenact certain of the shipping laws of the United States, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Merchant Marine Act of 1966".*

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## TITLE I—FEDERAL MARITIME COMMISSION

## PART A—ORGANIZATION, FUNCTIONS, AND AUTHORITY

## CONTINUATION OF FEDERAL MARITIME COMMISSION

SEC. 1101. (a) The Federal Maritime Commission, hereinafter referred to as the Commission, established by section 101 of Reorganization Plan Numbered 7 of 1961, is continued.

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

## COMPOSITION OF THE COMMISSION

SEC. 1102. (a) The Commission is and shall be composed of five Commissioners, who shall be appointed by the President by and with the advice and consent of the Senate. Each Commissioner shall be removable by the President for inefficiency, neglect of duty, or malfeasance in office.

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

(c) Each of the Commissioners holding office pursuant to subsection (a) of this section on the effective date of this Act shall continue in office until the expiration of the term for which he was appointed. Their successors shall be appointed for terms of five years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the Commissioner whom he succeeds: *Provided, however,* That upon the expiration of his term of office a Commissioner shall continue to serve until his successor shall have been appointed and shall have qualified. Not more than three of the Commissioners shall be appointed from the same political party. A vacancy in the office of any such Commissioner shall be filled in the same manner as the original appointment.

(d) A vacancy in the Commission, so long as there shall be three Commissioners in office, shall not impair the power of the Commission to execute its functions. Any three of the Commissioners in office shall constitute a quorum for the transaction of the business of the Commission and the affirmative votes of any three Commissioners shall be sufficient for the disposition of any matter which may come before the Commission.

## FUNCTIONS AND AUTHORITY OF COMMISSION

SEC. 1103. (a) The Commission shall have all functions and authority under the provisions of this title: *Provided, however,* That the provisions of this title shall not be construed to affect the power or jurisdiction of the Interstate Commerce Commission, nor to confer upon the Federal Maritime Commission concurrent power or jurisdiction over any matter within the power or jurisdiction of the Interstate Commerce Commission, nor shall such provisions be construed to apply to intrastate commerce.

(b) The Commission shall make such rules and regulations as may be necessary to carry out the provisions of this title.

(c) The Commission is further authorized and directed in aid of the accomplishment of the purposes of this Act—

(1) to make rules and regulations affecting shipping in the foreign trade not in conflict with law in order to adjust or meet general or special conditions unfavorable to shipping in the foreign trade, whether in any particular trade or upon any particular route or in commerce generally and which arise out of or result from foreign laws, rules, or regulations or from competitive methods or practices employed by owners, operators, agents, or masters of vessels of a foreign country; and

(2) to request the head of any department, board, bureau, or agency of the Government to suspend, modify, or annul rules or regulations which have been established by such department, board, bureau, or agency, or to make new rules or regulations affecting shipping in the foreign trade other than such rules or regulations relating to the Public Health Service, the Consular Service, and the Coast Guard.

(d) No rule or regulation shall hereafter be established by any department, board, bureau, or agency of the Government which affects shipping in the foreign trade, except rules or regulations affecting the Public Health Service, the Consular Service, and the Coast Guard, until such rule or regulation has been submitted to the Commission for its approval and final action has been taken thereon by the Commission or the President.

(e) Whenever the head of any department, board, bureau, or agency of the Government refuses to suspend, modify, or annul any rule or regulation, or make a new rule or regulation upon request of the Commission as provided in subsection (c) (2) of this section, or objects to the decision of the Commission in respect to the approval of any rule or regulation, as provided in subsection (d) of this section, either the Commission or the head of the department, board, bureau, or agency which has established or is attempting to establish the rule or regulation in question may submit the facts to the President, who is hereby authorized to establish or suspend, modify, or annul such rule or regulation.

(f) No rule or regulation shall be established which in any manner gives vessels owned by the United States any preference or favor over those vessels documented under the laws of the United States and owned by persons who are citizens of the United States.

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

(h) The Commission may, subject to the provisions of the civil service laws and the Classification Act of 1949, appoint such officer, engineers, inspectors, attorneys, examiners, and other employees as are necessary in the execution of its functions.

(i) Whenever any officer (not exceeding five in number at any time) of the Army, Navy, Marine Corps, or Coast Guard is detailed to the Commission, he shall receive from the Commission, for the period during which he is so detailed, such compensation as added to his pay and allowances as an officer in such service will make his aggregate compensation equal to the pay and allowances he would receive if he were the incumbent of an office or position in such service (or in the corresponding executive department), which, in the opinion of the Commission, involves the performance of work similar in importance, difficulty, and responsibility to that performed by him while detailed to the Commission.

(j) The Commission shall, at the beginning of each regular session, make a report to Congress, which shall include the results of its investigations, a summary of its transactions, and its recommendations for legislation, a statement of all receipts under this title, and the purposes for which all expenditures were made.

#### FUNCTIONS OF THE CHAIRMAN

SEC. 1104. (a) The Chairman of the Commission shall be the chief executive and administrative officer of the Commission. In executing and administering on behalf of the Commission its functions (exclusive of functions set forth in subsection (b) of this section) the Chairman shall be governed by the policies, regulatory decisions, findings, and determinations of the Commission.

(b) The Chairman of the Commission shall have the functions of (1) appointment and supervision of all personnel employed under the Commission, (2) distribution of business among such personnel and among organizational units of

the Commission, and (3) use and expenditure of funds for administrative purposes: *Provided*, That the provisions of this subsection do not extend to personnel employed regularly and full time in the offices of members of the Commission other than the Chairman: *Provided further*, That the heads of the major administrative units shall be appointed by the Chairman only after consultation with the other members of the Commission.

(c) The functions of the Chairman under the provisions of this section shall be performed by him, or, subject to his supervision and direction, by such officers and employees under his jurisdiction as he shall designate.

(d) The Chairman shall have the function of assigning Commission personnel, including Commissioners, to perform such functions as may have been delegated by the Commission pursuant to the provisions of section 1105 of this Act.

#### AUTHORITY OF COMMISSION TO DELEGATE FUNCTIONS

SEC. 1105. (a) The Commission shall have the authority to delegate, by published order or rule, any of its functions to a division of the Commission, an individual Commissioner, a hearing examiner, or an employee or employee board, including functions with respect to hearing, determining, ordering, certifying, reporting or otherwise acting as to any work, business, or matter: *Provided, however*, That nothing herein contained shall be deemed to supersede the provisions of section 7(a) of the Administrative Procedure Act (60 Stat. 241), as amended.

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

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

#### CONFLICT OF INTEREST

SEC. 1106. It shall be unlawful for any member, officer, or employee of the Commission to be in the employ of any other person, firm, or corporation, or to have any pecuniary interest in, or hold any official relationship with, any carrier by water, shipbuilder, contractor, or other person, firm, association, or corporation with whom the Commission may have business relations.

### PART B—RATES, AGREEMENTS, AND PRACTICES OF CARRIERS AND OTHERS

#### DEFINITIONS

SEC. 1201. As used in this title—

(a) "Carrying on the business of forwarding" means the dispatching of shipments by any person on behalf of others, by oceangoing common carriers in commerce from the United States, its territories, possessions or the Commonwealth of Puerto Rico to foreign countries, or between the United States and its territories or possessions or the Commonwealth of Puerto Rico, or between such territories and possessions and the Commonwealth of Puerto Rico, and handling the formalities incident to such shipments.

(b) "Citizen of the United States". (1) No corporation, partnership, or association shall be deemed a citizen of the United States unless the controlling interest therein is owned by citizens of the United States, and, in the case of a corporation, unless its president or other chief executive officers and the chairman of its board of directors are citizens of the United States and unless no more of its directors than a minority of the number necessary to constitute a quorum are noncitizens and the corporation itself is organized under the laws of the United States or of a State, territory, district, or possession thereof, or of the Commonwealth of Puerto Rico, but in the case of a corporation, association, or partnership operating any vessel in the coastwise trade the amount of interest required to be owned by citizens of the United States shall be 75 per centum.

(2) The controlling interest in a corporation shall not be deemed to be owned by citizens of the United States (A) if the title to a majority of the stock thereof is not vested in such citizens free from any trust or fiduciary obligation in favor of any person not a citizen of the United States; or (B) if the majority of the voting power in such corporation is not vested in citizens of the United States; or (C) if through any contract or understanding it is so arranged that the majority of the voting power may be exercised, directly or indirectly, in behalf of any person who is not a citizen of the United States; or (D) if by any other means whatsoever control of the corporation is conferred upon or permitted to be exercised by any person who is not a citizen of the United States.

(3) Seventy-five per centum of the interest in a corporation shall not be deemed to be owned by citizens of the United States (A) if the title to 75 per centum of its stock is not vested in such citizens free from any trust or fiduciary obligation in favor of any person not a citizen of the United States; or (B) if 75 per centum of the voting power in such corporation is not vested in citizens of the United States; or (C) if, through any contract or understanding it so arranged that more than 25 per centum of the voting power in such corporation may be exercised, directly or indirectly, in behalf of any person who is not a citizen of the United States; or (D) if by any other means whatsoever control of any interest in the corporation in excess of 25 per centum is conferred upon or permitted to be exercised by any person who is not a citizen of the United States.

(c) "Common carrier by water" means a common carrier by water in foreign commerce or in the domestic offshore trade.

(d) "Common carrier by water in foreign commerce" means a common carrier, except ferryboats running on regular routes, engaged in the transportation by water of passengers or property between the United States or any of its districts, territories, possessions, or the Commonwealth of Puerto Rico, and a foreign country, whether in the import or export trade; *Provided*, That a cargo boat commonly called an ocean tramp shall not be deemed such "common carrier by water in foreign commerce".

(e) "Common carrier by water in the domestic offshore trade" means a common carrier engaged in the transportation by water of passengers or property on the high seas on regular routes from port to port between one State, territory, district, possession of the United States or the Commonwealth of Puerto Rico and any other territory, district, or possession of the United States, or between the State of Alaska or the State of Hawaii and any other State, territory, district, or possession of the United States or the Commonwealth of Puerto Rico, or between the State of Alaska and the State of Hawaii, or between places in the same territory, district, possession, or the Commonwealth of Puerto Rico.

(f) "Deferred rebate" means a return of any portion of the freight money by a carrier to any shipper as a consideration for the giving of all or any portion of his shipments to the same or any other carrier, or for any other purpose, the payment of which is deferred beyond the completion of the service for which it is paid, and is made only if, during both the period for which computed and the period of deferment, the shipper has complied with the terms of the rebate agreement or arrangement.

(g) "Independent ocean freight forwarder" means a person carrying on the business of forwarding for a consideration who is not a shipper or consignee or a seller or purchaser of shipments to foreign countries, nor has any beneficial interest therein, nor directly or indirectly controls or is controlled by such shipper or consignee or by any person having such a beneficial interest.

(h) "Other person subject to this title" means any person not included in the term "common carrier by water", as defined in subsection (c) hereof, or not included in the term "common carrier by water in interstate commerce" as hereinafter defined, (1) carrying on the business of forwarding, as defined in subsection (a) hereof, or (2) carrying on the business of furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a "common carrier by water" or in connection with a "common carrier by water in interstate commerce". As used in this subsection, "common carrier by water in interstate commerce" means a common carrier engaged in the transportation by water of passengers or property on the high seas or the Great Lakes on regular routes from port to port between one State, territory, district, possession of the United States or the Commonwealth of Puerto Rico and any other State, territory, district, possession of the United States or the Commonwealth of Puerto Rico, or between places in the same territory, district, possession or the Commonwealth of Puerto Rico.

(i) "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 the Commonwealth of Puerto Rico, or of any foreign country.

(j) The provisions of this title shall apply to receivers and trustees of all persons to whom the title applies, and to the successors and assignees of such persons.

(k) "Vessel" includes all watercraft and other artificial contrivances of whatever description and at whatever stage of construction, whether on the stocks or launched, which are used or are capable of being or are intended to be used as a means of transportation on water.

#### CERTAIN PRACTICES PROHIBITED

SEC. 1202. (a) No common carrier by water shall, directly or indirectly, in respect to the transportation by water of passengers or property—

(1) Pay, or allow, or enter into any combination, agreement, or understanding, express or implied, to pay or allow, a deferred rebate to any shipper.

(2) Use a fighting ship either separately or in conjunction with any other carrier, through agreement or otherwise. "Fighting ship" means a vessel used in a particular trade by a carrier or group of carriers for the purpose of excluding, preventing, or reducing competition by driving another carrier out of said trade.

(3) Retaliate against any shipper by refusing, or threatening to refuse, space accommodations when such are available, or resort to other discriminating or unfair methods, because such shipper has patronized any other carrier or has filed a complaint charging unfair treatment, or for any other reason.

(4) Make any unfair or unjustly discriminatory contract with any shipper based on the volume of freight offered, or unfairly treat or unjustly discriminate against any shipper in the matter of: cargo space accommodations or other facilities, due regard being had for the proper loading of the vessel and the available tonnage; the loading and landing of freight in proper condition; or the adjustment and settlement of claims.

(b) Any carrier who violates any provision of this section shall be guilty of a misdemeanor punishable by a fine of not more than \$25,000 for each offense.

#### PROCEDURE FOR FINDING CERTAIN VIOLATIONS

SEC. 1203. (a) The Commission upon its own initiative may, or upon complaint shall, after due notice to all parties in interest and hearing, determine whether any person, not a citizen of the United States and engaged in transportation by water of passengers or property—

(1) has violated any provision of section 1202, or

(2) is a party to any combination, agreement or understanding, express or implied, that involves in respect to transportation of passengers or property between foreign ports, deferred rebates or any other unfair practice designated in section 1202, and that excludes from admission upon equal terms with all other parties thereto, a common carrier by water which is a citizen of the United States and which has applied for such admission.

(b) If the Commission determines that any such person has violated any such provision or is a party to any such combination, agreement, or understanding, the Commission shall thereupon certify such fact to the Commissioner of Customs. The Commissioner of Customs shall thereafter refuse such person the right of entry for any ship owned or operated by him or by any carrier directly or indirectly controlled by him, into any port of the United States, or any territory, district, or possession thereof, or the Commonwealth of Puerto Rico, until the Commission certifies that the violation has ceased or such combination, agreement, or understanding has been terminated.

#### DUAL RATE AGREEMENTS

SEC. 1204. (a) Notwithstanding any other provisions of this title, on application the Commission shall, after notice and hearing, by order, permit the use by any common carrier or conference of such carriers in foreign commerce of any contract, amendment, or modification thereof, which is available to all shippers and consignees on equal terms and conditions, which provides lower rates to a shipper or consignee who agrees to give all or any fixed portion of his patronage to such carrier or conference of carriers unless the Commission finds that the contract, amendment, or modification thereof will be detrimental to the commerce of the United States or contrary to the public interest, or unjustly discriminatory or unfair as

between shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, and provided the contract, amendment, or modification thereof, expressly (1) permits prompt release of the contract shipper from the contract with respect to any shipment or shipments for which the contracting carrier or conference of carriers cannot provide as much space as the contract shipper shall require on reasonable notice; (2) provides that whenever a tariff rate for the carriage of goods under the contract becomes effective, insofar as it is under the control of the carrier or conference of carriers, it shall not be increased before a reasonable period, but in no case less than ninety days; (3) covers only those goods of the contract shipper as to the shipment of which he has the legal right at the time of shipment to select the carrier: *Provided, however*, That it shall be deemed a breach of the contract if, before the time of shipment and with the intent to avoid his obligation under the contract, the contract shipper divests himself, or with the same intent permits himself to be divested, of the legal right to select the carrier and the shipment is carried by a carrier which is not a party to the contract; (4) does not require the contract shipper to divert shipment of goods from natural routings not served by the carrier or conference of carriers where direct carriage is available; (5) limits damages recoverable for breach by either party to actual damages to be determined after breach in accordance with the principles of contract law: *Provided, however*, That the contract may specify that in the case of a breach by a contract shipper the damages may be an amount not exceeding the freight charges computed at the contract rate on the particular shipment, less the cost of handling; (6) permits the contract shipper to terminate at any time without penalty upon ninety days' notice; (7) provides for a spread between ordinary rates and rates charged contract shippers which the Commission finds to be reasonable in all the circumstances but which spread shall in no event be more than 15 per centum of the ordinary rates; (8) excludes cargo of the contract shippers which is loaded and carried in bulk without mark or count except liquid bulk cargoes, other than chemicals, in less than full shipload lots: *Provided, however*, That upon finding that economic factors so warrant, the Commission may exclude from the contract any commodity subject to the foregoing exception; and (9) contains such other provisions not inconsistent herewith as the Commission shall require or permit.

(b) The Commission shall withdraw permission which it has granted under the authority contained in this section for the use of any contract if it finds, after notice and hearing, that the use of such contract is detrimental to the commerce of the United States or contrary to the public interest, or is unjustly discriminatory or unfair as between shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors.

(c) The carrier or conference of carriers may on ninety days' notice terminate without penalty the contract rate system herein authorized, in whole or with respect to any commodity: *Provided, however*, That after such termination the carrier or conference of carriers may not reinstitute such contract rate system or part thereof so terminated without prior permission by the Commission in accordance with the provisions of this section.

(d) Any contract, amendment, or modification of any contract not permitted by the Commission shall be unlawful, and contracts, amendments, and modifications shall be lawful only when and as long as permitted by the Commission; before permission is granted or after permission is withdrawn it shall be unlawful to carry out in whole or in part, directly or indirectly, any such contract, amendment, or modification.

(e) As used in this section, the term "contract shipper" means a person other than a carrier or conference of carriers who is a party to a contract the use of which may be permitted under this section.

#### FILING OF AGREEMENTS

SEC. 1205. (a) Every common carrier by water, or other person subject to this title, shall file immediately with the Commission a true copy, or, if oral, a true and complete memorandum, of every agreement with another such carrier or other person subject to this title, or modification or cancellation thereof, to which it may be a party, or conform in whole or in part, (1) fixing or regulating transportation rates or fares; (2) giving or receiving special rates, accommodations, or other special privileges or advantages; (3) controlling, regulating, preventing, or destroying competition; pooling or apportioning earnings, losses, or traffic; allotting ports or restricting or otherwise regulating the number and character of sailings between ports; (4) limiting or regulating in any way the volume

or character of freight or passenger traffic to be carried; or (5) in any manner providing for an exclusive, preferential, or cooperative working arrangement. The term "agreement" in this section includes understandings, conferences, and other arrangements.

(b) The Commission shall by order, after notice and hearing, disapprove, cancel, or modify any agreement, or any modification or cancellation thereof, whether or not previously approved by it, that it finds to be unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or to operate to the detriment of the commerce of the United States, or to be contrary to the public interest, or to be in violation of this title, and shall approve all other agreements, modifications, or cancellations. No such agreement shall be approved, nor shall continued approval be permitted for any agreement (1) between carriers not members of the same conference or conferences of carriers serving different trades that would otherwise be naturally competitive, unless in the case of agreements between carriers, each carrier, or in the case of agreements between conferences, each conference, retains the right of independent action, or (2) in respect to any conference agreement, which fails to provide reasonable and equal terms and conditions for admission and readmission to conference membership of other qualified carriers in the trade, and fails to provide that any member may withdraw from membership upon reasonable notice without penalty for such withdrawal.

(c) The Commission shall disapprove any such agreement, after notice and hearing, on a finding of inadequate policing of the obligations under it, or of failure or refusal to adopt and maintain reasonable procedures for promptly and fairly hearing and considering shippers' requests and complaints.

(d) Any agreement and any modification or cancellation of any agreement not approved, or disapproved, by the Commission shall be unlawful and agreements, modifications, and cancellations shall be lawful only when and as long as approved by the Commission; before approval or after disapproval it shall be unlawful to carry out in whole or in part, directly or indirectly, any such agreement, modification, or cancellation; except that tariff rates, fares, and charges, and classifications, rules, and regulations explanatory thereof (including changes in special rates and charges covered by section 1204 of this Act which do not involve a change in the spread between such rates and charges and the rates and charges applicable to noncontract shippers) agreed upon by approved conferences, and changes and amendments thereto, if otherwise in accordance with law, shall be permitted to take effect without prior approval upon compliance with the publication and filing requirements of section 1209 hereof and with the provisions of any regulations the Commission may adopt.

(e) Every agreement, modification, or cancellation lawful under this section, or permitted under section 1204, shall be excepted from the provisions of the Act approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies", and amendments and Acts supplementary thereto, and the provisions of sections 73 to 77, both inclusive, of the Act approved August 27, 1894, entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes", and amendments and Acts supplementary thereto.

(f) Whoever violates any provision of this section or of section 1204 shall be liable to a penalty or not more than \$1,000 for each day such violation continues, to be recovered by the United States in a civil action: *Provided, however*, That the penalty provisions of this section shall not apply to leases, licenses, assignments, or other agreements of similar character for the use of terminal property or facilities which were entered into before February 29, 1964, and, if continued in effect beyond said date, submitted to the Commission for approval prior to or within ninety days after said date, unless such leases, licenses, assignments, or other agreements for the use of terminal facilities are disapproved, modified, or canceled by the Commission and are continued in operation without regard to the Commission's action thereon. The Commission shall promptly approve, disapprove, cancel, or modify each such agreement in accordance with the provisions of this section.

#### DISCRIMINATORY ACTS PROHIBITED

SEC. 1206. (a) It shall be unlawful for any shipper, consignor, consignee, forwarder, broker, or other person, or any officer, agent, or employee thereof, knowingly and willfully, directly or indirectly, by means of false billing, false classification, false weighing, false report of weight, or by any other unjust or unfair device or means to obtain or attempt to obtain transportation by water for property at less than the rates or charges which would otherwise be applicable.

(b) It shall be unlawful for any common carrier by water, or other person subject to this title, either alone or in conjunction with any other person, directly or indirectly—

(1) To make or give any undue or unreasonable preference or advantage to any particular person, locality, or description of traffic in any respect whatsoever, or to subject any particular person, locality, or description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever: *Provided*, That within thirty days after the effective date of any conference freight rate, rule, or regulation in the foreign commerce of the United States, the Governor of any State, Commonwealth, or possession of the United States may file a protest with the Commission upon the ground that the rate, rule, or regulation unjustly discriminates against that State, Commonwealth, or possession of the United States, in which case the Commission shall issue an order to the conference to show cause why the rate, rule, or regulation should not be set aside. Within one hundred and eighty days from the date of the issuance of such order, the Commission shall determine whether or not such rate, rule, or regulation is unjustly discriminatory and issue a final order either dismissing the protest, or setting aside the rate, rule, or regulation.

(2) To allow any persons to obtain transportation for property at less than the regular rates or charges then established and enforced on the line of such carrier by means of false billing, false classification, false weighing, false report of weight, or by any other unjust or unfair device or means.

(3) To induce, persuade, or otherwise influence any marine insurance company or underwriter, or agent thereof, not to give a competing carrier by water as favorable a rate of insurance on vessel or cargo, having due regard to the class of vessel or cargo, as is granted to such carrier or other person subject to this title.

(c) Whoever violates any provision of this section shall be guilty of a misdemeanor punishable by a fine of not more than \$5,000 for each offense.

#### DISCRIMINATORY RATES AND PRACTICES

SEC. 1207. (a) No common carrier by water in foreign commerce shall demand, charge, or collect any rate, fare, or charge which is unjustly discriminatory between shippers or ports, or unjustly prejudicial to exporters of the United States as compared with their foreign competitors. Whenever the Commission finds that any such rate, fare, or charge is demanded, charged, or collected it may alter the same to the extent necessary to correct such unjust discrimination or prejudice and make an order that the carrier shall discontinue demanding, charging, or collecting any such unjustly discriminatory or prejudicial rate, fare, or charge.

(b) Every such carrier and every other person subject to this title shall establish, observe, and enforce just and reasonable regulations and practices relating to or connected with the receiving, handling, storing, or delivering of property. Whenever the Commission finds that any such regulation or practice is unjust or unreasonable it may determine, prescribe, and order enforced a just and reasonable regulation or practice.

#### RATES, PRACTICES, FILING REQUIREMENTS OF CARRIERS IN DOMESTIC OFFSHORE TRADE

SEC. 1208. (a) Every common carrier by water in the domestic offshore trade shall establish, observe, and enforce just and reasonable rates, fares, charges, classifications, and tariffs, and just and reasonable regulations and practices relating thereto and to the issuance, form, and substance of tickets, receipts, and bills of lading, the manner and method of presenting, marking, packing, and delivering property for transportation, the carrying of personal, sample, and excess baggage, the facilities for transportation, and all other matters relating to or connected with the receiving, handling, transporting, storing, or delivering of property.

(b)(1) Every common carrier by water in the domestic offshore trade shall file with the Commission and keep open to public inspection schedules showing all the rates, fares, and charges for or in connection with transportation between points on its own route; and, if a through route has been established, all the rates, fares, and charges for or in connection with transportation between points on its own route and points on the route of any other carrier by water. Such schedules shall (A) plainly show the places between which passengers and/or freight will be

carried, (B) contain the classification of freight and of passenger accommodations in force, (C) state separately each terminal or other charge, privilege, or facility, granted or allowed, and any rules or regulations which in any wise change, affect, or determine any part of the aggregate of such rates, fares, or charges, or the value of the service rendered to the passenger, consignor, or consignee, and (D) include the terms and conditions of any passenger ticket, bill of lading, contract of affreightment, or other document evidencing the transportation agreement. Such schedules shall be plainly printed, and copies shall be kept posted in a public and conspicuous place at every wharf, dock, or office of such carrier where passengers or freight are received for transportation, in such manner that they shall be readily accessible to the public and can be conveniently inspected. In addition, the terms and conditions included in the schedule as provided in this subsection shall be framed under glass and posted in a conspicuous place on board each vessel where they may be seen by passengers and others at all times, and copies of such terms and conditions shall be made available to any shipper, consignee, or passenger upon request. Any such terms and conditions may be incorporated by reference in a short form of the same actually issued for the transportation, or in a dock receipt or other document issued in connection therewith, by notice printed on the back of each document that all parties to the contract are bound by the terms and conditions as filed with the Commission and posted on board each vessel, and when so incorporated by reference every carrier and any other person having any interest or duty in respect of such transportation shall be deemed to have the same notice thereof as if all such terms and conditions had been set forth in the short form document.

(2) No change shall be made in the rates, fares, or charges, or classifications, rules, or regulations, which have been filed and posted as required by this subsection (b) except by the publication, filing, and posting as aforesaid of a new schedule or schedules which shall become effective not earlier than thirty days after date of posting and filing thereof with the Commission, and such schedule or schedules shall plainly show the changes proposed to be made in the schedule or schedules then in force and the time when the rates, fares, charges, classifications, rules, or regulations as changed are to become effective: *Provided*, That the Commission may, in its discretion and for good cause, allow changes upon less than the period of thirty days herein specified: *And provided further*, That schedules or changes which provide for extension of actual service to additional ports at rates of said carrier already in effect for similar service at the nearest port of call to said additional ports shall become effective immediately upon notice to the Commission.

(3) No person shall engage in transportation as a common carrier by water in the domestic offshore trade unless and until its schedules as provided by this subsection (b) have been duly and properly filed and posted; nor shall any common carrier by water in the domestic offshore trade charge or demand or collect or receive a greater or less or different compensation for the transportation of passengers or property or for any service in connection therewith than the rates, fares, and/or charges which are specified in its schedules filed with the Commission and duly posted and in effect at the time; nor shall any such carrier refund or remit in any manner or by any device any portion of the rates, fares, or charges so specified, nor extend or deny to any person any privilege or facility, except in accordance with such schedules.

(4) The Commission shall by regulations prescribe the form and manner in which the schedules required by this subsection (b) shall be published, filed, and posted; and the Commission is authorized to reject any schedule filed with it which is not in consonance with this subsection (b) and with such regulations. Upon rejection by the Commission, a schedule shall be void and its use unlawful.

(5) Every common carrier by water in the domestic offshore trade in establishing and fixing rates, fares, or charges may make equal rates, fares, or charges for similar service between all ports of origin and all ports of destination, and it shall be unlawful for any such carrier, either directly or indirectly, through the medium of any agreement, conference, association, understanding, or otherwise, to prevent or attempt to prevent any such carrier from extending service to any publicly owned terminal located on any improvement project authorized by the Congress at the same rates which it charges at its nearest regular port of call.

(6) Whoever violates any provision of this subsection (b) shall be liable to a penalty of not more than \$1,000 for each day such violation continues, to be recovered by the United States in a civil action.

(c) Whenever there shall be filed with the Commission any schedule stating a new individual or joint rate, fare, or charge, or any new individual or joint classi-

fication, or any new individual or joint regulation or practice affecting any rate, fare, or charge, as provided in subsection (b), the Commission shall have authority to enter upon a hearing concerning the lawfulness of such rate, fare, charge, classification, regulation, or practice. The Commission may order such a hearing either upon complaint or upon its own initiative without complaint, and, if it so orders, without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice. Pending such hearing and the decision thereon the Commission may from time to time suspend the operation of such schedule and defer the use of such rate, fare, charge, classification, regulation, or practice, but not for a longer period than four months beyond the time when it would otherwise go into effect: *Provided*, That there shall be no suspension of a tariff schedule or service which extends to additional ports, actual service at rates of the carrier for similar service already in effect at the nearest port of call to such additional port. The Commission shall effect such suspension by filing with such schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension. After full hearing, whether completed before or after the rate, fare, charge, classification, regulation, or practice goes into effect, the Commission may make such order with reference thereto as would be proper in a proceeding initiated after it had become effective. If the proceeding has not been concluded and an order made within the period of suspension, the proposed change of rate, fare, charge, classification, regulation, or practice shall go into effect at the end of such period. At any hearing under this subsection, the burden of proof to show that the rate, fare, charge, classification, regulation, or practice is just and reasonable shall be upon the carrier or carriers. The Commission shall give preference to the hearing and decision of such questions and decide the same as speedily as possible.

(d) Whenever the Commission finds that any rate, fare, charge, classification, tariff, regulation, or practice demanded, charged, collected, or observed by any carrier subject to the provisions of this section is unjust or unreasonable, it may determine, prescribe, and order enforced a just and reasonable maximum or minimum, or maximum and minimum rate, fare, or charge, or a just and reasonable classification, tariff, regulation, or practice.

(e) Whenever a common carrier by water in the domestic offshore trade reduces its rates on the carriage of any species of freight to or from competitive points below a fair and remunerative basis with the intent of driving out or otherwise injuring a competitive carrier by water, it shall not increase such rates unless after hearing the Commission finds that such proposed increase rests upon changed conditions other than the elimination of said competition.

(f) Nothing in this section shall prevent the carriage, storage, or handling of property free or at reduced rates, for the United States, State, or municipal governments, or for charitable purposes.

#### RATES, PRACTICES, FILING REQUIREMENTS OF CARRIERS IN FOREIGN COMMERCE

SEC. 1209. (a) Every common carrier by water in foreign commerce and every conference of such carriers shall file with the Commission and keep open to public inspection tariffs showing all the rates and charges of such carrier or conference of carriers for transportation to and from United States ports and foreign ports between all points of its own route and on any through route which has been established. Such tariffs shall plainly show the places between which freight will be carried and shall contain the classification of freight in force, and shall also state separately such terminal or other charge, privilege, or facility under the control of the carrier or conference of carriers which is granted or allowed, and any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates, or charges, and shall include specimens of any bill of lading, contract or affreightment, or other document evidencing the transportation agreement. Copies of such tariffs shall be made available to any person and a reasonable charge may be made therefor. The requirements of this section shall not be applicable to cargo loaded and carried in bulk without mark or count, or to cargo which is softwood lumber. As used in this subsection (a), "softwood lumber" means softwood lumber not further manufactured than passing lengthwise through a standard planing machine and crosscut to length, logs, poles, piling, and ties, including such articles preservativesly treated, or bored, or framed, but not including plywood on finished articles knocked down or set up.

(b) No change shall be made in rates, charges, classifications, rules or regulations, which results in an increase in cost to the shipper, nor shall any new or initial rate of any common carrier by water in foreign commerce or conference of

such carriers be instituted, except by the publication, and filing, as aforesaid, of a new tariff or tariffs which shall become effective not earlier than thirty days after the date of publication and filing thereof with the Commission, and each such tariff or tariffs shall plainly show the changes proposed to be made in the tariff or tariffs then in force and the time when the rates, charges, classifications, rules or regulations as changed are to become effective: *Provided, however*, That the Commission may, in its discretion and for good cause, allow such changes and such new or initial rates to become effective upon less than the period of thirty days herein specified. Any change in the rates, charges, classifications, rules or regulations which results in a decreased cost to the shipper may become effective upon the publication and filing with the Commission. "Tariff" as used in this subsection (b) shall include any amendment, supplement or reissue.

(c) No common carrier by water in foreign commerce or conference of such carriers shall charge or demand or collect or receive a greater or less or different compensation for the transportation of property or for any service in connection therewith than the rates and charges which are specified in its tariffs on file with the Commission and duly published and in effect at the time; nor shall any such carrier rebate, refund, or remit in any manner or by any device any portion of the rates or charges so specified, nor extend or deny to any person any privilege or facility, except in accordance with such tariffs.

(d) The Commission shall by regulations prescribe the form and manner in which the tariffs required by this section shall be published and filed; and the Commission is authorized to reject any tariff filed with it which is not in conformity with this section and with such regulations. Upon rejection by the Commission, a tariff shall be void and its use unlawful.

(e) The Commission shall disapprove any rate or charge filed by a common carrier by water in the foreign commerce of the United States or conference of carriers which, after hearing, it finds to be so unreasonably high or low as to be detrimental to the commerce of the United States.

(f) Whoever violates any provision of this section shall be liable to a penalty of not more than \$1,000 for each day such violation continues, to be recovered by the United States in a civil action.

#### FREIGHT FORWARDERS

SEC. 1210. (a) No person shall engage in carrying on the business of forwarding as defined in section 1201 of this Act unless such person holds a license issued by the Commission to engage in such business: *Provided, however*, That a person whose primary business is the sale of merchandise may dispatch shipments of such merchandise without a license.

(b) A forwarder's license shall be issued to any qualified applicant therefor if it is found by the Commission that the applicant is, or will be, an independent ocean freight forwarder as defined in section 1201 of this Act and is fit, willing, and able properly to carry on the business of forwarding and to conform to the provisions of this title and the requirements, rules, and regulations of the Commission issued thereunder, and that the proposed forwarding business is, or will be, consistent with the national maritime policies declared in section 2101 of this Act; otherwise such application shall be denied. Any independent ocean freight forwarder who, on September 19, 1961, was carrying on the business of forwarding under a registration number issued by the Commission may continue such business for a period of one hundred and twenty days thereafter without a license, and if application for such license is made within such period, such forwarder may, under such regulations as the Commission shall prescribe, continue such business until otherwise ordered by the Commission.

(c) The Commission shall prescribe reasonable rules and regulations to be observed by independent ocean freight forwarder and no such license shall be issued or remain in force unless such forwarder shall have furnished a bond or other security approved by the Commission in such form and amount as in the opinion of the Commission will insure financial responsibility and the supply of the services in accordance with contracts, agreements, or arrangements therefor.

(d) Licenses shall be effective from the date specified therein, and shall remain in effect until suspended or terminated as herein provided. Any such license may, upon application of the holder thereof, in the discretion of the Commission, be amended or revoked, in whole or in part, or may upon complaint, or on the Commission's own initiative, after notice and hearing, be suspended or revoked for willful failure to comply with any provision of this title or with any lawful order, rule, or regulation of the Commission promulgated thereunder.

(C) A common carrier by water may compensate a person carrying on the business of forwarding to the extent of the value rendered such carrier in connection with any shipment dispatched on behalf of others when, and only when, such person is licensed hereunder and has performed with respect to such shipment the solicitation and securing of the cargo for the ship or the booking of, or otherwise arranging for space for, such cargo, and at least two of the following services:

- (1) The coordination of the movement of the cargo to shipside;
- (2) The preparation and processing of the ocean bill of lading;
- (3) The preparation and processing of dock receipts or delivery orders;
- (4) The preparation and processing of consular documents or export declarations;

(5) The payment of the ocean freight charges on such shipments:

*Provided, however,* That where a common carrier by water has paid, or has incurred an obligation to pay, either to an ocean freight broker or freight forwarder, separate compensation for the solicitation or securing of cargo for the ship or the booking of, or otherwise arranging for space for, such cargo, then such carrier shall not be obligated to pay additional compensation for any other forwarding services rendered on the same cargo. Before any such compensation is paid to or received by any person carrying on the business of forwarding, such person shall, if he is qualified under the provisions of this paragraph to receive such compensation, certify in writing to the common carrier by water by which the shipment was dispatched that he is licensed by the Commission as an independent ocean freight forwarder and that he performed the above specified services with respect to such shipment. Such carrier shall be entitled to rely on such certification unless it knows that the certification is incorrect.

#### DISCLOSURE OF CONFIDENTIAL INFORMATION

SEC. 1211. (a) It shall be unlawful for any common carrier by water or other person subject to this title, or any officer, receiver, trustee, lessee, agent, or employee of such carrier or person, or for any other person authorized by such carrier or person to receive information, knowingly to disclose or to permit to be acquired by any person other than the shipper or consignee, without the consent of such shipper or consignee, any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to such common carrier or other person subject to this title for transportation in interstate or foreign commerce or domestic offshore trade, which information may be used to the detriment or prejudice of such shipper or consignee, or which may improperly disclose his business transactions to a competitor, or which may be used to the detriment or prejudice of any carrier; and it shall also be unlawful for any person to solicit or knowingly receive any such information which may be so used.

(b) Nothing in this title shall be construed to prevent the giving of such information in response to any legal process issued under the authority of any court, or to any officer or agent of the Government of the United States, or of any State, territory, district, or possession thereof, or the Commonwealth of Puerto Rico, in the exercise of his powers, or to any officer or other duly authorized person seeking such information for the prosecution of persons charged with or suspected of crime, or to another carrier, or its duly authorized agent, for the purpose of adjusting mutual traffic accounts in the ordinary course of business of such carriers; or to prevent any common carrier by water which is a party to a conference agreement approved pursuant to section 1205 of this Act, or any other person subject to this title, or any receiver, trustee, lessee, agent, or employee of such carrier or person, or any other person authorized by such carrier to receive information, from giving information to the conference or any person, firm, corporation, or agency designated by the conference, or to prevent the conference or its designee from soliciting or receiving information for the purpose of determining whether a shipper or consignee has breached an agreement with the conference or its member lines or of determining whether a member of the conference has breached the conference agreement, or for the purpose of compiling statistics of cargo movement, but the use of such information for any other purpose prohibited by this Act or any other Act shall be unlawful.

#### REPORTS BY CARRIERS

SEC. 1212. The Commission may require any common carrier by water, or other person subject to this title, or any officer, receiver, trustee, lessee, agent, or employee thereof, to file with it any periodical or special report, or any account,

record, rate or charge, or any memorandum of any facts and transactions appertaining to the business of such carrier or other person subject to this title. Such report, account, record, rate, charge, or memorandum shall be under oath whenever the Commission so requires, and shall be furnished in the form and within the time prescribed by the Commission. Whoever fails to file any report, account, record, rate, charge, or memorandum as required by this section shall forfeit to the United States the sum of \$100 for each day of such default. Whoever willfully falsifies, destroys, mutilates, or alters any such report, account, record, rate, charge, or memorandum, or willfully files a false report, account, record, rate, charge, or memorandum shall be guilty of a misdemeanor, and subject upon conviction to a fine or not more than \$1,000, or imprisonment for not more than one year, or to both such fine and imprisonment.

#### GENERAL PENALTIES

SEC. 1213. Whoever violates any provision of this title, except where a different penalty is provided, shall be guilty of a misdemeanor, punishable by fine not to exceed \$5,000.

### PART C—INVESTIGATIONS, COMPLAINTS, HEARINGS, AND ORDERS

#### INVESTIGATION OF ACTS OF FOREIGN GOVERNMENTS

SEC. 1301. The Commission shall have power, and it shall be its duty whenever complaint shall be made to it, to investigate the action of any foreign government with respect to the privileges afforded and burdens imposed upon vessels of the United States engaged in foreign trade whenever it shall appear that the laws, regulations, or practices of any foreign government operate in such a manner that vessels of the United States are not accorded equal privileges in foreign trade with vessels of such foreign countries or vessels of other foreign countries, either in trade to or from the ports of such foreign country or in respect of the passage or transportation through such foreign country of passengers or goods intended for shipment or transportation in such vessels of the United States, either to or from ports of such foreign country or to or from ports of other foreign countries. It shall be the duty of the Commission to report the results of its investigation to the President with its recommendations and the President is hereby authorized and empowered to secure by diplomatic action equal privileges for vessels of the United States engaged in such foreign trade. And if by such diplomatic action the President shall be unable to secure such equal privileges, then the President shall advise Congress as to the facts and his conclusions by a special message, if deemed important in the public interest, in order that proper action may be taken thereon.

#### COMPLAINTS AND INVESTIGATIONS

SEC. 1302. (a)(1) Any person may file with the Commission a sworn complaint setting forth any violation of this title by a common carrier by water, or other person subject to this title, and asking reparation for the injury, if any, caused thereby. The Commission shall furnish a copy of the complaint to such carrier or other person, who shall within a reasonable time specified by the Commission satisfy the complaint or answer it in writing. If the complaint is not satisfied the Commission shall, except as otherwise provided in this title, investigate it in such manner and by such means, and make such order as it deems proper. The Commission, if the complaint is filed within two years after the cause of action accrued, may direct the payment, on or before a day named, of full reparation to the complainant for the injury caused by such violation.

(2) The Commission, upon its own motion, may in like manner and, except as to orders for the payment of money, with the same powers, investigate any violation of this title.

(b) The Commission is authorized and directed to investigate any and all discriminatory rates, charges, classifications, and practices whereby exporters and shippers of cargo originating in the United States are required by any common carrier by water in the foreign trade of the United States to pay a higher rate from any United States port to a foreign port than the rate charged by such carrier on similar cargo from such foreign port to such United States port, and recommend to Congress measures by which such discrimination may be corrected.

## HEARINGS

SEC. 1303. For provisions, other than those in this part, relating to hearings before the Commission, see sections 1203, 1204, 1205, 1206, 1208, 1209, and 1210 of this Act.

## WITNESSES AND PRODUCTION OF EVIDENCE

SEC. 1304. (a) For the purpose of any investigation which, in the opinion of the Commission, is necessary and proper in carrying out the provisions of this title, any member of the Commission, or any officer or employee thereof designated by it, is empowered to subpoena witnesses, administer oaths and affirmations, take evidence, and require the production of any books, papers, or other documents which are relevant or material to the matter under investigation. Such attendance of witnesses and the production of such books, papers, or other documents may be required from any place in the United States or any territory, district, or possession thereof, or the Commonwealth of Puerto Rico, at any designated place of hearing. Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(b) Upon failure of any person to obey a subpoena issued by the Commission, it may invoke the aid of any United States district court within the jurisdiction in which such person resides or carries on business in requiring the attendance and testimony of witnesses and the production of books, papers, or other documents. Any such court may issue an order requiring such person to appear before the Commission, or member, officer, or employee designated by the Commission, there to produce books, papers, or any other documents, if so ordered, or to give testimony touching the matter under investigation or in question. Any failure to obey such order of the court may be punished by such court as a contempt thereof. Any process in any such case may be served in the judicial district wherein such person resides or wherever he may be found.

## IMMUNITY OF WITNESSES

SEC. 1305. No person shall be excused from attending and testifying or from producing books, papers, or other documents before the Commission, or any member or officer or employee thereof, in any investigation instituted by the Commission under this title, or in obedience to the subpoena of the Commission or of any court in any proceeding based upon or growing out of any alleged violation of this title, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no person shall be prosecuted or subject to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such person so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

## ORDERS

SEC. 1306. Orders of the Commission relating to any violation of this title of this Act shall be made only after full hearing, and upon a sworn complaint or in proceedings instituted on its own motion. All orders of the Commission, other than for the payment of money, made under this title shall continue in force until its further order, or for a specified period of time, as shall be prescribed in the order, unless the same shall be suspended, or modified, or set aside by the Commission, or be suspended or set aside by a court of competent jurisdiction.

## REVERSAL, SUSPENSION, OR MODIFICATION OF ORDERS

SEC. 1307. The Commission may reverse, suspend, or modify, upon such notice and in such manner as it deems proper, any order made by it. Upon application of any party to a decision or order it may grant a rehearing of the same or any matter determined therein, but no such application or allowance of a rehearing shall, except by special order of the Commission, operate as a stay of such order.

## REPORTS IN HEARING CASES

SEC. 1308. The Commission shall enter of record a written report of every investigation in which a hearing has been held, stating its conclusions, decision, and order, and, if reparation is awarded, the findings of fact on which the award is made, and shall furnish a copy of such report to all parties to the investigation. The Commission may publish such reports in the form best adapted for public information and use, and such authorized publications shall, without further proof or authentication, be competent evidence of such reports in all courts of the United States and of the States, territories, districts, and possessions thereof, and the Commonwealth of Puerto Rico.

## PART D—ENFORCEMENT AND REVIEW

## ENFORCEMENT OF ORDERS OTHER THAN FOR PAYMENT OF MONEY

SEC. 1401. In case of violation of any order of the Commission, other than an order for the payment of money, the Commission, or any party injured by such violation, or the Attorney General, may apply to a United States district court having jurisdiction of the parties; and if, after hearing, the court determines that the order was regularly made and duly issued, it shall enforce obedience thereto by a writ of injunction or other proper process, mandatory or otherwise.

## ENFORCEMENT OF ORDERS FOR PAYMENT OF MONEY

SEC. 1402. (a) In case of violation of any order of the Commission for the payment of money the person to whom such award was made may file in the United States district court for the district in which such person resides, or in which is located any office of the carrier or other person to whom the order was directed, or in which is located any point of call on a regular route operated by the carrier, or in any court of general jurisdiction of a State, territory, district, or possession of the United States or the Commonwealth of Puerto Rico having jurisdiction of the parties, a petition or suit setting forth briefly the causes for which he claims damages and the order of the Commission in the premises.

(b) In the United States district court the findings and order of the Commission shall be prima facie evidence of the facts therein stated, and the plaintiff shall not be liable for costs, nor shall he be liable for costs at any subsequent stage of the proceedings unless they accrue upon his appeal. If a plaintiff in a district court finally prevails, he shall be allowed a reasonable attorney's fee, to be taxed and collected as part of the costs of the suit.

(c) 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 to such order may be joined as defendants, in a single suit in any district in which any one such plaintiff could maintain a suit against any one such defendant. Service of process against any such defendant not found in that district may be made in any district in which is located any office of, or point of call on a regular route operated by, such defendant. Judgment may be entered in favor of any plaintiff against the defendant liable to that plaintiff.

(d) No petition or suit for the enforcement of an order for the payment of money shall be maintained unless filed within one year from the date of the order.

## REVIEW OF COMMISSION ORDERS

SEC. 1403. Except as otherwise provided in sections 1401 and 1402 of this Act, orders of the Commission entered pursuant to this title may be reviewed as provided in the Act of December 29, 1950, as amended (5 U.S.C. 1031-1042).

## PENALTIES FOR VIOLATIONS OF ORDERS, RULES, OR REGULATIONS

SEC. 1404. Whoever knowingly and willfully violates any order, rule, or regulation of the Commission made or issued in the exercise of the powers, duties and functions set forth in this title, for which no penalty is otherwise expressly provided, shall upon conviction thereof be subject to a fine of not more than \$500. If such violation is a continuing one, each day of such violation shall constitute a separate offense.

TITLE II—MERCHANT MARINE POLICY; FUNCTIONS OF THE  
DEPARTMENT OF COMMERCE

PART A—POLICY

DECLARATION OF POLICY

SEC. 2101. (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 waterborne commerce and a substantial portion of its waterborne export and import foreign commerce and to provide shipping service on all routes essential for maintaining the flow of such domestic and foreign waterborne 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, insofar as may be practicable; (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 titles III, IV, V and VI of this Act to foster the development and encourage the maintenance of such a merchant marine.

PART B—FUNCTIONS AND AUTHORITY OF THE DEPARTMENT OF COMMERCE

CONTINUATION OF MARITIME ADMINISTRATION

SEC. 2201. (a) The Maritime Administration, established in the Department of Commerce by section 201 of Reorganization Plan Numbered 21 of 1950, is continued.

(b) The Maritime Administration shall keep a true record of every action, order, contract, or financial transaction approved or disapproved by it. The Maritime Administration shall have an official seal which shall be judicially noticed.

MARITIME ADMINISTRATOR

SEC. 2202. There is and shall be at the head of the Maritime Administration a Maritime Administrator who shall be appointed by the President, by and with the advice and consent of the Senate, and shall perform such duties as the Secretary of Commerce shall prescribe.

DEPUTY MARITIME ADMINISTRATOR

SEC. 2203. There is and shall be in the Maritime Administration a Deputy Maritime Administrator, who shall be appointed by the Secretary of Commerce, after consultation with Administrator, under the classified civil service, and who shall perform such duties as the Administrator shall prescribe. The Deputy Maritime Administrator shall be Acting Maritime Administrator during the absence or disability of the Administrator and, unless the Secretary of Commerce shall designate another person, during a vacancy in the office of Administrator.

UNDER SECRETARY OF COMMERCE FOR TRANSPORTATION

SEC. 2204. There is and shall be in the Department of Commerce an office of Under Secretary with the title "Under Secretary of Commerce for Transportation". The Under Secretary of Commerce for Transportation shall be appointed by the President, by and with the advice and consent of the Senate, shall receive compensation at the rate prescribed by law for Under Secretaries of executive departments, and shall perform such duties as the Secretary of Commerce shall prescribe.

FUNCTIONS AND AUTHORITY OF SECRETARY OF COMMERCE

SEC. 2205. (a) The Secretary of Commerce shall have all functions and authority conferred on him by titles II, III, IV, V, and VI of this Act. "Secretary", whenever used in titles II, III, IV, V, and VI of this Act, shall mean the Secretary of Commerce, unless the context otherwise requires.

(b) The Secretary is hereby authorized to adopt all necessary rules and regulations to carry out the powers, duties, and functions vested in him by this Act.

(c) The Secretary may, subject to the provisions of the civil service laws and the Classification Act of 1949, appoint such officers, engineers, inspectors, attorneys examiners, and other employees as are necessary in the execution of his functions.

(d) Whenever any officer (not exceeding five in number at any time) of the Army, Navy, Marine Corps, or Coast Guard is detailed to the Secretary, he shall receive from the Secretary, for the period during which he is so detailed, such compensation as added to his pay and allowances as an officer in such service will make his aggregate compensation equal to the pay and allowances he would receive if he were the incumbent of an office or position in such service (or in the corresponding executive department), which, in the opinion of the Secretary, involves the performance of work similar in importance, difficulty, and responsibility to that performed by him while detailed to the Secretary.

#### DELEGATION OF FUNCTIONS BY SECRETARY

SEC. 2206. (a) The Secretary may from time to time make such provisions as he shall deem appropriate authorizing the performance by any other officer, or by any agency or employee, of the Department of Commerce of any function vested in the Secretary under the provisions of this Act.

(b) The Secretary may from time to time effect such transfers within the Department of Commerce of any of the records, property, personnel, and unexpended balances of appropriations, allocations, and other funds employed, used, held available, or to be made available, as he may deem necessary with respect to the functions vested in him under the provisions of this Act.

#### POWER TO CONTRACT; AUDIT OF ACCOUNTS; REPORTS OF COMPTROLLER GENERAL

SEC. 2207. The Secretary may enter into such contracts, upon behalf of the United States, and may make such disbursements as may, in his discretion, be necessary to carry on the activities authorized by this Act, or to protect, preserve, or improve the collateral held by the Secretary to secure indebtedness, in the same manner that a private corporation may contract within the scope of the authority conferred by its charter. All the Secretary's financial transactions shall be audited in the General Accounting Office according to approved commercial practice as provided in the Act of March 20, 1922 (42 Stat. 444): *Provided*, That it shall be recognized that, because of the business activities authorized by this Act, the accounting officers shall allow credit for all expenditures shown to be necessary because of the nature of such authorized activities, notwithstanding any existing statutory provision to the contrary. The Comptroller General shall report annually or oftener to Congress any departure by the Secretary from the provisions of this Act.

#### CONFLICT OF INTEREST

SEC. 2208. It shall be unlawful for the Maritime Administrator or any other officer or employee of the Maritime Administration to be in the employ of any other person, firm, or corporation, or to have any pecuniary interest in, or hold any official relationship with, any carrier by water, shipbuilder, contractor, or other person, firm, association, or corporation with whom the Maritime Administration may have business relations.

#### PART C—INVESTIGATIONS, HEARINGS, RECOMMENDATIONS, REPORTS AND ORDERS

##### INVESTIGATIONS, STUDIES, REPORTS, AND RECOMMENDATIONS TO CONGRESS

SEC. 2301. (a) The Secretary shall investigate the relative cost of building merchant vessels in the United States and in foreign maritime countries, and the relative cost, advantages, and disadvantages of operating in the foreign trade vessels under United States registry and under foreign registry. He shall examine the rules under which vessels are constructed abroad and in the United States, and the methods of classifying and rating same. He shall examine into the subject of marine insurance, the number of companies in the United States, domestic and foreign, engaging in marine insurance, the extent of the insurance on hulls and cargoes placed or written in the United States, and the extent of reinsurance of American maritime risks in foreign companies, and ascertain what steps may be necessary to develop an ample marine insurance system as an aid in the development of an American merchant marine. He shall examine the navigation laws of the United States and the rules and regulations thereunder, and make such recommendations to the Congress as he deems proper for the amendment, improvement, and revision of such laws, and for the development of the American mer-

chant marine. He shall investigate the legal status of mortgage loans on vessel property, with a view to means of improving the security of such loans and of encouraging investment in American shipping.

(b) It shall be the duty of the Secretary of Commerce, in cooperation with the Secretary of the Army, with the object of promoting, encouraging, and developing ports and transportation facilities in connection with water commerce over which he has jurisdiction, to investigate territorial regions and zones tributary to such ports, taking into consideration the economies of transportation by rail, water, and highway and the natural direction of the flow of commerce; to investigate the causes of the congestion of commerce at ports and the remedies applicable thereto; to investigate the subject of water terminals, including the necessary docks, warehouses, apparatus, equipment, and appliances in connection therewith, with a view of devising and suggesting the types most appropriate for different locations and for the most expeditious and economical transfer or interchange of passengers or property between carriers by water and carriers by rail; to advise with communities regarding the appropriate location and plan of construction of wharves, piers, and water terminals; to investigate the practicability and advantages of harbor, river, and port improvements in connection with foreign and coastwise trade; and to investigate any other matter that may tend to promote and encourage the use by vessels of ports adequate to care for the freight which would naturally pass through such ports: *Provided*, That if after such investigation the Secretary shall be of the opinion that rates, charges, rules, or regulations of common carriers by rail subject to the jurisdiction of the Interstate Commerce Commission are detrimental to the declared object of this subsection, or that new rates, charges, rules, or regulations, new or additional port terminal facilities, or affirmative action on the part of such common carriers by rail is necessary to promote the objects of this section, the Secretary may submit his findings to the Interstate Commerce Commission for such action as such Commission may consider proper under existing law.

(c) It shall be the duty of the Secretary to make a survey of the American merchant marine, to determine what additions and replacements are required to carry forward the national policy declared in section 2101 of this Act, and the Secretary is directed to study, perfect, and adopt a long-range program for replacements and additions to the American merchant marine so that as soon as practicable the following objectives may be accomplished:

(1) The creation of an adequate and well-balanced merchant fleet, including vessels of all types, to provide shipping service on all routes essential for maintaining the flow of foreign commerce, as defined in section 3101 of this Act, the vessels in such fleet to be so designed as to be readily and quickly convertible into transport and supply vessels in a time of national emergency. In planning the development of such a fleet the Secretary is directed to cooperate closely with the Navy Department as to national defense needs and the possible speedy adaption of the merchant fleet to national defense requirements.

(2) The ownership and the operation of such a merchant fleet by citizens of the United States, as defined in section 3101 of this Act, insofar as may be practicable.

(3) The planning of vessels designed to afford the best and most complete protection for passengers and crew against fire and all marine perils.

(d) The Secretary is authorized and directed to investigate, determine, and keep current records of—

(1) the ocean services, routes, and lines from ports in the United States, or in a territory, district, or possession thereof, or the Commonwealth of Puerto Rico, to foreign markets, which are, or may be, determined by the Secretary to be essential for the promotion, development, expansion, and maintenance of foreign commerce, and in reaching his determination the Secretary shall consider and give due weight to the cost of maintaining each of such steamship lines, the probability that any such line cannot be maintained except at a heavy loss disproportionate to the benefit accruing to foreign trade, as defined in section 3101 of this Act, the number of sailings and types of vessels that should be employed in such lines, and any other facts and conditions that a prudent businessman would consider when dealing with his own business, with the added consideration, however, of the intangible benefit the maintenance of any such line may afford to foreign commerce, as defined in section 3101 of this Act, and to the national defense;

(2) the type, size, speed, and other requirements of the vessels, including express-liner or superliner vessels, which should be employed in such services

or on such routes or lines, and the frequency and regularity of the sailings of such vessels, with a view of furnishing adequate, regular, certain, and permanent service;

(3) the relative cost of construction, including outfitting and equipping, of comparable vessels in the United States and in foreign countries;

(4) 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 in particular services, routes, and lines under the laws, rules, and regulations of the United States and under those of the foreign countries whose vessels are substantial competitors of any such American service, route or line;

(5) the extent and character of the governmental aid and subsidies granted by foreign governments to their merchant marine;

(6) the number, location, and efficiency of the shipyards in the United States;

(7) what provisions of this Act and other Acts relating to shipping should be made applicable to aircraft engaged in foreign commerce, as defined in section 3101 of this Act, in order to further the policy expressed in this Act, and to recommend appropriate legislation to this end;

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

(9) new designs, new methods of construction, and new types of equipment for vessels; the possibilities of promoting the carrying of foreign trade, as defined in section 3101 of this Act, in American vessels; and intercoastal and inland water transportation, including their relation to transportation by land and air.

(e) The Secretary is authorized and directed—

(1) to study all maritime problems arising in the carrying out of the policy set forth in section 2101 of this Act;

(2) to study, and to cooperate with vessel owners in devising means by which—

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

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

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

(4) to establish and maintain liaison with such other boards, commissions, independent establishments, and departments of the United States Government, and with such representative trade organizations throughout the United States as may be concerned, directly or indirectly with any movement of commodities in the waterborne export and import foreign commerce of the United States, for the purpose of securing preference to vessels of United States registry in the shipment of such commodities; and

(5) to make recommendation to Congress, from time to time, for such further legislation as he deems necessary better to effectuate the purpose and policy of titles III, IV, V, and VI of this Act.

(f) The Secretary shall make studies of and make reports to Congress on—

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

(2) tramp shipping service and the advisability of citizens of the United States participating in such service with vessels under United States registry;

(3) the relative cost of construction or reconditioning of comparable ocean vessels in shipyards in the various coastal districts of the United States, together with recommendations as to how such shipyards may com-

pete for work on an equalized basis; reports under this subsection shall be made annually on the first day of July of each year.

(g) The Secretary shall on the first day of July of each year make a report to Congress with respect to all activities or transactions under part C of title IV of this Act which have not been covered by any previous such report.

(h) The Secretary shall, at the beginning of each regular session, make a report to Congress, which shall include the results of his investigations, a summary of his recommendations for legislation, a summary of his transactions, and a statement of all expenditures and receipts under titles III, IV, and V of this Act.

#### MOBILE TRADE FAIRS

SEC. 2302. (a) The Secretary shall encourage and promote the development and use of mobile trade fairs which are designed to show and sell the products of United States business and agriculture at foreign ports and at other commercial centers throughout the world where the operator or operators of the mobile trade fairs exclusively use United States-flag vessels and aircraft in the transportation of their exhibits.

(b) The Secretary is authorized to provide to the operator or operators of such mobile trade fairs technical assistance and support as well as financial assistance for the purpose of defraying certain expenses incurred abroad, when the Secretary determines that such operations provide an economical and effective means of promoting export sales.

(c) There is authorized to be appropriated not to exceed \$500,000 per fiscal year for each of the six fiscal years during the period beginning July 1, 1962, and ending June 30, 1968. In addition to such appropriated sums, the President shall make maximum use of foreign currencies owned by or owed to the United States to carry out the purposes of this section.

(d) The Secretary shall submit annually to Congress a report on his activities under this section.

#### HEARINGS

SEC. 2303. For provisions, other than those in this part, relating to hearings before the Secretary, see sections 3202, 3205(c), 3206, 3211(a), 3405, 3501, and 4302 of this Act.

#### ATTENDANCE OF WITNESSES AND PRODUCTION OF EVIDENCE

SEC. 2304. (a) For the purpose of any investigation which, in the opinion of the Secretary, is necessary and proper in carrying out his functions under the provisions of titles II, III, IV (except section 4215 and part C), sections 5101-5105, and title VI of this Act, the Secretary, or any officer or employee of the Department of Commerce designated by him, is empowered to subpoena witnesses, administer oaths and affirmations, take evidence, and require the production of any books, papers, or other documents which are relevant or material to the matter under investigation. Such attendance of witnesses and the production of such books, papers, or other documents may be required from any place in the United States or any territory, district, or possession thereof, or the Commonwealth of Puerto Rico, at any designated place of hearing. Witnesses summoned before the Secretary shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

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

(c) No person shall be excused from attending and testifying or from producing books, papers, or other documents before the Secretary or any officer or employee of the Department of Commerce, in any investigation instituted by the Secretary under the provisions of this Act referred to in subsection (a) of this section, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no

person shall be prosecuted or subject to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such person so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

#### ENFORCEMENT OF ORDERS

SEC. 2305. In case of violation of any order of the Secretary under section 4107 of this Act, the Secretary, or any party injured by such violation, or the Attorney General, may apply to a district court having jurisdiction of the parties; and if, after hearing, the court determines that the order was regularly made and duly issued, it shall enforce obedience thereto by a writ of injunction or other proper process, mandatory or otherwise.

#### REVIEW OF ACTIONS OF THE SECRETARY

SEC. 2306. (a) The denial of an application filed pursuant to section 3211(a) may be reviewed in accordance with the provisions of section 3211(b).

(b) Any orders of the Secretary entered under part A of title IV of this Act may be reviewed as provided in the Act of December 29, 1950, as amended (5 U.S.C. 1031-1042).

(c) Except as provided in subsections (a) and (b), any action of the Secretary under this Act may be reviewed to the extent and in the manner provided in the Administrative Procedure Act, as amended, 5 U.S.C. 1001-1011, or as otherwise provided by law.

#### PENALTIES FOR VIOLATIONS OF ORDERS, RULES, OR REGULATIONS

SEC. 2307. Whoever knowingly and willfully violates any order, rule, or regulation of the Secretary made or issued in the exercise of the powers, duties, or functions set forth in titles II, III, IV (except part C thereof), sections 5101-5105 of title V, and title VI of this Act, for which no penalty is otherwise expressly provided, shall upon conviction thereof be subject to a fine of not more than \$500. If such violation is a continuing one, each day of such violation shall constitute a separate offense.

#### PART D—DEFINITIONS

##### DEFINITIONS OF TERMS USED IN TITLES II, III, IV, V, AND VI

SEC. 2401. For the definition of—

- (1) "Actual cost": see section 4501(a).
- (2) "Administratively disallowed": see section 4214(e)(1).
- (3) "Alien": see section 3502(a).
- (4) "American vessels": see section 4601(a).
- (5) "Antitrust laws": see section 6107(b).
- (6) "Association": see section 6107(a)(1).
- (7) "Capital necessarily employed": see section 3309 (b).
- (8) "Capital necessarily employed in the business": see section 3207(d)(1).
- (9) "Capital reserve fund": see section 3207(b).
- (10) "Citizen of the United States": see sections 2301(c)(2), 3101(a), 4101(a), (b), (c), 4102(c), 4103(d), 4104(f), 4203(g), 4301(a), 4401, 4501(b), 4601(b), 6103(c)(1), (d).
- (11) "Civilian nautical school": see section 5301.
- (12) "Collector of customs": see section 4401(a).
- (13) "Construction": see section 3101(b).
- (14) "Construction contract": see section 3112(a)(1).
- (15) "Construction-differential subsidy": see section 3103(b).
- (16) "Construction reserve fund": see section 3112(b).
- (17) "Contract for the construction": see section 3112(a)(1).
- (18) "Defaults": see section 4505(a)(1), (2).
- (19) "Director": see section 3405(c).
- (20) "Document": see section 4401(b).
- (21) "Documented": see sections 4204(c)(6), 4401(c).
- (22) "Documented under the laws of the United States": see sections 4101(e), 6103(d), 6105(b).
- (23) "Domestic war cost": see section 4301(b).
- (24) "Employee": see section 3405(c).

- (25) "Fair and reasonable overhead expenses": see section 3309(b).  
 (26) "Foreign commerce": see sections 2301(c)(1), (d)(1), (7), 3101(c), 6108(b).  
 (27) "Foreign cost": see section 3313(a).  
 (28) "Foreign trade": see sections 2301(d)(1), (9), 3101(c), 4206(c), 4207.  
 (29) "Home port": see section 4401(e).  
 (30) "Lender": see section 4501(e).  
 (31) "Loan": see section 4501(c).  
 (32) "Marine insurance companies": see section 6107(a)(2).  
 (33) "Modern or efficient war-built vessels": see section 3111(h).  
 (34) "Mortgage": see section 4501(d).  
 (35) "Mortgagee": see sections 4401(d), 4501(e).  
 (36) "Mortgagor": see section 4501(f).  
 (37) "Net earnings": see section 3207(d)(1).  
 (38) "Net indemnity": see section 3112(c)(2).  
 (39) "Net proceeds": see section 3112(c)(2).  
 (40) "Net voyage profit": see section 3309(b).  
 (41) "New vessel": see sections 3111(a)(2), 3112(a)(2), (3).  
 (42) "Obsolete vessel": see section 3111(a)(1).  
 (43) "Officer": see section 3405(c).  
 (44) "Parent": see section 6103(c)(2).  
 (45) "Passenger vessel": see section 3212(a).  
 (46) "Person": see sections 3101(d), 4101(d), 4401, 6103(d), 6107(a)(3).  
 (47) "Port of documentation": see section 4401(e).  
 (48) "Preferred maritime lien": see section 4412(a).  
 (49) "Preferred, mortgage": see sections 4403(b), 4410(b).  
 (50) "Preferred mortgage lien": see section 4410(b).  
 (51) "Privately owned United States-flag commercial vessels": see section 6101(a).  
 (52) "Reconstruction and reconditioning": see section 3112(a)(3).  
 (53) "Salary": see section 3405(c).  
 (54) "Seacoasts of the United States": see section 3112(f).  
 (55) "Seamen": see section 4214(e)(1).  
 (56) "Secretary": see section 2205(a).  
 (57) "Special reserve fund": see section 3207(c).  
 (58) "State": see section 5102(e).  
 (59) "Subsidiary": see section 6103(c)(2).  
 (60) "The United States": see section 4214(e)(3).  
 (61) "Transportation in the waterborne commerce of the United States": see section 4601(c).  
 (62) "Vessel": see sections 4101(f), 4401, 4501(g), 6103(d), 6105(b).  
 (63) "Vessel of the United States": see section 4401(f).  
 (64) "War-built vessel": see section 4301(c).  
 (65) "War risks": see section 4601(d).

### TITLE III—SUBSIDIES AND RELATED PROVISIONS

#### PART A—CONSTRUCTION-DIFFERENTIAL SUBSIDY

##### DEFINITIONS

SEC. 3101. As used in this title—

(a) "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 4101 of this Act: *Provided, however*, That, with respect to a corporation under part B of this title, all directors of the corporation shall be citizens of the United States: *Provided further*, That, in the case of a corporation, partnership, or association operating a vessel on the Great Lakes, or on bays, sounds, rivers, harbors, or inland lakes of the United States, the amount of interest required to be owned by a citizen of the United States shall be not less than 75 per centum.

(b) "Construction" includes outfitting and equipping.

(c) "Foreign commerce" or "foreign trade" means commerce or trade between the United States, its territories or possessions, or the District of Columbia, or the Commonwealth of Puerto Rico, and a foreign country.

(d) "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 the Commonwealth of Puerto Rico, or of any foreign country.

## APPLICATIONS FOR SUBSIDY FOR CONSTRUCTION, RECONSTRUCTION, OR RECONDITIONING

SEC. 3102. (a) Any citizen of the United States may make application to the Secretary for a construction-differential subsidy to aid in the construction of a new vessel to be used in the foreign commerce of the United States. No such application shall be approved by the Secretary unless he determines that (1) the plans and specifications call for a new vessel which will meet the requirements of the foreign commerce of the United States, will aid in the promotion and development of such commerce, and be suitable for use by the United States for national defense or military purposes in time of war or national emergency; (2) the applicant possesses the ability, experience, financial resources, and other qualifications necessary to enable it to operate and maintain the proposed new vessel; and (3) the granting of the aid applied for is reasonably calculated to replace wornout or obsolete tonnage with new and modern ships, or otherwise to carry out effectively the purposes and policy of this Act. The contract of sale, and the mortgage given to secure the payment of the unpaid balance of the purchase price, shall not restrict the lawful or proper use or operation of the vessel except to the extent expressly required by law.

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

(c) Any citizen of the United States may make application to the Secretary for a construction-differential subsidy to aid in reconstructing or reconditioning any vessel that is to be used in the foreign commerce of the United States. If the Secretary, in the exercise of his discretion, shall determine that the granting of the financial aid applied for is reasonably calculated to carry out effectively the purposes and policy of this Act, the Secretary may approve such application and enter into a contract or contracts with the applicant therefor providing for the payment by the United States of a construction-differential subsidy that is to be ascertained, determined, controlled, granted, and paid, subject to all the applicable conditions and limitations of this part and under such further conditions and limitations as may be prescribed in the rules and regulations the Secretary has adopted as provided in section 2205 of this Act; but the financial aid authorized by this subsection shall be extended to reconstruction or reconditioning only in exceptional cases and after a thorough study and a formal determination by the Secretary that the proposed reconstruction or reconditioning is consistent with the purposes and policy of this Act.

## CONSTRUCTION OF VESSELS; BIDS; AMOUNT OF SUBSIDY

SEC. 3103. (a) If the Secretary of the Navy certifies his approval under section 3102(b) of this Act, and the Secretary of Commerce approves the application, the Secretary of Commerce may secure, on behalf of the applicant, bids for the construction of the proposed vessel according to the approved plans and specifications. If the bid of the shipbuilder who is the lowest responsible bidder is determined by the Secretary of Commerce to be fair and reasonable, the Secretary may approve such bid, and if such approved bid is accepted by the applicant, the Secretary is authorized to enter into a contract with the successful bidder for the construction of the proposed vessel, and for the payment by the Secretary to the shipbuilder, on terms to be agreed upon in the contract, of the contract price of the vessel, out of the construction fund referred to in section 4213 of this Act, or out of other available funds. Concurrently with entering into such contract with the shipbuilder, the Secretary is authorized to enter into a contract with the applicant for the purchase by the applicant of such vessel upon its completion, at a price corresponding to the estimated cost, as determined by the Secretary pursuant to the provisions of this title, of building such vessel in a foreign shipyard.

(b) The amount of the reduction in selling price which is herein termed "construction-differential subsidy" may equal, but not exceed, the excess of the bid of the shipbuilder constructing the proposed vessel (excluding the cost of any features incorporated in the vessel for national defense uses, which shall be paid by the Secretary in addition to the subsidy), over the fair and reasonable estimate

of cost, as determined by the Secretary, of the construction of the proposed vessel if it were constructed under similar plans and specifications (excluding national defense features as above provided) in a foreign shipbuilding center which is deemed by the Secretary to furnish a fair and representative example for the determination of the estimated foreign cost of construction of vessels of the type proposed to be constructed. The construction differential approved and paid by the Secretary shall not exceed 55 per centum of the construction cost of the vessel, except that in the case of reconstruction or reconditioning of a passenger vessel having the tonnage, speed, passenger accommodations, and other characteristics set forth in section 3104 of this Act, the construction differential approved and paid shall not exceed 60 per centum of the reconstruction or reconditioning cost (excluding the cost of national defense features as above provided): *Provided, however,* That after June 30, 1966, the construction differential approved by the Secretary shall not exceed in the case of the construction, reconstruction or reconditioning of any vessel, 50 per centum of such cost. When the Secretary finds that the construction differential in any case exceeds the foregoing applicable percentage of such cost, the Secretary may negotiate and contract on behalf of the applicant to construct, reconstruct, or recondition such vessel in a domestic shipyard at a cost which will reduce the construction differential to such applicable percentage or less. In the event that the Secretary has reason to believe that the bidding in any instance is collusive, he shall report all of the evidence on which he acted (1) to the Attorney General of the United States, and (2) to the President of the Senate and to the Speaker of the House of Representatives if the Congress shall be in session or if the Congress shall not be in session, then to the Secretary of the Senate and the Clerk of the House, respectively.

(c) In such contract between the applicant and the Secretary, the applicant shall be required to make cash payments to the Secretary of not less than 25 per centum of the price at which the vessel is sold to the applicant. The cash payments shall be made at the time and in the same proportion as provided for the payments on account of the construction cost in the contract between the shipbuilder and the Secretary. The applicant shall pay, not less frequently than annually, interest at the rate of  $3\frac{1}{2}$  per centum per annum on those portions of the Secretary's payments as made to the shipbuilder which are chargeable to the applicant's purchase price of the vessel (after deduction of the applicant's cash payments). Except as otherwise provided in section 6109 of this Act, the balance of such purchase price shall be paid by the applicant within twenty-five years after delivery of the vessel and in not to exceed twenty-five equal annual installments, the first of which shall be payable one year after the delivery of the vessel by the Secretary to the applicant. Interest at the rate of  $3\frac{1}{2}$  per centum per annum shall be paid on all such installments of the purchase price remaining unpaid.

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

(e) The Secretary of Commerce, with the advice of and in coordination with the Secretary of the Navy, shall at least once each year, as required for purposes of this Act, survey the existing privately owned shipyards capable of merchant ship construction, or review available data on such shipyards if deemed adequate, to determine whether their capabilities for merchant ship construction, including facilities and skilled personnel, provide an adequate mobilization base at strategic points for purposes of national defense and national emergency. The Secretary of Commerce, in connection with ship construction, reconstruction, reconditioning, or remodeling under parts A and C of this title, upon a basis of a finding that the award of the proposed construction, reconstruction, reconditioning, or remodeling work will remedy an existing or impending inadequacy in such mobilization base as to the capabilities and capacities of a shipyard or shipyards at a strategic point, and after taking into consideration the benefits accruing from standardized construction, the conditions of unemploy-

ment, and the needs and reasonable requirements of all shipyards, may allocate such construction, reconstruction, reconditioning, or remodeling to such yard or yards in such manner as may be determined to be fair, just, and reasonable to all sections of the country, subject to the provisions of this subsection. In the allocation of construction work to such yards as herein provided, the Secretary may, after first obtaining competitive bids for such work in compliance with the provisions of this title, negotiate with the bidders and with other shipbuilders concerning the terms and conditions of any contract for such work, and is authorized to enter into such contract at a price deemed by the Secretary to be fair and reasonable. Any contract entered into by the Secretary under the provisions of this subsection shall be subject to all of the terms and conditions of this title, except those pertaining to the awarding of contracts to the lowest bidder which are inconsistent with the provisions of this subsection. In the event that a contract is made providing for a price in excess of the lowest responsible bid which otherwise would be accepted, such excess shall be paid by the Secretary as a part of the cost of national defense, and shall not be considered as a part of the construction-differential subsidy. In the event that a contract is made providing for a price lower than the lowest responsible bid which otherwise would be accepted, the construction-differential subsidy shall be computed on the contract price in lieu of such bid. If, as a result of allocation under this subsection, the applicant incurs expenses for inspection and supervision of the vessel during construction and for the delivery voyage of the vessel in excess of the estimated expenses for the same services that he would have incurred if the vessel had been constructed by the lowest responsible bidder the Secretary (with respect to construction under this part, except section 3110) shall reimburse the applicant for such excess, less one-half of any gross income the applicant receives that is allocable to the delivery voyage minus one-half of the extra expenses incurred to produce such gross income, and such reimbursement shall not be considered part of the construction-differential subsidy: *Provided*, That no interest shall be paid on any refund authorized under this title. If the vessel is constructed under section 3110 the Secretary shall reduce the price of the vessel by such excess, less one-half of any gross income (minus one-half of the extra expenses incurred to produce such gross income) the applicant receives that is allocable to the delivery voyage. In the case of a vessel that is not to receive operating-differential subsidy, the delivery voyage shall be deemed terminated at the port where the vessel begins loading. In the case of a vessel that is to receive operating-differential subsidy, the delivery voyage shall be deemed terminated when the vessel begins loading at a United States port on any essential services of the operator. In either case, however, the vessel owner shall not be compensated for excess vessel delivery costs in an amount greater than the expenses that would have been incurred in delivering the vessel from the shipyard at which it was built to the shipyard of the lowest responsible bidder. If as a result of such allocation, the expenses the applicant incurs with respect to such services are less than the expenses he would have incurred for such services if the vessel had been constructed by the lowest responsible bidder, the applicant shall pay to the Secretary an amount equal to such reduction and, if the vessel was built with the aid of construction-differential subsidy, such payment shall not be considered a reduction of the construction-differential subsidy.

(f) Upon the agreement of an applicant under this part to purchase any vessel acquired by the Secretary under the provisions of section 4202 of this Act, the Secretary is authorized to sell such vessel to the applicant for the fair and reasonable value thereof, but at not less than the cost thereof to the Secretary, less depreciation at the rate of 4 per centum per annum from the date of completion, except as otherwise provided in section 6109 of this Act, excluding the cost of national defense features added by the Secretary, less the equivalent of any applicable construction differential subsidy as provided by subsection (b), such sale to be in accordance with all the provisions of this part. Such vessel shall thereupon be eligible for an operating differential subsidy under part II of this title, notwithstanding the provisions of section 3201(a)(1) and section 3210(1), or any other provision of law.

DOCUMENTATION OF COMPLETED VESSELS; DELIVERY TO APPLICANT; FIRST-PREFERRED MORTGAGE TO SECURE DEFERRED PAYMENTS

SEC. 3104. Upon completion of the construction of any vessel in respect to which a construction-differential subsidy is to be allowed under this part and its delivery by the shipbuilder to the Secretary, the vessel shall be documented under the laws of the United States, and concurrently therewith, or as soon thereafter

as practicable, the vessel shall be delivered with a bill of sale to the applicant with warranty against liens, pursuant to the contract of purchase between the applicant and the Secretary. The vessel shall remain documented under the laws of the United States for not less than twenty-five years, except as otherwise provided in section 6109 of this Act, or so long as there remains due the United States any principal or interest on account of the purchase price, whichever is the longer period. At the time of delivery of the vessel the applicant shall execute and deliver a first-preferred mortgage to the United States to secure payment of any sums due from the applicant in respect to said vessel: *Provided*, That, notwithstanding any other provisions of law, the payment of any sums due in respect to a passenger vessel purchased under this part, which is delivered subsequent to March 8, 1946, and which (1) is of not less than ten thousand gross tons, (2) has a designed speed approved by the Secretary but not less than eighteen knots, (3) has accommodations for not less than two hundred passengers, and (4) is approved by the Secretary of Defense as being desirable for national defense purposes, may, with the approval of the Secretary of Commerce, be secured only by a first-preferred mortgage on said vessel. With the approval of the Secretary such preferred mortgage may provide that the sole recourse against the purchaser of such a passenger vessel under such mortgage, and any of the notes secured thereby, shall be limited to repossession of the vessel by the United States and the assignment of insurance claims, if the purchaser shall have complied with all provisions of the mortgage other than those relating to the payment of principal and interest when due, and the obligation of the purchaser shall be satisfied and discharged by the surrender of the vessel, and all right, title, and interest therein to the United States. Such vessel upon surrender shall be (1) free and clear of all liens and encumbrances whatsoever, except the lien of the preferred mortgage, (2) in class, and (3) in as good order and condition ordinary wear and tear excepted, as when acquired by the purchaser, except that any deficiencies with respect to freedom from encumbrances, condition, and class, may, to the extent covered by valid policies of insurance, be satisfied by the assignment to the United States of claims of the purchaser under such policies of insurance. The purchaser shall also comply with all the provisions of section 4211 of this Act.

#### FINANCING CONSTRUCTION BY APPLICANT RATHER THAN PURCHASE FROM SECRETARY

SEC. 3105. Where an eligible applicant under the terms of this part desires to finance the construction of a proposed vessel according to approved plans and specifications rather than purchase the same vessel from the Secretary as hereinabove authorized, the Secretary may permit the applicant to obtain and submit to him competitive bids from domestic shipyards for such work. If the Secretary considers the bid of the shipyard in which the applicant desires to have the vessel built fair and reasonable, he may approve such bid and become a party to the contract or contracts or other arrangements for the construction of such proposed vessel and may agree to pay a construction-differential subsidy in an amount determined by the Secretary in accordance with section 3103 of this Act, and for the cost of national-defense features. The construction-differential subsidy and payments for national-defense features shall be based on the lowest responsible domestic bid. No construction-differential subsidy, as provided in this section, shall be paid unless the said contract or contracts or other arrangements contain such provisions as are provided in this part to protect the interests of the United States as the Secretary deems necessary. Such vessel shall be documented under the laws of the United States as provided in section 3104 of this Act. The contract of sale, and the mortgage given to secure the payment of the unpaid balance of the purchase price, shall not restrict the lawful or proper use or operation of the vessel, except to the extent expressly required by law.

#### ELIGIBLE SHIPYARDS; MATERIALS; CONDITIONS OF CONTRACTS

SEC. 3106. (a) All construction in respect of which a construction-differential subsidy is allowed under this part shall be performed in a shipyard within the continental limits of the United States or within the States of Alaska or Hawaii as the result of competitive bidding, after due advertisement, with the right reserved in the applicant to reject, and in the Secretary to disapprove, any or all bids. In all such construction the shipbuilder, subcontractors, materialmen, or suppliers shall use, so far as practicable, only articles, materials, and supplies of the growth, production, or manufacture of the United States as defined in

paragraph K of section 401 of the Tariff Act of 1930 (19 U.S.C. 1401(k)). No shipbuilder shall be deemed a responsible bidder unless he possesses the ability, experience, financial resources, equipment, and other qualifications necessary properly to perform the proposed contract. Each bid submitted to the Secretary shall be accompanied by all detailed estimates upon which it is based. The Secretary may require that the bids of any subcontractors, or other pertinent data, accompany such bid. All such bids and data relating thereto shall be kept on file, until disposed of as provided by law.

(b) No contract shall be made for the construction of any vessel under this title unless the shipbuilder shall agree (1) to make a report under oath to the Secretary upon completion of the contract, setting forth in the form prescribed by the Secretary the total contract price, the total cost of performing the contract, the amount of the shipbuilder's overhead charge to such cost, the net profits and the percentage such net profit bears to the contract price, and such other information as the Secretary shall prescribe; (2) to pay to the Secretary, except as otherwise provided in section 102 of the Renegotiation Act of 1951, as amended (50 U.S.C. App. 1212(e)), profit determined by the Secretary as provided in subsection (c) of this section, in excess of 10 per centum of the total contract prices of such contracts within the scope of this section as are completed by the particular contracting party within the income taxable year, such amount to become the property of the United States, but the surety under such contracts shall not be liable for the payment of such excess profit: *Provided*, That if there is a net loss on all such contracts or subcontracts completed by the particular contractor or subcontractor within any income taxable year, such net loss shall be allowed as a credit in determining the excess profit, if any, for the next succeeding income taxable year: *Provided further*, That if such amount is not voluntarily paid, the Secretary shall determine the amount of such excess profit and collect it in the same manner that other debts due the United States may be collected; (3) to make no subdivisions of any contract or subcontract for the same article or articles for the purpose of evading the provisions of this title, and any subdivision of any contract or subcontract involving an amount in excess of \$11,000 shall be subject to the conditions herein prescribed; (4) that the books, files, and all other records of the shipbuilder, or any holding, subsidiary, affiliated, or associated company, shall at all times be subject to inspection and audit by any person designated by the Secretary, and the premises, including ships under construction, of the shipbuilder, shall at all reasonable times be subject to inspection by the agents of the Secretary; and (5) to make no subcontract unless the subcontractor agrees to the foregoing conditions.

(c) The method of determining the shipbuilder's profit shall be prescribed by the Secretary: *Provided*, That in computing such profits no salary of more than \$25,000 per year to any individual shall be considered as a part of the cost of building such ship, and the Secretary shall scrutinize construction costs and overhead expenses to determine that they are fair, just, and not in excess of a reasonable market price for commodities or goods or services purchased or charged.

(d) The Secretary of Commerce may, with the consent of the Secretary of the Treasury, utilize the services of Treasury Department employees engaged in similar functions in the determination or collection of shipbuilder profits in naval construction.

(e) If the shipbuilder whose bid has been approved by the Secretary and accepted by the applicant, as provided in section 3103 of this Act, shall refuse to agree to any of the requirements of this section, the Secretary is authorized to rescind his approval of such bid and to advertise for new bids, or, in his discretion, the Secretary may have the vessel or vessels in question constructed in a United States Navy yard.

(f) This section shall not apply to contracts or subcontracts for scientific equipment used for communication and navigation as may be so designated by the Secretary, nor to contracts or other arrangements entered into under this part by the terms of which the United States undertakes to pay only for national defense features.

#### OPERATION OF SUBSIDIZED VESSELS LIMITED TO FOREIGN TRADE; EXCEPTIONS

SEC. 3107. Every owner of a vessel for which a construction-differential subsidy has been paid shall agree that the vessel shall be operated exclusively in foreign trade, or on a round-the-world voyage, or on a round voyage from the west coast of the United States to a European port or ports which includes intercoastal ports of the United States, or a round voyage from the Atlantic coast of the United States to the Orient which includes intercoastal ports of the United States, or on

a voyage in foreign trade on which the vessel may stop at the State of Hawaii, or an island possession or island territory of the United States, or the Commonwealth of Puerto Rico, and that if the vessel is operated in the domestic trade on any of the above-enumerated services, he will pay annually to the Secretary, except as otherwise provided in section 6109 of this Act, that proportion of one twenty-fifth of the construction-differential subsidy paid for such vessel as the gross revenue derived from the domestic trade bears to the gross revenue derived from the entire voyages completed during the preceding year. The Secretary may consent in writing to the temporary transfer of such vessel to service other than the service covered by such agreement for periods not exceeding six months in any year, whenever the Secretary may determine that such transfer is necessary or appropriate to carry out the purposes of this title and part B of title IV of this Act. Such consent shall be conditioned upon the agreement by the owner to pay to the Secretary, upon such terms and conditions as he may prescribe, an amount which bears the same proportion to the construction-differential subsidy paid by the Secretary as such temporary period bears to the entire economic life of the vessel. No operating-differential subsidy shall be paid for the operation of such vessel for such temporary period.

CONSTRUCTION OF NEW VESSELS TO REPLACE OBSOLETE VESSELS; PURCHASE OF OBSOLETE VESSELS BY SECRETARY

SEC. 3108. If a contract is made by the Secretary under authority of this part for the construction and sale of a new vessel to replace a vessel then operated in foreign trade or domestic trade, which in the judgment of the Secretary should be replaced because it is obsolete or inadequate for successful operation in such trade the Secretary is authorized, in his discretion, to buy such replaced vessel from the owner at a fair and reasonable valuation, which valuation shall not exceed the cost to the owner or any former owner plus the actual cost previously expended thereon for reconditioning, and less a reasonable and proper depreciation, based upon not more than a twenty-five-year life of the vessel, except as otherwise provided in section 6109 of this Act, and apply the purchase price agreed upon to that portion of the construction cost of such new vessel which is to be borne by the purchaser thereof: *Provided*, That the owner of such replaced vessel shall execute a bond, with one or more approved sureties, conditioned upon indemnifying the United States from all loss resulting from any existing lien against such vessel: *And provided further*, That such vessel has been documented under the laws of the United States for a period of at least ten years prior to the date of its purchase by the United States.

SCRAPPING OR SALE OF CERTAIN VESSELS

SEC. 3109. If the Secretary shall determine that any vessel heretofore or hereafter acquired by the Department of Commerce is of insufficient value for commercial or military operation to warrant its further preservation, the Secretary is authorized (1) to scrap said vessel, or (2) to sell such vessel for cash, after appraisal and due advertisement, and upon competitive sealed bids, either to citizens of the United States or to aliens: *Provided*, That the purchaser thereof shall enter into an undertaking with sureties approved by the Secretary that such vessel shall not be operated in the foreign commerce of the United States at any time within the period of ten years after the date of the sale, in competition with any other vessel owned by a citizen of the United States and registered under the laws thereof.

CONSTRUCTION OF VESSELS WITHOUT CONSTRUCTION-DIFFERENTIAL SUBSIDY; APPLICATIONS FOR AID

SEC. 3110. (a) Any citizen of the United States may make application to the Secretary for aid in the construction of a new vessel to be operated in the foreign or domestic trade (excepting vessels engaged solely in the transportation of property on inland rivers and canals exclusively). If such application is approved by the Secretary, the vessel may be constructed under the terms and conditions of this part, but no construction-differential subsidy shall be allowed. The Secretary shall pay for the cost of national defense features incorporated in such vessel. In case the vessel is designed to be of not less than three thousand five hundred gross tons and to be capable of sustained speed of not less than fourteen knots, the applicant shall be required to pay the Secretary not less than 12½ per centum of the cost of such vessel, and in the case of any other vessel the applicant shall be

required to pay the Secretary not less than 25 per centum of the cost of such vessel (excluding from such cost, in either case, the cost of national defense features); and the balance of such purchase price shall be paid by the applicant within twenty-five years in not to exceed twenty-five equal annual installments, except as otherwise provided in section 6109 of this Act, with interest at 3½ per centum per annum, secured by a preferred mortgage on the vessel sold and otherwise secured as the Secretary may determine: *Provided*, That, notwithstanding any other provisions of law, the balance of the purchase price of a passenger vessel constructed under this section which is delivered subsequent to March 8, 1946, and which has the tonnage, speed, passenger accommodations, and other characteristics set forth in section 3104 of this Act, may, with the approval of the Secretary, be secured as provided in such section, and the obligation of the purchaser of such a vessel shall be satisfied and discharged as provided in such section.

(b) Functions with respect to direct loans to aid construction of fishing vessels, transferred to the Department of the Interior pursuant to the Fish and Wildlife Act of 1956, shall continue to be vested in that Department.

#### ACQUISITION OF OBSOLETE VESSELS

SEC. 3111. (a) As used in this section—

(1) "Obsolete vessel" means a vessel which (A) is of not less than one thousand three hundred and fifty gross tons, (B) is not less than seventeen years old and, in the judgment of the Secretary, is obsolete or inadequate for successful operation in the domestic or foreign trade of the United States, and (C) is owned by a citizen or citizens of the United States and has been owned by such citizen or citizens for at least three years immediately prior to the date of acquisition hereunder.

(2) "New vessel" means a vessel which (A) is constructed under the provisions of this title, and is acquired within two years from the date of completion of such vessel, or is purchased under section 3313, by the person turning in an obsolete vessel under this section, or (B) is hereafter constructed in a domestic shipyard on private account and not under the provisions of this title, and documented under the laws of the United States.

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

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

(d) The allowance for an obsolete vessel shall be the fair and reasonable value of such vessel as determined by the Secretary. In making such determination the Secretary shall consider: (1) the scrap value of the obsolete vessel both in American and foreign markets, (2) the depreciated value based on a twenty- or twenty-five-year life, whichever is applicable to the obsolete vessel pursuant to the provisions of section 6109 of this Act, and (3) the market value thereof for

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

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

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

(g) Any vessel (1) acquired by the Secretary as an obsolete vessel under this section, or (2) presently in the laid-up fleet, which is or becomes twenty-five years old or more (except as otherwise provided in section 6109 of this Act), shall in no case be used for commercial operation, except as otherwise provided in this title for the employment of the Secretary's vessels in steamship lines or trade routes exclusively serving the foreign trade of the United States: *Provided, however*, That any such vessel may be used during any period in which vessels may be requisitioned under section 4203 of this Act.

(h) In order to improve the type and suitability of vessels operating in the domestic and foreign commerce of the United States, and to further the policies stated in section 2101 of this Act, the Secretary is authorized (subject to the provisions of this subsection) to acquire at any time before July 5, 1970, vessels of one thousand five hundred gross tons or over which were constructed or contracted for by the United States shipyards before September 3, 1945, in exchange for more modern or efficient war-built vessels (which are defined for purposes of this subsection as ocean-going vessels of one thousand five hundred gross tons or over which were constructed or contracted for by the United States shipyards during the period beginning September 3, 1939, and ending September 2, 1945) owned by the United States. Such exchanges shall be subject to the following conditions:

(1) The traded-in vessel shall have been owned by a citizen or citizens of the United States, documented under the laws of the United States, and shall not have been operated with operating-differential subsidy under part B of this title of this Act by the applicant or any affiliate of the applicant for at least three years immediately prior to the date of the exchange.

(2) The fair and reasonable value of the traded-in and traded-out vessels shall be determined, as of the date of the exchange, pursuant to subsection (d) of this section. The value of a vessel when traded out shall be calculated in the same manner as its value was determined when it was traded in, except that vessels traded in prior to October 1, 1960, shall be valued on the basis yielding the highest fair return to the Government commensurate with the purposes of this subsection. In each exchange of vessels under this subsection, the value of the vessel traded in unless based on scrap value, and the value of the vessel traded out shall be calculated in the same manner.

(3) In determining said fair and reasonable value the Secretary shall consider the cost of placing the vessels in class with respect to hull and machinery, and, with respect to any traded-out vessels of the military type, the cost of reconverting and restoring such vessels for normal operation in commercial service. The Secretary shall consult with and obtain the approval of the Defense Department before any vessel of a military type is traded out under the provisions of this subsection. In determining the value of the traded-in vessel or vessels the Secretary may take into consideration the cost to the owner of compliance with subparagraph (8), clauses (A) and (B), of this subsection.

(4) The value of the traded-out vessel which is in excess of the value of the traded-in vessel or vessels shall be paid in cash at the time of the exchange. No payments shall be made by the United States to the owner of a traded-in vessel in connection with any exchange under this subsection.

(5) A contract shall be entered into under this subsection by any person acquiring a traded-out vessel, which shall provide (A) that in the event the United States shall, through purchase or requisition or otherwise, reacquire ownership of said vessel, at any time within twenty years of the date of construction thereof, the owner shall be paid therefor the value thereof, but in no event shall such payment exceed the fair and reasonable exchange value determined under this subsection (together with the actual cost of capital improvements thereon) depreciated to the date of such purchase or acquisition, or the fair and reasonable scrap value of such vessel, as determined by the Secretary, whichever is the greater; (B) that such determination shall be final; (C) that in computing the depreciated exchange value of such vessel, the depreciation shall be computed on the vessel on the schedule adopted or accepted by the Secretary of the Treasury for Federal income tax purposes as applicable to such vessel; (D) that such vessel shall remain documented under the laws of the United States for a period of at least five years after the date of the exchange, or twenty years from the date of its construction, whichever is the later date; and (E) that the foregoing conditions respecting requisition or acquisition of ownership by the United States and documentation shall run with the title to such vessel and be binding on all owners thereof. Any other conditions respecting purchase or requisition by the United States heretofore applicable by statute to any traded-out vessel are hereby made inapplicable to such vessel.

(6) Neither subsection (e) of this section, nor the nontaxable exchange provisions of the Internal Revenue Code, shall apply to the exchange of vessels under this subsection.

(7) Any repairs or reconversion necessary at the time of the exchange to place the traded-out vessel in class and prepare it for commercial operation shall be performed in a shipyard within the continental United States.

(8) The owner of the traded-in vessel, at his own expense and in a manner satisfactory to the Secretary, shall (A) effect deactivation and preparation of the traded-in vessel and its equipment for storage or layup; (B) make delivery of such vessel and its equipment at a location designated by the Secretary; and (C) execute a bond, with one or more approved sureties, conditioned upon indemnifying the United States from all loss resulting from any lien against such vessel existing at the time of the exchange.

(9) Except where traded out for use exclusively in trade and commerce on the Great Lakes, including the Saint Lawrence River and Gulf, tanker vessels may be traded out under the provisions of this subsection only for major conversions into dry cargo carriers or liquid bulk carriers, including natural gas carriers but excluding bulk petroleum carriers.

(1) Any vessel heretofore or hereafter acquired under this section, or otherwise acquired by the Secretary under any other authority shall be placed in the national defense reserve fleet referred to in section 4215 of this Act, and shall not be traded out or sold from such reserve fleet, except as provided for in subsections (g) and (h) of this section. This limitation shall not affect the rights of the Secretary to dispose of a vessel as provided in other sections of this part or in part C of this title or in part E of title IV of this Act.

(2) No sale of a vessel by the Secretary shall be completed until its ballast and equipment shall have been inventoried and their value taken into consideration by the Secretary in determining the selling price.

#### CONSTRUCTION RESERVE FUNDS; TAXATION

SEC. 3112. (a) For the purposes of this section—

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

(2) "New vessel" means any vessel (A) documented or agreed with the Secretary to be documented under the laws of the United States; (B) constructed in the United States after December 31, 1939, or the construction of which has been financed under part A or C of this title, or the construction of which has been aided by a mortgage insured under part E of title IV of this Act; and (C) either (i) of such type, size, and speed as the Secretary shall determine to be suitable for use on the high seas or Great Lakes in carrying

out the purposes of this Act, but not of less than two thousand gross tons or of less speed than twelve knots, unless the Secretary shall determine and certify in each case that a vessel of a specified lesser tonnage or speed is desirable for use by the United States in case of war or national emergency, or

(ii) constructed to replace a vessel or vessels requisitioned or purchased by the United States.

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

(4) A vessel shall be considered as constructed or acquired by the taxpayer if constructed or acquired by a corporation at a time when the taxpayer owns at least 95 per centum of the total number of shares of each class of stock of the corporation.

(5) The terms used in this section shall have the same meaning as in subtitle A of the Internal Revenue Code.

(b) For the purposes of promoting the construction, reconstruction, reconditioning, or acquisition of vessels, or for other purposes authorized in this section, necessary to carrying out the policy stated in section 2101 of this Act, any citizen of the United States who is operating a vessel in the foreign or domestic commerce of the United States or in the fisheries or owns in whole or in part a vessel being so operated, or who, at the time of purchase or requisition of the vessel by the Government, was operating a vessel so engaged or owned in whole or in part a vessel being so operated or had acquired or was having constructed a vessel for the purpose of operation in such commerce or in the fisheries, may establish a construction reserve fund, for the construction, reconstruction, reconditioning, or acquisition of new vessels, or for other purposes authorized in this section, to be composed of deposits of proceeds from sales of vessels, indemnities on account of losses of vessels, earnings from the operation of vessels documented under the laws of the United States and from services incident thereto, and receipts, in the form of interest or otherwise, with respect to amounts previously deposited. Such construction reserve fund shall be established, maintained, expended, and used in accordance with the provisions of this section and rules or regulations to be prescribed jointly by the Secretary of Commerce and the Secretary of the Treasury.

(c)(1) In the case of the sale or actual or constructive total loss of a vessel, if the taxpayer deposits an amount equal to the net proceeds of the sale or to the net indemnity with respect to the loss in a construction reserve fund established under subsection (b), then—

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

(B) if the taxpayer so elects, in accordance with a form of election to be prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, prior to the expiration of sixty days after receipt of payment for a vessel purchased or requisitioned by the United States, or receipt of indemnity from the United States on account of its loss, and such payment or indemnity was received subsequent to the end of the taxable year in which the vessel was purchased, requisitioned or lost, no gain shall be recognized to the taxpayer in respect of such sale or indemnification in the computation of net income for the purchases of Federal income or excess profits taxes. If an election is made under subdivision (1)(B) of this subsection and if computation or recomputation in accordance with this subsection is otherwise allowable but is prevented, on the date of making such election or within six months thereafter, by any statute of limitation, such computation or recomputation nevertheless shall be made notwithstanding such statute if a claim therefor is filed within six months after the date of making such election.

(2) For the purposes of this subsection, (A) no amount shall be considered as deposited in a construction reserve fund unless it is deposited within sixty days after it is received by the taxpayer, and (B) "net proceeds" and "net indemnity" mean the sum of (i) the adjusted basis of the vessel and (ii) the amount of gain which would be recognized to the taxpayer without regard to this subsection.

(d) The basis for determining gain or loss and for depreciation, for the purposes of Federal income or excess profits taxes, of any new vessel constructed, recon-

structed, reconditioned, or acquired by the taxpayer, or with respect to which purchase-money indebtedness is liquidated, as provided in subsection (g), in whole or in part out of the construction reserve fund, shall be reduced by that portion of the deposits in the fund expended in the construction, reconstruction, reconditioning, acquisition, or liquidation of purchase-money indebtedness of the new vessel which represents gain not recognized for tax purposes under subsection (c).

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

(f) With respect to any taxable year, amounts on deposit on the last day of such year in a construction reserve fund in accordance with this section and with respect to which all the requirements of subsection (g) have been satisfied, to the extent that such requirements are applicable as of the last day of said taxable year, shall not constitute an accumulation of earnings or profits within the meaning of sections 531-537 of the Internal Revenue Code.

(g) The provisions of subsections (c) and (f) shall apply to any deposit in the construction reserve fund only to the extent that such deposit is expended or obligated for expenditure, in accordance with rules and regulations to be prescribed jointly by the Secretary of Commerce and the Secretary of the Treasury—

(1) under a contract for the construction or acquisition of a new vessel (or in the discretion of the Secretary, for a part interest therein), or, with the approval of the Secretary, for the reconstruction or reconditioning of a new vessel, entered into within three years from the date of such deposit, only if under such rules and regulations—

(A) within such period not less than 12½ per centum of the construction or contract price of the vessel is paid or irrevocably committed on account thereof and the plans and specifications therefor are approved by the Secretary to the extent by him deemed necessary; and

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

(2) for the liquidation of existing or subsequently incurred purchase-money indebtedness to persons other than a parent company of, or a company affiliated or associated with, the mortgagor on a new vessel within three years from the date of such deposit.

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

(i) Any such deposited gain or portion thereof which is not so expended or obligated within the period provided, or which is otherwise withdrawn before the expiration of such period, or with respect to which the construction has not progressed to the extent of 5 per centum of completion within the period provided, or with respect to which the Secretary of Commerce finds and certifies to the Secretary of the Treasury that, for causes within the control of the taxpayer, the entire construction is not completed with reasonable dispatch, if otherwise taxable income under the law applicable to the taxable year in which such gain was realized, shall be included in the gross income for such taxable year.

(j) Notwithstanding any other provision of law, any deficiency in tax for any taxable year resulting from the inclusion of any amount in gross income as provided by subsection (i) may be assessed or a proceeding in court for the collection

thereof may be begun without assessment, at any time: *Provided, however,* That interest on any such deficiency shall not begin until the date the deposited gain or portion thereof in question is required under subsection (i) to be included in gross income.

#### PART B—OPERATING-DIFFERENTIAL SUBSIDY

##### APPLICATION FOR OPERATING-DIFFERENTIAL SUBSIDY

SEC. 3201. (a) The Secretary is authorized and directed to consider the application of any citizen of the United States for financial aid in the operation of a vessel or vessels, which are to be used in an essential service in the foreign commerce of the United States or in such service and in cruises, authorized under section 3212 of this Act. No such application shall be approved by the Secretary unless he determines that (1) the operation of such vessel or vessels in such service, route, or line is required to meet foreign-flag competition and to promote the foreign commerce of the United States, except to the extent such vessels are to be operated on cruises authorized under section 3212 of this Act; (2) the applicant owns, or can and will build or purchase, a vessel or vessels, eligible for subsidy pursuant to the provisions of section 3210 of this Act, and of the size, type, speed and number, and with the proper equipment required to enable him to operate and maintain the service, route, or line, in such manner as may be necessary to meet competitive conditions, and to promote foreign commerce; (3) the applicant possesses the ability, experience, financial resources, and other qualifications necessary to enable him to conduct the proposed operations of the vessel or vessels as to meet competitive conditions and promote foreign commerce; (4) the granting of the aid applied for is necessary to place the proposed operations of the vessel or vessels on a parity with those of foreign competitors, and is reasonably calculated to carry out effectively the purposes and policy of this Act. To the extent the application covers cruises, as authorized under section 3212 of this Act, the Secretary may make the portion of this last determination relating to parity on the basis that any foreign-flag cruise from the United States competes with any American-flag cruise from the United States.

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

##### SUBSIDY TO MEET FOREIGN-FLAG COMPETITION

SEC. 3202. Except with respect to cruises authorized under section 3212 of this Act, no contract for an operating-differential subsidy shall be made by the Secretary for the operation of a vessel or vessels to meet foreign competition, except direct foreign-flag competition, until and unless the Secretary, after a full and complete investigation and hearing, shall determine that an operating-differential subsidy is necessary to meet competition of foreign-flag ships.

##### CONTRACTS FOR PAYMENTS OF SUBSIDY

SEC. 3203. (a) If the Secretary approves the application, he may enter into a contract with the applicant for the payment of an operating-differential subsidy determined in accordance with the provisions of subsection (b) of this section, for the operation of such vessel or vessels in such service, route, or line and in cruises authorized under section 3212 of this Act for a period not exceeding twenty years, and subject to such reasonable terms and conditions, consistent with this Act, as the Secretary shall require to effectuate the purposes and policy of this Act, including a performance bond with approved sureties, if such bond is required by the Secretary.

(b) Such contract shall provide that the amount of the operating-differential subsidy for the operation of vessels on a service, route, or line shall not exceed the excess of the fair and reasonable cost of insurance, maintenance, repairs not compensated by insurance, wages and subsistence of officers and crews, and any other items of expense in which the Secretary shall find and determine that the appli-

cant is at a substantial disadvantage in competition with vessels of the foreign country hereinafter referred to, in the operation under United States registry of the vessel or vessels covered by the contract, over the estimated fair and reasonable cost of the same items of expense (after deducting therefrom any estimated increase in such items necessitated by features incorporated pursuant to the provisions of section 3102(b) of this Act) if such vessel or vessels were operated under the registry of a foreign country whose vessels are substantial competitors of the vessel or vessels covered by the contract. For any period during which a vessel cruises as authorized by section 3212 of this Act, operating-differential subsidy shall be computed as though the vessel were operating on the essential service to which the vessel is assigned: *Provided, however,* That if the cruise vessel calls at a port or ports outside of its assigned service, but which is served with passenger vessels (as defined in section 3212 of this Act) by another subsidized operator at an operating-differential subsidy rate for wages lower than the cruise vessel has on its assigned essential service, the operating-differential subsidy rates for each of the subsidizable items for each day (a fraction of a day to count as a day) that the vessel stops at such port shall be at the respective rates applicable to the subsidized operator regularly serving the area.

(c) The amount of such subsidy shall be determined and payable on the basis of a final accounting made as soon as practicable after the end of each year or other period fixed in the contract. The Secretary may provide for in the contract, or otherwise approve, the payment from time to time during any such period of such amounts on account as he deems proper. Such payments on account shall in no case exceed 90 per centum of the amount estimated to have accrued on account of such subsidy, except that, with respect to that part of the subsidy relating to any particular voyage, an additional 5 per centum may be paid to the contractor after such contractor's audit of the voyage account for such voyage has been completed and the Secretary has verified the correctness of the same. Any such payments shall be made only after there has been furnished to the Secretary such security as he deems to be reasonable and necessary to insure refund of any overpayment. No such operating-differential subsidy shall be paid until the contractor shall have furnished evidence satisfactory to the Secretary that the wages prescribed in accordance with subsection 3501(a) of this Act have been paid to the ship's personnel.

#### ADDITIONAL SUBSIDY

SEC. 3204. If in the case of any particular foreign trade route the Secretary of Commerce shall find, after consultation with the Secretary of State, that the subsidy provided for in this part is in any respect inadequate to offset the effect of governmental aid paid to foreign competitors, he may grant such additional subsidy as he determines to be necessary for that purpose.

#### LIMITATION ON SUBSIDIZED OPERATIONS

SEC. 3205. (a) No operating-differential subsidy shall be paid for the operation of any vessel on a voyage on which it engages in coastwise or intercoastal trade: *Provided, however,* That such subsidy may be paid on a round-the-world voyage or a round voyage from the west coast of the United States to a European port or ports or a round voyage from the Atlantic coast to the Orient which includes intercoastal ports of the United States or a voyage in foreign trade on which the vessel may stop at the State of Hawaii, or an island possession or island territory of the United States or the Commonwealth of Puerto Rico, and if the subsidized vessel earns any gross revenue on the carriage of mail, passengers, or cargo by reason of such coastal or intercoastal trade the subsidy payment for the entire voyage shall be reduced by an amount which bears the same ratio to the subsidy otherwise payable as such gross revenue bears to the gross revenue derived from the entire voyage. No vessel operating on the Great Lakes or on the inland waterways of the United States shall be considered for the purposes of this title to be operating in foreign trade.

(b) No operating-differential subsidy shall be paid for the operation of a vessel that is more than twenty-five years of age except (1) as otherwise provided in section 6109 of this Act, or (2) one whose life expectancy has been determined as provided in section 3207(b) of this Act for a period in no case to exceed the life expectancy determined thereunder, unless the Secretary finds that it is to the public interest to grant such financial aid for the operation of such vessel and enters a formal order thereon.

(c) Except as provided in section 3212 of this Act, no contract shall be made under this part with respect to a vessel to be operated on a service, route, or line

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

#### CONDITIONS IN SUBSIDY CONTRACTS

SEC. 3206. Every contract for an operating-differential subsidy under this part shall provide that—

(1) the amount of the future payments to the contractor shall be subject to review and readjustment from time to time, but not more frequently than once a year, at the instance of the Secretary or of the contractor in the following manner: (A) if any such readjustment cannot be reached by mutual agreement, the Secretary, on his own motion or on the application of the contractor, shall, after a proper hearing, determine the facts and make such readjustment in the amount of such future payments as he may determine to be fair and reasonable and in the public interest; (B) the testimony in every such proceeding shall be reduced to writing and filed in the office of the Secretary; and (C) the Secretary's decision shall be based upon and governed by the changes which may have occurred since the date of the said contract, with respect to the items theretofore considered and on which such contract was based, and other conditions affecting shipping, and shall be promulgated in a formal order, which shall be accompanied by a report in writing in which the Secretary shall state his findings of fact;

(2) the compensation to be paid under the contract shall be reduced, under such terms and in such amounts as the Secretary shall determine, for any periods in which the vessel or vessels are laid up;

(3) if the Secretary shall determine that a change in the service, route, or line, which is receiving an operating-differential subsidy under this part, is necessary in the accomplishment of the purposes of this Act, he may make such change upon such readjustment of payments to the contractor as shall be arrived at by the method prescribed in clause (1) of these conditions;

(4) if at any time the contractor receiving an operating-differential subsidy claims that he cannot maintain and operate his vessels on such service, route, or line, with a reasonable profit upon his investment, and applies to the Secretary for a modification or rescission of his contract to maintain such service, route, or line, and the Secretary determines that such claim is proved, the Secretary shall modify or rescind such contract and permit the contractor to withdraw such vessels from such service, route, or line, upon a date fixed by the Secretary, and upon the date of such withdrawal the further payment of the operating-differential subsidy shall cease and the contractor be discharged from any further obligation under such contract;

(5) when at the end of any ten-year period during which an operating-differential subsidy has been paid under a contract or consecutive contracts (such period to be computed from the end of the operator's last completed recapture period regardless of its duration, or from the beginning of subsidized operations if the operator has not previously completed a recapture period), or when prior to the end of such ten-year period subsidized operations shall be finally terminated, if the net profit of the contractor on his subsidized vessels and services incident thereto during such period or time (without regard to capital gains and capital losses), after deduction of depreciation charges based upon a life expectancy of the subsidized vessels determined as provided in section 3207 (b) of this Act, has averaged more than 10 percent per annum upon the contractor's capital investment necessarily employed

in the operation of the subsidized vessels, services, routes, and lines, the contractor shall pay to the United States an amount equal to one-half of such profits in excess of 10 percent per annum as partial or complete reimbursement for operating-differential subsidy payments received by the contractor for such recapture period, but the amount of excessive profit so recaptured shall not in any case exceed the amount of the operating-differential subsidy payments theretofore made to the contractor for such period under such contract or consecutive contracts and the repayment of such reimbursement to the Secretary shall be subject to the provisions of section 3207;

(6) the contractor shall conduct his operations with respect to the vessel's services, routes, and lines, and any cruises authorized under section 3212 of this Act, covered by his contract in the most economical and efficient manner, but with due regard to the wage and manning scales and working conditions prescribed by the Secretary as provided in part E of this title; and

(7) whenever practicable, the operator shall use only articles, materials, and supplies of the growth, production, and manufacture of the United States, as defined in section 3106(a) of this Act, except when it is necessary to purchase supplies and equipment outside the United States to enable such vessel to continue and complete her voyage, and the operator shall perform repairs to subsidize vessels within the continental limits of the United States, or within the States of Alaska or Hawaii except in an emergency.

#### WITHDRAWAL OR DISTRIBUTION OF PROFITS; RESERVE FUNDS

SEC. 3207. (a) Every contract for an operating-differential subsidy under this part shall provide that the contractor shall be entitled to annually withdraw from net earnings of subsidized vessels and services incident thereto as profit, if the contractor is a natural person or a partnership, or may pay to its shareholders or stockholders, as dividends, if the contractor is an association or corporation, a sum not in excess of 10 per centum per annum on the contractor's capital necessarily employed in his business, except subject to the further provisions of this section, which likewise shall be incorporated in such contract:

(b)(1) To insure the prompt payment of the contractor's obligations to the United States and the replacement of the contractor's subsidized vessels as may be required, the contractor shall create and maintain, out of gross earnings, during the life of such contract, a "capital reserve fund", in such depository or depositories as may be approved by the Secretary.

(2) In the capital reserve fund the contractor shall deposit annually or oftener, as the Secretary may require, an amount equal to the annual depreciation charges on the contractor's vessels on which the operating differential is being paid, such depreciation charges to be computed on a twenty-five year life expectancy of the subsidized vessels, except (A) as otherwise provided in section 6109 of this Act or (B) that the life expectancy of a vessel which shall have been or is to be wholly or partially reconstructed or reconditioned shall upon request be determined jointly by the Secretary of the Treasury and the Secretary of Commerce, and the depreciation charges on such vessel shall be computed on the life expectancy so determined: *Provided, however*, That, if during any accounting year, the annual depreciation charges on the contractor's line of subsidized vessels has not been earned, in whole or in part, over and above the annual expense of operation of such vessels (exclusive of said annual depreciation thereon), the contractor shall not be required to deposit in his capital reserve fund for such accounting year a sum in excess of the amount of annual depreciation actually earned during that year but shall make up any and all deficiencies in his capital reserve fund as soon as the earnings of his subsidized vessels in excess of annual expenses of operation shall permit. The proceeds of all insurance and indemnities received by the contractors on account of total loss of any subsidized vessel and the proceeds of any sale or other disposition of such vessel shall also be deposited in the capital reserve fund.

(3) The contractor shall also deposit in the capital reserve fund, from time to time, such percentage of the annual net profits of the contractor's business covered by the contract as the Secretary shall determine is necessary to further build up a fund for replacement of the contractor's subsidized ships; but the Secretary shall not require the contractor to make such deposit of the contractor's net profits in the capital reserve fund unless the cumulative net profits of the contractor, at the time such deposit is to be made, shall be in excess of 10 per centum per annum from the date the contract was executed.

(4) From the capital reserve fund so created, the contractor may pay the principal, when due, on all notes secured by mortgage on the subsidized vessels and may make disbursements for the purchase of replacement vessels or reconstruction of vessels or additional vessels to be employed by the contractor on an essential foreign-trade line, route, or service, approved by the Secretary, and on cruises, if any, authorized under section 3212 of this Act, but payments from the capital reserve fund shall not be made for any other purpose.

(5) The contractor may, with the consent of the Secretary, pay from the capital reserve fund any sums owing, but not yet due, on notes secured by mortgages on subsidized vessels, and may also pay from such fund, with such consent and upon terms and conditions which the Secretary shall by regulation prescribe to give priority to the foregoing purposes of the fund (and with respect to any transfer of funds from the special reserve fund, to give priority to the purposes of that fund) and to carry out the purposes of this Act,

(A) amounts contributed toward research, development, and design expenses incident to new and advanced ship design machinery and equipment, and

(B) amounts (i) for the purchase of cargo containers, delivered after June 30, 1959, of a type approved by the Secretary for use in connection with any of the contractor's subsidized vessels, (ii) for the payment of the principal of any indebtedness incurred for such containers, or (iii) to reimburse the contractor's general funds for expenditures for such purchases or payments. Such cargo containers to the extent paid for out of the capital reserve fund shall be treated as vessels for the purpose of deposits and withdrawals from the capital reserve fund under this section 3207, and the regulations and closing agreements relating thereto, except that the depreciation on such cargo containers shall be based upon the life expectancy used for such containers in the determination of "net earnings" under subsection (d)(1) of this section 3207.

(c)(1) To attain the public objects for which the financial aid provided for in the operating-differential subsidy contract is extended and to insure the continued maintenance and successful operation of the subsidized vessels, the contractor shall create and maintain, during the life of such contract, a "special reserve fund" in such depository or depositories as the Secretary shall approve.

(2) If the profits, without regard to capital gains and capital losses, earned by the business of the subsidized vessels and services incident thereto exceed 10 per centum per annum and exceed the percentage of profits deposited in the capital reserve funds, as provided in subsection (b) of this section, the contractor shall deposit annually such excess profits in this reserve fund.

(3) From the special reserve fund the contractor may make the following disbursements and no others:

(A) reimbursement to the contractor's general funds for any losses on the operation of the subsidized vessels and services incident thereto sustained subsequent to the execution of the operating-differential subsidy contract;

(B) reimbursement to the contractor's general funds for current operating losses on completed voyages of subsidized vessels whenever the Secretary shall determine it is improbable that such current losses will be made up by profits on other voyages during the current year;

(C) payment of amounts due from the contractor to the Secretary for reimbursement as provided in clause 5 of section 3206, but such reimbursement shall be deferred until the amount on deposit in the special reserve fund shall be sufficiently in excess of 5 per centum of the capital necessarily employed in the business so that payment of such reimbursement to the Secretary will not reduce the special reserve fund below a sum equal to such 5 per centum of capital necessarily employed in the business: *Provided*, That such reimbursement to the Secretary, if so deferred, shall be payable upon termination of the contract from any amounts then in the special reserve fund and the capital reserve fund: *Provided further*, That if any amounts shall have been transferred to the general funds of the contractor from either of such reserve funds and not repaid thereto, or if prepayments of amounts due before one year after the date of termination of the contract have been made from the capital reserve fund pursuant to subsection (b) of this section, then the balance of such reimbursement not paid out of said reserve funds shall be payable out of any other assets of the contractor, but the amounts so payable from such assets shall not exceed in the aggregate the sum of the amounts so transferred and not repaid, and the amounts of such prepayments;

(D) after reimbursement to the contractor's general funds of all operating losses has been made, as provided in clause (A), and after reimbursement to

the Secretary of all amounts due from the contractor, as determined under clause 5 of section 3206, if the amount accumulated in the special reserve fund shall then be in excess of 5 per centum of the capital necessarily employed in the business, the contractor may, if the Secretary approves, withdraw some or all of such excess reserve and pay the sum so withdrawn into the contractor's general funds or distribute the sum so withdrawn as a special dividend to the contractor's shareholders or stockholders or as a bonus to officers or employees, as the contractor may determine.

(d)(1) The Secretary shall adopt and prescribe rules and regulations for the administration of the reserve funds contemplated by this section and shall include therein a definition of the term "net earnings" and the term "capital necessarily employed in the business", as such terms are employed in this section: *Provided, however,* That the term "net earnings" shall take into account as a proper accounting charge to operation of vessels expense, an annual depreciation charge on the vessels, computed on the economic life of the vessel as provided in subsection (b) of this section and the term "capital necessarily employed in the business" shall not include borrowed capital.

(2) Upon application of the contractor, the Secretary, in his discretion, may permit the investment by the operator of some or all of the contractor's capital and special reserve fund in approved interest-bearing securities, approved by the Secretary, upon condition that the interest on such securities shall be deposited in the capital reserve fund.

(3)(A) Upon application of the contractor, the Secretary, in his discretion, may permit the contractor to transfer not exceeding 50 per centum of his capital reserve fund and 50 per centum of his special reserve fund to a trustee which is incorporated as a bank or trust company under the laws of the United States, or of any State, and which is approved by the Secretary, in trust nevertheless for the benefit of the contractor and of the United States as their interests are stated in this section (i) to hold in separate trusts the principal of the capital and special reserve funds so transferred, one trust for the capital reserve fund and one trust for the special reserve fund; (ii) to invest and reinvest the principal of such trusts in such common stocks of corporations organized and existing under the laws of the United States or of the District of Columbia or of any State of the United States which are currently fully listed and registered upon an exchange registered with the Securities and Exchange Commission as a national securities exchange, and which would be acquired by prudent men of discretion and intelligence in such matters who are seeking a reasonable income and the preservation of their capital; (iii) to accumulate the income from the capital reserve fund trust in such trust, to pay the income from the special reserve fund trust into the capital reserve fund trust, and to invest and reinvest such income in common stocks in which the trustee is authorized to invest principal under this subdivision (3); and (iv) to pay to the contractor and the Secretary, as trustees of the special reserve fund and the capital reserve fund, after reasonable notice, from the principal and accumulated income of the trusts such amounts, in cash, as the contractor and the Secretary direct.

(B) Consent by the contractor to an investment which is not authorized by this subdivision (3) shall not be a defense to the trustee. Such common stock trusts shall be revocable by the Secretary at any time and upon notice of the revocation, the common stock trustee shall reduce the principal and accumulated income of such trusts to cash and shall pay such cash to the contractor and the Secretary as trustees of the capital reserve fund and special reserve fund. In the administration of such common stock trusts, capital gains, stock dividends, and rights to purchase stock shall be considered principal; cash dividends, whenever earned, shall be considered income. At the end of the contractor's recapture period, however, after satisfaction of the contractor's recapture obligations, an amount of the special reserve fund trust equal to the value of the capital gains made (whether realized or not), the stock dividends declared, and the rights to purchase stock issued to the special reserve fund trust during such recapture period, to the extent the special reserve fund trust contains this amount, shall be transferred (in cash or in stock) to the capital reserve fund trust. For the purpose of determining the 50 per centum of the capital reserve fund and the special reserve fund the transfer of which to a common stock trust the Secretary may approve, the market value of each such fund as of the date of such transfer shall be used. The common stock trusts authorized by this subdivision (3) shall at all times remain a part of the capital reserve fund and the special reserve fund.

(C) If immediately before a deposit is made in a capital or special reserve fund, 50 per centum or more of the value of such fund is invested in common stock, the

Secretary is authorized to approve, upon application of the contractor, the transfer of not exceeding 50 per centum of such deposit to the common stock trustee upon the trusts authorized in this subdivision (3). When payments are made, or funds are withdrawn, from a capital reserve fund or a special reserve fund, as authorized in this section, if 50 per centum or more of the value of such capital reserve fund or special reserve fund, as of the date of such payment or withdrawal, is invested in common stocks, such payment or withdrawal shall be made from the common stock trust in the proportion that the value of such common stock trust bears to the value of the entire capital reserve fund or special reserve fund. If, however, less than 50 per centum of the value of such capital or special reserve fund, as of the date of such payment or withdrawal, is invested in common stocks, the Secretary is authorized, upon application by the contractor, to approve the allocation of the payment or withdrawal entirely to the portion of such capital or special reserve fund not invested in common stocks, or to approve the allocation of such payment or withdrawal between the common stock trust and the remainder of such capital or special reserve fund in any proportion, so long as the value of the common stock trust immediately after such withdrawal does not exceed 50 per centum of the value of such capital or special reserve fund, and if the contractor makes no such application or if the allocation requested in such application is not approved by the Secretary, then such payment or withdrawal shall be allocated in the manner above provided for when the value of the common stock trust is 50 per centum or more of the value of the entire capital reserve fund or special reserve fund.

(D) Trust indentures executed under the authority of this subdivision (3) may contain such other terms and conditions not inconsistent with this subdivision (3), as the Secretary determines are desirable to protect the interests of the United States. The authority of the Secretary to grant approvals, give directions, make determinations, and make regulations under this subdivision (3), and to act as trustee of the capital reserve fund and special reserve fund under this section may be delegated to the Maritime Administrator.

(e) If, during any accounting year, the contractor's general funds have become seriously depleted due to operating losses on the subsidized vessels and the special reserve fund has been exhausted, the Secretary may, in his discretion, permit the contractor temporarily to withdraw from his capital reserve fund such excess therein on deposit over and above the amount necessary to pay the principal amount currently due or about to become due on the contractor's mortgage obligation on the subsidized vessels: *Provided, however,* That the sum so withdrawn shall be repaid to the capital reserve fund as soon as the contractor's financial condition shall permit.

(f) Unless otherwise provided in the operating-differential subsidy contract, upon the termination of any such contract, the reserve funds required under this section shall be the property of the contractor, except for such amounts as may be due the United States.

(g) With the approval of the Secretary, the contractor may voluntarily increase the amount of either or both reserve funds by depositing in such fund or funds any or all of the earnings otherwise available for distribution to stockholders, or may transfer funds from the special reserve funds to the capital reserve funds. If a voluntary deposit of earnings approved by the Secretary under this subsection results in an overpayment of Federal taxes for any year, interest shall not be allowed on such overpayment for any period prior to the date of approval of the deposit by the Secretary.

(h) The earnings of any contractor receiving an operating-differential subsidy under authority of this Act, which are deposited in the contractor's reserve funds as provided in this section, except earnings withdrawn from the special reserve funds and paid into the contractor's general funds or distributed as dividends or bonuses as provided in subsection (c)(3)(D) of this section, shall be exempt from all Federal taxes. Earnings withdrawn from such special reserve fund shall be taxable as if earned during the year of withdrawal from such fund.

(i) After June 13, 1957, to the extent that the operating-differential subsidy accrual (computed on the basis of parity) is represented on the operator's books by a contingent accounts receivable item against the United States as a partial or complete offset to the recapture accrual, the operator (1) shall be excused from making deposits in the special reserve fund, and (2) as to the amount of such earnings the deposit of which is so excused, shall be entitled to the same tax treatment as though it had been deposited in said special reserve fund. To the extent that any amount paid to the operator by the United States reduces the balance in the operator's contingent receivable account against the United States such amount shall forthwith be deposited in the special reserve fund of the operator.

## ASSIGNMENT OF CONTRACTS AND TRANSFER OF INTERESTS

SEC. 3208. No contract executed under this part or any interest therein shall be sold, assigned, or transferred, either directly or indirectly, or through any reorganization, merger, or consolidation, nor shall any agreement or arrangement be made by the holder whereby the maintenance, management, or operation of the service, route, line, vessel, or vessels is to be performed by any other person without the written consent of the Secretary. If the Secretary consents to such agreement or arrangement, the agreement or arrangement shall make provision whereby the person undertaking such maintenance, management, or operation agrees to be bound by all of the provisions of the contract and of this Act applicable thereto, and the rules and regulations prescribed pursuant to this Act. If the holder of any such contract shall voluntarily sell such contract or any interest therein, or make such assignment, transfer, agreement, or arrangement whereby the maintenance, management, or operation of the service, route, line, vessel, or vessels is to be performed by any other person, without the consent of the Secretary, or if the operation of the service, route, line or vessel, shall pass out of the direct control of the holder of such contract by reason of any voluntary or involuntary receivership or bankruptcy proceedings, the Secretary shall have the right to modify or rescind such contract, without further liability thereon by the United States, and is hereby vested with the exclusive jurisdiction to determine the purposes for which any payments made by him under such contract shall be expended.

## PAYMENT OF SUBSIDY WITHHELD WHILE CONTRACTOR IN DEFAULT

SEC. 3209. The Secretary shall withhold the payment of operating-differential subsidy while any contractor therefor is in default in any payments due on account of construction-loan, ship-sales mortgage notes, or any other obligation due the United States, and shall apply the amount so withheld to the satisfaction of such debt.

## VESSELS ELIGIBLE FOR SUBSIDY

SEC. 3210. An operating-differential subsidy shall not be paid under authority of this part on account of the operation of any vessel which does not meet the following requirements: (1) the vessel shall be of steel or other acceptable metal, shall be propelled by steam or motor, shall be as nearly fireproof as practicable, shall be built in a shipyard in the continental United States, or in the States of Alaska or Hawaii, or shall have been documented under the laws of the United States not later than February 1, 1928, or actually ordered and under construction for the account of citizens of the United States prior to such date, and shall be documented under the laws of the United States, during the entire life of the subsidy contract; and (2) if the vessel shall be constructed after June 29, 1936, it shall be either a vessel constructed according to plans and specifications approved by the Secretary of Commerce and the Secretary of the Navy, with particular reference to economical conversion into an auxiliary naval vessel, or a vessel approved by the Secretary of Commerce and the Navy Department as otherwise useful to the United States in time of national emergency.

## TRANSFER OF VESSELS TO FOREIGN REGISTRY ON DEFAULT OF THE UNITED STATES

SEC. 3211. (a) The contractor, upon compliance with the provisions of this section, may transfer to foreign registry the vessels covered by any operating-differential subsidy contract held by him, in the event that the United States defaults upon such contract or cancels it without just cause. Any contractor desiring to transfer any such vessel to foreign registry upon such default or cancellation shall file an application in writing with the Secretary setting forth its contentions with respect to the lack of just cause or lawful grounds for such default or cancellation. The Secretary shall afford the contractor an opportunity for a hearing within twenty days after such contractor files written application therefor, and after the testimony, if any, in such hearing has been reduced to writing and filed with the Secretary, he shall, within a reasonable time, grant or deny the application by order.

(b) If any such application is denied, the contractor may obtain a review of the order of denial in the United States Court of Appeals for the District of Columbia Circuit, by filing in such court, within twenty days after the entry of such order, a written petition praying that the order of the Secretary be set aside. A copy

of such petition shall be forthwith transmitted by the clerk of the court to the Secretary, or any officer designated by him for that purpose, and thereupon the Secretary shall file in the court the record upon which the order complained of was entered, as provided in section 2112 of title 28, United States Code. Upon the filing of a petition to review such order, such court shall have exclusive jurisdiction to determine whether such cancellation or default was without just cause, and to affirm or set aside such order. The judgment and decree of the court affirming or setting aside any such order of the Secretary shall be final.

(c) No transfer of vessels to foreign registry under this section shall become effective until any indebtedness to the Government or to any citizen of the United States, secured by such vessels, has been paid or discharged, and until after the expiration of ninety days from the date of final determination of the application or the appeal, if any. Within such ninety-day period the Secretary may (1) with the consent of the contractor purchase the vessels at cost to the contractor plus cost of capital improvements thereon, less 4 per centum annual depreciation upon such vessel except as otherwise provided in section 6190 of this Act, and the actual depreciated costs of capital improvements thereon, or (2) reinstate the contract and adjust or settle the default found by the Secretary or the court to exist.

#### OFF-SEASON CRUISES BY SUBSIDIZED VESSELS

SEC. 3212. (a) As used in this section, "passenger vessel" means a vessel which (1) is of not less than ten thousand gross tons, and (2) has accommodations for not less than one hundred passengers.

(b) If the Secretary finds that the operation of passenger vessels with respect to which an application for operating-differential subsidy has been filed under section 3201 of this Act is required for at least two-thirds of each year, but not for all of each year, in order to furnish adequate service on the service, route, or line with respect to which the application was filed, the Secretary may approve the application for payment of operating-differential subsidy for operation of the vessels (1) on such service, route, or line for such part of each year, and (2) on cruises for all or part of the remainder of each year if each specific cruise is approved by the Secretary under subsection (e) of this section.

(c) Cruises authorized by this section must begin and end at a domestic port or ports on the same seacoast of the United States from which the operator operates or conducts the regular service to which the vessels are assigned. When a vessel is being operated on cruises—

(1) it shall carry no mail unless required by law, or cargo except passengers' luggage, except between those ports between which it may carry mail and cargo on its regular service assigned by contract;

(2) it shall carry passengers on a round-trip basis, except between those ports between which it may carry one-way passengers on its regular service assigned by contract;

(3) it shall embark passengers only at domestic ports on the same seacoast of the United States as that to which the vessel is assigned on its regular service; and

(4) it shall stop at other domestic ports only for the same time and the same purposes as is permitted with respect to a foreign-flag vessel which is carrying passengers who embarked at a domestic port.

(d) The Secretary may from time to time review operating-differential subsidy contracts entered into under this part for the operation of passenger vessels, and upon a finding that operation of such vessels upon a service, route, or line is required in order to furnish adequate service on such service, route, or line, but is not required for the entire year, may amend such contracts to agree to pay operating-differential subsidy for operation of such vessels on cruises, as authorized by this section, for part or all of the remainder, but not exceeding one-third, of each year, if each specific cruise is approved by the Secretary under subsection (e) of this section.

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

(f) As used in this section the following three are the seacoasts of the United States: (1) the Atlantic coast, including the Great Lakes but excluding the Gulf of Mexico; (2) the Gulf of Mexico; and (3) the Pacific coast, including Alaska and Hawaii.

(g) The cruises authorized by this section shall be in addition to and not in derogation of the right of an operator to make voyages on his regular service, route, or line, including approved deviations within the general area of his essential service. There shall be no adjustment of subsidy in the event of such deviations if they are without prejudice to the adequacy of service.

(h) Section 3205(c) of this Act shall not apply to cruises authorized under this section.

#### PART C—CONSTRUCTION, SALE, OR CHARTER OF VESSELS FOR ESSENTIAL TRADE ROUTES

##### COMPETITION OF LONG-RANGE PROGRAM BY SECRETARY

SEC. 3301. Whenever the Secretary shall find and determine, and such finding and determination shall be approved by the President of the United States, that the national policy declared in section 2101 of this Act, and the objectives set forth in section 2301(c) of this Act, cannot be fully realized within a reasonable time, in whole or in part, under the provisions of parts A and B of this title, the Secretary is authorized and directed to complete, as hereinafter provided in this part, his long-range program previously adopted.

##### CONSTRUCTION AND RECONDITIONING OF VESSELS BY SECRETARY

SEC. 3302. The Secretary is authorized to have constructed in shipyards in the continental United States or in the States of Alaska or Hawaii such new vessels as he shall determine may be required to carry out the objects of this Act, and to have old vessels reconditioned or remodeled in such yards: *Provided*, That if satisfactory contracts for such new construction or reconstruction, in accordance with the provisions of this title, cannot be obtained from private shipbuilders, the Secretary is authorized to have such vessels constructed, reconditioned, or remodeled in United States navy yards.

##### ADVERTISING; SEALED COMPETITIVE BIDS; OPENING OF BIDS

SEC. 3303. (a) No contract for the building of a new vessel, or for the reconditioning or reconstruction of any other vessel, shall be made by the Secretary with any private shipbuilder, except after due advertisement and upon sealed competitive bids.

(b) All contracts for the construction, reconditioning, or reconstruction of a vessel or vessels by a private shipbuilder under authority of this part shall be subject to all the provisions and requirements prescribed in part A of this title with respect to contracts with a private shipbuilder for the construction of vessels under authority of that part.

(c) All bids required by the Secretary for the construction, reconstruction, or reconditioning of vessels, and for the chartering of the vessels hereinafter provided for in this part, shall be opened at the time, hour, and place stated in the advertisement for bids, and all interested persons, including representatives of the press, shall be permitted to attend, and the results of such bidding shall be publicly announced.

##### POWER OF SECRETARY TO SELL OR CHARTER VESSELS

SEC. 3304. All vessels transferred to or otherwise acquired by the Department of Commerce in any manner may be chartered or sold pursuant to the further provisions of this title.

##### EMPLOYMENT OF VESSELS ON ESSENTIAL TRADE ROUTES; ENCOURAGING PRIVATE OPERATION BY SALE OR CHARTER

SEC. 3305. The Secretary shall arrange for the employment of vessels transferred to or acquired by the Department of Commerce in steamship lines on such trade routes, exclusively serving the foreign trade of the United States, as the Secretary shall determine are necessary and essential for the development and maintenance of the commerce of the United States and the national defense:

*Provided*, That such needs are not being adequately served by existing steamship lines privately owned and operated by citizens of the United States with vessels documented under the laws of the United States. It shall be the policy of the Secretary to encourage private operation of each essential steamship line owned by the United States by selling such lines to citizens of the United States in the manner provided in section 4205 of this Act, and in strict accordance with the provisions of section 4210 of this Act, or by demising vessels on bareboat charter to citizens of the United States who shall agree to maintain such line or lines in the manner hereinafter provided in this part. Except as otherwise provided in section 6109 of this Act, no vessel constructed under the provisions of this title shall be sold by the Secretary for operation in the foreign trade for a sum less than the estimated foreign construction cost exclusive of national-defense features (determined as of the date the construction contract therefor is executed) less depreciation based on a twenty-five year life, nor shall any such vessel be sold by the Secretary for operation in the domestic trade for a sum less than the cost of construction in the United States exclusive of national-defense features less depreciation based on a twenty-five year life.

#### CHARTERS FOR OPERATION AS STEAMSHIP LINES ON DESIGNATED ROUTES; BIDDING

SEC. 3306. The Secretary shall charter vessels to private operators only upon competitive sealed bids submitted in strict compliance with all the terms and conditions of a public advertisement soliciting such bids. Each advertisement for such bids shall state the number, type, and tonnage of the vessels offered for bareboat charter for operation as a steamship line on a designated trade route, the minimum number of sailings that will be required, the length of time for which the charter will be given, and all other information the Secretary shall deem necessary for the information of prospective bidders, and shall announce that the Secretary reserves the right to reject any and all bids submitted.

#### AWARDING CHARTER ON BIDS

SEC. 3307. (a) The Secretary shall award the charter to the bidder proposing to pay the highest monthly charter hire unless the Secretary shall reject such bid for the reasons set forth in this section.

(b) The Secretary shall reject any bid for the charter (under sections 3301 to 3312, both inclusive, of this Act) of any vessel constructed under the provisions of this title if the charter hire offered by the bidder is lower than the minimum charter hire for such vessel would be if chartered under the provisions of section 3313 of this Act.

(c) In the awarding of charters, the Secretary shall take into consideration the charterer's financial resources and credit standing, practical experience in the operation of vessels, and any other factors that would be considered by a prudent businessman in entering into a transaction involving a large investment of his capital; and the Secretary is directed to reject any bid for the charter of any vessel by any person appearing to lack sufficient capital, credit, and experience to operate successfully the vessel over the period covered by the charter.

(d) The Secretary may reject the highest or most advantageous or any other bid, if, in his discretion, the charter hire offered is deemed too low.

(e) The reason or reasons for rejection of any bid, upon request of the bidder, shall be stated to such bidder in writing.

(f) If the highest bid is rejected, the Secretary may award the charter to the next highest bidder, or may reject all bids and readvertise the line: *Provided, however*, That the Secretary may operate the line until conditions appear to be more favorable for a reoffering of the line for private charter.

#### PAYMENT OF SUBSIDIES TO CHARTERERS

SEC. 3308. The Secretary may, if in his discretion financial aid is deemed necessary, enter into a contract with any charterer of vessels transferred to or acquired by the Department of Commerce for payment to such charterer of an operating-differential subsidy upon the same terms and conditions and subject to the same limitations and restrictions, where applicable, as are elsewhere provided in this title with respect to payments of such subsidies to operators of privately owned vessels.

#### EXCESS PROFITS OF CHARTERER

SEC. 3309. (a) Every charter made by the Secretary pursuant to the provisions of this part shall provide that whenever, at the end of any calendar year subsequent

to the execution of such charter, the cumulative net voyage profits (after payment of the charter hire reserved in the charter and payment of the charterer's fair and reasonable overhead expenses applicable to operation of the chartered vessels) shall exceed 10 per centum per annum on the charterer's capital necessarily employed in the business of such chartered vessels, the charterer shall pay over to the Secretary, as additional charter hire, one-half of such cumulative net voyage profit in excess of 10 per centum per annum: *Provided*, That the cumulative net profit so accounted for shall not be included in any calculation of cumulative net profit in subsequent years.

(b) Every charter shall contain a definition of the terms "net voyage profit" and "fair and reasonable overhead expenses", and "capital necessarily employed", as said terms are used in subsection (a) of this section, setting forth the formula for determining such profit and overhead expense and capital necessarily employed, which definitions shall have been previously approved by the Secretary and published in the advertisement for bids for such charter.

#### UNDERTAKING REQUIRED OF CHARTER

Sec. 3310. Every charterer of vessels transferred to or acquired by the Department of Commerce shall be required to deposit with the Secretary an undertaking with approved sureties as security for the faithful performance of all of the conditions of the charter, including indemnity against liens on the chartered vessels, in such amount as the Secretary shall require.

#### TERMS OF CHARTERS

Sec. 3311. The charters to be made by the Secretary pursuant to the provisions of this part shall demise the vessels to the charterer subject to all usual conditions contained in bareboat charters. Such charters may be executed by the Secretary for such terms as the experience gained by the Secretary shall indicate are to the best interests of the United States and the merchant marine.

#### CONDITIONS OF CHARTERS

Sec. 3312. Every charter shall provide—

(1) That the charterer shall carry on the chartered vessels, at his own expense, policies of insurance covering all marine and port risks, protection and indemnity risks, and all other hazards and liabilities, in such amounts, in such form, and in such insurance companies as the Secretary shall require and approve, adequate to cover all damages claimed against and losses sustained by the chartered vessels arising during the life of the charter: *Provided*, That in accordance with existing law, some or all of such insurance risks may be underwritten by the Secretary himself as in his discretion he may determine.

(2) That the charterer shall at his own expense keep the chartered vessel in good state of repair and in efficient operating condition and shall at his own expense make any and all repairs as may be required by the Secretary.

(3) That the Secretary shall have the right to inspect the vessel at any and all times to ascertain its condition.

(4) That whenever the President shall proclaim that the security of the national defense makes it advisable, or during any national emergency declared by proclamation of the President, the Secretary may terminate the charter without cost to the United States, upon such notice to the charterer as the President shall determine.

#### SPECIAL POWERS OF SECRETARY TO CONSTRUCT AND CHARTER VESSELS

Sec. 3313. (a) If the Secretary shall find that any essential trade route, as determined under section 2301(d) of this Act cannot be successfully developed and maintained and the Secretary's replacement program cannot be achieved under private operation of such trade route by a citizen of the United States with vessels registered under the laws thereof, without further Government aid in addition to the financial aids authorized under parts A and B of title III of this Act, the Secretary is authorized to have constructed, in private shipyards or in navy yards, the vessel or vessels of the types deemed necessary for such trade route, and to demise such new vessel or vessels on bareboat charter to the American-flag operator established on such trade route, without advertisement or competition, upon an annual charter hire of not less than 4 per centum of the price (herein referred to as the "foreign cost") at which such vessel or vessels

would be sold if constructed under part A of title III plus 3½ per centum of the depreciated foreign cost computed annually upon the basis of a twenty-five-year life of the vessel.

(b) Such charter may contain an option to the charterer to purchase such vessel or vessels from the Secretary within five years after delivery thereof under the charter, upon the same terms and conditions as are provided in part A of title III for the purchase of new vessels from the Secretary, except that (1) the purchase price shall be the foreign cost less depreciation to the date of purchase based upon a twenty-five-year life; (2) the required cash payment payable at the time of such purchase shall be 25 per centum of the purchase price as so determined; (3) the charter may provide that all or any part of the charter hire paid in excess of the minimum charter hire provided for in this section may be credited against the cash payment payable at the time of such purchase; (4) the balance of the purchase price paid shall be paid within the years remaining of the twenty-five years after the date of delivery of the vessel under the charter and in approximately equal annual installments, except that the first of said installments, which shall be payable upon the next ensuing anniversary date of such delivery under the charter, shall be a proportionate part of the annual installment, interest to be payable upon the unpaid balances of 3½ per centum per annum from the date of purchase.

(c) Such charter shall provide for operation of the vessel exclusively in foreign trade, or on a round-the-world voyage, or on a round voyage from the west coast of the United States to a European port or ports which includes intercoastal ports of the United States, or a round voyage from the Atlantic coast of the United States to the Orient which includes intercoastal ports of the United States, or on a voyage in foreign trade on which the vessel may stop at the State of Hawaii, or an island possession or island territory of the United States, or the Commonwealth of Puerto Rico, and if the vessel is operated in the domestic trade on any of the above-enumerated services the charterer will pay annually to the Secretary that proportion of one twenty-fifth of the difference between the domestic and foreign cost of such vessel as the gross revenue derived from the domestic trade bears to the gross revenue derived from the entire voyages completed during the preceding year.

(d) With respect to vessels delivered by the shipbuilder before January 1, 1960, and with respect to tankers and liquid bulk carriers, the provisions of section 6109 of this Act shall apply.

#### EXPERIMENTAL OPERATION AND TESTING OF UNITED STATES VESSELS; CHARTERS AND AGENCY AGREEMENTS

SEC. 3314. (a) The Secretary, for the purpose of practical development, trial, and testing, is authorized without regard to other provisions of this part or other laws relating to chartering and general agency operations, to operate, under general agency agreements or bareboat charter, vessels owned by the United States (including any national defense reserve vessels) which have been constructed, reconditioned, or remodeled for experimental or testing purposes, in the foreign or domestic trade of the United States or for use for the account of any agency or department of the United States, under such reasonable terms or conditions as the Secretary determines to be necessary to carry out the objects of this Act: *Provided, however*, That not in excess of ten such vessels shall be operated and tested under the authority of this section in any one year. Bareboat charters entered into under this section shall be made at reasonable rates of charter and shall include such restrictions and conditions as the Secretary determines to be necessary or appropriate to protect the public interest, including provisions for recapture of profits as provided for in section 3309 of this Act. Charters and general agency agreements entered into under this section shall be reviewed annually for the purpose of determining whether conditions exist which would justify continuance of the charter or agreement.

(b) The provisions of section 4214 of this Act shall be applicable to charters and agreements entered into under this section.

#### CONSTRUCTION OF NUCLEAR-POWERED MERCHANT SHIP

SEC. 3315. There are authorized to be appropriated to the Department of Commerce, Maritime Administration, and the Atomic Energy Commission, such sums as may be necessary, to remain available until expended, for the construction, outfitting, and preparation for operation, including training of qualified personnel, of a nuclear-powered merchant ship capable of providing shipping services on

routes essential for maintaining the flow of the foreign commerce of the United States. The Maritime Administration, and the Atomic Energy Commission, in carrying on activities and functions under this section, may collaborate with and employ persons, firms, and corporations on a contract or fee basis for the performance of special services deemed necessary by such agencies in carrying on such activities and functions. The Administration may, for the same purposes, with the approval of the Secretary and where appropriate the Atomic Energy Commission, avail itself of the use of licenses, information, services, facilities, offices, and employees of any executive department, independent establishment, or other agency of the Government, including any field service thereof.

PART D—ADDITIONAL PROVISIONS RELATING TO CONTRACTS AND CONTRACTORS  
BOOKS AND RECORDS OF CONTRACTOR AND AFFILIATES

SEC. 3401. Every contract executed by the Secretary under parts B or C of this title shall contain provisions requiring that—

(1) the contractor and every affiliate, domestic agent, subsidiary, or holding company connected with, or directly or indirectly controlling or controlled by the contractor,

(A) keep its books, records, and accounts, relating to the maintenance, operation, and servicing of the vessels, services, route, and lines covered by the contract, in such form and under such regulations as may be prescribed by the Secretary: *Provided*, That this provision shall not require the duplication of books, records, and accounts required to be kept in some other form by the Interstate Commerce Commission; and

(B) file, upon notice from the Secretary, balance sheets, profit and loss statements, and such other statements of financial operations, special reports, and memorandums of any facts and transactions, which in the opinion of the Secretary affect the financial results in, the performance of, or transactions or operations under, such contract;

(2) the Secretary shall be authorized to examine and audit the books, records, and accounts of all persons referred to in this section, whenever he may deem it necessary or desirable; and

(3) upon the willful failure or refusal of any person described in this section to comply with the contract provisions required by this section, the Secretary shall have the right to rescind the contract, and upon such rescission the United States shall be relieved of all further liability on such contract.

PURCHASE OR REQUISITION OF VESSELS BY UNITED STATES; COMPUTATION OF VALUE

SEC. 3402. (a) Every contract executed by the Secretary under authority of part A of this title shall provide that—

(1) in the event the United States shall, through purchase or requisition, acquire ownership of the vessel on which a construction-differential subsidy was paid, the owner shall be paid therefor the value thereof, but in no event shall such payment exceed the actual depreciated construction cost thereof (together with the actual depreciated cost of capital improvements thereon, but excluding the cost of national-defense features) less the depreciated amount of construction-differential subsidy therefore paid incident to the construction or reconditioning of such vessel, or, if greater, the fair and reasonable scrap value of such vessel as determined by the Secretary, whose determination shall be final;

(2) in computing the depreciated value of such vessel, depreciation shall be computed on each vessel on the schedule adopted by the Internal Revenue Service for income tax purposes.

(b) The provisions of subsection (a) respecting the acquisition of ownership by the United States shall run with the title to such vessel and be binding on all owners thereof.

EMPLOYMENT OF CERTAIN SUPPLIERS PROHIBITED

SEC. 3403. (a) It shall be unlawful for any contractor receiving an operating-differential subsidy under part B or for any charter under part C of this title to employ any person or concern performing or supplying stevedoring, ship-repair, ship-chandler, towboat, or kindred services to supply such services to the operator's subsidized or chartered vessels if (1) such contractor, or (2) any subsidiary com-

pany, holding company, affiliate company, or associate company of such contractor, or (3) any officer, director, or employee of such contractor, or (4) any member of the immediate family of any such contractor, officer, director, or employee, or (5) any member of the immediate family of any officer, director, or employee, of such subsidiary company, holding company, affiliate company, or associate company of such contractor, owns any pecuniary interest directly or indirectly in the person or concern supplying such services to the contractor's subsidized or chartered vessels or receives any payment or other thing of value directly or indirectly as a result of such employment or services.

(b) The Secretary may grant an exemption in writing from the provisions of subsection (a), upon such terms and conditions and for such specific period of time as he deems necessary or appropriate to carry out the policy of this Act, in any case where—

(1) the Secretary finds that the enforcement of such provisions is not necessary to safeguard the economical and fair application of subsidies paid the contractor under this title, and that such exemption will promote economy or efficiency of service by the merchant marine; and

(2) the person performing the services or supplying the facilities agrees to account for and pay over to the contractor any and all profits resulting from performing such services or supplying such facilities.

#### OWNERSHIP OR OPERATION OF COMPETING FOREIGN-FLAG VESSEL PROHIBITED

SEC. 3404. It shall be unlawful for any contractor receiving an operating-differential subsidy under part B or for any charterer of vessels under part C of this title, or any holding company, subsidiary, affiliate, or associate of such contractor or such charterer, or any officer, director, agent, or executive thereof, directly or indirectly, to own, charter, act as agent or broker for, or operate any foreign-flag vessel which competes with any American-flag service determined by the Secretary to be essential as provided in section 2301 of this Act: *Provided, however,* That under special circumstances and for good cause shown the Secretary may, in his discretion, waive the provisions of this section as to any contractor, for a specific period of time.

#### FORBIDDEN PRACTICES; CONTRACTOR OR CHARTERER ENGAGING IN COASTWISE SERVICE; SALARY LIMITATIONS; OFFICERS AND EMPLOYEES; PENALTIES

SEC. 3405. (a) (1) It shall be unlawful to award or pay any subsidy to any contractor under authority of part B of this title, or to charter any vessel to any person under part C of this title, if said contractor or charterer, or any holding company, subsidiary, affiliate, or associate of such contractor or charterer, or any officer, director, agent, or executive thereof, directly or indirectly, shall own, operate, or charter any vessel or vessels engaged in the domestic intercoastal or coastwise service, or own any pecuniary interest, directly or indirectly, in any person or concern that owns, charters, or operates any vessel or vessels in the domestic intercoastal or coastwise service, without the written permission of the Secretary. Every person, firm, or corporation having any interest in any application for such permission shall be permitted to intervene and the Secretary shall give a hearing to the applicant and the intervenors. The Secretary shall not grant any such application if the Secretary finds it will result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or intercoastal service or that it would be prejudicial to the objects and policy of this Act: *Provided,* That if such contractor or other person above described or a predecessor in interest was in bona fide operation as a common carrier by water in the domestic, intercoastal, or coastwise trade in 1935 over the route or routes or in the trade or trades for which application is made and has so operated since that time or if engaged in furnishing seasonal service only, was in bona fide operation in 1935 during the season ordinarily covered by its operation, except in either event, as to interruptions of service over which the applicant or its predecessor in interest had no control, the Secretary shall grant such permission without requiring further proof that public interest and convenience will be served by such operation, and without further proceedings as to the competition in such route or trade.

(2) If such application be allowed, it shall be unlawful for any of the persons mentioned in this section to divert, directly or indirectly, any moneys, property, or other thing of value, used in foreign-trade operations, for which a subsidy is paid by the United States, into any such coastwise or intercoastal operations; and whosoever shall violate this provision shall be guilty of a misdemeanor.

(b) Whenever any contractor under part B or part C of this title receiving an operating-differential subsidy is in default with respect to any mortgage, note, purchase contract, or other obligation to the Secretary, or has not maintained, in a manner satisfactory to the Secretary, all of the reserves provided for in this title, the Secretary shall have the right to supervise the number and compensation of all officers and employees of the contractor.

(c) In determining the rights and obligations of any contractor under a contract authorized under part B or part C of this title, no salary for personal services in excess of \$25,000 per annum paid to a director, officer, or employee by said contractor, its affiliates, subsidiary, or associates, shall be taken into account. The terms "director", "officer", or "employee" shall be construed in the broadest sense. The term "salary" shall include wages and allowances of compensation in any form for personal services which will result in a director, officer, or employee receiving total compensation for his personal services from such sources exceeding in amount or value \$25,000 per annum.

(d) It shall be unlawful, without express written consent of the Secretary, for any contractor holding a contract authorized under part B or C of this title to employ any other person or concern as the managing or operating agent of such operator, or to charter any vessel, on which an operating-differential subsidy is to be paid, for operation by another person or concern, and if such charter is made, the person or concern operating the chartered vessel shall be subject to all the terms and provisions of this title, including limitations of profits and salaries. No contractor shall receive an operating-differential subsidy for the operation of any chartered vessel save and except during a period of actual emergency determined by the Secretary, or except as provided in section 3308.

(e) It shall be unlawful for any contractor or charterer who holds any contract made under authority of any provision of this title to employ any Member of Congress, either with or without compensation, as an attorney, agent, officer, or director of such person.

(f) Any willful violation of any provision of this section shall constitute a breach of the contract or charter in force under this title, and upon determining that such a violation has occurred the Secretary may forthwith declare such contractor charter rescinded.

(g) Any person willfully violating the provisions of this section shall be guilty of a misdemeanor.

#### COLLUSION IN RESTRAINT OF FREE BIDDING

SEC. 3406. Whoever shall consult with, or enter into an agreement with, or inform any other bidder, or officer, director, executive, agent, or employee of any such other bidder, as to the amount, the terms, or the conditions of any bid submitted to the Secretary prior to the public opening of such bids, or enter into any combination, understanding, agreement, or arrangement whatsoever, to prevent the making of any bona fide bid for any contract or charter under this title, to induce any other person not to bid for any such contract or charter, or to deprive the United States in any way of the benefit of full, free, and secret competition in the awarding of any such contract or charter shall be guilty of a misdemeanor: *Provided*, That this section shall also apply to bidding for contracts under the provisions of section 3105 of this Act.

#### LOBBYING AND REPRESENTATION ACTIVITIES

SEC. 3407. It shall be unlawful for any person employed or retained by any shipbuilder or ship operator holding or applying for a contract under the provisions of this title, or employed or retained by any subsidiary, affiliate, associate, or holding company of such shipbuilder or ship operator, to present, advocate, or oppose any matter within the scope of this Act before the Congress or any committee thereof, before the Federal Maritime Commission or before the Secretary, unless such shipbuilder or ship operator shall have previously filed with the Secretary in such form and detail as the Secretary shall by rules and regulations or order prescribe as necessary or appropriate in the public interest, a statement of the subject matter in respect of which such person is retained or employed, the nature and character of such retainer or employment, and the amount of compensation received or to be received by such person, directly or indirectly, in connection therewith. It shall be the duty of every such person so employed or retained to file with the Secretary within thirty days after the close of each calendar month during such retainer or employment, in such form and detail as the Secretary shall by rules and regulations or order prescribe as necessary, or

appropriate in the public interest, a statement of the expenses incurred and the compensation received by such person during such month in connection with such retainer or employment. Whosoever shall violate this provision shall be guilty of a misdemeanor.

DISCRIMINATION BY SUBSIDIZED CONTRACTOR OR CHARTERER IN FAVOR OF OWN CARGO

SEC. 3408. It shall be unlawful for any contractor receiving an operating-differential subsidy under part B or for any charterer under part C of this title unjustly to discriminate in any manner so as to give preference directly or indirectly in respect to cargo in which such contractor or charterer has a direct or indirect ownership, or purchase or vending interest; and whosoever shall violate this provision shall be guilty of a misdemeanor.

EQUITABLE AWARDING OF CONTRACTS; PREFERENCE TO LOCAL CITIZENS

SEC. 3409. Contracts under this title shall be entered into so as to equitably serve, insofar as possible, the foreign-trade requirements of the Atlantic, Gulf, and Pacific ports of the United States. In awarding contracts under this title, preference shall be given to persons who are citizens of the United States and who have the support, financial and otherwise, of the domestic communities primarily interested.

CERTAIN DISCRIMINATORY AGREEMENTS OR PRACTICES PROHIBITED

SEC. 3410. (a) It shall be unlawful for any contractor receiving an operating-differential subsidy under part B or for any charterer of vessels under part C of this title, to continue as a party to or to conform to any agreement with another carrier or carriers by water, or to engage in any practice in concert with another carrier or carriers by water, which is unjustly discriminatory or unfair to any other citizen of the United States who operates a common carrier by water exclusively employing vessels registered under the laws of the United States on any established trade route from and to a United States port or ports.

(b) No payment or subsidy of any kind shall be paid directly or indirectly out of funds of the United States or any agency of the United States to any contractor or charterer who shall violate this section. Any person who shall be injured in his business or property by reason of anything forbidden by this section may sue therefor in the United States district court for any district in which the defendant either resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee.

PENALTIES

SEC. 3411. (a) Whenever any natural person is found guilty in any United States district court of any act or acts declared in this title to constitute a misdemeanor, he shall be punished by a fine of not more than \$10,000, or by imprisonment for not less than one year or more than five years, or by both fine and imprisonment. Whenever any corporation is found guilty of any act or acts declared in this title to be unlawful, such corporation shall be punished by a fine of not more than \$25,000.

(b) In addition to the punishment prescribed in subsection (a) of this section, any person or corporation convicted of a misdemeanor under the provisions of this title shall be ineligible, at the discretion of the Secretary, to receive any benefits under parts A and B of this title, or to receive a charter under part C of this title, for a period of five years after conviction.

PART E—MANNING AND WAGE SCALES; CITIZENSHIP OF OFFICERS AND CREWS

MANNING AND WAGE SCALES

SEC. 3501. (a) The Secretary is authorized and directed to investigate the employment and wage conditions in ocean-going shipping and, after making such investigation and after appropriate hearings, to incorporate in the contracts authorized under parts B and C of this title minimum manning scales and minimum wage scales, and minimum working conditions for all officers and crews employed on all types of vessels receiving an operating-differential subsidy. After such minimum manning and wage scales and working conditions shall have been adopted by the Secretary, no change shall be made therein by the Secretary except

upon public notice of the hearing to be had, and a hearing by the Secretary of all interested parties, under such rules as the Secretary shall prescribe. The duly elected representatives of the organizations certified as the proper collective bargaining agencies shall have the right to represent the employees who are members of their organizations at any such hearings. Every contractor receiving an operating-differential subsidy shall post and keep posted in a conspicuous place on each such vessel operated by such contractor a printed copy of the minimum manning and wage scales, and working conditions prescribed by his contract and applicable to such vessel: *Provided, however,* That any increase in the operating expenses of the subsidized vessel occasioned by any change in the wage or manning scales or working conditions as provided in this section shall be added to the operating-differential subsidy previously authorized for the vessel.

(b) Every contract executed under authority of parts B and C of this title shall require—

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

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

(3) licensed officers who are members of the United States Naval Reserve shall wear on their uniforms such special distinguishing insignia as may be approved by the Secretary of the Navy; officers being those men serving under licenses issued by the Coast Guard;

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

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

#### CITIZENSHIP OF OFFICERS AND CREWS

SEC. 3502. (a) All licensed officers of vessels documented under the laws of the United States, as now required by law, shall be citizens of the United States, native born or completely naturalized; and upon each departure from the United States of a cargo vessel in respect of which a construction or operating subsidy has been granted all of the crew (crew including all employees of the ship) shall be citizens of the United States, native born or completely naturalized.

(b) Upon each departure from the United States of a passenger vessel in respect of which a construction or operating subsidy has been granted, all licensed officers shall be citizens of the United States as defined above, and no less than 90 per centum of the entire crew, including all licensed officers of any such vessel, shall be citizens of the United States, native born or completely naturalized.

(c) Any member of the crew, not required by this section to be a citizen of the United States, may be an alien only if he is in possession of a valid declaration of intention to become a citizen of the United States, or other evidence of legal admission to the United States for permanent residence. Such alien, as above defined, may be employed only in the steward's department on passenger vessels.

(d) If any vessel referred to in subsection (a) or (b) of this section while on a foreign voyage is for any reason deprived of the services of any employee below the grade of master, his place or a vacancy caused by the promotion of another to his place may be supplied by a person other than defined in subsections (a) and (b), until the first return of such vessel to a port in the United States.

(e) The owner, agent, or officer of any vessel referred to in subsections (a) and (b) of this section who knowingly employs any person in violation of the provisions of this title shall, upon conviction thereof, be fined \$50 for each person so employed.

(f) This section shall be enforced by the Secretary of the Department in which the Coast Guard is operating.

(g) All of the deck and engineer officers employed on vessels on which an operating-differential subsidy is paid under authority of part B of this title, or employed on vessels transferred to or acquired by the Department of Commerce shall, if eligible, be members of the United States Naval Reserve.

(h) During a national emergency as proclaimed by the President he may, in his discretion, suspend any or all of the provisions of this section.

TITLE IV—ACQUISITION, OPERATION, CHARTER, TRANSFER  
MORTGAGE, AND INSURANCE OF VESSELS

PART A—OPERATION AND TRANSFER OF PRIVATELY OWNED OR CHARTERED  
VESSELS AND FACILITIES

DEFINITIONS

Sec. 4101. (a) Within the meaning of this title, except part F, no corporation, partnership, or association shall be deemed a citizen of the United States unless the controlling interest therein is owned by citizens of the United States, and, in the case of a corporation, unless its president or other chief executive officer and the chairman of its board of directors are citizens of the United States and unless no more of its directors than a minority of the number necessary to constitute a quorum are noncitizens and the corporation itself is organized under the laws of the United States or of a State, territory, district, or possession thereof, or of the Commonwealth of Puerto Rico, but in the case of a corporation association, or partnership operating any vessel in the coastwise trade the amount of interest required to be owned by citizens of the United States shall be 75 per centum.

(b) The controlling interest in a corporation shall not be deemed to be owned by citizens of the United States (1) if the title to a majority of the stock thereof is not vested in such citizens free from any trust or fiduciary obligation in favor of any person not a citizen of the United States; or (2) if the majority of the voting power in such corporation is not vested in citizens of the United States; or (3) if through any contract or understanding it is so arranged that the majority of the voting power may be exercised, directly or indirectly, in behalf of any person who is not a citizen of the United States; or (4) if by any other means whatsoever control of the corporation is conferred upon or permitted to be exercised by any person who is not a citizen of the United States.

(c) Seventy-five per centum of the interest in a corporation shall not be deemed to be owned by citizens of the United States (1) if the title to 75 per centum of its stock is not vested in such citizens free from any trust or fiduciary obligation in favor of any person not a citizen of the United States; or (2) if 75 per centum of the voting power in such corporation is not vested in citizens of the United States; or (3) if, through any contract or understanding it is so arranged that more than 25 per centum of the voting power in such corporation may be exercised, directly or indirectly, in behalf of any person who is not a citizen of the United States; or (4) if by any other means whatsoever control of any interest in the corporation in excess of 25 per centum is conferred upon or permitted to be exercised by any person who is not a citizen of the United States.

(d) As used in parts A, B, and D of this title, "person" includes corporations, partnerships, and association, existing under or authorized by the laws of the United States, or any State, territory, district, or possession thereof, or the Commonwealth of Puerto Rico, or of any foreign country.

(e) As used in parts A and B of this title, "documented under the laws of the United States" means registered, enrolled or licensed under the laws of the United States.

(f) As used in parts A, B, and D of this title, "vessel" includes all watercraft and other artificial contrivances of whatever description and at whatever stage of construction, whether on the stocks or launched, which are used, are capable of being or are intended to be used as a means of transportation on water.

(g) The provisions of this title shall apply to receivers and trustees of all persons to whom the title applies, and to the successors or assignees of such persons.

REGISTRATION, ENROLLMENT, AND LICENSING OF VESSELS PURCHASED, CHARTERED  
OR LEASED; RESTRICTIONS ON OPERATIONS

Sec. 4102. (a) Any vessel purchased, chartered, or leased from the Secretary, by persons who are citizens of the United States, may be registered or enrolled and licensed, or both registered and enrolled and licensed, as a vessel of the United States and entitled to the benefits and privileges appertaining thereto: *Provided*, That foreign-built vessels admitted to American registry or enrollment and license hereunder, and vessels owned by any corporation in which the United States is a stockholder, and vessels sold, leased, or chartered by the Secretary to any person who is a citizen of the United States, as provided in this title, may engage in the coastwise trade of the United States while owned, leased, or chartered by such a person.

(b) Every vessel purchased, chartered, or leased from the Secretary shall, unless otherwise authorized by the Secretary, be operated only under such registry

or enrollment and license. Such vessels while employed solely as merchant vessels shall be subject to all laws, regulations, and liabilities governing merchant vessels, whether the United States be interested therein as owner, in whole or in part, or hold any mortgage, lien, or other interest therein.

(c) Any vessel operated in violation of this section shall be forfeited to the United States, and whoever violates this section shall be guilty of a misdemeanor and subject to a fine of not more than \$5,000, or to imprisonment for not more than five years, or both.

(d) Notwithstanding any other provisions of law, for the purposes of this section, a corporation incorporated under the laws of the United States or any State, territory, district, or possession thereof, or the Commonwealth of Puerto Rico, shall be deemed to be a citizen of the United States if it has satisfied the requirements of section 6103(c) of this Act.

#### RESTRICTIONS ON TRANSFERS TO ALIENS

SEC. 4103. (a) Except as provided in section 3211 of this Act, it shall be unlawful, without the approval of the Secretary, to sell, mortgage, lease, charter, deliver, or in any manner transfer, or agree to sell, mortgage, lease, charter, deliver, or in any manner transfer, to any person not a citizen of the United States, or transfer or place under foreign registry or flag, any vessel or any interest therein owned in whole or in part by a citizen of the United States, and documented under the laws of the United States, or the last documentation of which was under the laws of the United States.

(b) The issuance, transfer, or assignment of a bond, note, or other evidence of indebtedness which is secured by a mortgage of a vessel to a trustee or by an assignment to a trustee of the owner's right, title, or interest in a vessel under construction, to a person not a citizen of the United States, without the approval of the Secretary, is unlawful unless the trustee or a substitute trustee of such mortgage or assignment is approved by the Secretary. The Secretary shall grant his approval if such trustee or a substitute trustee is a bank or trust company which (1) is organized as a corporation, and is doing business, under the laws of the United States or any State thereof, (2) is authorized under such laws to exercise corporate trust powers, (3) is a citizen of the United States, (4) is subject to supervision or examination by Federal or State authority, and (5) has a combined capital and surplus (as set forth in its most recent published report of condition) of at least \$3,000,000. If such trustee or a substitute trustee at any time ceases to meet the foregoing qualifications, the Secretary shall disapprove such trustee or substitute trustee, and after such disapproval the transfer or assignment of such bond, note, or other evidence of indebtedness to a person not a citizen of the United States, without the approval of the Secretary, shall be unlawful. The trustee or substitute trustee approved by the Secretary shall not operate the vessel under the mortgage or assignment without the approval of the Secretary. If a bond, note, or other evidence of indebtedness which is secured by a mortgage of a vessel to a trustee or by an assignment to a trustee of the owner's right, title, or interest in a vessel under construction, is issued, transferred, or assigned to a person not a citizen of the United States in violation of this section, the issuance, transfer, or assignment shall be void.

(c) Any such vessel, or any interest therein, chartered, sold, transferred, or mortgaged to a person not a citizen of the United States or placed under a foreign registry or flag, or operated, in violation of any provision of this section, shall be forfeited to the United States, and whoever violates any provision of this section shall be guilty of a misdemeanor and subject to a fine of not more than \$5,000, or to imprisonment for not more than five years, or both.

(d) Notwithstanding any other provisions of law, for the purposes of this section, a corporation incorporated under the laws of the United States or any State, territory, district, or possession thereof, or the Commonwealth of Puerto Rico, shall be deemed to be a citizen of the United States if it has satisfied the requirements of section 6103(c) of this Act.

#### RESTRICTIONS ON TRANSFERS OF SHIPPING FACILITIES DURING WAR OR NATIONAL EMERGENCY

SEC. 4104. (a) When the United States is at war or during any national emergency, the existence of which is declared by proclamation of the President, it shall be unlawful, without first obtaining the approval of the Secretary—

(1) to transfer to or place under any foreign registry or flag any vessel owned in whole or in part by any person a citizen of the United States or by

a corporation organized under the laws of the United States, or of any State, territory, district, or possession thereof or the Commonwealth of Puerto Rico; or

(2) to sell, mortgage, lease, charter, deliver, or in any manner transfer, or agree to sell, mortgage, lease, charter, deliver, or in any manner transfer, to any person not a citizen of the United States, (A) any such vessel or any interest therein, or (B) any vessel documented under the laws of the United States, or any interest therein, or (C) any shipyard, drydock, ship building or ship repairing plant or facilities, or any interest therein; or

(3) to issue, transfer, or assign a bond, note, or other evidence of indebtedness which is secured by a mortgage of a vessel to a trustee or by an assignment to a trustee of the owner's right, title, or interest in a vessel under construction, or by a mortgage to a trustee on a shipyard, drydock, or ship building or ship repairing plant or facilities, to a person not a citizen of the United States, unless the trustee or a substitute trustee of such mortgage or assignment is approved by the Secretary: *Provided, however,* That the Secretary shall grant his approval if such trustee or a substitute trustee is a bank or trust company which (A) is organized as a corporation, and is doing business, under the laws of the United States or any State thereof, (B) is authorized under such 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; or for the trustee or substitute trustee approved by the Secretary to operate said vessel under the mortgage or assignment: *Provided further,* That if such trustee or a substitute trustee at any time ceases to meet the foregoing qualifications, the Secretary shall disapprove such trustee or substitute trustee, and after such disapproval the transfer or assignment of such bond, note, or other evidence of indebtedness to a person not a citizen of the United States, without the approval of the Secretary, shall be unlawful; or

(4) to enter into any contract, agreement, or understanding to construct a vessel within the United States for or to be delivered to any person not a citizen of the United States, without expressly stipulating that such construction shall not begin until after the war or emergency proclaimed by the President has ended; or

(5) to make any agreement or effect any understanding whereby there is vested in or for the benefit of any person not a citizen of the United States, the controlling interest or a majority of the voting power in a corporation which is organized under the laws of the United States, or of any State, territory, district, or possession thereof, or the Commonwealth of Puerto Rico, and which owns any vessel, shipyard, drydock, or ship building or ship repairing plant or facilities; or

(6) to cause or procure any vessel constructed in whole or in part within the United States, which has never cleared for any foreign port, to depart from a port of the United States before it has been documented under the laws of the United States.

(b) Any vessel registered, enrolled, or licensed under the laws of the United States shall be deemed to continue to be documented under the laws of the United States within the meaning of subsection (a)(2) of this section, until such registry, enrollment, or license is surrendered with the approval of the Secretary, the provisions of any other Act of Congress to the contrary notwithstanding.

(c) If a bond, note, or other evidence of indebtedness which is secured by a mortgage of a vessel to a trustee or by an assignment to a trustee of the owner's right, title, or interest in a vessel under construction, or by a mortgage to a trustee on a shipyard, drydock or ship building or ship repairing plant or facilities, is issued, transferred, or assigned to a person not a citizen of the United States in violation of subsection (a)(3) of this section, the issuance, transfer or assignment shall be void.

(d) Any vessel, shipyard, drydock, ship building or ship repairing plant or facilities, or interest therein, sold, mortgaged, leased, chartered, delivered, transferred, or documented, or agreed to be sold, mortgaged, leased, chartered, delivered, transferred, or documented, in violation of any of the provisions of this section and any stocks, bonds, or other securities sold or transferred, or agreed to be sold, or transferred, in violation of any such provisions, or any vessel departing in violation of the provisions of subsection (a)(6) of this section, shall be forfeited to the United States.

(e) Any such sale, mortgage, lease, charter, delivery, transfer, documentation, or agreement therefor shall be void, whether made within or without the United

States, and any consideration paid therefor or deposited in connection therewith shall be recoverable at the suit of the person who has paid or deposited the same, or of his successors or assigns, after the tender of such vessel, shipyard, drydock, ship building or ship repairing plant or facilities, or interest therein, or of such stocks, bonds, or other securities, to the person entitled thereto, or after forfeiture thereof to the United States, unless the person to whom the consideration was paid, or in whose interest it was deposited, entered into the transaction in the honest belief that the person who paid or deposited such consideration was a citizen of the United States.

(f) Notwithstanding any other provisions of law, for the purposes of this section, a corporation incorporated under the laws of the United States or any State, territory, district, or possession thereof, or the Commonwealth of Puerto Rico, shall be deemed to be a citizen of the United States if it has satisfied the requirements of section 6103(c) of this Act.

(g) Whoever violates, or attempts or conspires to violate, any of the provisions of this section shall be guilty of a misdemeanor, punishable by a fine of not more than \$5,000 or by imprisonment for not more than five years, or both.

#### RECORD OF SALE OR OTHER DISPOSITION OF VESSELS

SEC. 4105. (a) Whenever any bill of sale, mortgage, hypothecation, or conveyance of any vessel, or part thereof, or interest therein, is presented to any officer or employee designated by the Secretary of the Treasury for that purpose to be recorded, the vendee, mortgagee, or transferee shall file therewith a written declaration in such form as the Secretary of Commerce may by regulation prescribe, setting forth the facts relating to his citizenship, and such other facts as the Secretary requires, showing that the transaction does not involve a violation of any of the provisions of sections 4102, 4103, or 4104 of this Act. No such bill of sale, mortgage, hypothecation, or conveyance shall be valid against any person whatsoever until such declaration has been filed. Any declaration filed by or in behalf of a corporation shall be signed by the president, secretary, or treasurer thereof, or any other official thereof duly authorized by such corporation to execute any such declaration.

(b) Whoever knowingly makes any false statement of a material fact in any such declaration shall be guilty of a misdemeanor and subject to a fine of not more than \$5,000, or to imprisonment for not more than five years, or both.

#### APPROVAL BY SECRETARY; PENALTIES FOR FALSE STATEMENTS

SEC. 4106. (a) Whenever by sections 4102, 4103, or 4104 of this Act the approval of the Secretary is required to render any act or transaction lawful, such approval may be accorded either absolutely or upon such conditions as the Secretary prescribes. Whenever the approval of the Secretary is accorded upon any condition a statement of such condition shall be entered upon his records and incorporated in the same document or paper which notifies the applicant of such approval. A violation of such condition so incorporated shall constitute a misdemeanor and shall be punishable by fine and imprisonment in the same manner, and shall subject the vessel, stocks, bonds, or other subject matter of the application conditionally approved to forfeiture in the same manner, as though the act conditionally approved had been done without the approval of the Secretary but the offense shall be deemed to have been committed at the time of the violation of the condition.

(b) Whenever by this part the approval of the Secretary is required to render any act or transaction lawful, whoever knowingly makes any false statement of a material fact to the Secretary, or to any officer, attorney, or agent of the Department of Commerce, for the purpose of securing such approval, shall be guilty of a misdemeanor and subject to a fine of not more than \$5,000, or to imprisonment for not more than five years, or both.

#### REPORTS BY CARRIERS

SEC. 4107. In carrying out his functions under this part, the Secretary may require any common carrier by water, or other person subject to title I of this Act, or any officer, receiver, trustee, lessee, agent, or employee thereof, to file with him any periodical or special report, or any account, record, rate or charge, or any memorandum of any facts and transactions appertaining to the business of such carrier or other person subject to title I of this Act. Such report, account, record, rate, charge, or memorandum shall be under oath whenever the Secretary so requires, and shall be furnished in the form and within the time prescribed by

the Secretary. Whoever fails to file any report, account, record, rate, charge, or memorandum as required by this section shall forfeit to the United States the sum of \$100 for each day of such default. Whoever willfully falsifies, destroys, mutilates, or alters any such report, account, record, rate, charge, or memorandum, or willfully files a false report, account, record, rate, charge, or memorandum shall be guilty of a misdemeanor, and subject upon conviction to a fine of not more than \$1,000, or imprisonment for not more than one year, or to both such fine and imprisonment.

#### FORFEITURES

SEC. 4108. All forfeitures incurred under the provisions of this part may be prosecuted in the same court, and may be disposed of in the same manner, as forfeitures incurred for offenses under the Act of June 17, 1930, sections 602-615 617-621, 46 Stat. 754, as amended (19 U.S.C. 1602-1621).

#### CONVICTION AS PRIMA FACIE EVIDENCE OF VIOLATION

SEC. 4109. In any action or proceeding under the provisions of this part to enforce a forfeiture the conviction in a court of criminal jurisdiction of any person for a violation thereof with respect to the subject of the forfeiture shall constitute prima facie evidence of such violation against the person so convicted.

### PART B—ACQUISITION, CONSTRUCTION, OPERATION AND TRANSFER OF VESSELS BY SECRETARY

#### SCOPE OF PART

SEC. 4201. This part deals with acquisition, construction, operation and transfer of vessels by the Secretary generally. For other provisions dealing with the acquisition, construction, operation and transfer of vessels by the Secretary, see title III and parts A and E of title IV.

#### ACQUISITION AND CONSTRUCTION OF VESSELS

SEC. 4202. (a) The Secretary is authorized to acquire by purchase or otherwise such vessels constructed in the United States as he may deem necessary to establish, maintain, improve, or effect replacements upon any service, route, or line in the foreign commerce of the United States determined to be essential under section 2301(d) of this Act, and to pay for the same out of the construction fund provided for in section 4213 of this Act: *Provided*, That the price paid therefor shall be based upon a fair and reasonable valuation, but it shall not exceed by more than 5 per centum the cost of such vessel to the owner (excluding any construction-differential subsidy and the cost of national-defense features paid by the Secretary) plus the actual cost previously expended thereon for reconditioning less depreciation based upon a twenty-five-year life expectancy of the vessel, except as otherwise provided in section 6109 of this Act. No such vessel shall be acquired by the Secretary unless the Secretary of the Navy has certified to him that such vessel is suitable for economical and speedy conversion into a naval or military auxiliary, or otherwise suitable for the use of the United States in time of war or national emergency.

(b) Every vessel acquired under authority of this section that is not documented under the laws of the United States at the time of its acquisition shall be so documented as soon as practicable.

#### REQUISITION OR PURCHASE OF VESSELS IN TIME OF EMERGENCY

SEC. 4203. (a) Whenever the President shall proclaim that the security of the national defense makes it advisable or during any national emergency declared by proclamation of the President, it shall be lawful for the Secretary to requisition or purchase any vessel or other watercraft owned by citizens of the United States, or under construction within the United States, or for any period during such emergency, to requisition or charter the use of any such property. The termination of any emergency so declared shall be announced by a further proclamation by the President. When any such property or the use thereof is so requisitioned, the owner thereof shall be paid just compensation for the property taken or for the use of such property, but in no case shall the value of the property taken or used be deemed enhanced by the causes necessitating the taking or use. If any property is taken and used under the authority of this section, but the ownership thereof is not required by the United States, such property shall be restored to

the owner in a condition at least as good as when taken, less ordinary wear and tear, or the owner shall be paid an amount for reconditioning sufficient to place the property in such condition. The owner shall not be paid for any consequential damages arising from a taking or use of property under authority of this section.

(b) When any vessel is taken or used under authority of this section, upon which vessel a construction-differential subsidy has been allowed and paid, the value of the vessel at the time of its taking shall be determined as provided in section 3402 of this Act, and in determining the value of any vessel taken or used, on which a construction-differential subsidy has not been paid, the value of any national-defense features previously paid for by the United States shall be excluded.

(c) If any property is taken and used under authority of this section, but the ownership thereof is not required by the United States, the Secretary, at the time of the taking or as soon thereafter as the exigencies of the situation may permit, shall transmit to the person entitled to the possession of such property a charter setting forth the terms which, in the Secretary's judgment, should govern the relationships between the United States and such person and a statement of the rate of hire which, in the Secretary's judgment, will be just compensation for the use of such property and for the services required under the terms of such charter. If such person does not execute and deliver such charter and accept such rate of hire, the Secretary shall pay to such person as a tentative advance only, on account of such just compensation, a sum equal to 75 per centum of such rate of hire as the same may from time to time be due under the terms of the charter so tendered, and such person shall be entitled to sue the United States in a court having jurisdiction of such claims to recover such amounts as would be equal to just compensation for the use of the property and for the services required in connection with such use: *Provided, however*, That in the event of an election by such person to reject the rate of hire fixed by the Secretary and to sue in the courts, the excess of any amounts advanced on account of just compensation over the amount of the court judgment will be required to be refunded. In the event of loss or damage to such property, due to operation of a risk assumed by the United States under the terms of a charter prescribed in this subsection, where no valuation of such vessel or other property or mode of compensation has been agreed to, the United States shall pay just compensation for such loss or damage, to the extent the person entitled thereto is not reimbursed therefor through policies of insurance against such loss or damage.

(d)(1) In all cases, the just compensation authorized by this section shall be determined and paid by the Secretary as soon as practicable, but if the amount of just compensation determined by the Secretary is unsatisfactory to the person entitled thereto, such person shall be paid, as a tentative advance only, 75 per centum of the amount so determined and shall be entitled to sue the United States to recover such amount as would equal just compensation therefor, in the manner provided for by 28 U.S.C. 1346, 1491, 1503, 2401, 2402 and 2501: *Provided, however*, That in the event of an election to reject the amount determined by the Secretary and to sue in the courts, the excess of any amounts advanced on account of just compensation over the amount of the court judgment will be required to be refunded.

(2) The existence of any valid claim by way of mortgage or maritime claim or attachment lien upon such vessel shall not prevent the taking thereof pursuant to this section: *Provided, however*, That in the event any such claim exists the Secretary may in his discretion deposit such portion of the compensation hereunder, or advances on account thereof, as may equal but not exceed the amount of such claims in respect of the vessel, with the Treasurer of the United States, and the fund so deposited shall be available for the payment of such compensation, and shall be subject to be applied to the payment of the amount of any valid claim by way of mortgage or maritime lien or attachment lien upon such vessel, or of any stipulation therefor in a court of the United States, or of any State, subsisting at the time of such requisition or taking of title or possession. The holder of any such claim may commence, within six months after the first such deposit with the Treasurer and publication of notice thereof in the Federal Register, and maintain in the United States district court from whose custody such vessel has been or may be taken or in whose territorial jurisdiction the vessel was lying at the time of requisitioning or taking of title or possession, a suit in admiralty according to the principles of libels in rem against the fund, which shall proceed and be heard and determined according to the principles of law and to the rules of practice obtaining in like cases between private parties, and any decree in said suit shall be paid out of the first and all subsequent deposits of compensation; and such suit shall be commenced in the manner provided by section 2 of

the Suits in Admiralty Act (46 U.S.C. 742) and service of process shall be made in the manner therein provided by service upon the United States attorney and by mailing by registered mail to the Attorney General and the Secretary and due notice shall under order of the court be given to all interested persons, and any decree shall be subject to appeal and revision as now provided in other cases of admiralty and maritime jurisdiction.

(e) In the event that a vessel the title or use and possession of which is requisitioned or taken pursuant to this section, or section 4204 of this Act, is in the custody of any court, State or Federal, it shall be the duty of all agents and officers of the court having possession, custody, or control of said vessel, forthwith upon the filing with the clerk of said court of a certified copy of the order of requisitioning or taking, and without further order of the court, to comply with said requisitioning or taking and to permit the representatives of the Secretary to take possession, custody, and control of said vessel.

(f) The Secretary is authorized to repair, recondition, reconstruct, and operate, or charter for operation, any property acquired under authority of this section. The Secretary is further authorized to transfer the possession or control of any such property to any department or agency of the Government of the United States upon such terms and conditions as may be approved by the President. In case of any such transfer the department or agency to which the transfer is made shall promptly reimburse the Secretary for his expenditures on account of just compensation, purchase price, repairs, reconditioning, reconstruction, or charter hire for the property transferred. Such reimbursements shall be deposited in the construction fund provided for in section 4213 of this Act.

(g) As used in this section, "citizen of the United States" shall have the meaning assigned to it by section 3101(a) of this Act.

#### EMERGENCY ACQUISITION OF FOREIGN VESSELS

SEC. 4204. (a) During any period in which vessels may be requisitioned under section 4203 of this Act the President is authorized and empowered through the Secretary 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, including the Canal Zone, 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 4203 of this Act. 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 accordance with section 4203(d)(2) shall be made from such fund upon the certificate of the Secretary.

(b) During any period in which vessels may be requisitioned under section 4203 of this Act, the President is authorized through the Secretary 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.

(c)(1) Any vessel not documented under the laws of the United States, acquired by or made available to the Secretary under this section, or otherwise, may, notwithstanding any other provision of law, in the discretion of the Secretary of the Treasury 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 may prescribe or issue as necessary or appropriate to carry out the purposes and provisions of this section, and in accordance with the provisions of paragraph (3) hereof, engage in the coastwise trade when so documented. Any document issued to a vessel under the provisions of this subsection shall be surrendered at any time that such surrender may be ordered by the Secretary of the Treasury. 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.

(2) 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 subsection 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 paragraph.

(3) Any vessel while documented under the provisions of this subsection, when chartered under this section by the Secretary to Government agencies or departments or to private operators, may engage in the coastwise trade under permits issued by the Secretary, who is hereby authorized to issue permits for such purpose pursuant to such rules and regulations as he may prescribe. The Secretary 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 subsection. Section 4102(b) of this Act 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 section. Existing laws covering the inspection of steam vessels are hereby made applicable to vessels documented under this subsection only to such extent and upon such conditions as many 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.

(4) The Secretary, without regard to the provisions of Section 3709 of the Revised Statutes, as amended (41 U.S.C. 5) may repair, reconstruct, or recondition any vessels to be utilized under this section. The Secretary 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 section may, with the aid of any funds available and without regard to the provisions of said section 3709 repair, reconstruct, or recondition any such vessels to meet the needs of the services intended, or provide facilities for such repair, reconstruction, or reconditioning. The Secretary may operate or charter for operation any vessel to be utilized under this section 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 part C of title III of this Act, and any department or agency of the United States Government is authorized to enter into such charters.

(5) In case of any voyage of a vessel documented under the provisions of this subsection begun before the date of termination of an effective period of subsection (a) hereof, but completed after such date, the provisions of this subsection shall continue in effect with respect to such vessel until such voyage is completed.

(6) When used in this section, the term "documented" means "registered", "enrolled and licensed", or "licensed".

#### ESTABLISHMENT AND OPERATION OF STEAMSHIP LINES; SALES OR CHARTERS OF VESSELS

SEC. 4205. (a) The Secretary is authorized and directed to investigate and determine from time to time what steamship lines should be established and put in operation from ports in the United States or any territory, district, or possession thereof, or the Commonwealth of Puerto Rico to such world and domestic markets as in his judgment are desirable for the promotion, development, expansion, and maintenance of the foreign and coastwise trade of the United States and an adequate postal service, and to determine the type, size, speed, and other requirements of the vessels to be employed upon such lines and the frequency and regularity of their sailings, with a view to furnishing adequate, regular, certain, and permanent service. The Secretary is authorized to sell, and if a satisfactory sale cannot be made, to charter any of the vessels acquired by the Department of Commerce, as will meet these requirements to responsible persons who are citizens of the United States who agree to establish and maintain such lines upon such terms of payment and other conditions as the Secretary may deem just and necessary to secure and maintain the service desired; and if any such steamship line is deemed desirable and necessary, and if no such citizen can be secured to supply such service by the purchase or charter of vessels on terms satisfactory to the Secretary, the Secretary shall operate vessels on such line until the business is developed so that such vessels may be sold on satisfactory terms and the service maintained, or unless it shall appear within a reasonable time that such line cannot be made self-sustaining: *Provided*, That preference in the sale or assignment of vessels for operation on such steamship lines shall be given to persons who are citizens of the United States who have the support, financial and otherwise, of the domestic communities primarily interested in such lines if the Secretary is satisfied of the ability of such persons to maintain the service desired and proposed to be maintained, or to persons who are citizens of the United States who may then be maintaining a

service from the port of the United States to or in the general direction of the world market port to which the Secretary has determined that such service should be established: *Provided further*, That whenever the Secretary shall determine, as provided in this part, that trade conditions warrant the establishment of a service or additional service under Government administration where a service is already being given by persons, citizens of the United States, the rates and charges for such Government service shall not be less than the costs thereof, including a proper interest and depreciation charge on the value of Government vessels and equipment employed therein.

(b) The Secretary is directed prior to February 1, 1922, to have established adequate steamship service at reasonable rates to accommodate the commerce and the passenger travel of the islands to which the coastwise laws of the United States are applicable pursuant to section 6103 of this Act and to maintain and operate such service until it can be taken over and operated and maintained upon satisfactory terms by private capital and enterprise: *Provided*, That if adequate shipping service is not established by February 1, 1922, the President shall extend the period herein allowed for the establishment of such service in the case of any island territory or possession or the Commonwealth of Puerto Rico for such time as may be necessary for the establishment of adequate shipping facilities therefor.

(c) After December 31, 1946, operation of vessels in commercial service by the United States, either for its own account or through operating agents under agency agreements, shall, except as to the Panama Canal Company and other services specifically authorized by law, be continued only to the extent necessary to effect orderly transfer of vessels to private operation.

#### REPAIR AND OPERATION OF VESSELS

SEC. 4206. (a) All vessels may be reconditioned and kept in suitable repair and until sold shall be managed and operated by the Secretary or chartered or leased by him on such terms and conditions as the Secretary shall deem wise for the promotion and maintenance of an efficient merchant marine, pursuant to the policy and purposes declared in sections 2101 and 4210 of this Act.

(b) The Secretary may remodel and improve vessels owned by the United States and in his possession or under his control, so as to equip them adequately for competition in the foreign trade of the United States. Any vessel so remodeled or improved shall be documented under the laws of the United States and shall remain documented under such laws for not less than five years from the date of the completion of the remodeling or improving and so long as there remains due the United States any money or interest on account of such vessel, and during such period it shall be operated only on voyages which are not exclusively coastwise.

(c) As used in this and the following section only, the words "foreign trade" mean trade between the United States, its territories or possessions, or the District of Columbia, or the Commonwealth of Puerto Rico and a foreign country: *Provided, however*, That the loading or the unloading of cargo, mail, or passengers at any port in any territory or possession of the United States, or the Commonwealth of Puerto Rico shall be construed to be foreign trade if the stop at such territory or possession, or the Commonwealth of Puerto Rico is an intermediate stop on what would otherwise be a voyage in a foreign trade.

#### REPLACEMENT OF VESSELS

SEC. 4207. The necessity for the replacement of vessels owned by the United States and in the possession or under the control of the Secretary and the construction for the Secretary of additional up-to-date cargo, combination cargo and passenger, and passenger ships, to give the United States an adequate merchant marine, is hereby recognized, and the Secretary is authorized and directed to present to Congress, from time to time, recommendations setting forth what new vessels are required for permanent operation under the United States flag in foreign trade, as defined in subsection 4206(c), and the estimated cost thereof, to the end that Congress may, from time to time, make provision for replacements and additions. All vessels built for the Secretary shall be built in the United States, and they shall be planned with reference to their possible usefulness as auxiliaries to the naval and military services of the United States.

ALLOCATION OF SHIP OPERATIONS WITHOUT DETRIMENT TO SERVICE AMONG  
VARIOUS PORTS

SEC. 4208. In the allocations of the operations of the ships, the Secretary shall distribute them as far as possible and without detriment to the service among the various ports of the country.

## INSURANCE FUND FOR UNITED STATES INTERESTS

SEC. 4209. The Secretary may create, out of insurance premiums, and revenue from operations and sales, and maintain and administer, separate insurance funds which he may use to insure in whole or in part against all hazards commonly covered by insurance policies in such cases, any legal or equitable interest of the United States (1) in any vessel constructed or in process of construction; and (2) in any plants or property in the possession or under the authority of the Secretary. The United States shall be held to have such an interest in any vessel upon which it holds a mortgage or lien of any character, or in any vessel which is obligated by contract with the owner to perform any service in behalf of the United States, to the extent of the Government's interest therein.

## SALES OF VESSELS TO CITIZENS

SEC. 4210. (a) Except as otherwise provided in this Act, the Secretary is authorized and directed to sell, as soon as practicable, consistent with good business methods and the objects and purposes to be attained by this Act, as public or private competitive sale after appraisalment and due advertisement, to persons who are citizens of the United States, all vessels acquired by the Department of Commerce.

(b) Such sale shall be made at such prices and on such terms and conditions as the Secretary may prescribe, but the completion of the payment of the purchase price and interest shall not be deferred more than fifteen years after the making of the contract of sale. The Secretary in fixing or accepting the sale price of such vessels shall take into consideration the prevailing domestic and foreign market price of, the available supply of, and the demand for vessels, existing freight rates and prospects of their maintenance, the cost of constructing vessels of similar types under prevailing conditions, as well as the cost of the construction or purchase price of the vessels to be sold, and any other facts or conditions that would influence a prudent, solvent businessman in the sale of similar vessels or property which he is not forced to sell.

(c) All sales made under the authority of this part shall be subject to the limitations and restrictions of sections 4102 and 4103 of this Act.

## INSURANCE ON VESSELS SOLD UNDER DEFERRED PAYMENTS

SEC. 4211. If the terms and conditions of any sale of a vessel made under the provisions of this part include deferred payments of the purchase price, the Secretary shall require, as part of such terms and conditions, that the purchaser of the vessel shall keep the same insured (1) against loss or damage by fire, and against marine risks and disasters, and war and other risks if the Secretary so specifies, with such insurance companies, associations, or underwriters, and under such forms of policies, and to such an amount, as the Secretary may prescribe or approve; and (2) by protection and indemnity insurance with such insurance companies, associations, or underwriters and under such forms of policies and to such an amount as the Secretary may prescribe or approve. The insurance required to be carried under this section shall be made payable to the Secretary and/or to the parties as interest may appear. The Secretary is authorized to enter into any agreement that he deems wise in respect to the payment and/or the guarantee of premiums of insurance.

## SALE OR OPERATION OF PROPERTY

SEC. 4212. (a) The Secretary is authorized to sell all property other than vessels transferred to the former United States Shipping Board under section 4 of the Merchant Marine Act of 1920 upon such terms and conditions as the Secretary may determine and prescribe.

(b) The possession and control of docks, piers, warehouses, wharves, and terminal equipment and facilities or parts thereof, including all leasehold easements, rights-or-way, riparian rights and other rights, estates or interests therein

or appurtenant thereto, other than those acquired by the President by or under the Act entitled "An Act making appropriations to supply urgent deficiencies in appropriations for the fiscal year ending June 30, 1918, and prior fiscal years, on account of war expenses, and for other purposes", approved March 28, 1918, which are acquired by the War Department or the Navy Department for military or naval purposes during the World War I emergency may be transferred by the President to the Secretary whenever the President deems such transfer to be for the best interest of the United States. The President may at any time he deems it necessary, by order setting out the need therefor and fixing the period of such need, permit or transfer the possession and control of any part of the property taken over by or transferred to the Secretary under this subsection to the Department of the Army or the Department of the Navy for their needs, and when in the opinion of the President such need therefor ceases the possession and control of such property shall revert to the Secretary. None of such property shall be sold except as may be provided by law.

(c) Notwithstanding any other provision of law, the Secretary may, in accordance with good business methods and on such terms and conditions as he determines to effectuate the policy of this Act, operate or lease any lands, docks, wharves, piers, or real property under his control, and all money heretofore or hereafter received from such operation or lease shall be available for expenditure by the Secretary as provided in this Act.

(d) The Secretary may, upon such terms and conditions as he may prescribe in accordance with sound business practice, make such extensions and accept such renewals of the notes and other evidences of indebtedness transferred to the Department of Commerce as the successor to the powers and functions of the former United States Shipping Board, by virtue of the President's Executive order of June 10, 1933, and of the mortgages and other contracts securing the same, as he may deem necessary to carry out the objects of this Act.

#### CONSTRUCTION FUND

SEC. 4213. (a) The revolving fund created by section 206 of the Merchant Marine Act of 1936, as amended, therein designated as the construction fund, is continued, and all of the proceeds of sales of ships and surplus property heretofore or hereafter made, including proceeds of notes or other evidences of debt taken therefor and the interest thereon, and, notwithstanding any other provision of law, all money heretofore or hereafter received from the operation or leasing of lands, docks, wharves, piers, or real property shall be deposited in the Treasury of the United States and there maintained as such revolving fund, and shall be available for expenditure by the Secretary in carrying out his functions under titles II, III, IV, sections 5101-5105 of title V, and title VI of this Act. Except as provided in subsection (b), all moneys received by the Secretary under the provisions of this Act shall be deposited in the construction fund, and all disbursements made by the Secretary under authority of this Act shall be paid out of said fund, and notwithstanding any other provision of law, all disbursements applicable to the money referred to in this section may be made by the Secretary out of said fund. Further appropriations by Congress to replenish said fund are authorized.

(b) Nothing in subsection (a) shall affect the provisions of sections 4214, 4306, 4502, and 4608 of this Act.

#### VESSEL OPERATIONS REVOLVING FUND

SEC. 4214. (a) The vessel operations revolving fund created by the Third Supplemental Appropriation Act, 1951 for the purpose of carrying out vessel operating functions of the Secretary, including charter, operation, maintenance, repair, reconditioning, and betterment of merchant vessels under the jurisdiction of the Secretary, is continued.

(b) Notwithstanding any other provision of law, rates for shipping services rendered under the fund shall be prescribed by the Secretary and the fund shall be credited with all receipts from vessel operating activities conducted thereunder: *Provided*, That such sums as may be determined to be necessary by the Secretary, with the approval of the Bureau of the Budget, but not exceeding 2 per centum of vessel operating expenses, may be advanced from the fund to the appropriation "Salaries and expenses" for the purposes of that appropriation in connection with vessel operating functions, but without regard to the limitations on amounts as stated therein: *Provided further*, That notwithstanding any other provision of law, the unexpended balances of any working funds or of allocation accounts estab-

lished, subsequent to January 1, 1951, for the activities provided for under the Act referred to in subsection (a), together with receipts heretofore and hereafter received from such activities, may be transferred to and consolidated with the fund, which shall be available for the purposes of such working funds or allocation accounts.

(c) The vessel operations revolving fund shall be available for necessary expenses incurred, in connection with protection, preservation, maintenance, acquisition, or use of vessels involved in mortgage-foreclosure or forfeiture proceedings instituted by the United States, including payment of prior claims and liens, expenses of sale, or other charges incident thereto; for necessary expenses incident to the redelivery and layup, in the United States, of ships chartered on or before June 30, 1955, under agreements which did not call for their return to the United States; and for payment of expenses of custody and husbanding of Government-owned ships other than those within reserve fleets.

(d) The vessel operations revolving fund shall be available for expenses incurred in connection with the activation, repair, and deactivation of merchant ships chartered under the jurisdiction of the Secretary. There shall be credited to such fund all receipts on account of operations under charters of Government-owned ships under the jurisdiction of the Secretary.

(e) In connection with the functions of the Secretary described in subsection (a), and with seamen employed through general agents as employees of the United States, who may be employed in accordance with customary commercial practices in the maritime industry, notwithstanding the provisions of any law applicable in terms to the employment of persons by the United States, the following provisions shall be applicable:

(1) Officers and members of crews (hereinafter referred to as "seamen") employed on United States- or foreign-flag vessels as employees of the United States through the Secretary shall, with respect to (A) laws administered by the Public Health Service and the Social Security Act, as amended; (B) death, injuries, illness, maintenance and cure, loss of effects, detention, or repatriation, or claim arising therefrom not covered by the foregoing clause (A); and (C) collection of wages and bonuses and making of allotments, have all of the rights, benefits, exemptions, privileges, and liabilities, under law applicable to citizens of the United States employed as seamen on privately owned and operated American vessels. Such seamen shall not be considered as officers or employees of the United States for the purposes of the United States Employees Compensation Act, as amended; the Civil Service Retirement Act, as amended; the Act of Congress approved March 7, 1942 (Public Law 490, Seventy-seventh Congress); or the Act entitled "An Act to provide benefits for the injury, disability, death, or detention of employees of contractors with the United States and certain other persons or reimbursement therefor", approved December 2, 1942 (Public Law 784, Seventy-seventh Congress). Claims arising under clause (A) hereof shall be enforced in the same manner as such claims would be enforced if the seamen were employed on a privately owned and operated American vessel. Any claim referred to in clause (B) or (C) hereof shall, if administratively disallowed in whole or in part, be enforced pursuant to the provisions of the Suits in Admiralty Act, notwithstanding the vessel on which the seaman is employed is not a merchant vessel within the meaning of such Act. Rights of any seaman under the Social Security Act, as amended, and claims therefor shall be governed solely by the provisions of such Act. When used in this subsection the term "administratively disallowed" means a denial of a written claim in accordance with rules or regulations prescribed by the Secretary. "Seaman" shall be deemed to include any seaman employed as an employee of the United States through the Secretary on vessels made available to or subchartered to other agencies or departments of the United States.

(2) The Secretary and his agents or persons acting on his behalf or for his account may, for convenience of administration, make payments of any taxes, fees, charges, or exactions to the United States or its agencies.

(3) The United States shall, with respect to vessels owned by or chartered to the Secretary under bareboat charter or time charter or operated directly by the Secretary or for his account, be entitled to the benefits of all exemptions and of all limitations of liability accorded by law to the owners of vessels. With respect to any such vessel, the term "the United States" shall include agents or other persons acting for or on behalf of the Secretary in connection with the operation thereof.

## NATIONAL DEFENSE RESERVE FLEET

SEC. 4215. The national defense reserve fleet, established under section 11(a) of the Merchant Ship Sales Act of 1946, is continued. Unless otherwise provided by law, all vessels now in the reserve fleet or hereafter placed in the reserve fleet pursuant to section 3111(i) of this Act shall be preserved and maintained by the Secretary for the purpose of national defense. A vessel placed in such reserve shall in no case be used for any purpose whatsoever except that (1) any such vessel may be used for account of any agency or department of the United States during any period in which vessels may be requisitioned under section 4203 of this Act, (2) any such vessel may be used under a bareboat charter entered into pursuant to authority vested in the Secretary under this Act or otherwise, and (3) any vessel may be furnished to a State maritime academy or college as provided in section 5202 of this Act.

## PART C—WAR-BUILT VESSELS

## DEFINITIONS

SEC. 4301. As used in this part—

(a) "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 4101 of this Act, and, in the case of a corporation, partnership, or association operating a vessel on the Great Lakes, or on bays, sounds, rivers, harbors, or inland lakes of the United States the amount of interest required to be owned by a citizen of the United States shall be not less than 75 percentum.

(b) "Domestic war cost" as applied to any type of vessel means the average construction cost (without national-defense features) as determined by the Secretary, of vessels of such type delivered during the calendar year 1944, except in case of any type of vessel the principal deliveries of which were made after the calendar year 1944, there shall be used in lieu of such year 1944 such period of not less than six consecutive calendar months as the Secretary shall find to be most representative of war production costs of such type.

(c) "War-built vessel" means an oceangoing vessel of one thousand five hundred gross tons or more, owned by the United States and suitable for commercial use—

(1) which was constructed or contracted for by or for the account of the United States during the period beginning January 1, 1941, and ending with September 2, 1945; or

(2) which, having been constructed during the period beginning September 3, 1939, and ending with September 2, 1945, was acquired by the United States during such period.

## CHARTER OF WAR-BUILT VESSELS

SEC. 4302. Notwithstanding the provisions of section 4215 of this Act, war-built dry-cargo vessels owned by the United States may be chartered to any citizen of the United States for bareboat use in any service which, in the opinion of the Secretary, 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 such charters shall be made by the Secretary until he shall have given due notice to all interested parties and shall have afforded such parties an opportunity for a public hearing thereon. The Secretary is authorized to include in such charters such restrictions and conditions as he determines to be necessary or appropriate to protect the public interest in respect to 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 Secretary, for the purpose of determining whether conditions exist justifying continuance of the charters under the provisions of this subsection.

## CHARTER HIRE

SEC. 4303. (a) The charter hire for any vessel chartered under section 4302 shall be fixed by the Secretary at such rate as the Secretary determines to be consistent with the policies stated in section 2101 of this Act. Except in the case of vessels having passenger accommodations for not less than eighty passengers, rates of charter hire fixed by the Secretary on any war-built vessel which are less than 5.25 per centum per annum of its domestic war cost (4.725 per centum in the case of any Liberty-type vessel) shall not be less than the prevailing world

market charter rate for similar vessels for similar use as determined by the Secretary.

(b) The provisions of sections 3307(k), 3308, 3309, 3310, and 3312 of this Act shall be applicable to charters made under section 4302.

(c) Where an operator is engaged both in the foreign trade and in the domestic trade (coastwise or intercoastal), additional charter hire determined with reference to voyage profits of the chartered vessels, under regulations promulgated by the Secretary, shall be computed, accounted for, and paid separately on such foreign trade and shall be computed, accounted for, and paid separately on such domestic trade.

#### CHARTER OF PASSENGER VESSELS

SEC. 4304. Notwithstanding the provisions of section 4215 of this Act, the Secretary may charter any passenger vessel, whether or not war built, owned by the United States, pursuant to part C of title III of this Act 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 pursuant to section 4302 of this Act.

#### ORDER OF PREFERENCE

SEC. 4305. In exercising his powers under this part and under other provisions of law with respect to the sale and charter of war-built vessels, the Secretary shall give preference to citizen applicants over noncitizen applicants, and as between citizen applicants to purchase and citizen applicants to charter, shall, so far as practicable and consistent with the policies of this Act, give preference to citizen applicants to purchase.

#### GENERAL PROVISIONS

SEC. 4306. (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 chartered under this part. The Secretary is authorized to make such replacements, alterations, or modifications with respect to any vessel authorized to be chartered under this part, 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.

(b) Notwithstanding the provisions of section 6103(b) of this Act, no vessel chartered by the Secretary under this part to a citizen of the United States or sold under the provisions of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1735 et seq.) shall be prohibited from engaging in the coastwise trade of the United States while owned by or chartered to such citizen or citizen successors in interest merely because it was under foreign registry on or after May 27, 1941, and prior to such sale or charter to such citizen, if it is otherwise entitled under the laws of the United States to engage in such trade.

(c) All moneys received by the Secretary under this part shall be deposited in the Treasury to the credit of miscellaneous receipts. The provisions of sections 2205(b) and 2207 shall apply to all activities and functions which the Secretary is authorized to perform under this part.

### PART D—SHIP MORTGAGES

#### DEFINITIONS

SEC. 4401. In addition to the definitions in subsections (a), (b), (c), (d), and (f) of section 4101 of this Act, for the purposes of this part—

(a) "Collector of customs" includes any officer or employee designated by the Secretary of the Treasury to carry out the functions referred to in this part.

(b) "Document" includes registry and enrollment and license.

(c) "Documented" means registered or enrolled or licensed under the laws of the United States, whether permanently or temporarily.

(d) "Mortgagee", in the case of a mortgagee involving a trust deed and a bond issue thereunder, means the trustee designated in such deed.

(e) "Port of documentation" means the "home port" of the vessel, as defined in section 1 of the Act of February 16, 1925 (43 Stat. 947, as amended; 46 U.S.C. 18), except that "port of documentation" shall not include a port in which a temporary document is issued.

(f) "Vessel of the United States" means any vessel documented under the laws of the United States and such vessel shall be held to continue to be so documented until its documents are surrendered with the approval of the Secretary.

RECORDING OF SALES, CONVEYANCES, AND MORTGAGES OF VESSELS OF THE UNITED STATES

SEC. 4402. (a) No bill of sale, conveyance, mortgage, assignment of mortgage, or hypothecation (except bottomry), which includes a vessel of the United States or any portion thereof, shall be valid in respect to such vessel against any person other than the grantor or mortgagor, his heirs or devisees, and any person having actual notice thereof, until such bill of sale, conveyance, mortgage, assignment of mortgage, or hypothecation is recorded in the office of the collector of customs at the home port of such vessel. Any bill of sale or conveyance of the whole or any part of a vessel shall be recorded at the home port of such vessel as shown in her new document.

(b) Such collector of customs shall record bills of sale, conveyances, and mortgages, delivered to him, in the order of their reception, in books to be kept for that purpose and indexed to show

- (1) The name of the vessel;
- (2) The names of the parties to the sale, conveyance, or mortgage;
- (3) The time and date of reception of the instrument;
- (4) The interest in the vessel so sold, conveyed, or mortgaged; and
- (5) The amount and date of maturity of the mortgage.

PREFERRED MORTGAGES

SEC. 4403. (a)(1) A valid mortgage which, at the time it is made, includes the whole of any vessel of the United States (other than a towboat, barge, scow, lighter, car float, canal boat, or tank vessel, of less than twenty-five gross tons), shall, in addition, have in respect to such vessel and as of the date of the compliance with all the provisions of this subsection (a), the preferred status given by the provisions of section 4412, if—

(A) The mortgage is endorsed upon the vessel's documents in accordance with the provisions of this section;

(B) The mortgage is recorded as provided in section 4402, together with the time and date when the mortgage is so endorsed;

(C) An affidavit is filed with the record of such mortgage to the effect that the mortgage is made in good faith and without any design to hinder, delay, or defraud any existing or future creditor of the mortgagor or any lienor of the mortgaged vessel;

(D) The mortgage does not stipulate that the mortgagee waives the preferred status thereof; and

(E) The mortgagee is a citizen of the United States, as defined in section 4101 of this Act.

(2) With respect to any mortgage in existence on September 26, 1961, or any mortgage placed on a vessel after September 26, 1961, under a mortgage on such vessel in existence on such date, as long as such existing mortgage remains undischarged, "twenty-five gross tons" in subsection (a)(1) shall read "two hundred gross tons".

(b) Any mortgage which complies in respect to any vessel with the conditions enumerated in this section is hereafter in this part called a "preferred mortgage" as to such vessel.

(c) There shall be endorsed upon the documents of a vessel covered by a preferred mortgage—

- (1) The names of the mortgagor and mortgagee;
- (2) The time and date the endorsement is made;
- (3) The amount and date of maturity of the mortgage; and
- (4) Any amount required to be endorsed by the provisions of subsection (e) or (f) of this section.

(d) Such endorsement shall be made (1) by the collector of customs of the port of documentation of the mortgaged vessel, or (2) by the collector of customs of any port in which the vessel is found, if such collector is directed to make the endorsement by the collector of customs of the port of documentation; and no clearance shall be issued to the vessel until such endorsement is made. The collector of customs of the port of documentation shall give such direction by wire or letter at the request of the mortgagee and upon the tender of the cost of communication of such direction. Whenever any new document is issued for the vessel, such

endorsement shall be transferred to and endorsed upon the new document by the collector of customs.

(e) A mortgage which includes property other than a vessel shall not be held a preferred mortgage unless the mortgage provides for the separate discharge of such property by the payment of a specified portion of the mortgage indebtedness. If a preferred mortgage so provides for the separate discharge, the amount of the portion of such payment shall be endorsed upon the documents of the vessel.

(f) If a preferred mortgage includes more than one vessel and provides for the separate discharge of each vessel by the payment of a portion of the mortgage indebtedness, the amount of such portion of such payment shall be endorsed upon the documents of the vessel. In case such mortgage does not provide for the separate discharge of a vessel and the vessel is to be sold upon the order of a United States district court in a suit in rem in admiralty, the court shall determine the portion of the mortgage indebtedness increased by 20 per centum (1) which, in the opinion of the court, the approximate value of the vessel bears to the approximate value of all the vessels covered by the mortgage, and (2) upon the payment of which the vessel shall be discharged from the mortgage.

#### CERTIFIED COPIES OF MORTGAGES

SEC. 4404. The collector of customs upon the recording of a preferred mortgage shall deliver two certified copies thereof to the mortgagor who shall place, and use due diligence to retain, one copy on board the mortgaged vessel and cause such copy and the documents of the vessel to be exhibited by the master to any person having business with the vessel, which may give rise to a maritime lien upon the vessel or to the sale, conveyance, or mortgage thereof. The master of the vessel shall, upon the request of any such person, exhibit to him the documents of the vessel and the copy of any preferred mortgage of the vessel placed on board thereof.

#### MARITIME LIENS

SEC. 4405. The mortgagor (1) shall, upon request of the mortgagee, disclose in writing to him prior to the execution of any preferred mortgage, the existence of any maritime lien, prior mortgage, or other obligation or liability upon the vessel to be mortgaged, that is known as the mortgagor, and (2) without the consent of the mortgagee, shall not incur, after the execution of such mortgage and before the mortgagee has had a reasonable time in which to record the mortgage and have indorsements in respect thereto made upon the documents of the vessel, any contractual obligation creating a lien upon the vessel other than a lien for wages of stevedores when employed directly by the owner, operator, master, ship's husband, or agent of the vessel, for wages of the crew of the vessel, for general average, or for salvage, including contract salvage, in respect to the vessel.

#### RECORDING NOTICE OF CLAIM OF LIEN AND OF DISCHARGE

SEC. 4406. (a) The collector of customs of the port of documentation shall, upon the request of any person, record notice of his claim of a lien upon a vessel covered by a preferred mortgage, together with the nature, date of creation, and amount of the lien, and the name and address of the person. Any person who has caused notice of his claim of lien to be so recorded shall, upon a discharge in whole or in part of the indebtedness, forthwith file with the collector of customs a certificate of such discharge. The collector of customs shall thereupon record the certificate.

(b) The mortgagor, upon a discharge in whole or in part of the mortgage indebtedness, shall forthwith file with the collector of customs for the port of documentation of the vessel, a certificate of such discharge. Such collector of customs shall thereupon record the certificate. In case of a vessel covered by a preferred mortgage, the collector of customs at the port of documentation shall (1) endorse upon the documents of the vessel, or direct the collector of customs at any port in which the vessel is found, to so endorse, the fact of such discharge, and (2) shall deny clearance to the vessel until such endorsement is made.

#### RECORDING REQUIREMENTS; INTEREST

SEC. 4407. (a) No bill of sale, conveyance, or mortgage shall be recorded unless it states the interest of the grantor or mortgagor in the vessel, and the interest so sold, conveyed, or mortgaged.

(b) No bill of sale, conveyance, mortgage, notice of claim of lien, or certificate of discharge thereof, shall be recorded unless previously acknowledged before a notary public or other officer authorized by a law of the United States, or of a State, territory, district, or possession thereof, or the Commonwealth of Puerto Rico, to take acknowledgement of deeds.

(c) In case of a change in the port of documentation of a vessel of the United States, no bill of sale, conveyance, or mortgage shall be recorded at the new port of documentation unless there is furnished to the collector of customs of such port, together with the copy of the bill of sale, conveyance, or mortgage to be recorded, a certified copy of the record of the vessel at the former port of documentation furnished by the collector of such port. The collector of customs at the new port of documentation is authorized and directed to record such certified copy.

(d) A preferred mortgage may bear such rate of interest as is agreed by the parties thereto.

#### INSPECTION OF RECORDS

SEC. 4408. Each collector of customs shall permit records made under the provisions of this part to be inspected during office hours, under such reasonable regulations as the collector may establish. Upon the request of any person the collector of customs shall furnish him from the records of the collector's office

(1) a certificate setting forth the name of the owners of any vessel, the interest held by each owner, and the material facts as to any bill of sale or conveyance of, any mortgage covering, or any lien or other encumbrance upon, a specified vessel.

(2) a certified copy of any bill of sale, conveyance, mortgage, notice of claim of lien, or certificate of discharge in respect to such vessel, or (3) a certified copy as required by section 4407(c). The collector of customs shall collect a fee for any bill of sale, conveyance, or mortgage recorded, or any certificate or certified copy furnished, by him, in the amount of 20 cents a folio with a minimum charge of \$1. All such fees shall be covered into the Treasury of the United States as miscellaneous receipts.

#### PENALTIES

SEC. 4409. (a) If the master of the vessel willfully fails to exhibit the documents of the vessel or the copy of any preferred mortgage thereof, as required by section 4404, the Coast Guard may suspend or cancel the master's license.

(b) A mortgagor who, with intent to defraud, violates any provision of section 4405, and if the mortgagor is a corporation or association, the president or other principal executive officer of the corporation or association, shall upon conviction thereof be held guilty of a misdemeanor and shall be fined not more than \$1,000 or imprisoned not more than two years, or both. The mortgaged indebtedness shall thereupon become immediately due and payable at the election of the mortgagee.

(c) If any person enters into any contract secured by, or upon the credit of, a vessel of the United States covered by a preferred mortgage, and suffers pecuniary loss by reason of the failure of the collector of customs, or any officer, employee, or agent thereof, properly to perform any duty required of the collector under the provisions of this part, the collector of customs shall be liable to such person for damages in the amount of such loss. If any such person is caused any such loss by reason of the failure of the mortgagor, or matter of the mortgaged vessel, or any officer, employee, or agent thereof, to comply with any provision of section 4404 or 4405 or to file an affidavit as required by section 4403(a), correct in each particular thereof, the mortgagor shall be liable to such person for damages in the amount of such loss. The United States district courts are given jurisdiction (but not to the exclusion of the courts of the several States, territories, districts, or possessions, or the Commonwealth of Puerto Rico) of suits for the recovery of such damages, irrespective of the amount involved in the suit or the citizenship of the parties thereto. Such suit shall be begun, and personal service made upon the defendant, as provided in the Federal Rules of Civil Procedure. Upon judgment for the plaintiff in any such suit, the court shall include in the judgment an additional amount for costs of the action and a reasonable counsel's fee, to be fixed by the court.

#### FORECLOSURE OF PREFERRED MORTGAGES

SEC. 4410. (a) A preferred mortgage shall constitute a lien upon the mortgaged vessel in the amount of the outstanding mortgage indebtedness secured by such vessel. Upon the default of any term or condition of the mortgage, such lien may be enforced by the mortgagee by suit in rem in admiralty. Original jurisdiction of all such suits is granted to the United States district courts exclusively. In addition to any notice by publication, actual notice of the commencement of any such suit shall be given by the libellant, in such manner as the court shall direct, to

(1) the master, other ranking officer, or caretaker of the vessel, and (2) any person who has recorded a notice of claim of an undischarged lien upon the vessel, as provided in section 4406, unless after search by the libellant satisfactory to the court, such mortgagor, master, other ranking officer, caretaker, or claimant is not found within the United States. Failure to give notice to any such person, as required by this subsection, shall not constitute a jurisdictional defect; but the libellant shall be liable to such person for damages in the amount of his interest in the vessel terminated by the suit. Suit in personam for the recovery of such damages may be brought in accordance with the provisions of section 4409 (c).

(b) As used in this section and sections 4411, 4412, and 4413, the term "preferred mortgage" shall include, in addition to a preferred mortgage made pursuant to the provisions of this part, any mortgage, hypothecation, or similar charge created as security upon any documented foreign vessel (other than a towboat, barge, scow, lighter, car float, canal boat, or tank vessel, of less than two hundred gross tons) if such mortgage, hypothecation, or similar charge has been duly and validly executed in accordance with the laws of the foreign nation under the laws of which the vessel is documented and has been duly registered in accordance with such laws in a public register either at the port of registry of the vessel or at a central office; and the term "preferred mortgage lien" shall also include the lien of such mortgage, hypothecation, or similar charge: *Provided, however*, That such "preferred mortgage lien" in the case of a foreign vessel shall also be subordinate to maritime liens for repairs, supplies, towage, use of drydock or marine railway, or other necessities, performed or supplied in the United States.

#### RECEIVERS

SEC. 4411. In any suit in rem in admiralty for the enforcement of the preferred mortgage lien, the court may appoint a receiver and, in its discretion, authorize the receiver to operate the mortgaged vessel. The marshal may be authorized and directed by the court to take possession of the mortgaged vessel notwithstanding the fact that the vessel is in the possession or under the control of any person claiming a possessory common law lien.

#### PREFERRED MARITIME LIEN

SEC. 4412. (a) When used hereinafter in this part, the term "preferred maritime lien" means (1) a lien arising prior in time to the recording and endorsement of a preferred mortgage in accordance with the provisions of this part; or (2) a lien for damages arising out of tort, for wages of a stevedore when employed directly by the owner, operator, master, ship's husband, or agent of the vessel, for wages of the crew of the vessel, for general average, and for salvage, including contract salvage.

(b) Upon the sale of any mortgaged vessel by order of a United States district court in any suit in rem in admiralty for the enforcement of a preferred mortgage lien thereon, all preexisting claims in the vessel, including any possessory common law lien of which a lienor is deprived under the provisions of section 4411 shall be held terminated and shall thereafter attach, in like amount and in accordance with their respective priorities, to the proceeds of the sale; except that the preferred mortgage lien shall have priority over all claims against the vessel, except (1) preferred maritime liens; (2) expenses and fees allowed and costs taxed by the court; and (3) in the case of a foreign vessel, the maritime liens referred to in section 4410 (b).

#### SUITS IN ADMIRALTY

SEC. 4413. (a) Upon the default of any term or condition of a preferred mortgage upon a vessel, the mortgagee may, in addition to all other remedies granted by this part, bring suit in personam in admiralty in a United States district court against the mortgagor for the amount of the outstanding mortgage indebtedness secured by such vessel or any deficiency in the full payment thereof.

(b) This part shall not be construed, in the case of a mortgage covering, in addition to vessels, realty or personalty other than vessels, or both, to authorize the enforcement by suit in rem in admiralty of the rights of the mortgagee in respect to such realty or personalty other than vessels.

#### TRANSFERS OF MORTGAGED VESSELS AND ASSIGNMENT OF MORTGAGES

SEC. 4414. (a) The documents of a vessel of the United States covered by a preferred mortgage may not be surrendered (except in the case of the forfeiture of the vessel or its sale by the order of any court of the United States or any

foreign country) without the approval of the Secretary. The Secretary shall refuse such approval unless the mortgagee consents to such surrender.

(b) The interest of the mortgagee in a vessel of the United States covered by a mortgage shall not be terminated by the forfeiture of the vessel for a violation of any law of the United States unless the mortgagee authorized, consented, or conspired to effect the illegal act, failure, or omission which constituted such violation.

(c) Upon the sale of any vessel of the United States covered by a preferred mortgage, by order of a United States district court in any suit in rem in admiralty for the enforcement of a maritime lien other than a preferred maritime lien, the vessel shall be sold free from all preexisting claims thereon; but the court shall, upon the request of the mortgagee, the libellant, or any intervenor, require the purchaser at such sale to give and the mortgagee to accept a new mortgage of the vessel for the balance of the term of the original mortgage. The conditions of such new mortgage shall be the same so far as practicable, as those of the original mortgage and shall be subject to the approval of the court. If such new mortgage is given, the mortgagee shall not be paid from the proceeds of the sale and the amount payable as the purchase price shall be held diminished in the amount of the new mortgage indebtedness.

(d) No rights under a mortgage of a vessel of the United States shall be assigned to any person not a citizen of the United States without the approval of the Secretary. Any assignment in violation of any provision of this part shall be void.

(e) No bond, note, or other evidence of indebtedness which is secured by a mortgage of a vessel to a trustee may be issued, transferred, or assigned to a person not a citizen of the United States, without the approval of the Secretary, unless the trustee or substitute trustee of such mortgage is approved by the Secretary. The Secretary shall grant his approval if such trustee or substitute trustee is a bank or trust company which (1) is organized as a corporation, and is doing business, under the laws of the United States or any State thereof, (2) is authorized under such laws to exercise corporate trust powers, (3) is a citizen of the United States, (4) is subject to supervision or examination by Federal or State authority, and (5) has a combined capital and surplus (as set forth in its most recent published report of condition) of at least \$3,000,000. If such trustee or a substitute trustee at any time ceases to meet the foregoing qualifications, the Secretary shall disapprove such trustee or substitute trustee, and after such disapproval the transfer or assignment of such bond, note, or other evidence of indebtedness to a person not a citizen of the United States, without the approval of the Secretary, shall be unlawful. If a bond, note, or other evidence of indebtedness which is secured by a mortgage of a vessel to a trustee is issued, transferred, or assigned to a person not a citizen of the United States in violation of this paragraph, the issuance, transfer, or assignment shall be void.

(f) No vessel of the United States shall be sold by order of a United States district court in any suit in rem in admiralty to any person not a citizen of the United States.

#### MARITIME LIENS FOR NECESSARIES

SEC. 4415. Any person furnishing repairs, supplies, towage, use of drydock or marine railway, or other necessities, to any vessel, whether foreign or domestic, upon the order of the owner of such vessel, or of a person authorized by the owner, shall have a maritime lien on the vessel, which may be enforced by suit in rem, and it shall not be necessary to allege or prove that credit was given to the vessel.

#### AUTHORITY TO PROCURE NECESSARIES

SEC. 4416. (a) The following persons shall be presumed to have authority from the owner to procure repairs, supplies, towage, use of drydock or marine railway, and other necessities for the vessel: The managing owner, ship's husband, master, or any person to whom the management of the vessel at the port of supply is entrusted. No person tortiously or unlawfully in possession or charge of a vessel shall have authority to bind the vessel.

(b) The officers and agents of a vessel specified in subsection (a) shall be taken to include such officers and agents when appointed by a charterer, by an owner pro hac vice, or by an agreed purchaser in possession of the vessel; but nothing in this part shall be construed to confer a lien when the furnisher knew, or by exercise of reasonable diligence could have ascertained, that because of the terms of a charter party, agreement for sale of the vessel, or for any other reason, the person ordering the repairs, supplies, or other necessities was without authority to bind the vessel therefor.

WAIVER OF LIEN; EXISTING LAW

SEC. 4417. Nothing in this part shall be construed to prevent the furnisher of repairs, supplies, towage, use of drydock or marine railway, or other necessities, or the mortgagee, from waiving his right to a lien, or in the case of a preferred mortgage lien, to the preferred status of such lien, at any time, by agreement or otherwise; and this part shall not be construed to affect the rules of law now existing in regard to (1) the right to proceed against the vessel for advances, (2) laches in the enforcement of liens upon vessels, (3) the right to proceed in personam, (4) the rank of preferred maritime liens among themselves, or (5) priorities between maritime liens and mortgages, other than preferred mortgages, upon vessels of the United States.

STATE LAWS SUPERSEDED

SEC. 4418. This part shall supersede the provisions of all State statutes conferring liens on vessels, insofar as such statutes purport to create rights of action to be enforced by suits in rem in admiralty against vessels for repairs, supplies, towage, use of drydock or marine railway, and other necessities.

DOCUMENTS TO BE FURNISHED COLLECTORS OF CUSTOMS

SEC. 4419. The Commissioner of Customs is authorized and directed to furnish collectors of customs with all necessary books and records, and with certificates of registry and of enrollment and license in such form as provides for the making of all endorsements thereon required by this part.

AUTHORITY OF COMMISSIONER OF CUSTOMS TO MAKE RULES AND REGULATIONS

SEC. 4420. The Commissioner of Customs is authorized to make such regulations in respect to the recording and endorsing of mortgages covering vessels of the United States, as he deems necessary to the efficient execution of the provisions of this part.

PART E—SHIP MORTGAGE INSURANCE

DEFINITIONS

SEC. 4501. As used in this part—

(a) "Actual cost" of a vessel as of any specified date means the aggregate as determined by the Secretary of (1) all amounts paid by or for the account of the mortgagor or borrower on or before that date, and (2) all amounts which the mortgagor or borrower is then obligated to pay from time to time thereafter, for the construction, reconstruction, or reconditioning (including designing, inspecting, outfitting, and equipping) of such vessel.

(b) "Citizen of the United States" shall have the meaning assigned to it by section 3101(a) of this Act.

(c) "Loan" includes any loan or advance of credit other than a mortgage loan.

(d) "Mortgage" includes a preferred mortgage as defined in part D of this title on any vessel of the United States (other than a towboat, barge, scow, lighter, car float, canal boat, or tank vessel, of less than two hundred gross tons), and a mortgage on such a vessel which will become a preferred mortgage when recorded and endorsed as required by part D of this title.

(e) "Mortgagee" includes the original maker of a loan secured by a mortgage and his successors and assigns, except that in the case of a mortgage involving a trust indenture and an issue of bonds or notes thereunder, it means the trustee designated in such trust indenture and his successors and assigns as trustee, but does not include the holders of the bonds or notes issued under such trust indenture; and the term "lender" includes the original maker of any loan or advance of credit other than a loan secured by a mortgage, and his successors and assigns, except that in the case of a loan or advance of credit involving a trust indenture and an issue of bonds or notes thereunder, it means the trustee designated in such trust indenture and his successors and assigns as trustee, but does not include the holders of the bonds or notes issued under such trust indenture.

(f) "Mortgagor" includes the original borrower under a mortgage and his successors and assigns approved by the Secretary.

(g) "Vessel" includes all types of passenger, cargo, and combination passenger-cargo carrying vessels, tankers, tugs, towboats, barges, fishing vessels and dredges documented under the laws of the United States, and floating drydocks which have a capacity of thirty-five thousand or more lifting tons and a beam of one

hundred and twenty-five feet or more between the wingwalls owned by citizens of the United States.

#### FEDERAL SHIP MORTGAGE INSURANCE FUND

SEC. 4502. (a) The Federal ship mortgage insurance fund (hereinafter referred to as the "fund") created by section 1102 of the Merchant Marine Act of 1936, as amended, is continued. The fund shall be used by the Secretary as a revolving fund for the purpose of carrying out the provisions of this part. Moneys in the fund shall be deposited in the Treasury of the United States to the credit of the fund or invested in bonds or other obligations of, or guaranteed as to principal and interest by, the United States.

(b) The Secretary is authorized to advance to the fund referred to in subsection (a) from the vessel operations revolving fund (section 4214 of this Act), such amounts as may be required for the payment, pursuant to section 4505 of this Act, of unpaid principal amounts of defaulted mortgages and loans and of unpaid interest thereon: *Provided*, That such advances shall be repaid to the vessel operations revolving fund as soon as practicable consistent with the status of the Fund referred to in subsection (a): *Provided further*, That the total advances outstanding at any one time shall not exceed \$10,000,000.

#### AUTHORIZATION TO INSURE MORTGAGE AND LOANS

SEC. 4503. (a) The Secretary, upon application by the mortgagor, is authorized to insure as hereinafter provided the interest on, and the unpaid balance of the principal of, any mortgage offered to him which is eligible for insurance as hereinafter provided and, upon such terms as the Secretary may prescribe, is authorized to make commitments to insure any such mortgage prior to the date of execution or disbursement thereon.

(b) The Secretary, upon application by the borrower, is authorized to insure as hereinafter provided the interest on, and the unpaid balance of the principal of, any loan offered to him which is eligible for insurance as hereinafter provided and, upon such terms as the Secretary may prescribe, is authorized to make commitments to insure any such loan prior to the date of execution or disbursement thereon.

(c) Each insurance contract made under this section shall run to the mortgagee or lender and be for the benefit of such mortgagee or lender and the holders of the obligations secured by the mortgage or evidencing the loan, and if the mortgagee or lender is a trustee under a trust indenture, for the benefit of the holders of the bonds or notes issued under such trust indenture.

(d) The faith of the United States is solemnly pledged to the payment of interest on and the unpaid balance of the principal amount of each mortgage and loan insured under this title.

(e) The aggregate unpaid principal amount of the mortgages and loans insured under this section and outstanding at any one time shall not exceed \$1,000,000,000.

(f) Functions pertaining to Federal ship mortgage insurance for fishing vessels, transferred to the Department of the Interior pursuant to the Fish and Wildlife Act of 1956, shall continue to be vested in that Department.

#### ELIGIBILITY FOR INSURANCE

SEC. 4504. (a) To be eligible for insurance under this part a mortgage, except as otherwise provided in section 4506—

(1) shall have a mortgagee approved by the Secretary as responsible and able to service the mortgage properly; and a mortgagor approved by the Secretary as possessing the ability, experience, financial resources, and other qualifications necessary to the adequate operation and maintenance of the mortgaged property;

(2) shall involve an obligation in a principal amount which does not exceed 75 per centum of the actual cost of the vessel, such actual cost to be determined by the Secretary prior to the execution of the mortgage and such determination to be conclusive for the purpose of determining the principal amount of the mortgage: *Provided, however*, That in the case of a vessel, the size and speed of which are approved by the Secretary, and which is, or in the case of a vessel to be reconstructed or reconditioned would have been, eligible for mortgage aid for construction under section 3110 of this Act and in respect of which the minimum downpayment by the mortgagor required by that section would be 12½ per centum of the cost of such vessel,

the obligation may be in an amount which does not exceed 87½ per centum of such actual cost; or, in the case of vessels purchased pursuant to the Merchant Ship Sales Act of 1946, as amended, for exclusive use on the Great Lakes, involve an obligation in a principal amount which does not exceed 75 per centum of the net purchase price of such vessels plus 75 per centum of the amounts expended for altering, modifying, converting, and equipping such vessels in excess of that purchase price, or 75 per centum of the amount which the Secretary estimates will be the value of such vessel so purchased for exclusive use on the Great Lakes when the reconstruction or reconditioning is completed, whichever is the lesser;

(3) except as otherwise provided in section 6109 of this Act, shall secure bonds, notes, or other obligations having maturity dates satisfactory to the Secretary but not to exceed twenty-five years from the date of its execution;

(4) shall contain amortization provisions satisfactory to the Secretary requiring periodic payments by the mortgagor;

(5) shall secure bonds, notes or other obligations bearing interest (exclusive of premium charges for insurance) at a rate not to exceed 5 per centum per annum on the amount of the unpaid principal at any time, or not to exceed 6 per centum per annum if the Secretary finds that in certain areas or under special circumstances the mortgage or lending market demands it;

(6) shall provide, in a manner satisfactory to the Secretary, for the application of the mortgagor's periodic payments to amortization of the principal of the mortgage, exclusive of the amount allocated to interest;

(7) shall contain such terms and provisions with respect to the construction, reconstruction, reconditioning, maintenance, purchase of a vessel for use on the Great Lakes pursuant to the Merchant Ship Sales Act of 1946, as amended, or operation of the property, repairs, alterations, payment of taxes, insurance, delinquency charges, revisions, foreclosure proceedings, anticipation of maturity, additional and secondary liens, and other matters pertinent to the security as the Secretary may prescribe;

(8) shall secure a loan made to aid in financing, including payment of loans previously made to finance, and reimbursement of the mortgagor for expenditures previously made for, construction (including designing, inspecting, outfitting, and equipping) of vessels under part A of title III of this Act or the purchase by citizens of the United States of vessels for use on the Great Lakes pursuant to the Merchant Ship Sales Act of 1946, as amended, or the construction, reconstruction, or reconditioning (including designing, inspecting, outfitting, and equipping) of vessels owned by citizens of the United States which are designed principally for commercial use (A) in the coastwise or intracoastal trade; (B) on the Great Lakes, or on bays, sounds, rivers, harbors, or inland lakes of the United States; (C) in foreign trade; (D) in the fishing trade or industry; or (E) with respect to floating dry docks, in the construction, reconstruction, reconditioning, or repair of vessels;

(9) shall provide that the mortgagor shall pay to the mortgagee the amount required for the payment of each mortgage insurance premium charge at least sixty days before the payment of such premium charge to the Secretary is due, and shall further provide that the failure of the mortgagor to make such payment shall be a default under the mortgage;

(10) may, in the case of a passenger vessel having the tonnage, speed, passenger accommodations and other characteristics set forth in part A of title III of this Act with the approval of the Secretary, provided that the sole recourse against the mortgagor of the United States as assignee of the mortgage for the payment of the principal of an interest on the mortgage and the bonds, notes or other obligations secured thereby shall be limited to repossession of the vessel and the assignment of insurance claims and that the obligation of the mortgagor for such principal and interest shall be satisfied and discharged by the surrender of the vessel and all right, title and interest therein to the United States: *Provided*, That the vessel upon surrender shall be (A) free and clear of all liens and encumbrances whatsoever except the lien of the preferred mortgage; (B) in class; and (C) in as good order and condition, ordinary wear and tear excepted, as when acquired by the mortgagor, except that any deficiencies with respect to freedom from encumbrances, condition and class may, to the extent covered by valid policies of insurance, be satisfied by the assignment to the United States of claims of the mortgagor under such policies; and

(11) shall contain such other provisions as may be agreed upon between the mortgagor and mortgagee, which are not inconsistent with the provisions

of the preceding paragraphs of this subsection (a) and which are not disapproved by the Secretary.

(b) To be eligible for insurance under this part a loan—

(1) shall be made by a lender approved by the Secretary to a borrower approved by the Secretary as possessing the ability, experience, financial resources, and other qualifications necessary to the adequate operation and maintenance of the property;

(2) shall be made to aid in financing, including payment of loans previously made to finance, and reimbursement of the borrowed for expenditures previously made for construction (including designing, inspecting, outfitting, and equipping) of vessels under part A of title III of this Act or for the construction, reconstruction, or reconditioning (including designing, inspecting, outfitting, and equipping) of vessels owned by citizens of the United States which are designed principally for commercial use (A) in the coastwise or inter-coastal trade; (B) on the Great Lakes or on bays, sounds, rivers, harbors, or inland lakes of the United States; (C) in foreign trade; (D) in the fishing trade or industry; or (E) with respect to floating drydocks, in the construction, recondition, or repair of vessels;

(3) shall be payable to or simultaneously with the execution of the mortgage;

(4) shall provide that no advance shall be made thereunder unless the sum of such advance and the principal amount of all other advances under insured loans then outstanding at the time of said advance shall be less than 75 per centum of the actual cost of such vessel, such actual cost to be determined by the Secretary and such determination to be conclusive for the purpose of determining the principal amount of the loan;

(5) shall provide that the borrower shall pay to the lender the amount required for the payment of each loan insurance premium charge at least sixty days before the payment of such premium charge to the Secretary is due, and which shall further provide that the failure of the borrower to make such payment shall give the lender the right to mature the loan;

(6) shall bear interest at an average interest rate not to exceed the maximum rate permitted by paragraph (5) of subsection (a) of this section; and

(7) shall contain such other provisions as may be agreed upon between the borrower and the lender which are not inconsistent with the provisions of the preceding paragraphs of this subsection (b) and which are not disapproved by the Secretary

(c) No commitment to insure a mortgage or loan shall be made by the Secretary unless he finds, at or prior to the time such commitment is made, that the property or project with respect to which the mortgage or loan will be executed will be, in his opinion, economically sound, and no mortgage or loan, unless made pursuant to a prior commitment, shall be insured unless the Secretary finds, at or prior to the time the insurance becomes effective, that the property or project with respect to which the mortgage or the loan is executed will be in his opinion economically sound.

(d) The Secretary is authorized to fix a premium charge for the insurance of mortgages and loans under this part. In the case of any mortgage insured under section 4503(a), such charge shall not be less than one-half of 1 per centum per annum nor more than 1 per centum per annum of the average principal amount of the mortgage outstanding, excluding the average amount (except interest) on deposit in an escrow fund referred to in section 4508 of this Act. In the case of loans insured under section 4503(b), such charge shall not be less than one-quarter of 1 per centum per annum nor more than one-half of 1 per centum per annum of the average principal amount of the loan outstanding, excluding the average amount (except interest) on deposit in an escrow fund referred to in section 4508 of this Act. Premium payments shall be made when moneys are first advanced under the mortgage or loan agreement and on each anniversary date thereafter. All such premium charges shall be computed and shall be payable to the Secretary under such regulations as the Secretary may prescribe.

(e) The Secretary shall charge and collect such amounts as he may deem reasonable for the investigation of applications for insurance, for the appraisal of properties offered for insurance, for the issuance of commitments, for services in connection with the escrow fund referred to in section 4508 and for the inspection of such properties during construction, reconstruction, or reconditioning: *Provided*, That such charges shall not aggregate more than one-half of 1 per centum of the original principal amount of the mortgage or loan to be insured. Unless otherwise agreed, the charge for any such services shall be paid by the mortgagor or the borrower.

(f) Except as otherwise provided in section 4508, all moneys received under the provisions of this part shall be deposited in the fund.

## DEFAULTS

SEC. 4505. (a)(1) In the event of any act or failure to act which gives the mortgagee the right to foreclose, any such events being herein called defaults, and failure on the part of the mortgagor to remove and remedy the default within thirty days, the mortgagee shall have the right (A) in the case of a default in respect of the payment of principal or interest or the payment of any amount to provide for the payment of premium charges for mortgage insurance, to demand at or before the expiration of sixty days after any such default, and (B) in the case of any other default, to demand at any time during the continuance of such default, payment by the Secretary of the unpaid principal amount of said mortgage and of the unpaid interests thereon to the date of payment: *Provided*, That an assignment of the mortgage and of the obligations secured by the mortgage be tendered to the Secretary at the time such demand is made. The Secretary may at any time during the continuance of any default notify the mortgagee in writing, specifying the default, that by reason of such default the Secretary intends to terminate the insurance contract sixty days after such notice is received by the mortgagee, and the mortgagee shall be entitled to demand payment by the Secretary as above provided at any time during said sixty-day period, whether or not the default is removed and remedied, and if the mortgagee shall fail to make such demand, the insurance contract may be terminated by the Secretary on or after the expiration of such period. Within a period of thirty days from the date of any such demand, the Secretary shall accept the assignment and promptly pay to the mortgagee the unpaid principal amount of said mortgage and unpaid interest thereon to the date of payment: *Provided*, That, except in any case in which the Secretary has given notice of intention to terminate the insurance contract pursuant to the foregoing provisions, the Secretary shall not be required to accept such assignment if prior to the expiration of said thirty-day period he shall find that there was no default or that such default was removed and remedied prior to any such demand.

(2) In the event of an act or failure to act which gives the lender the right to mature the loan, any such events being herein called defaults, and failure on the part of the borrower to remove and remedy the default within thirty days, the lender shall have the right (A) in the case of a default in respect of the payment of principal or interest or the payment of any amount to provide for the payment of premium charges for loan insurance, to demand at or before the expiration of sixty days after any such default, and (B) in the case of any other default, to demand at any time during the continuance of such default, payment by the Secretary of the unpaid principal amount of said loan and of the unpaid interest thereon to the date of payment: *Provided*, That an assignment of the loan agreement and of the obligations evidencing such loan be tendered to the Secretary at the time such demand is made. The Secretary may at any time during the continuance of any default notify the lender in writing, specifying such default, that by reason of such default the Secretary intends to terminate the insurance contract sixty days after such notice is received by the lender, and the lender shall be entitled to demand payment by the Secretary as above provided at any time during said sixty-day period, whether or not the default is removed and remedied, and if the lender shall fail to make such demand, the insurance contract may be terminated by the Secretary on or after the expiration of such period. Within a period of thirty days from the date of any such demand, the Secretary shall accept the assignment and promptly pay to the lender the unpaid principal amount of said loan and unpaid interest thereon to the date of payment: *Provided*, That except in any case in which the Secretary has given notice of intention to terminate the insurance contract pursuant to the foregoing provisions, the Secretary shall not be required to accept such assignment if prior to the expiration of said thirty-day period he shall find that there was no default or that such default was removed and remedied prior to any such demand.

(3) In no event shall the Secretary pay as insurance under this part in respect of the unpaid balance of the principal of a mortgage or loan an amount in excess of 75 per centum, or 87½ per centum, as the case may be, of the amount paid by or for the account of the mortgagor or borrower for the construction, reconstruction, or reconditioning (including designing, inspecting, outfitting, and equipping) of such vessel, except that if the mortgagor or borrower creates an escrow fund as authorized by section 4508 of this Act, the amount that shall be paid as

insurance is the interest on and the unpaid balance of the principal of such loan or mortgage.

(b) Any amount required to be paid by the Secretary pursuant to subsection (a) of this section shall be paid in cash. If at any time the moneys in the fund referred to in section 4502 of this Act are not sufficient to pay any amount the Secretary is required to pay by subsection (a) of this section, the Secretary of Commerce is authorized to issue to the Secretary of the Treasury notes or other obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be prescribed by the Secretary of Commerce, with the approval of the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of such notes or other obligations. The Secretary of the Treasury is authorized and directed to purchase any notes and other obligations to be issued hereunder and for such purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under such Act, as amended, are extended to include any purchases of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this section. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States. Funds borrowed under this section shall be deposited in the fund and redemptions of such notes and obligations shall be made by the Secretary of Commerce from such fund.

(c)(1) In the event the Secretary shall accept the assignment of a mortgage upon the default of the mortgagor pursuant to subsection (a)(1) of this section, he may institute foreclosure proceedings and in connection therewith repossess the mortgaged vessel forthwith and, subject to the provisions of section 4504(a)(10), take such other action against the mortgagor that, in his discretion, may be required to protect the interests of the United States and of the mortgagee, as they may appear. Any suit may be brought in the name of the United States or in the name of the mortgagee and the mortgagee shall make available to the United States all records and evidence necessary to prosecute any such suit. If the Secretary shall determine that the interests of the United States do not require foreclosure of the mortgage, he may make such agreement with the mortgagor as in the opinion of the Secretary will result in remedying the defaults. The Secretary shall have the right in his discretion to accept a conveyance of title to and possession of the vessel from the mortgagor, and in the event of a sale under foreclosure proceedings, may purchase the vessel for an amount not greater than the unpaid principal amount of such mortgage and unpaid interest thereon. In the event the Secretary shall receive through the sale of the vessel an amount of cash in excess of any payment made to the mortgagee under subsection (a)(1) of this section, and the expenses of collection of such amount, he shall pay such excess to the borrower.

(2) In the event the Secretary shall accept the assignment of a loan agreement upon the default of a borrower pursuant to subsection (a)(2) of this section, he shall take such action against the borrower or any other parties liable under the loan agreement or the obligations evidencing such loan thereunder that, in his discretion, may be required to protect the interests of the United States and of the lender as they may appear. Any suit may be brought in the name of the United States or in the name of the lender and the lender shall make available to the United States all records and evidence necessary to prosecute any such suit. The Secretary shall have the right in his discretion to accept a conveyance of title to and possession of the property from the borrower, and may purchase the property for an amount not greater than the unpaid principal amount of such loan and unpaid interest thereon. In the event the Secretary shall receive through the sale of the property an amount of cash in excess of any payment made to the lender under subsection (a)(2) of this section and the expenses of collection of such amount, he shall pay such excess to the borrower.

(d) Notwithstanding any other provision of law relating to the acquisition, handling or disposal of property by the United States, the Secretary shall have the right in his discretion to complete, recondition, reconstruct, renovate, repair, maintain, operate, charter or sell any property acquired by him pursuant to the assignment as provided in this section and may place the mortgaged vessel in the national defense reserve or may sell the same upon competitive bids for not less

than the minimum sales price provided by title III of this Act. The buyer shall be required to make cash payment to the Secretary of not less than 25 per centum of the sales price, and the balance shall be paid in equal annual installments over the remaining period of the expected useful life of such vessel. Interest at the rate of  $3\frac{1}{2}$  per centum per annum shall be paid on all such installments of the purchase price remaining unpaid.

(e) Any contract or commitment of insurance entered into by the Secretary under the provisions of this part shall not be terminated, canceled, or otherwise revoked for any reason, except as provided in this section, and shall be conclusive evidence that the mortgage or loan complies fully with the provisions of this title and of the approval of the principal amount, interest rate, and all other terms of the mortgage or loan and of the mortgagor or borrower and of the mortgagee or lender; and any contract or commitment of insurance so entered into shall be incontestable from the date as of which such contract or commitment is entered into, except for fraud, duress, or mutual mistake of fact.

#### INSURANCE OF MORTGAGES FOR REFINANCING

SEC. 4506. (a) No mortgage shall be insured for refinancing in whole or in part any existing mortgage indebtedness except as provided in section 4507 or—

(1) where a substantial portion of the total amount to be secured by the new mortgage, not to exceed beyond twenty-five years from the date of the original mortgage, shall be applied to new construction, reconditioning, or reconstruction of one or more of the mortgaged vessels: *Provided, however,* That the aggregate amount of all mortgages insured under this paragraph and outstanding at any one time shall not exceed \$20,000,000: *Provided further,* That all of the eligibility requirements of section 4504 not inconsistent with this paragraph are complied with;

(2) where the Secretary has insured a mortgage under the provisions of this part, and the mortgagor thereafter makes application to the mortgagee or another lender for an additional loan or advance for reconditioning or reconstructing the mortgaged property, the Secretary may insure a new mortgage, not to extend beyond the twenty-five years from the date of the original mortgage, in the amount of the principal outstanding balance of the original mortgage, plus the amount of the additional loan, provided the amount of the additional loan is within the limits of paragraph (2) of subsection (a) of section 4504 and the new mortgage conforms to the eligibility requirements of all the other paragraphs of said subsection (a);

(3) where the Secretary has insured a mortgage under the provisions of this part, the Secretary may insure a new mortgage for the purpose of refunding such mortgage: *Provided,* That the principal amount of the new mortgage shall not exceed the then unpaid principal amount of the original mortgage; that the interest rate on the new mortgage shall not be higher than the interest rate on the original mortgage; that the maturity date of the new mortgage shall not be later than twenty-five years from the date of the original mortgage; and that the new mortgage shall otherwise conform to the eligibility requirements of subsection (a) of section 4504.

(b) The Secretary may insure mortgages given to finance the purchase of vessels theretofore acquired by the fund under the provisions of section 4505 and to secure loans or advances made for reconditioning and reconstruction of such vessels.

(c) With respect to vessels delivered by the shipbuilder before January 1, 1960, the provisions of section 6109 shall apply.

#### AUTHORITY TO MAKE COMMITMENT TO PROSPECTIVE OWNER OF VESSEL; CONDITIONS

SEC. 4507. The Secretary is authorized, upon such terms as he may prescribe, to make a commitment to the prospective owner of a vessel who is a citizen of the United States, prior to the time when the keel of such vessel is laid under a contract which such prospective owner has made with the shipbuilder for the construction of the vessel, to insure the interest on and the unpaid balance of the principal of a mortgage or mortgages which such prospective owner, as mortgagor, may at any time place on the vessel in order to finance the construction, reconstruction, or reconditioning of other vessels or both to refinance a mortgage insured by the Secretary on the vessel and to finance the construction, reconstruction, or reconditioning of other vessels, subject to the following conditions—

(1) the commitment shall not be assignable without the prior written approval of the Secretary;

(2) the vessel is not, at the time of insuring the mortgage pursuant to the commitment, subject to a mortgage which has not been insured by the Secretary;

(3) within a reasonable period prior to, or at the time of, insuring the mortgage pursuant to the commitment, the Secretary makes the finding required by section 4504(c) of this Act (which required a finding that the mortgaged vessel or the project with respect to which the mortgaged vessel is to be operated will be, in the opinion of the Secretary, economically sound);

(4) the mortgage involves a principal obligation which when added to the unpaid balance of the principal obligations of prior mortgages on the vessel (other than mortgages that are being refinanced by this mortgage) will result in a sum which will not (A) if the vessel was not built with the aid of construction-differential subsidy and complies with the requirements of section 3110 of this Act exceed (i) if the vessel has not been reconstructed or reconditioned before such mortgage is executed, 87½ per centum of all amounts the mortgagor has paid or is obligated to pay for the construction (including designing, inspecting, outfitting, or equipping) of the vessel, depreciated at the rate of 4 per centum per annum from the date the vessel was delivered by the shipbuilder to the date such mortgage is executed, except as otherwise provided in section 6109 of this Act, or (ii) if the vessel has been reconstructed or reconditioned before such mortgage is executed, 87½ per centum of all amounts the mortgagor has paid or is obligated to pay for the construction (including designing, inspecting, outfitting, and equipping) of the vessel, depreciated at the rate of 4 per centum per annum from the date the vessel was delivered by the shipbuilder to the date of such reconstruction or reconditioning, except as otherwise provided in section 6109 of this Act, and depreciated, from the date of such reconstruction or reconditioning to the date such mortgage is executed, on a straight-line basis and on the basis of a useful life of the vessel determined jointly by the Secretary of Commerce and the Secretary of the Treasury, plus 87½ per centum of all amounts the mortgagor has paid or is obligated to pay for the reconstruction or reconditioning of the vessel (if such reconstruction or reconditioning was done without aid of construction subsidy and the vessel complies with the requirements of section 3110 of this Act; otherwise, 75 per centum of such amount), depreciated, from the date of such reconstruction or reconditioning to the date such mortgage is executed, on a straight-line basis and on the basis of a useful life of the vessel determined jointly by the Secretary of Commerce and the Secretary of the Treasury, and (B) if the vessel was built with the aid of construction-differential subsidy, or does not comply with the requirements of section 3110 of this Act, exceed the amount computed under (A) above except that, where (A) above provides for 87½ per centum of the construction cost of the vessel, the percentage shall be 75 per centum;

(5) the mortgage has maturity dates which, if the vessel has not been reconstructed or reconditioned, do not exceed the remaining years of a useful life of the mortgaged vessel of twenty-five years computed from the date the vessel was delivered by the shipbuilder, except as otherwise provided in section 6109 of this Act, or, if the vessel has been reconstructed or reconditioned, do not exceed the remaining years of a useful life of the vessel determined jointly by the Secretary of the Treasury and the Secretary of Commerce;

(6) the loan agreement for the making of the loan secured by the mortgage, or the mortgage, provides that the underwriter or mortgagee will disburse the loan for one or more of the following purposes: (A) to pay one of the components of actual cost of the vessels to be constructed, reconstructed, or reconditioned and, if any such payment is to reimburse the operator for payments made from his capital reserve fund, to deposit such payment in his capital reserve fund, or (B) to pay part of the loan to discharge an existing mortgage which is insured by the Secretary on the vessel that is subject to the mortgage which is to be insured, or (C) to deposit part or all of the loan in the operator's capital reserve fund, if he is a subsidized operator, and in a construction reserve fund, if he is an unsubsidized operator; if any deposit is made in a capital reserve fund, or construction reserve fund under (C) hereof, such deposit may be withdrawn only to pay one of the components of actual cost of the vessels that are to be constructed, reconstructed, or reconditioned, or if for any reason such payments do not exhaust the deposit, then to pay off the loan secured by the mortgage that is to be insured;

(7) the mortgage complies with all of the requirements of section 4504(a) of this Act (which defines an eligible mortgage) except subdivision 2 thereof

(which specifies the maximum principal amount of the mortgage), subdivision 3 thereof (which specifies the maximum duration of the mortgage), and subdivision 8 thereof (which specifies the purpose of the loan secured by the mortgage);

(8) the mortgaged vessel shall be in class A-1, American Bureau of Shipping, with all required certificates, including but not limited to marine inspection certificates of the United States Coast Guard, with all outstanding requirements and recommendations necessary for retention of class accomplished, unless the Secretary permits a deferment of such repairs, and shall be tight, staunch, strong and well and sufficiently tackled, appareled, furnished and equipped, and in every respect seaworthy and in good running condition and repair and in all respects fit for service.

#### ESCROW FUND

SEC. 4508. (a) In connection with the insurance of loans and mortgages, which are financed by sale of bonds to the general public, the Secretary is authorized to accept a deposit in escrow in an amount which at the time of such deposit is equal to (1) the excess of the principal of such loan or mortgage over 75 per centum, or 87½ per centum, as the case may be, of the amount paid by or for the account of the mortgagor or borrower for the construction, reconstruction, or reconditioning (including designing, inspection, outfitting and equipping) of the vessel, (2) with interest thereon for the period of the escrow agreement.

(b) The Secretary shall, as specified in the escrow agreement, disburse the escrow fund to pay amounts the mortgagor or borrower is obligated to pay as interest on such loan or mortgage or for the construction, reconstruction, or reconditioning (including designing, inspecting, outfitting, and equipping) of the vessel, except that if insurance becomes payable under the insurance contract prior to the termination of the escrow agreement, all amounts in the escrow fund at the time such insurance becomes payable (including realized income which has not yet been paid to the borrower or mortgagor) shall, subject in the case of insurance on a mortgage to the application of mortgage provisions contemplated by section 4504(a)(10) of this Act, be paid into the Federal ship mortgage insurance fund and (1) be credited against any amounts due or to become due to the Secretary from the borrower or mortgagor with respect to the insured loan or mortgage, and (2) to the extent not so required, be paid to the borrower or mortgagor.

(c) If insurance has not become payable under the insurance contract prior to the termination of the escrow agreement, any balance of the escrow fund at the time of such termination shall be disbursed by the Secretary to prepay the excess of the principal of the loan or mortgage over 75 per centum, or 87½ per centum, as the case may be, of the actual cost of the vessel to the extent paid, and to pay interest on such prepaid amount of principal, and the remainder of such balance of the escrow fund shall be paid to the borrower or mortgagor.

(d) The Secretary may invest and reinvest all or any part of the escrow fund in obligations of the United States with such maturities that such fund will be available as required for purposes of the escrow agreement.

(e) Any income realized on the escrow fund shall, upon receipt by the Secretary, be paid to the borrower or mortgagor.

(f) The escrow agreement shall contain such other terms as the Secretary may consider necessary to fully protect the interests of the United States.

#### OFFENSES AND PENALTIES

SEC. 4509. Whoever, for the purpose of obtaining any loan or advance of credit from any person, partnership, association, or corporation with the intent that such loan or advance of credit shall be offered to or accepted by the Secretary for insurance, or for the purpose of obtaining any extension or renewal of any loan, advance of credit, or mortgage insured by the Secretary, or the acceptance, release, or substitution of any security on such a loan, advance of credit, or for the purpose of influencing in any way the action of the Secretary under this title, makes, passes, utters, or publishes, or causes to be made, passed, uttered, or published any statement, knowing the same to be false, or alters, forges, or counterfeits, or causes or procures to be altered, forged, or counterfeited, any instrument, paper, or document, or utters, publishes, or passes as true, or causes to be uttered, published, or passed as true, any instrument, paper, or document, knowing it to have been altered, forged, or counterfeited, or willfully overvalues any security, asset, or

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Income, shall be guilty of a misdemeanor and punished as provided under section 3411(a) of this Act.

#### PART F—WAR RISK INSURANCE

##### DEFINITIONS

SEC. 4601. As used in this part—

(a) "American vessels" includes any vessel registered, enrolled, or licensed under the laws of the United States and any undocumented vessel owned or chartered by or made available to the United States or any department or agency thereof and any tug or barge or other watercraft (documented or undocumented) owned by a citizen of the United States used in essential water transportation or in the fishing trade or industry, except watercraft used exclusively in or for sport fishing.

(b) "Citizen of the United States" includes corporations, partnerships, and associations existing, authorized, or organized under the laws of the United States or any State, district, territory, or possession thereof, or the Commonwealth of Puerto Rico.

(c) "Transportation in the waterborne commerce of the United States" includes the operation of vessels in the fishing trade or industry, except watercraft used exclusively in or for sport fishing.

(d) "War risks" includes to such extent as the Secretary may determine all or any part of those losses which are excluded from marine insurance coverage under a "free of capture and seizure" clause, or analogous clauses.

##### AUTHORITY TO PROVIDE INSURANCE; CONSIDERATION OF RISK

SEC. 4602. (a) The Secretary, with the approval of the President, and after such consultation with interested agencies of the Government as the President may require, may provide insurance and reinsurance against loss or damage by war risks in the manner and to the extent provided in this part, whenever it appears to the Secretary that such 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 an insurance business in a State of the United States.

(b) Any insurance or reinsurance issued under any of the provisions of this part shall be based, insofar as practicable, upon consideration of the risk involved.

##### PERSONS, PROPERTY, AND INTEREST INSURABLE

SEC. 4603. The Secretary may provide the insurance and reinsurance authorized by section 4602 with respect to the following persons, property, or interest—

(1) American vessels, including vessels under construction, and foreign-flag vessels owned by citizens of the United States or engaged in transportation in the waterborne commerce of the United States or in such other transportation by water or such other services as may be deemed by the Secretary to be in the interest of the national defense or the national economy of the United States, when so engaged;

(2) cargoes shipped or to be shipped on any such vessels, including shipments by express or registered mail; cargoes owned by citizens or residents of the United States, its territories or possessions or the Commonwealth of Puerto Rico; cargoes imported to, or exported from, the United States, its territories or possessions or the Commonwealth of Puerto Rico; and cargoes sold or purchased by citizens or residents of the United States, its territories or possessions or the Commonwealth of Puerto Rico, under contracts of sale or purchase by the terms of which the risk of loss by war risks or the obligation to provide insurance against such risks is assumed by or falls upon a citizen or resident of the United States, its territories or possessions or the Commonwealth of Puerto Rico; and cargoes shipped between ports in the United States or between ports in the United States and its territories and possessions and the Commonwealth of Puerto Rico, or between ports in such territories or possessions or the Commonwealth of Puerto Rico;

(3) the disbursements, including advances to masters and general average disbursements, and freight and passage moneys of such vessels;

(4) the personal effects of the masters, officers, and crews of such vessels, and of other persons transported on such vessels;

(5) masters, officers, members of the crews of such vessels and other persons employed or transported thereon against loss of life, injury, or detention by an enemy of the United States following capture;

(6) statutory or contractual obligations or other liabilities of such vessels or of the owner or charterer of such vessels of the nature customarily covered by insurance.

#### RISKS OTHER THAN WAR RISKS

SEC. 4604. Whenever the Secretary shall insure any risk included under subsections (4), (5), or (6) of section 4603, insofar as it concerns liabilities relating to the masters, officers, and crews of such vessels or to other persons transported thereon, the insurance on such risks may include risks other than war risks to the extent that the Secretary determines to be necessary, or advisable.

#### INSURANCE FOR GOVERNMENT DEPARTMENTS AND AGENCIES

SEC. 4605. (a) Any department or agency of the United States may, with the approval of the President, procure from the Secretary any of the insurance as provided for in this part, except as provided in sections 1 and 2 of the Act of July 3, 1937 (50 Stat. 479, 5 U.S.C. 134 and 134a).

(b) The Secretary is authorized with such approval to provide such insurance at the request of the Secretary of Defense, and such other agencies as the President may prescribe, without premium in consideration of the agreement of the Secretary of Defense or such agency to indemnify the Secretary against all losses covered by such insurance, and the Secretary of Defense and such other agencies are authorized to execute such indemnity agreement with the Secretary.

#### INSURANCE AGAINST LEGAL LIABILITY OF PERSONS PERFORMING SERVICES OR PROVIDING FACILITIES FOR VESSELS

SEC. 4606. The Secretary is authorized to provide insurance for any person who performs services or provides facilities for or with respect to any American- or foreign-flag vessel, public or private, against legal liabilities that may be incurred by such person in connection with the performance of such services or the providing of such facilities. Such insurance shall not be issued against liability to employees in respect to employers' liability or workmen's compensation. No such insurance shall be provided unless, in the opinion of the Secretary, such insurance is required in the prosecution of the war effort or in connection with national defense and cannot be obtained at reasonable rates or upon reasonable conditions from approved companies authorized to do insurance business in any State of the United States.

#### REINSURANCE; RATES; ALLOWANCES TO INSURANCE CARRIERS

SEC. 4607. (a) To the extent that he is authorized by this part to provide marine, war risk, and liability insurance, the Secretary may reinsure, in whole or in part, any company authorized to do an insurance business in any State of the United States. The Secretary may reinsure with, or cede or retrocede to, any such company any insurance or reinsurance provided by the Secretary in accordance with the provisions of this part.

(b) Reinsurance shall not be provided by the Secretary at rates less than nor obtained by the Secretary at rates more than the rates established by the Secretary on the same or similar risks or the rates charged by the insurance carrier for the insurance so reinsured whichever is most advantageous to the Secretary, except that the Secretary may make to the insurance carrier such allowances for expenses on account of the cost of services rendered or facilities furnished as he deems reasonably to accord with good business practice, but such allowance to the carrier shall not provide for any payment by the carrier on account of solicitation for or stimulation of insurance business.

#### WAR-RISK INSURANCE REVOLVING FUND

SEC. 4608. (a) Moneys appropriated by Congress to carry out the provisions of this part and all moneys received from premiums, salvage, or other recoveries and all receipts in connection with this part shall be deposited in the Treasury to the credit of the war-risk insurance revolving fund created by the Secretary pursuant to the provisions of section 1208(a) of the Merchant Marine Act of 1936. Payments of return premiums, losses, settlements, judgments, and all liabilities incurred by the United States under this part shall be made from such fund through the Division of Disbursement, Treasury Department. Upon the request of the Secretary of Commerce, the Secretary of the Treasury may invest or reinvest all or any part of the funds in securities of the United States or in securities guaranteed

as to principal and interest by the United States. The interest and benefits accruing from such securities shall be deposited to the credit of the fund.

(b) The Secretary is authorized to transfer to the war-risk insurance revolving fund referred to in subsection (a), at such times as it may become necessary in order to place into effect the insurance coverage authorized by this part, and in such amounts as he may determine, not to exceed a total of \$10,000,000 from the vessel operations revolving fund referred to in section 4214 of this Act.

#### AUTHORITY OF SECRETARY IN THE ADMINISTRATION OF THIS PART

Sec. 4609. (a)(1) The Secretary, in the administration of this part, may issue such policies, rules, and regulations as he deems proper and may adjust and pay losses, compromise and settle claims, whether in favor of or against the United States and pay the amount of any judgment rendered against the United States in any suit, or the amount of any settlement agreed upon, in respect of any claim under insurance authorized by this part.

(2) In respect of hull insurance, the valuation in the policy for actual or constructive total loss of the vessel insured shall be a stated valuation (exclusive of national-defense features paid for by the Government) determined by the Secretary which shall not exceed the amount that would be payable if the vessel had been requisitioned for title under section 3203 (a) at the time of the attachment of the insurance under said policy: *Provided*, That the insured shall have the right within sixty days after the attachment of the insurance under said policy, or within sixty days after determination of such valuation by the Secretary, whichever is later, to reject such valuation, and shall pay, at the rate provided for in said policy, premiums upon such asserted valuation as the insured shall specify at the time of rejection, but such asserted valuation shall not operate to the prejudice of the Government in any subsequent action on the policy. In the event of the actual or constructive total loss of the vessel, if the insured has not rejected such valuation the amount of any claim therefor which is adjusted, compromised, settled, adjudged, or paid shall not exceed such stated amount, but if the insured has so rejected such valuation, the insured shall be paid as a tentative advance only, 75 per centum of such valuation so determined by the Secretary and shall be entitled to sue the United States in a court having jurisdiction of such claims to recover such valuation as would be equal to the just compensation which such court determines would have been payable if the vessel had been requisitioned for title under section 4203 (a) at the time of the attachment of the insurance under said policy: *Provided*, That in the event of an election by the insured to reject the stated valuation fixed by the Secretary and to sue in the courts, the amount of the judgment will be payable without regard to the limitations contained in the twelfth paragraph under the heading "Maritime Activities" in title I of the Department of Commerce and Related Agencies Appropriation Act, 1956, in the tenth paragraph under the heading "Maritime Activities" in title III of the Department of State, Justice, and Commerce, and the United States Information Agency Appropriation Act, 1955, in the eleventh paragraph under the heading "Maritime Activities" in title III of the Department of Justice, State and Commerce Appropriation Act, 1954, the tenth paragraph under the heading "Operating Differential Subsidies" in title II of the Independent Offices Appropriation Act, 1953, the corresponding paragraphs of the Independent Offices Appropriation Act, 1952, and the Third Supplemental Appropriation Act, 1951, although the excess of any amounts advanced on account of just compensation over the amount of the court judgment will be required to be refunded. In the event of such determination, premiums under the policy shall be adjusted on the basis of the valuation as finally determined and of the rate provided for in said policy.

(b) The Secretary may prescribe and change forms and policies, and fix, adjust, and change the amounts insured and rates of premium provided for in this part.

(c) The Secretary, in administering this part, may exercise his powers, perform his duties, and functions, and make his expenditures, in accordance with commercial practice in the marine insurance business. Except as authorized in subsection (d) of this section, no insurance broker or other person acting in a similar intermediary capacity shall be paid any fee or other consideration by the Secretary by virtue of his participation in arranging any insurance wherein the Secretary directly insures any of the risk thereof.

(d) The Secretary may, and whenever he finds it practical to do so shall, employ domestic companies or groups of domestic companies, authorized to do a marine insurance business in any State of the United States, to act as his underwriting agents. The Secretary may allow such companies or groups of companies

fair and reasonable compensation for servicing insurance written by such companies or groups of companies as underwriting agents for the Secretary. The services of such underwriting agents may be utilized in the adjustment of claims under insurance provided by this part, but no claim shall be paid unless and until it has been approved by the Secretary. Such compensation may include an allowance for expenses reasonably incurred by such agents, but such allowance shall not include any payment by such agent on account of solicitation for or stimulation of insurance business.

(e) The Secretary, without regard to the laws, rules, or regulations relating to the employment of employees of the United States, may appoint and prescribe the duties of such number of experts in marine insurance as he deems necessary under this part.

(f) The Secretary, with the consent of any executive department, independent establishment, or other agency of the Government, including any field service thereof, may avail himself of the use of information, services, facilities, officers, and employees thereof in carrying out the provisions of this part.

(g) The Secretary shall include in his annual report to Congress a detailed statement of all activities and of all expenditures and receipts under this part for the period covered by such report.

#### SEAMEN'S RIGHTS UNAFFECTED

SEC. 4610. This part shall not affect rights of seamen under existing law.

#### SUITS ON CLAIMS FOR LOSSES; JURISDICTION OF COURTS; LIMITATION OF ACTIONS

SEC. 4611. Upon disagreement as to a loss insured under this part, suit may be maintained against the United States in admiralty in the district in which the claimant or his agent resides, and this remedy shall be exclusive of any other action by reason of the same subject matter against any agent or employee of the United States employed or retained under this part. If the claimant has not residence in the United States, suit may be brought in the United States District Court for the District of Columbia or in such other district court in which the Attorney General of the United States agrees to accept service. Such suits shall be heard and determined under the provisions of the Suits in Admiralty Act (46 U.S.C. 741-752). All persons having or claiming or who might have an interest in such insurance may be made parties either initially or upon the motion of either party. In any case where the Secretary acknowledges the indebtedness of the United States on account of such insurance, and there is a dispute as to the persons entitled to receive payment, the United States may bring an action in the nature of a bill of interpleader against such parties, in the United States District Court for the District of Columbia or in the district court of the district in which any such person resides. In such actions any party, if not a resident of or found within the district, may be brought in by order of court served in such reasonable manner as the court directs. If the court is satisfied that persons unknown might assert a claim on account of such insurance, it may direct service upon such persons unknown by publication in the Federal Register. Judgment in any such suit shall discharge the United States from further liability to any parties to such action, and to all persons when service by publication upon persons unknown is directed by the court. The period within which suits may be commenced contained in said Suits in Admiralty Act shall, if claim be filed therefor within such period, be suspended from such time of filing until the claim shall have been administratively denied by the Secretary, and for sixty days thereafter: *Provided, however,* That such claim shall be deemed to have been administratively denied if not acted upon within six months after the time of filing, unless the Secretary for good cause shown shall have otherwise agreed with the claimant.

#### ADDITIONAL INSURANCE WITH OTHER UNDERWRITERS

SEC. 4612. A person having an insurable interest in a vessel may, with the approval of the Secretary, insure with other underwriters in an amount in excess of the amount insured with the Secretary, and in that event the Secretary shall not be entitled to the benefits of such insurance.

#### EXPIRATION OF AUTHORITY TO PROVIDE INSURANCE

SEC. 4613. The authority of the Secretary to provide insurance and reinsurance under this part shall expire on September 7, 1970.

## TITLE V—MERCHANT MARINE PERSONNEL, EDUCATION AND TRAINING

## PART A—UNITED STATES MARITIME SERVICE AND MERCHANT MARINE ACADEMY

## TRAINING OF MERCHANT MARINE PERSONNEL

SEC. 5101. The Secretary is authorized and directed, under such rules and regulations as he may prescribe, to maintain the United States Maritime Service as a voluntary organization for the training of citizens of the United States to serve as licensed and unlicensed personnel on American merchant vessels. The Secretary is authorized to determine the number of persons to be enrolled for training and reserve purposes in the said Service, to fix the rates of pay and allowances of such persons, and to prescribe such courses and periods of training as, in his discretion, are necessary to maintain a trained and efficient merchant marine personnel. The ranks, grades, and ratings for personnel of the said Service shall be the same as are now or shall hereafter be prescribed for the personnel of the Coast Guard. The Secretary is authorized to prescribe, by rules and regulations, the uniform of the Service and rules governing the wearing and furnishing of such uniform of persons in the Service.

## UNITED STATES MERCHANT MARINE ACADEMY

SEC. 5102. (a) The Secretary shall maintain a Merchant Marine Academy at King's Point, New York, for the instruction and preparation for service in the merchant marine of selected persons as officers thereof. Competitive examinations shall be held annually among those persons nominated as candidates to the Academy by Senators and Representatives, by the Resident Commissioner from the Commonwealth of Puerto Rico, by the Governors of the Canal Zone, Guam, American Samoa, and the Virgin Islands, and by the Commissioners of the District of Columbia. The number of vacancies allocated to each State shall be proportioned to the representation in Congress from that State; but two vacancies shall be allocated each year to the Canal Zone, to be filled by qualified candidates nominated by the Governor of the Canal Zone from among the sons of residents of the Canal Zone and the sons of personnel of the United States Government and the Panama Canal Company residing in the Republic of Panama, one vacancy each shall be allocated each year to Guam, American Samoa, and the Virgin Islands, to be filled by qualified candidates nominated by the Governors of Guam, American Samoa, and the Virgin Islands, and four vacancies shall be allocated each year to the District of Columbia, to be filled by qualified candidates nominated by the Commissioners thereof: *Provided*, That a candidate nominated by the Governor of American Samoa shall not be denied admission by reason of his being a national but not a citizen of the United States: *Provided further*, That the foregoing proviso shall not be construed to permit any such person who is a national but not a citizen of the United States to be entitled to any office or position in the United States merchant marine by reason of his graduation from the Academy until such person shall have become a citizen. Appointments from each State shall be made by the Secretary from among qualified candidates nominated from that State in the order of merit established by the examinations. In case vacancies remain after the appointments under the preceding sentence have been made, the Secretary shall fill them by appointments from qualified candidates from other States.

(b) In connection with such instruction and as a part thereof, the Secretary is authorized to provide for training of merchant marine cadets on Government owned and subsidized vessels and, in cooperation with other governmental and private agencies, on other vessels, and, for instructional purposes only, in shipyards, plants, and industrial and educational organizations under rules and regulations prescribed by the Secretary and upon such terms as the Secretary may arrange, and expenditures incident to such training are authorized.

(c) Cadets appointed to the United States Merchant Marine Academy may be appointed by the Secretary of the Navy as Reserve midshipmen in the United States Navy and may be commissioned as Reserve ensigns in the United States Navy upon graduation from the Academy.

(d) Cadets at the United States Merchant Marine Academy shall receive allowances for all required uniforms and textbooks as prescribed by rules and regulations under this section, and to transportation, including reimbursement of traveling expenses, while traveling under orders as a cadet.

(e) As used in this section, "State" shall include the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, and the Virgin Islands.

#### EXTENSION AND CORRESPONDENCE COURSES

SEC. 5103. The Secretary is authorized to prescribe, conduct, and supervise such extension and correspondence courses as he may deem necessary to supplement other training facilities, and to make such courses available, under such rules and regulations and upon such terms as he may prescribe, to the licensed and unlicensed personnel of the merchant marine, and to cadets and cadet officers, who shall make application therefor. The Secretary is further authorized to print, publish, and purchase suitable textbooks, equipment, and supplies required for such courses, and to employ persons, firms, and corporations on a contract or fee basis (without regard to the provisions of section 3709 of the Revised Statutes, 41 U.S.C. 35), for the performance of special services deemed necessary by the Secretary in the preparation and editing of such textbooks and other aids to instruction, and in the supervision and administration of such courses.

#### FACILITIES OF OTHER DEPARTMENTS AND AGENCIES

SEC. 5104. The Secretary, with the consent of any executive department, independent establishment, or other agency of the Government, including any field service thereof, may avail himself of the use of information, services, facilities, officers, and employees thereof in carrying out the provisions of this section, as amended.

#### EMPLOYMENT OF PROFESSORS, AND SO FORTH

SEC. 5105. To effectuate the purpose of this part, the Secretary is authorized to employ professors, lecturers, and instructors and to compensate them without regard to the Classification Act of 1949, as amended.

#### ADMISSION OF PERSONS FROM OTHER AMERICAN REPUBLICS TO UNITED STATES MERCHANT MARINE ACADEMY

SEC. 5106. The Secretary is authorized to permit upon designation of the President of the United States not exceeding twelve persons at a time from the American Republics (other than the United States) to receive instruction in the United States Merchant Marine Cadet Corps and at the United States Merchant Marine Academy. Not more than two persons from any of such republics shall receive instruction under authority of this section at the same time. The persons receiving instruction under authority of this section shall receive the same pay allowances and emoluments to be paid from the same appropriations, and, subject to such exceptions as may be determined by the Secretary, shall be subject to the same rules and regulations governing admission, attendance, discipline, resignation, discharge, dismissal, and graduation as cadet-midshipmen at the Merchant Marine Academy appointed from the United States; but such persons shall not be entitled to appointment to any office or position in the United States merchant marine by reason of their graduation from the Merchant Marine Academy.

#### APPOINTMENT OF CADETS FROM TRUST TERRITORY OF PACIFIC ISLANDS TO MERCHANT MARINE ACADEMY

SEC. 5107. The Secretary is authorized to permit, upon designation of the Secretary of the Interior, not to exceed four persons at a time from the Trust Territory of the Pacific Islands to receive instruction in the United States Merchant Marine Cadet Corps and at the United States Merchant Marine Academy. The persons receiving instruction under authority of this section shall receive the same pay, allowances, and emoluments, to be paid from the same appropriations, and subject to such exceptions as shall be jointly agreed upon by the Secretary of Commerce and the Secretary of the Interior, shall be subject to the same rules and regulations governing admission, attendance, discipline, resignation, discharge, dismissal, and graduation as cadets at the Merchant Marine Academy appointed from the United States; but such persons shall not be entitled to appointment to any office or position in the United States merchant marine by reason of their graduation from the Merchant Marine Academy.

## BACHELOR OF SCIENCE DEGREE ON GRADUATION FROM MERCHANT MARINE ACADEMY

Sec. 5108. Under conditions prescribed by the Secretary, the Superintendent of the United States Merchant Marine Academy may confer the degree of bachelor of science upon graduates of the Academy, and upon living graduates of the Academy who were graduated before the date of accrediting of the Academy and who have met the requirements of the Academy for that degree.

## BOARD OF VISITORS FOR MERCHANT MARINE ACADEMY

Sec. 5109. (a) There shall be appointed in January of each year a Board of Visitors to visit the United States Merchant Marine Academy, which shall consist of two Senators and three Members of the House of Representatives, appointed by the chairmen of the committees of the Senate and the House of Representatives, respectively, having cognizance of legislation pertaining to the United States Merchant Marine Academy, the chairman of said committees being ex officio members of the Board, and of one Senator and two Members of the House of Representatives appointed by the President of the Senate and the Speaker of the House of Representatives, respectively: *Provided*, That whenever a member or an ex officio member is unable to attend the annual meeting as provided in subsection (b) of this section another Member may be appointed in his stead in the manner as herein provided but without restriction as to month of appointment.

(b) Such Board shall visit the United States Merchant Marine Academy annually on a date to be fixed by the Secretary. Each member of the Board shall be reimbursed under Government travel regulations for the actual expense incurred by him while engaged upon duties as a member of such Board.

## ADVISORY BOARD OF MERCHANT MARINE ACADEMY

Sec. 5110. The Secretary may appoint an advisory board to the United States Merchant Marine Academy consisting of not more than seven persons of distinction in education and other fields relating to the purposes of the Academy, who shall serve without pay. Members of the Advisory Board shall be appointed for terms of not to exceed three years and may be reappointed. The Secretary shall, in June of each year, appoint one of the members to serve as Chairman. The members so appointed shall visit the Academy at least once during the academic year on the call of the Chairman and may convene once each year in Washington, at the call of the Maritime Administrator, for the purpose of examining the course of instruction and the management of the Academy and advising the Maritime Administrator, with a copy of such advice to the Superintendent, relative thereto. The expenses of the board while engaged in these duties, including the expense of travel, shall be defrayed under Government travel regulations from any appropriation for the authorized work of the Maritime Administration.

## PART B—STATE MARITIME ACADEMIES

## STATEMENT OF POLICY

Sec. 5201. It is the policy of this part to promote the national policy with respect to the United States merchant marine, as set out in section 2101 of this Act, by assisting and cooperating with the States and territories in the operation and maintenance of maritime academies or colleges for the training of merchant marine officers.

## VESSELS FOR MARITIME ACADEMIES

Sec. 5202. (a) In order to carry out the policy set out in section 5201, the Secretary may furnish any suitable vessel under his jurisdiction, or obtained under the provisions of subsection (b) of this section, or construct and furnish a suitable vessel if such a vessel is not available, to the State of Maine, the State of Massachusetts, the State of New York, the State of California, and to any other State or territory of the United States, for use as a training vessel for a maritime academy or college meeting the requirements of this part. Any such vessel (1) shall be repaired, reconditioned, equipped (including all apparel, charts, books, and instruments of navigation) as necessary for use as a training ship, (2) shall be furnished only upon application therefor in writing by the Governor of such State or territory, (3) shall be furnished only if a suitable port for the safe mooring of such vessel is available while it is being used by such academy or college, (4) shall be maintained in good repair by the Secretary, and (5) shall remain the property of the United States.

(b) Any department or agency of the United States may provide to the Secretary for disposition under the provisions of this part any vessel (including equipment) which is suitable for the purposes of this part and can be spared without detriment to the service to which such vessel has been assigned.

#### FINANCIAL ASSISTANCE TO MARITIME ACADEMIES

SEC. 5203. The Secretary may enter into agreements with not more than one maritime academy or college which meets the requirements of this part in each State or territory to make annual payments to such academy or college for not in excess of four years in the case of each such agreement to be used for the maintenance and support of such academy or college. Such payments for any year to any maritime academy or college shall be an amount equal to the amount furnished to such academy or college for its maintenance and support by the State or territory in which such academy or college is located except that such payments to any academy or college for any year shall not exceed \$75,000, or \$25,000 if such academy or college does not meet the requirement of section 5204(b) of this Act.

#### REQUIREMENTS FOR RECEIVING FINANCIAL ASSISTANCE

SEC. 5204. (a) As a condition to receiving any payments or the use of any vessel under the provisions of this part an academy or college shall—

(1) provide courses of instruction to youths in navigation and marine engineering, including steam and diesel propulsion, and courses in atomic or nuclear propulsion as soon as practical and possible; and

(2) shall agree in writing to conform to such standards in such courses, in training facilities, in entrance requirements, and in instructors, as are established by the Secretary after consultation with superintendents of maritime academies and colleges in the United States.

(b) As a condition to receiving payment of any amount in excess of \$25,000 for any year under the provisions of section 5203 of this Act, a maritime academy or college shall agree to admit to such academy or college students resident in other States in such numbers as the Secretary shall prescribe, except that the number of such students prescribed for any academy or college shall not at any time exceed one-third of the student capacity of such academy or college.

#### SUBSISTENCE PAYMENTS FOR STUDENTS

SEC. 5205. (a) The Secretary may enter into agreements with each academy or college with which he contracts under section 5203 to make payments, at a rate not in excess of \$600 per academic year per student, to such academy or college, with respect to each student attending such academy or college. Such payments

(1) shall be used to assist in defraying the cost of uniforms, books, and subsistence for such student, (2) shall commence to accrue on the day such student begins his first term of work at such academy or college, and (3) shall be paid to such academy or college in such installments as the Secretary shall prescribe, while such student is in attendance and until the completion of his course of instruction, but in no event for more than four academic years for any one student.

(b) If the Secretary deems it advisable in the case of any such academy or college, he may, in lieu of entering into agreements with such academy or college for payments under this section, enter into such agreements directly with each student at such academy or college and make such payments directly to each such student.

#### DETAILING OF OFFICERS TO MARITIME ACADEMIES

SEC. 5206. When requested by the Governor of any State or Territory, the President of the United States is authorized to detail, when in his opinion such detailing can be done without detriment to the public service, proper officers of the Navy or Coast Guard or instructors at the United States Marine Academy employed under the provisions of section 5105 of this Act, as superintendents or instructors, or both, at maritime academies or colleges meeting the requirements of this part. Officers or instructors so detailed shall be compensated by the Federal agency ordinarily compensating them for service as such an officer or instructor.

## PART C—CIVILIAN NAUTICAL SCHOOLS

## CIVILIAN NAUTICAL SCHOOL DEFINED

SEC. 5301. As used in this part, "civilian nautical school" means any school or branch thereof operated and conducted in the United States (except State nautical schools and schools operated by the United States or any agency thereof), which offers to persons quartered on board any vessel instruction for the primary purpose of training for service in the merchant marine.

## EXAMINATION AND INSPECTION

SEC. 5302. Every civilian nautical school shall be subject to examination and inspection by the Secretary, and the Secretary may, under such rules and regulations as he may prescribe, provide for the rating and certification of such schools as to the adequacy of the course of instruction, the competency of the instructors, and the suitability of equipment used by or in connection with such schools.

## LAWS APPLICABLE; RULES AND REGULATIONS; CERTIFICATES OF INSPECTION

SEC. 5303. (a) All laws covering the inspection of passenger vessels in effect on June 12, 1940, are made applicable to all vessels or other floating equipment used by or in connection with any civilian nautical school, whether such vessels or other floating equipment are being navigated or not, to such extent and upon such conditions as may be required by regulations prescribed by the Secretary of the Department in which the Coast Guard is operating.

(b) The Secretary of the Department in which the Coast Guard is operating is authorized and directed to prescribe minimum standards for the size, ventilation, plumbing, and sanitation of quarters assigned to members of the crew, passengers, cadets, students, instructors, or any other persons at any time quartered on board any vessel used by or in connection with any civilian nautical school.

(c) No certificate of inspection shall be issued to any such vessel until and unless the Coast Guard has found such vessel to be in compliance with all the requirements of this section and the regulations issued thereunder. Such certificates shall be subject to revocation in the manner prescribed by section 4453 of the Revised Statutes of the United States, as amended (46 U.S.C. 435).

(d) It shall be unlawful for any vessel to which this part applies to be used by or in connection with any civilian nautical school unless it is in possession of a valid, unexpired certificate of inspection, or a valid, unexpired temporary certificate of inspection.

(e) In case of the violation of this section or of any of the regulations issued thereunder by any vessel, or any owner or officer thereof, such vessel, owner, or officer shall be fined not more than \$1,000, and such owner or officer may be imprisoned for not more than one year, or subjected to both fine and imprisonment. Should the owner of such vessel be a corporation, organization, or association, each officer or director participating in the violation shall be liable to the penalty hereinabove prescribed.

(f) The provisions of this section shall not apply to vessels of the Navy or the Coast Guard used by or in connection with civilian nautical schools.

## PART D—MERCHANT MARINE MEDALS

## DISTINGUISHED SERVICE AND MERITORIOUS SERVICE MEDALS

SEC. 5401. (a) The Secretary is authorized, under such rules and regulations as he may prescribe, to provide and award with the concurrence of the Secretary of the Treasury: A merchant marine distinguished service medal to any person serving in the United States merchant marine who distinguishes himself by outstanding act, conduct, or valor beyond the line of duty, and a merchant marine meritorious service medal to any person serving in the United States merchant marine for meritorious act, conduct, or service in line of duty, but not of such outstanding character as would warrant an award of the distinguished service medal.

(b) No more than one distinguished service medal or meritorious service medal shall be awarded to any one person, but for each succeeding act, conduct, or service justifying such an award, a suitable device may be awarded to be worn with the medal or ribbon. In case any person who so distinguishes himself or so acts or serves as to justify the award of a medal under this section dies before the award can be made to him, the award may be made and medal presented to such representatives of the deceased as the Secretary deems proper.

## DISTINCTIVE SERVICE RIBBON BARS

SEC. 5402. The Secretary is authorized to provide and issue, under such rules and regulations as he may from time to time prescribe, a distinctive service ribbon bar to each master, officer, or member of the crew of any United States ship who serves or has served after June 30, 1950, in any time of war, or national emergency proclaimed by the President or by Congress, or during an operation by armed forces of the United States outside the continental United States, for such period of time and in such area or under such conditions of danger to life as the Secretary may set forth in regulations issued hereunder. Such bars shall be provided at cost by the Secretary or at reasonable prices by private persons when authorized for manufacture and sale by the Secretary. Whenever any bar presented under the provisions of this section is lost, destroyed, or rendered unfit for use, without fault or neglect of the owner, such bar may be replaced at cost by the Secretary or at reasonable prices by private persons authorized by him.

## CITATIONS

SEC. 5403. The Secretary is authorized to issue, with the concurrence of the Secretary of the Treasury, a citation as public evidence of deserved honor and distinction to any United States ship or to any foreign ship which participates in outstanding or gallant action in marine disasters or other emergencies for the purpose of saving life or property. The Secretary may award a plaque to a ship so cited, and a replica of such plaque may be preserved, under such rules and regulations as the Secretary may prescribe, as a permanent historic record. The Secretary may also award an appropriate citation ribbon bar to the master or each person serving on board such ship at the time of the action for which citation is made, as public evidence of such honor and distinction. Whenever such master or person would be entitled hereunder to the award of an additional citation ribbon a suitable device shall be awarded, in lieu thereof, to be attached to the ribbon originally awarded. In any case of a proposed award or citation to a foreign ship or to a master or person serving aboard such ship, such award or citation shall be subject to the concurrence of the Secretary of State.

## PROHIBITIONS AND PENALTIES

SEC. 5404. The manufacture, sale, possession, or display of any insignia, decoration, medal, device, or rosette thereof, or any colorable imitation of any insignia, decoration, medal, device, or rosette, provided for in this part, or in any rule or regulation issued pursuant to this part, is prohibited, except as authorized by this part or any rule or regulation issued pursuant thereto. Whoever violates any provision of this section shall be punished by a fine not exceeding \$250 or by imprisonment not exceeding six months, or both.

## REPLACEMENT OF AWARDS, MEDALS, AND SO FORTH

SEC. 5405. The Secretary is authorized, under such rules and regulations as he may from time to time prescribe, to make replacements at cost or permit replacements at reasonable prices by persons authorized by him of the awards, medals, decorations, or other articles issued under the Act of May 10, 1943, as amended (57 Stat. 81, 59 Stat. 511, 60 Stat. 884), the Act of August 8, 1946 (60 Stat. 960), and the Act of June 23, 1943, as amended (57 Stat. 162, 60 Stat. 905, 945), if lost, destroyed, or rendered unfit for use, without fault or neglect on the part of the owner.

## TITLE VI—MISCELLANEOUS PROVISIONS

## CARGO PREFERENCE

SEC. 6101. (a) Except as otherwise provided in subsection (b) of this section, whenever the United States shall procure, contract for, or otherwise obtain for its own account, or shall furnish to or for the account of any foreign nation without provision for reimbursement, any equipment, materials, or commodities, within or without the United States, or shall advance funds or credits or guarantee the convertibility of foreign currencies in connection with the furnishing of such equipment, materials, or commodities, the appropriate agency or agencies shall take such steps as may be necessary and practicable to assure that at least 50 per centum of the gross tonnage of such equipment, materials or commodities (computed separately for dry bulk carriers, dry cargo liners, and tankers), which may be transported on ocean vessels shall be transported on privately owned

United States-flag commercial vessels, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels, in such manner as will insure a fair and reasonable participation of United States-flag commercial vessels in such cargoes by geographic areas: *Provided*, That the provisions of this subsection may be waived whenever the Congress by concurrent resolution or otherwise, or the President of the United States or the Secretary of Defense declares that an emergency exists justifying a temporary waiver of the provisions of this subsection and so notifies the appropriate agency or agencies: *Provided further*, That the provisions of this subsection shall not apply to cargoes carried in the vessels of the Panama Canal Company. For purposes of this subsection, "privately owned United States-flag commercial vessels" shall not be deemed to include any vessels which, subsequent to September 21, 1961, shall have been either (1) built outside the United States, (2) rebuilt outside the United States, or (3) documented under any foreign registry, until such vessel shall have documented under the laws of the United States for a period of three years: *Provided, however*, That the provisions of the preceding sentence shall not apply where, (1) prior to September 21, 1961, the owner of a vessel, or contractor for the purchase of a vessel, originally constructed in the United States and rebuilt abroad or contracted to be rebuilt abroad, has notified the Maritime Administration in writing of its intent to document such vessel under United States registry, and such vessel is so documented on its first arrival at a United States port not later than one year subsequent to September 21, 1961, or (2) where, prior to September 21, 1961, the owner of a vessel under United States registry has made a contract for the rebuilding abroad of such vessel and has notified the Maritime Administration of such contract, and such rebuilding is completed and such vessel is thereafter documented under United States registry on its first arrival at a United States port not later than one year subsequent to September 21, 1961.

(b) It is the sense of Congress that in any loans made by any instrumentality of the Government to foster the exporting of agricultural or other products, provision shall be made that such products shall be carried exclusively in vessels of the United States, unless, as to any or all of such products, the Secretary, after investigation, shall certify to any such instrumentality of the Government that vessels of the United States are not available in sufficient numbers, or in sufficient tonnage capacity, or on necessary sailing schedule, or at reasonable rates.

#### TRANSPORTATION OF GOVERNMENT PERSONNEL AND THEIR PERSONAL EFFECTS

SEC. 6102. (a) Any officer or employee of the United States traveling on official business overseas or to or from any of the possessions of the United States shall travel and transport his personal effects on ships registered under the laws of the United States where such ships are available unless the necessity of his mission requires the use of a ship under a foreign flag: *Provided*, That the Comptroller General of the United States shall not credit any allowance for travel or shipping expenses incurred on a foreign ship in the absence of satisfactory proof of the necessity therefor.

(b) Notwithstanding any other provision of law, privately owned American shipping services may be utilized for the transportation of motor vehicles owned by Government personnel whenever transportation of such vehicles at Government expense is otherwise authorized by law.

(c) No common carrier by water subject to this Act or any other Act shall directly or indirectly issue any ticket or pass for free or reduced rate transportation to any official or employee of the United States Government (military or civilian) or to any member of their immediate families, traveling as a passenger on any ship sailing under the American flag in foreign commerce or in commerce between the United States and its territories and possessions; except that this restriction shall not apply to persons injured in accidents at sea and physicians and nurses attending such persons, and persons rescued at sea, and except that this restriction shall not apply to persons referred to in section 6104 of title 39, United States Code, relating to steamship companies carrying mails of the United States: *Provided*, That nothing in this section shall prevent the United States Government from entering into contractual arrangements with said companies for reduced transportation rates involving the traveling expenses of those Government employees (military or civilian) or their families, when such transportation costs are paid for by the United States Government. Any person or corporation who knowingly violates this section shall upon conviction thereof be fined not less than \$500 nor more than \$10,000 at the discretion of the courts for each such violation.

(d) No official or employee of the United States Government nor any member of their immediate families may accept directly or indirectly free or at a reduced rate passenger travel or carriage of personal property on any ship sailing under a flag other than that of the United States. This restriction shall not apply to persons injured in accidents at sea and physicians and nurses attending such persons, and persons rescued at sea, and this restriction shall not apply to persons referred to in section 6104 of title 39, United States Code, relating to steamship companies carrying the mails of the United States. Any person who knowingly violates this section shall upon conviction thereof be fined not less than \$500 nor more than \$10,000 at the discretion of the courts for each such violation.

TRANSPORTATION IN COASTWISE TRADE

SEC. 6103. (a) The coastwise laws of the United States shall extend to the island territories and possessions of the United States not covered thereby on June 5, 1920, and to the Commonwealth of Puerto Rico: *Provided*, That the coastwise laws of the United States shall not extend to the Virgin Islands of the United States until the President of the United States shall, by proclamation, declare that such coastwise laws shall extend to the Virgin Islands and fix a date for the going into effect of same: *Provided further*, That the provisions of law of the United States restricting to vessels of the United States the transportation of passengers and merchandise directly or indirectly from any port of the United States to another port of the United States shall not be applicable to commerce between the islands of American Samoa or between those islands and other ports under the jurisdiction of the United States.

(b) No merchandise shall be transported by water, or by land and water, on penalty of forfeiture thereof, between points in the United States, including districts, territories, and possessions thereof embraced within the coastwise laws and the Commonwealth of Puerto Rico, either directly or via a foreign port, or for any part of the transportation, in any other vessel than a vessel built in and documented under the laws of the United States and owned by persons who are citizens of the United States, or vessels to which the privilege of engaging in the coastwise trade was extended by section 18 or 22 of the Merchant Marine Act of 1920: *Provided*, That—

(1) no vessel having at any time acquired the lawful right to engage in the coastwise trade, either by virtue of having been built in, or documented under the laws of the United States, and later sold foreign in whole or in part, or placed under foreign registry, shall acquire the right to engage in the coastwise trade;

(2) no vessel of more than five hundred gross tons which has acquired the lawful right to engage in the coastwise trade, by virtue of having been built in or documented under the laws of the United States, and which has later been rebuilt, shall have the right thereafter to engage in the coastwise trade, unless the entire rebuilding, including the construction of any major components of the hull or superstructure of the vessel, is effected within the United States, its territories (not including trust territories), or its possessions or the Commonwealth of Puerto Rico;

(3) this subsection shall not apply to merchandise transported between points within the continental United States, including Alaska, over through routes heretofore or hereafter recognized by the Interstate Commerce Commission for which routes rate tariffs have been or shall hereafter be filed with said Commission when such routes are in part over Canadian rail lines and their own or other connecting water facilities;

(4) this subsection shall not become effective upon the Yukon River until the Alaska Railroad shall be completed and the Secretary shall find that proper facilities will be furnished for transportation by persons citizens of the United States for properly handling the traffic;

(5) this subsection shall not apply to the transportation of merchandise loaded on railroad cars or to motor vehicles with or without trailers, and with their passengers or contents when accompanied by the operator thereof, when such railroad cars or motor vehicles are transported in any railroad car ferry operated between fixed termini on the Great Lakes as a part of a rail route, if such car ferry is owned by a common carrier by water and operated as part of a rail route with the approval of the Interstate Commerce Commission, and if the stock of such common carrier by water, or its predecessor, was owned or controlled by a common carrier by rail prior to June 5, 1920, and if the stock of the common carrier owning such car ferry is, with

the approval of the Interstate Commerce Commission, now owned or controlled by any common carrier by rail and if such car ferry is built in and documented under the laws of the United States;

(6) upon such terms and conditions as the Secretary of the Treasury by regulation may prescribe, and, if the transporting vessel is of foreign registry, upon a finding by the Secretary of the Treasury, pursuant to information obtained and furnished by the Secretary of State, that the government of the nation of registry extends reciprocal privileges to vessels of the United States, this subsection shall not apply to the transportation of empty cargo vans, empty lift vans, and empty shipping tanks by vessels of the United States not qualified to engage in the coastwise trade, or by vessels of foreign registry, so long as such vans or tanks are owned or leased by the owner or operator of the transporting vessel and are being transported for use in the carriage of cargo in foreign trade.

(c)(1) Notwithstanding any other provision of law, a corporation incorporated under the laws of the United States or any State, territory, district, or possession thereof, or the Commonwealth of Puerto Rico, shall be deemed to be a citizen of the United States for the purposes of and within the meaning of that term as used in subsection (b) of this section, Revised Statutes, section 4370 (46 U.S.C. 316), and the laws relating to the documentation of vessels, if it is established by a certificate filed with the Secretary of the Treasury as hereinafter provided, that—

(A) a majority of the officers and directors of such corporation are citizens of the United States;

(B) not less than 90 per centum of the employees of such corporation are residents of the United States;

(C) such corporation is engaged primarily in a manufacturing or mineral industry in the United States or any territory, district, or possession thereof or the Commonwealth of Puerto Rico;

(D) the aggregate book value of the vessels owned by such corporation does not exceed 10 per centum of the aggregate book value of the assets of such corporation; and

(E) such corporation purchases or produces in the United States, its territories, or possessions, or the Commonwealth of Puerto Rico, not less than 75 per centum of the raw materials used or sold in its operations;

but no vessel owned by any such corporation shall engage in the fisheries or in the transportation of merchandise or passengers for hire between points in the United States, including territories, districts, and possessions thereof embraced within the coastwise laws, and the Commonwealth of Puerto Rico, except as a service for a parent or subsidiary corporation and except when such vessel is under demise or bareboat charter at prevailing rates for use otherwise than in the domestic non-contiguous trades from any such corporation to a common or contract carrier subject to part 3 of the Interstate Commerce Act, as amended, which otherwise qualifies as a citizen under section 4101 of this Act, and which is not connected, directly or indirectly, by way of ownership or control with such corporation.

(2) As used herein "parent" means a corporation which controls, directly or indirectly, at least 50 per centum of the voting stock of such corporation, and "subsidiary" means a corporation not less than 50 per centum of the voting stock of which is controlled, directly or indirectly, by such corporation or its parent, but no corporation shall be deemed to be a "parent" or "subsidiary" hereunder unless it is incorporated under the laws of the United States, or any State, territory, district, or possession thereof, or the Commonwealth of Puerto Rico, and there has been filed with the Secretary of the Treasury a certificate as hereinafter provided.

(3) Vessels built in the United States and owned by a corporation meeting the conditions hereof which are non-self-propelled or which, if self-propelled, are of less than five hundred gross tons shall be entitled to documentation under the laws of the United States, and except as restricted by this subsection, shall be entitled to engage in the coastwise trade and, together with their owners or masters, shall be entitled to all the other benefits and privileges and shall be subject to the same requirements, penalties, and forfeitures as may be applicable in the case of vessels built in the United States and otherwise documented or exempt from documentation under the laws of the United States.

(4) A corporation seeking under this subsection to document a vessel under the laws of the United States or to operate a vessel exempt from documentation under the laws of the United States shall file with the Secretary of the Treasury of the United States a certificate under oath, in such form and at such times as may be prescribed by him, executed by its duly authorized officer or agent, establishing that such corporation complies with the conditions of this subsection above set

forth. A "parent" or "subsidiary" of such corporation shall likewise file with the Secretary of the Treasury a certificate under oath, in such form and at such time as may be prescribed by him, executed by its duly authorized officer or agent, establishing that such "parent" or "subsidiary" complies with the conditions of this subsection above set forth, before such corporation may transport any merchandise or passengers for such parent or subsidiary. If any material matter of fact is alleged in any such certificate which, within the knowledge of the party so swearing, is not true, there shall be a forfeiture of the vessel (or the value thereof) documented or operated under this subsection in respect to which the oath shall have been made. If any vessel shall transport merchandise for hire in violation of this subsection, such merchandise shall be forfeited to the United States. If any vessel shall transport passengers for hire in violation of this subsection, such vessel shall be subject to a penalty of \$200 for each passenger so transported. Any penalty or forfeiture incurred under this subsection may be remitted or mitigated by the Secretary of the Treasury under the provisions of sections 5294, Revised Statutes (46 U.S.C. 7).

(5) Any corporation which has filed a certificate with the Secretary of the Treasury as provided for in this subsection shall cease to be qualified under this subsection if there is any change in its status whereby it no longer meets the conditions above set forth, and any documents theretofore issued to it, pursuant to the provisions of this subsection, shall be forthwith surrendered by it to the Secretary of the Treasury.

(d) As used in this section "person", "vessel", "documented under the laws of the United States", and, except as otherwise provided in subsection (c), "citizen of the United States" shall have the meaning assigned to them by section 4101 of this Act.

#### PREVENTING CARRIER FROM SERVING PORT AT REGULAR RATES

SEC. 6104. Without limiting the power and authority otherwise vested in the Secretary, it shall be unlawful for any common carrier by water, either directly or indirectly, through the medium of an agreement, conference, association, understanding, or otherwise, to prevent or attempt to prevent any other such carrier from serving any port designed for the accommodation of oceangoing vessels located on any improvement project authorized by the Congress or through it by any other agency of the Federal Government, lying within the continental limits of the United States, at the same rates which it charges at the nearest port already regularly served by it, and any such common carrier violating this section shall be subject to punishment as provided in section 3411 of this Act.

#### CHARGES FOR TRANSPORTATION SUBJECT TO INTERSTATE COMMERCE ACT

SEC. 6105. (a) No common carrier shall charge, collect, or receive, for transportation subject to the Interstate Commerce Act of persons or property, under any joint rate, fare, or charge, or under any export, import, or other proportional rate, fare, or charge, which is based in whole or in part on the fact that the persons or property affected thereby are to be transported to, or have been transported from any port in a possession or dependency of the United States or in the Commonwealth of Puerto Rico, or in a foreign country, by a carrier by water in foreign commerce, any lower rate, fare, or charge than that charged, collected, or received by it for the transportation of persons, or of a like kind of property, for the same distance, in the same direction, and over the same route, in connection with commerce wholly within the United States, unless the vessel so transporting such persons or property is, or unless it was at the time of such transportation by water, documented under the laws of the United States. Whenever the Secretary is of the opinion, however, that adequate shipping facilities to or from any port in a possession or dependency of the United States or a foreign country are not afforded by vessels so documented, he shall certify this fact to the Interstate Commerce Commission, and the Commission may, by order, suspend the operation of the provisions of this subsection with respect to the rates, fares, and charges for the transportation by rail of persons and property transported from, or to be transported to, such ports, for such length of time and under such terms and conditions as it may prescribe in such order, or in any order supplemental thereto. Such suspension of operation of the provisions of this section may be terminated by order of the Interstate Commerce Commission whenever the Secretary is of the opinion that adequate shipping facilities by such vessels to such ports are afforded and shall so certify to such Commission.

(b) As used in this section "vessel" and "documented under the laws of the United States" shall have the meaning assigned to them by section 4101 (d) and (f) of this Act.

#### AMERICAN BUREAU OF SHIPPING

SEC. 6106. For the classification of vessels owned by the United States, and for such other purposes in connection therewith as are the proper functions of a classification bureau, all departments, boards, bureaus, and commissions of the Government are hereby directed to recognize the American Bureau of Shipping as their agency so long as the American Bureau of Shipping continues to be maintained as an organization which has no capital stock and pays no dividends: *Provided*, That the Secretary of the Department in which the Coast Guard is operating and the Secretary of Commerce shall each appoint one representative who shall represent the Government upon the executive committee of the American Bureau of Shipping, and the Bureau shall agree that these representatives shall be accepted by them as active members of such committee. Such representatives of the Government shall serve without any compensation, except necessary traveling expenses: *Provided further*, That the official list of merchant vessels published by the Government shall hereafter contain a notation clearly indicating all vessels classed by the American Bureau of Shipping.

#### EXEMPTION OF MARINE INSURANCE ASSOCIATIONS FROM ANTITRUST LAWS

SEC. 6107. (a) As used in this section—

(1) "Association" means any association, exchange, pool, combination, or other arrangement for concerted action; and

(2) "Marine insurance companies" means any persons, companies, or associations authorized to write marine insurance or reinsurance under the laws of the United States or of a State, territory, district, or possession thereof, or the Commonwealth of Puerto Rico.

(3) "Person" shall have the meaning assigned to it by section 4101(d) of this Act.

(b) Nothing contained in the "antitrust laws" as defined in section 1 of the Act of October 15, 1914 (38 Stat. 730, 15 U.S.C. 12), shall be construed as declaring illegal an association entered into by marine insurance companies for the following purposes: To transact a marine insurance and reinsurance business in the United States and in foreign countries and to reinsure or otherwise apportion among its membership the risks undertaken by such association or any of the component members.

#### VESSEL UTILIZATION AND PERFORMANCE REPORTS

SEC. 6108. (a) The operator of a vessel in waterborne foreign commerce of the United States shall file at such times and in such manner as the Secretary may prescribe by regulations, such report, account, record, or memorandum relating to the utilization and performance of such vessel in commerce of the United States, as the Secretary may determine to be necessary or desirable in order to carry out his functions under this Act. Such report, account, record, or memorandum shall be signed and verified in accordance with regulations prescribed by the Secretary. An operator who does not file the report, account, record, or memorandum as required by this section and the regulations issued hereunder, shall be liable to the United States in a penalty of \$50 for each day of such violation. The amount of any penalty imposed for any violation of this section upon the operator of any vessel shall constitute a lien upon the vessel involved in the violation, and such vessel may be libeled therefor in the United States district court for the district in which it may be found. The Secretary may, in his discretion, remit or mitigate any penalty imposed under this section on such terms as he may deem proper.

(b) As used in this section, "foreign commerce" shall have the meaning assigned to it in section 3101(c) of this Act.

#### LIFE EXPECTANCY OF CERTAIN VESSELS; SPECIAL PROVISIONS

SEC. 6109. (a) The provisions of sections 3103 (c) and (f), 3104, 3107, 3108, 3110, 3111 (d) and (g), 3205(b), 3207(b), 3211(c), 3305, 3313, 4202, 4504(a) (3), 4506(a) (1), (2), and (3), 4507 (4) and (5) of this Act, to the extent that they provide for or are based upon a twenty-five year life expectancy of a vessel, shall apply only to vessels delivery by the shipbuilder on or after January 1, 1946, and with respect to those vessels such provisions are effective as of January 1, 1960.

(b) With respect to vessels delivered by the shipbuilder before January 1, 1946, the provisions of the Merchant Marine Act, 1936, existing immediately prior to June 12, 1960, shall continue in effect.

(c) With respect to vessels delivered by the shipbuilder on or after January 1, 1946, and before January 1, 1960, depreciation under sections 3103(f), 3108, 3111(d), 3207(b), 3211(c), 3305, 3313, 4202 and 4507(4) of this Act shall be taken (unless a contract which was in effect on January 1, 1960, otherwise provides) for the period prior to January 1, 1960, at the rate provided by the Merchant Marine Act, 1936, as it existed immediately prior to June 12, 1960, and for the period after January 1, 1960, such depreciation shall be taken on the basis of the remaining years of a useful life of twenty-five years unless the vessel is reconstructed or reconditioned, in which event such depreciation, from the time of such reconstruction or reconditioning, shall be taken on the basis of the remaining years of a useful life of the vessel determined jointly by the Secretary of Commerce and the Secretary of the Treasury.

(d) Nothing in this section or in the provisions of this Act referred to in this section shall operate or be interpreted to change from twenty to twenty-five years the provisions of the Merchant Marine Act, 1936, as they existed immediately prior to June 12, 1960, relating to the commercial expectancy or period of depreciation of any tanker or other liquid bulk carrier.

## TITLE VII—INTERPRETATION, SEVERABILITY, APPROPRIATIONS, AMENDMENTS, AND REPEALS

### INTERPRETATION

SEC. 7101. (a) The classification and arrangement of the titles, parts, and sections of this Act have been made for the purpose of convenience and orderly arrangement, and no implication or presumption of a legislative construction is to be drawn therefrom.

(b) Title, part, and section headings in this Act have been included for purposes of convenience and shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions of any title, part, or section hereof.

### SEVERABILITY

SEC. 7102. If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

### APPROPRIATIONS

SEC. 7103. (a) There are hereby authorized to be appropriated such sums as are necessary to carry out the provisions of this Act.

(b) Nothing in this Act shall be deemed to affect appropriations made to the Federal Maritime Commission or to the Secretary prior to the date of enactment of this Act.

### SAVING PROVISIONS

SEC. 7104. (a) Nothing in this Act shall affect any rights or obligations that had vested or accrued, or penalties that were incurred, or proceedings that were begun, under the provisions of laws superseded, or amended, or repealed by this Act.

(b) An order, rule, or regulation in effect under a law replaced by this Act continues in effect under the corresponding provision enacted by this Act until repealed, amended, or superseded.

### AMENDMENTS

SEC. 7105. (a) A reference to a law replaced by this Act, including a reference in a regulation, order, or other law, is deemed to refer to the corresponding provision enacted by this Act.

(b) Without limiting the foregoing, the following laws are amended as follows:

(1) Section 104(m) of the Agricultural Trade Development and Assistance Act of 1954, as amended (7 U.S.C. 1704(m)), is amended by striking the words "section 212(B) of the Merchant Marine Act, 1936" and inserting in lieu thereof "section 2302 of the Merchant Marine Act of 1966".

(2) Subsection 170(1) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2210(1)), is amended by striking the words "section 716 of the Merchant

Marine Act, 1936" and inserting in lieu thereof "section 3315 of the Merchant Marine Act of 1966".

(3) Section 8 of the Carriage of Goods by Sea Act (46 U.S.C. 1308) is amended by striking the words "the Shipping Act, 1916" and inserting in lieu thereof "title I and sections 4101-4109 of title IV of the Merchant Marine Act of 1966".

(4) Section 9 of the Carriage of Goods by Sea Act (46 U.S.C. 1309) is amended by striking the words "the Shipping Act, 1916, as amended" and inserting in lieu thereof "title I of the Merchant Marine Act of 1966".

(5) Section 4(c) of the China Trade Act, 1922, as amended (15 U.S.C. 144(c)), is amended by striking the words "section 802 of title 46, SHIPPING" and inserting in lieu thereof "section 1201(b) of the Merchant Marine Act of 1966".

(6) Section 352(a)(2) of the Communications Act of 1934 (47 U.S.C. 352(a)(2)) is amended by striking the words "United States Maritime Commission" and inserting in lieu thereof "Department of Commerce".

(7) Section 382(2) of the Communications Act of 1934 (47 U.S.C. 382(2)) is amended by striking the words "United States Maritime Administration" and inserting in lieu thereof "Department of Commerce".

(8) Section 203(i) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 484(i)), is amended to read as follows:

"(i) The Secretary of Commerce shall dispose of surplus vessels of one thousand five hundred gross tons or more which he determines to be merchant vessels or capable of conversion to merchant use, and such vessels shall be disposed of only in accordance with the provisions of the Merchant Marine Act of 1966 and other laws authorizing the sale of such vessels."

(9) Section 602(d)(16) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 474(16)), is amended to read as follows:

"(16) the Secretary of Commerce with respect to the construction, reconstruction, and reconditioning (including outfitting and equipping incident to the foregoing), the acquisition, procurement, operation, maintenance, preservation, sale, lease, or charter of any merchant vessel or of any shipyard, ship site, terminal, pier, dock, warehouse, or other installation necessary or appropriate for the carrying out of any program of the Secretary authorized by law, or nonadministrative activities incidental thereto: *Provided*, That the Secretary shall to the maximum extent that he may deem practicable, consistent with the fulfillment of the purposes of such programs and the effective and efficient conduct of such activities, coordinate his operations with the requirements of this Act, and the policies and regulation prescribed pursuant thereto;"

(10) Section 1503(c) (1) (F) of the Internal Revenue Code of 1954 is amended by striking the words "Federal Maritime Board under the Intercoastal Shipping Act, 1933" and inserting in lieu thereof "Federal Maritime Commission under section 1208 of the Merchant Marine Act of 1966".

(11) Section 7701(a)(33)(F) of the Internal Revenue Code of 1954, as amended, is amended by striking the words "Federal Maritime Board under the Intercoastal Shipping Act, 1933" and inserting in lieu thereof "Federal Maritime Commission under section 1208 of the Merchant Marine Act of 1966".

(12) Section 216 of the Interstate Commerce Act, as amended (49 U.S.C. 316(c)), is amended by striking the words "the Shipping Act, 1916, as amended, or the Intercoastal Shipping Act of 1933, as amended" and inserting in lieu thereof "title I of the Merchant Marine Act of 1966".

(13) Section 305(b) of the Interstate Commerce Act, as amended (49 U.S.C. 905(b)), is amended by striking the words "the Shipping Act, 1916, as amended, or the Intercoastal Shipping Act, 1933, as amended" and inserting in lieu thereof "title I of the Merchant Marine Act of 1966".

(14) Section 320 of the Interstate Commerce Act (49 U.S.C. 920) is amended by (A) striking subsections (a) and (b); (B) redesignating subsections (c), (d), and (e) as (a), (b), and (c); and (C) amending subsection (a) (formerly (c)) to read as follows: "(a) Nothing in this part shall be construed to affect the provisions of section 1205 of the Merchant Marine Act of 1966 so as to prevent any water carrier subject to the provisions of this part from entering into any agreement under the provisions of such section 1205 with respect to transportation not subject to the provisions of this part in which such carrier may be engaged."

(15) Section 102(e) of the Renegotiation Act of 1951, as amended (50 U.S.C. App. 1212(e)), is amended by (A) striking the words "section 505(b) of the Merchant Marine Act, 1936, as amended and supplemented" and inserting in lieu thereof "section 3106(b) of the Merchant Marine Act of 1966"; and (B) by striking the words "in the case of the Merchant Marine Act, 1936" and inserting in lieu thereof "in the case of the Merchant Marine Act of 1966".

(16) Section 103 of the Renegotiation Act of 1951, as amended (50 U.S.C. App. 1213), is amended by striking the words "the Federal Maritime Board", in subsections (a) and (b).

(17) Section 106(a)(4) of the Renegotiation Act of 1951, as amended (50 U.S.C. App. 1216(a)(4)), is amended by striking the words "Federal Maritime Board under the Interoceanic Shipping Act, 1933" and inserting in lieu thereof "Federal Maritime Commission under section 1208 of the Merchant Marine Act of 1966".

(18) Section 7 of the Suits in Admiralty Act (46 U.S.C. 747) is amended by striking the words "United States Shipping Board" wherever they appear and inserting in lieu thereof "Secretary of Commerce".

(19) Section 9 of the Suits in Admiralty Act (46 U.S.C. 749) is amended by striking the words "or the United States Shipping Board,".

(20) Section 10 of the Suits in Admiralty Act (46 U.S.C. 750) is amended by striking the words "or of the United States Shipping Board,".

(21) Section 11 of the Suits in Admiralty Act (46 U.S.C. 751) is amended by striking the words "or of the United States Shipping Board,".

(22) Section 12 of the Suits in Admiralty Act, as amended (46 U.S.C. 752), is amended by striking the words "and the United States Shipping Board,".

(23) Section 4370(c) of the Revised Statutes, as amended, is amended by striking the words "section 27 of the Merchant Marine Act, 1920, as amended (U.S.C., 1934 edition, Supp. IV, title 46, sec. 883)" and inserting in lieu thereof "section 6103(b) of the Merchant Marine Act of 1966".

(24) Section 2664(a) of title 10 United States Code, as amended, is amended by (A) striking the words "the Secretary of Commerce, and the Chairman of the Federal Maritime Board" and inserting in lieu thereof "or the Secretary of Commerce"; and (B) striking the words "transferred to the Secretary of Commerce or the Federal Maritime Board by 1950 Reorganization Plan Numbered 21, effective May 24, 1950 (64 Stat. 1273)" and inserting in lieu thereof "vested in the Secretary of Commerce by the Merchant Marine Act of 1966".

(25) Section 2665 of title 10 United States Code is amended by striking the words "Federal Maritime Board" wherever they appear and inserting in lieu thereof "Secretary of Commerce".

(26) Section 148 of title 14 United States Code is amended by striking the words "United States Maritime Commission" and inserting in lieu thereof "Secretary of Commerce".

(27) Section 7 of the Act of October 15, 1914 (Public Law 212; 38 Stat. 731), as amended, is amended by striking the words "United States Maritime Commission" and inserting in lieu thereof "Federal Maritime Commission".

(28) Section 1 of the Act of February 16, 1925 (Public Law 420; 43 Stat. 947), as amended, is amended by striking the words "the Ship Mortgage Act, 1920, otherwise known as section 30 of the Merchant Marine Act, 1920" and inserting in lieu thereof "part D of title IV of the Merchant Marine Act of 1966".

(29) Section 5 of the Act of February 16, 1925 (Public Law 420; 43 Stat. 948) is amended by striking the words "the Ship Mortgage Act, 1920, otherwise known as section 30 of the Merchant Marine Act, 1920" and inserting in lieu thereof "part D of title IV of the Merchant Marine Act of 1966".

(30) Section 5(b) of the Act of May 27, 1936 (Public Law 622; 49 Stat. 1384), is amended by striking from the last sentence the words "the Merchant Marine Act, June 5, 1920 (ch. 250, sec. 25; 41 Stat. 998; 46 U.S.C. Annotated, sec. 881)" and inserting in lieu thereof "section 6106(a) of the Merchant Marine Act of 1966".

(31) Section 1(701) of the Act of June 22, 1938 (Public Law 696; 52 Stat. 938), is amended by (A) striking the words "the Merchant Marine Act, 1936" and inserting in lieu thereof "section 2101 of title I, title III, and sections 4202, 4203, 4212 (c) and (d) of title IV of the Merchant Marine Act of 1966"; and (B) by striking the words "United States Maritime Commission" or "Commission" and inserting in lieu thereof "Secretary of Commerce".

(32) Section 1(702) of the Act of June 22, 1938 (Public Law 696; 52 Stat. 939) is amended by (A) striking the words "the Merchant Marine Act, 1936" and inserting in lieu thereof "section 2101 of title I, title III, and sections 4202, 4203, 4112 (c) and (d) of title IV of the Merchant Marine Act of 1966"; and (B) by striking the words "United States Maritime Commission" or "Commission" and inserting in lieu thereof "Secretary of Commerce".

(33) Section 1(703) of the Act of June 22, 1938 (Public Law 696; 52 Stat. 939) is amended by striking the words "the Ship Mortgage Act, 1920, as amended" and inserting in lieu thereof "section 4403(b) of the Merchant Marine Act of 1966".

(34) Section 4(a) of the Act of February 19, 1941 (Public Law 7; 55 Stat. 9), as amended, is amended by striking the words "United States Maritime Commission" and inserting in lieu thereof "Secretary of Commerce".

(35) Section 4 of the Act of March 9, 1945 (Public Law 15; 59 Stat. 34), is amended by striking the words "the Act of June 5, 1920, known as the Merchant Marine Act, 1920" and inserting in lieu thereof "section 6107 of the Merchant Marine Act of 1966".

(36) Section 203(i) of the Act of June 30, 1949 (Public Law 152; 63 Stat. 385) is amended by (A) striking the words "United States Maritime Commission" or "Commission" and inserting in lieu thereof "Secretary of Commerce"; and (B) striking the words "Merchant Marine Act, 1936, as amended" and inserting in lieu thereof "Merchant Marine Act of 1966".

(37) Section 1(d) of the Act of December 29, 1950 (the Judicial Review Act of 1950; Public Law 901; 64 Stat. 1129), as amended, is amended by striking the words "United States Maritime Commission, or the Federal Maritime Board, or the Maritime Administration, 'agency' means that Commission or Board, or Administration" and inserting in lieu thereof "Federal Maritime Commission or the Secretary of Commerce, 'agency' means that Commission or the Secretary".

(38) Section 2, clause (c) of the Act of December 29, 1950 (the Judicial Review Act of 1950; Public Law 901; 64 Stat. 1129), as amended, is amended to read as follows: "(c) such final orders of the Federal Maritime Commission or the Secretary of Commerce as are made reviewable under this Act by sections 1403 or 2306(b) of the Merchant Marine Act of 1966."

(39) Section 3 of the Act of August 3, 1956 (Public Law 962; 70 Stat. 988) is amended by striking the words "Public Resolution 17, Seventy-third Congress and section 901(b) of the Merchant Marine Act, 1936" and inserting in lieu thereof "section 6101 (a) and (b) of the Merchant Marine Act of 1966".

(40) Section 27(b) of the Act of July 7, 1958 (Public Law 85-508; 72 Stat. 351), is amended by striking the words "Federal Maritime Board" and inserting in lieu thereof "Federal Maritime Commission".

(41) The Act of July 15, 1958 (Public Law 85-521; 72 Stat. 359) is amended by (A) striking the words "the Merchant Marine Act, 1936, as amended," in section 1 and inserting in lieu thereof "section 2101 of the Merchant Marine Act of 1966"; (B) striking the words "Federal Maritime Board" or "Board" wherever they appear and inserting in lieu thereof "Secretary of Commerce"; (C) striking the words "sections 502(c) and 503 of the Merchant Marine Act, 1936, as amended" and inserting in lieu thereof "sections 3103(c) and 3104 of the Merchant Marine Act of 1966"; (D) striking the words "the Merchant Marine Act, 1936, as amended" in section 3 and inserting in lieu thereof "parts A, C, D and E of title III of the Merchant Marine Act of 1966"; (E) striking the words "the Merchant Marine Act, 1936, as amended," in section 4 and inserting in lieu thereof "section 3103(b) of the Merchant Marine Act of 1966"; and (F) striking the words "title VI of the Merchant Marine Act, 1936, as amended" and inserting in lieu thereof "part A of title III of the Merchant Marine Act of 1966".

(42) Section 18(a) of the Act of March 18, 1959 (Public Law 86-3; 73 Stat. 12) as amended, is amended by striking the words "Federal Maritime Board" and inserting in lieu thereof "Federal Maritime Commission".

(43) Section 11(3) of the Act of June 12, 1960 (Public Law 86-516; 74 Stat. 214) is amended by striking the words "section 2 of the Shipping Act, 1916, as amended" and inserting in lieu thereof "section 1201(b) of the Merchant Marine Act of 1966".

(44) The Act of July 5, 1960 (Public Law 86-577; 74 Stat. 314) is amended by (A) striking the words "the Merchant Marine Act of June 29, 1936, as amended (49 Stat. 1985; 46 U.S.C. 1271, 1952 edition, and the following)" and inserting in lieu thereof "part E of title IV of the Merchant Marine Act of 1966"; and (B) striking the words "the said Merchant Marine Act of 1936, including, but not limited to, the authority contained in the amendment to such Act of July 15, 1958 (72 Stat. 358)" and inserting in lieu thereof "part E of title IV of the Merchant Marine Act of 1966, including, but not limited to the authority contained in section 4505(b) thereof".

(45) Section 3 of the Act of July 5, 1960 (Public Law 86-583; 74 Stat. 321), is amended by inserting, immediately preceding the words "this Act", the words "section 6103(b)(2) of the Merchant Marine Act of 1966 and of".

(46) Section 303 of the Act of September 4, 1961 (Public Law 87-195; 75 Stat. 433) is amended by striking the words "section 901(b) of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1241)" and inserting in lieu thereof "section 6101(a) of the Merchant Marine Act of 1966".

(47) Section 603 of the Act of September 4, 1961 (Public Law 87-195; 75 Stat. 439) is amended by striking the words "section 901(b) of the Merchant Marine Act of 1936, as amended (46 U.S.C. 1241)" and inserting in lieu thereof "section 6101(a) of the Merchant Marine Act of 1966".

## REPEALS

SEC. 7106. (a) The following laws are repealed:

(1) The Shipping Act, 1916, Public Law Numbered 260 (39 Stat. 728), approved September 7, 1916, except section 36.

(2) The Merchant Marine Act, 1920, Public Law Numbered 261 (41 Stat. 988), approved June 5, 1920, except sections 26, 31, 32, and 33.

(3) The Merchant Marine Act, 1928, Public Law Numbered 463 (45 Stat. 689), Approved May 22, 1928.

(4) The Intercoastal Shipping Act, 1933, Public Law Numbered 415 (47 Stat. 1425), approved March 3, 1933.

(5) The Merchant Marine Act, 1936, Public Law Numbered 835 (49 Stat. 1985), approved June 29, 1936.

(6) The Merchant Ship Sales Act, 1946, Public Law Numbered 321 (60 Stat. 41), Approved March 8, 1946.

(7) The Merchant Marine Medals Act, 1956, Public Law Numbered 759 (70 Stat. 605), approved July 24, 1956.

(8) The Maritime Academy Act, 1958, Public Law Numbered 85-672 (72 Stat. 622), approved August 18, 1958.

(9) Reorganization Plan Numbered 6 of 1949 (63 Stat. 1069).

(10) Reorganization Plan Numbered 21 of 1950 (64 Stat. 1273).

(11) Reorganization Plan Numbered 7 of 1961 (75 Stat. 840).

(12) All laws amending or repealing any of the provisions of the laws specified in the preceding clauses of this section.

(13) Without limiting the foregoing, the laws specified in the following schedule.

Date	Public Law	Section	Statutes at Large	
			Volume	Page
1918 July 15	198	-----	40	900
1924 June 6	205	-----	43	468
1925 Feb. 16	420	2, 3, 4.-----	43	948
1931 Feb. 2	603	-----	46	1059
1934 Mar. 26	P.R. 17	-----	48	500
Apr. 16	P.R. 19	-----	48	596
June 14	P.R. 31	-----	48	963
1935 Apr. 11	33	-----	49	154
June 27	168	-----	49	424
July 2	191	-----	49	442
1936 Apr. 16	520	-----	49	1207
June 16	685	-----	49	1518
1937 Apr. 1	27	-----	50	57
Aug. 26	382	-----	50	839
1938 May 18	531	-----	52	408
June 1	573	-----	52	606
23	705	-----	52	953
1939 June 6	116	-----	53	810
Aug. 4	259	-----	53	1182
7	328	-----	53	1254
1940 June 12	606	-----	54	346
29	677	-----	54	689
Oct. 10	840	-----	54	1106

Date	Public Law	Section	Statutes at Large	
			Volume	Page
<i>1941</i>				
May 2	46		55	148
June 23	124		55	259
<i>1942</i>				
Mar. 6	482		56	140
14	498		56	171
Apr. 11	523		56	214
11	524		56	217
<i>1943</i>				
Mar. 24	17	1 (a), (c), 2, 3 (c), (d), (e), (f), (g), (h), (i), 4, 5	57	45, 47, 48, 49, 50, 51
June 17	78		57	157
<i>1944</i>				
Apr. 24	295		58	216
May 11	301		58	220
Dec. 23	552		58	920
<i>1946</i>				
Aug. 9	701		60	961
<i>1947</i>				
June 28	127		61	190
July 22	214		61	401
<i>1948</i>				
Feb. 27	423	1	62	38
May 10	518		62	212
<i>1949</i>				
Feb. 28	12		63	9
June 29	147		63	349
<i>1950</i>				
June 30	591	1, 2, 3, 5	64	308, 309
Aug. 17	702		64	452
Sept. 7	763		64	773
28	856		64	1078
<i>1951</i>				
June 2	45	801 (1st 2 paragraphs under heading "Maritime Activities," subheading "Vessel Operations Revolving Fund").	65	59
Oct. 25	209	3(4)	65	639
Nov. 1	253	701 (all language under heading "Maritime Activities," subheading "War-Risk Insurance Revolving Fund").	65	746
<i>1952</i>				
July 17	586		66	760
<i>1953</i>				
Aug. 15	288		67	626
<i>1954</i>				
June 29	447		68	323
Aug. 9	569		68	675
10	574		68	680
26	664		68	832
31	757		68	1050
Sept. 3	781		68	1267
<i>1955</i>				
June 30	121	101 (penultimate paragraph under heading "Maritime Activities," except proviso therein).	69	231
Aug. 3	209		69	440
<i>1956</i>				
Feb. 2	415		70	25
May 10	515		70	148
19	533	201 (last 36 words under heading "Maritime Activities," subheading "Ship Construction").	70	162
28	538		70	187
June 20	604	101 (penultimate paragraph under heading "Maritime Activities," except proviso therein).	70	316
25	612		70	332
25	613		70	332
July 11	691		70	524
11	701		70	531
14	714	1, 4	70	544
26	805		70	657
30	848		70	731

Date	Public Law	Section	Statutes at Large	
			Volume	Page
<i>1956</i>				
Aug. 1	890		70	85
3	958		70	984
6	1004		70	1068
7	1017		70	1087
10	1028	34	70A	634
<i>1957</i>				
June 13	85-52	101 (1st provis <sup>o</sup> under heading "Maritime Activities," subheading "Operating—Differential Subsidies").	71	73
Aug. 28	85-191		71	471
<i>1958</i>				
Feb. 20	85-331		72	16
20	85-332		72	17
June 25	85-469	101 (all language under heading "Federal Ship Mortgage Insurance Fund").	72	231
July 7	85-507	21(b)(4)	72	337
7	85-508	27(a)	72	351
15	85-520		72	358
Aug. 12	85-626		72	574
14	85-637		72	592
23	85-791	17	72	947
28	85-810		72	977
Sept. 2	85-902		72	1736
<i>1959</i>				
Mar. 18	86-3	18(h)	73	12
July 31	86-120		73	266
31	76-123		73	269
31	86-127		73	273
Sept. 8	86-237		73	471
21	86-327	2, 3, 4	73	597
<i>1960</i>				
June 12	86-518		74	216
29	86-542		74	253
July 5	86-575		74	312
5	86-583	1, 4	74	321
7	86-607		74	362
12	86-624	35	74	421
Sept. 2	86-685		74	733
<i>1961</i>				
May 27	87-45		75	89
June 30	87-75		75	195
July 20	87-93		75	212
Sept. 6	87-199		75	468
6	87-208		75	480
13	87-222		75	494
14	87-243		75	513
14	87-244		75	514
16	87-252	2	75	521
19	87-254		75	522
21	87-266		75	565
21	87-271		75	570
26	87-303		75	661
Oct. 3	87-346		75	762
5	87-401		75	833
<i>1962</i>				
Oct. 5	87-755		76	751
10	87-782		76	796
18	87-839	1	76	1074
24	87-877		76	1200
<i>1963</i>				
Apr. 3	88-5		77	5
Aug. 20	88-103		77	129
Dec. 23	88-225		77	469
23	88-227		77	470
<i>1964</i>				
Feb. 24	88-275		78	148
July 11	88-370		78	313
Aug. 14	88-426	305(19)	78	425
10	88-410		78	385
22	88-478		78	587
Sept. 12	88-595		78	943

Date	Public Law	Section	Statutes at Large	
			Volume	Page
<i>1965</i>				
June 30	89-56	-----	79	195
July 7	89-66	-----	79	211
9	89-71	-----	79	213
27	89-89	-----	79	264
Aug. 14	89-127	-----	79	519
Sept. 21	89-194	-----	79	823
Oct. 10	89-254	-----	79	980
30	89-303	-----	79	1124
Nov. 8	89-346	-----	79	1305
8	89-347	1 (7), (8), (9); 2(1)	79	1310, 1312

(b) The repeal of a law by this Act may not be construed as a legislative inference that the provision was or was not in effect before its repeal.

Senator HARTKE. Gentlemen, the first witness we have this morning is Mr. Henry G. Fischer, who is president of Pike & Fischer, Inc., of Washington, D.C.

Good morning, Mr. Fischer.

#### STATEMENT OF HENRY G. FISCHER, PRESIDENT, PIKE & FISHER, INC.

Mr. FISCHER. Mr. Chairman, my name is Henry G. Fischer and I am president of Pike & Fischer, Inc., which has been working since the end of March 1965, under the supervision of Gerald B. Grinstein, chief counsel of the Senate Commerce Committee, and William C. Foster, staff counsel of the committee, on a consolidation of certain of the shipping laws of the United States.

When we started we were advised that the end result desired by this committee was a single maritime statute to take the place of the following laws: Shipping Act, 1916; Intercoastal Shipping Act, 1933; Merchant Marine Act, 1920; Merchant Marine Act, 1928; Ship Mortgage Act, 1920; Home Port of Vessels Act, Merchant Marine Act, 1936; Civilian Nautical Schools Acts, Maritime Academy Act, 1958; Merchant Ship Sales Act, 1946; Merchant Marine Medals Act, 1956; and, in addition, relevant reorganization plans and miscellaneous legislation related to the enumerated statutes, all as amended to date.

We were also instructed to keep the consolidation free of any change in the substance of the laws being replaced.

The desirability of such a consolidated statute, within the prescribed limits, becomes self-evident when it is considered how many times since 1916 shipping laws have been enacted and amended which affect the same subject matter, some provisions overlapping and others becoming obsolete with the passage of time and the change in circumstances.

Senator HARTKE. Let me say to Mr. Fischer, that is not peculiar to this legislation. That, unfortunately, seems to be peculiar to too much of our law at the present time.

Go right ahead, I do not want to interrupt you.

Mr. FISCHER. The fact that functions under the various statutes have been redistributed from time to time among the Government agencies by reorganization plans, the most recent in 1961, heightens the desirability of trying to organize these laws in one place in a way to make clear where such functions lie.

We delivered our draft of the consolidation to the chief counsel of this committee sometime around the end of the year 1965, and after consultation and some modification as a result, a committee print of that draft was circulated to interested persons, the shipping industry and the Government agencies involved with a request for comments. That committee print showed precisely what was being done in the proposed consolidation by the use of tables of distribution of prior laws, italic and brackets to indicate changes in language, and section notes describing the reasons for the proposed changes.

A substantial number of helpful comments were received, some among the more comprehensive being from the Department of Commerce; Federal Maritime Commission; Treasury Department; a committee of counsel appointed by the Committee of American Steamship Lines whose work was coordinated by Messrs. Odell Kominers, Ira L. Ewers, and Warner W. Gardner, chairman; Casey, Lane & Mittendorf and Burlingham, Underwood, Barron, Wright & White on behalf of about 20 conferences; the Pacific American Steamship Association; and the Maritime Administrative Bar Association.

All the comments were studied. Where alternatives were suggested in organization or language, they became the subject of consultation with Mr. Grinstein and Mr. Foster, who made the necessary determinations. Sometime in April we delivered a second draft of the proposed consolidation incorporating the changes resulting from the comments. The differences between the bill introduced, S. 3446, and the committee print of the draft consolidation circulated in February reflect those changes.

S. 3446, a bill to enact the Merchant Marine Act of 1966, is organized into seven titles, the first of which deals with the functions of the Federal Maritime Commission and other aspects of the regulation of shipping in foreign commerce and in the domestic offshore trade. This title replaces most of the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933.

Title II sets out the merchant marine policy of titles III to VI of the act, defines the functions of the Department of Commerce under those titles and provides authority for investigations, hearings, enforcements, and review in connection with actions taken by the Secretary of Commerce under the act.

Title III collects the provisions relating to subsidies and the construction, sale, and charter of subsidized vessels for essential trade routes. Almost all of these provisions now appear in the Merchant Marine Act, 1936.

Title IV deals with the acquisition, operation, transfer, mortgaging, and insurance of vessels. Part A, derived from the Shipping Act of 1916, affects the operation and transfer of privately owned or chartered vessels. Similar activities concerning vessels under the jurisdiction of the Secretary of Commerce are the subject matter of part B, replacing provisions mainly from the Merchant Marine Act, 1920; Merchant Marine Act, 1928; and Merchant Marine Act, 1936.

The Ship Sales Act of 1946, to the extent it is still in effect, the ship mortgage provisions of the 1920 act, the ship mortgage insurance provisions and war risk insurance provisions of the 1936 act, respectively, for the basis of other parts of this title.

Laws dealing with the U.S. Maritime Service, the Merchant Marine Academy, State maritime academies, civilian nautical schools,

and merchant marine medals are assembled in title V and miscellaneous provisions of a special character or having only temporary effect, mostly from the 1920 and 1936 acts, appear in title VI. Title VII is not a substantive title at all; it contains the provisions amending and repealing prior laws, rules of interpretation, and savings provisions.

By and large, the only changes that were made in the language of the provisions of law being replaced by the bill were those which are required by the fact of the consolidation, that is to say, eliminating obsolete language, changing cross-references, and updating the distribution of functions in accordance with the reorganization plans.

At a few points, for example in subsections 1208 (b) and (c), an attempt was made to change the phraseology of a provision solely for the purposes of clarification. And in a few instances, choices had to be made between overlapping provisions of different acts dealing in slightly different ways with the same subject matter.

Section 1304, concerning subpoenas for Commission investigations and section 1305, concerning immunity of witnesses in Commission and court proceedings, are examples of provisions where such choices had to be made. In both cases, authority stems from the 1916 act and also from the 1936 act, the provisions overlapping but not quite identical. As now drafted, section 1304 reflects the provision from the 1936 act and section 1305 reflects a combination of the provisions from the 1916 act and the 1936 act.

To the extent these changes in language were made, it was our purpose, which we pursued with the greatest care at our command, to effect no change in the substance of existing laws, in accordance with the instructions we received when we began the work, and we sincerely hope we have been successful in doing so.

Senator HARTKE. In other words, Mr. Fischer, you made no attempt to deal with the substantive provisions, mostly with the procedural aspects and consolidation of laws; is that correct?

Mr. FISCHER. That is right; it was our purpose to avoid affecting the substance of any of the existing laws which are being replaced by this consolidation.

Senator HARTKE. Well, during your studies, did you see some areas in the substantive law which might warrant review?

Mr. FISCHER. Mr. Chairman, we did not concern ourselves with that problem at all.

Senator HARTKE. I see.

In regard to the procedural changes, were there any adverse interests, in your opinion, which felt that they were especially aggrieved as a result of these consolidations?

Mr. FISCHER. From the comments that were received, we got the impressions, Mr. Chairman, that by and large the industry and those people affected by the proposed consolidation felt that we pretty much had achieved the purpose of effecting the consolidation without in any way changing the substance of the law.

Some questions have been raised as to some of the choices that were made of overlapping provisions and we hope that those questions are resolved sometime early in the course of the progress of this bill through the legislative process, so that they can be taken care of and incorporated in the bill to the satisfaction of all concerned.

Senator HARTKE. Have you identified those in a separate memorandum?

Mr. FISCHER. As I understand it, there is a witness who will testify as to the principal one; namely, concerning the provisions about subpenas, 1304, which I mentioned in my statement.

Senator HARTKE. I wonder if you could, without too much difficulty, just by reference rather than incorporating it in the full hearing of this committee, give us a memorandum of what you consider the major areas in which you feel some additional action is necessary.

Mr. FISCHER. We will make an attempt to do so, Mr. Chairman.

Senator HARTKE. Let me say to you I am not authorized to authorize any additional expense. [Laughter.]

Mr. FISCHER. We will be glad to make an attempt to do so.

Senator HARTKE. All right, fine.

What about the public? Did you find any areas in which you felt that possibly somebody from the public might possibly be adversely affected, as distinguished from the agencies themselves and the commercial interests?

Mr. FISCHER. Mr. Chairman, if we succeeded in doing our job properly, nobody would be affected by this consolidation because of any changes in any laws that now exist. It would be only in the event that somewhere we failed in doing what we set out to do that anyone would be affected one way or another, and to the extent that the proposed consolidation has been widely circulated and we have received comments, we have the feeling that, by and large, we succeeded in doing what we were instructed to do.

Senator HARTKE. I take it you would recommend, most highly, the passage of the bill then?

Mr. FISCHER. Yes, I think so, Mr. Chairman.

Senator HARTKE. Thank you, Mr. Fischer.

The next witness we will hear will be Rear Adm. Ralph K. James, U.S. Navy (retired), who is executive director of the Association of American Steamship Lines, Washington, D.C.

Good morning, sir.

**STATEMENT OF RALPH K. JAMES, REAR ADMIRAL, U.S. NAVY  
(RETIRED), EXECUTIVE DIRECTOR, COMMITTEE OF AMERICAN  
STEAMSHIP LINES**

Admiral JAMES. Good morning, Mr. Chairman. It is my pleasure to appear here today on behalf of the 13 members of the Committee of American Steamship Lines, to commend you, members of your committee, and staff for undertaking a codification of maritime statutes.

As an aside, I might note that in the history of the Committee of American Steamship Lines (CASL), no shorter or briefer statement has ever been presented to a committee of Congress, because our position here is a very simple one, to explain, which I will continue to do.

Senator HARTKE. I might say so—you, Admiral, you know, there is an old statement—off the record.

(Discussion off the record.)

Admiral JAMES. Thank you, sir.

When the first draft of your proposed revisions became available early this year, CASL appointed a team of experienced maritime

attorneys to review the proposed codification. To our amazement these senior counsel, numbering almost a score, could find very little to criticize or to suggest in the way of revision of the excellent draft prepared by Pike & Fischer under contract with your committee.

Again, aside, I might note that we appointed from each of the member lines one of the house counsel and then placed in the position of a review panel the three gentlemen identified by Mr. Fischer earlier, old pros in the matter of maritime law, who did the final review of this entire undertaking.

Upon completion of our review, we did propose to you a number of relatively minor changes and improvements, the majority of which have been incorporated in the pending legislation.

It is our considered opinion that Senate 3446 successfully meets your objective that this codification should not in any way effect a substantive change in existing law.

Today we have a few further improvements to suggest with regard to S. 3446 as presently drafted. Our suggestions relate to what appear to be clerical omissions and clarification of language in order to avoid any misinterpretation of intent. Since these are primarily technical in nature, I will offer them for the record.

Our counsel, Mr. Robert Alsop, will be available tomorrow, if you desire, to discuss these further with your staff.

Admiral JAMES. Thank you, sir. In closing, I should simply like to repeat the congratulations of the entire CASL group upon the successful completion of this laborious and unglamorous, but important, undertaking. I am sure that S. 3446, when enacted, will provide a firm foundation for the improvement and expansion of our national maritime policy.

Thank you, sir.

Senator HARTKE. Thank you, sir. I do not even know of any questions I can ask you in view of that statement.

Admiral JAMES. Very good, sir.

Senator HARTKE. The next witness will be Mr. John R. Mahoney, of Casey, Lane & Mittendorf, New York City, representing various New York-based conferences.

Good morning, sir.

**STATEMENT OF JOHN R. MAHONEY, FIRM OF CASEY, LANE & MITTENDORF; ACCOMPANIED BY CHARLES D. MARSHALL, CHAIRMAN, ASSOCIATED LATIN AMERICAN FREIGHT CONFERENCES, NEW YORK, N.Y.**

Mr. MAHONEY. Good morning, Senator and Mr. Chairman.

Senator HARTKE. We are always delighted here in Washington to receive visiting guests of the great city of New York, which is a subsidiary of the fine things which come from Washington.

Mr. MAHONEY. We feel we are third-party beneficiaries of all those fine things. We hope, Senator, that we may make some kind of a contribution to some of these fine things.

Senator HARTKE. Well, you certainly do.

I might say that frequently people from the European countries find it very difficult to acclimate themselves to a situation where there is a capital in the political fields which is separate and distinct from the other commercial interests throughout the United States.

Mr. MAHONEY. I think, Senator, that that could not have been more dramatically shown than the events of the past week in which here in the capital, I think, showed, oh, tremendous latitude of spirit in connection with a distinguished visiting fireman, and we in New York took a more parochial view, at least our mayor did.

Mr. Chairman, I would start out by saying that unlike—first of all, I want to introduce the person at my side here, Charles D. Marshall, who is chairman of the Associated Latin American Freight Conferences, of New York City.

What I would like to do is to have this statement that we prepared, which is actually an eight-page statement with a two-page appendix A, and then a 22-page appendix B, incorporated in the record as such and then I would like to just do a little running commentary on the eight-page statement, with your permission.

Senator HARTKE. The entire record and the appendixes will be included and you can proceed as you see fit.

(Statement follows:)

STATEMENT OF JOHN R. MAHONEY, A MEMBER OF THE FIRM OF CASEY, LANE & MITTENDORF, ACCOMPANIED BY CHARLES D. MARSHALL, CHAIRMAN, ASSOCIATED LATIN AMERICAN FREIGHT CONFERENCES, NEW YORK, N. Y.

Mr. Chairman, Members of the Committee. My name is John R. Mahoney. I am a member of the firm of Casey, Lane & Mittendorf, New York, and I specialize in maritime and administrative law. I am accompanied today by Mr. Charles D. Marshall, Chairman of the Associated Latin American Freight Conferences. As their name implies, these Conferences based in New York, cover the trade between the East Coast and Gulf ports of the United States on the one hand, and the Caribbean, Central and South America on the other.

Mr. Marshall is here in a representative capacity. Besides Mr. Marshall, the following Chairmen of other New York based Conferences are associating themselves with this statement: Vincent Barnett, David MacNeil, Richard Gage, James Pendleton, and Marcus Rough. Collectively, they represent the majority of the Conferences based in New York. If you'll refer to Appendix A where they are listed, you will see that geographically they reach every continent in the world.

When your Committee issued its Committee Print entitled "Draft of Proposed Merchant Marine Act 1966" last February, these Conferences, in recognition of the vital stake which they have in shipping regulatory legislation, asked Messrs. Casey, Lane & Mittendorf and Burlingham, Underwood, Barron, Wright & White to collaborate in reviewing the material. Mr. Burton White of Messrs. Burlingham, assisted by Randolph Taylor, worked with my associate Preben Jensen and me in reviewing the Committee Print. In this project we coordinated our efforts with the Working Committee of CASL to avoid duplication and submitted our comments to your Committee on April 6th.

I am pleased to say that most of our suggestions, which were embodied in those comments, have been adopted and are reflected in the present Bill, S. 3446. Parenthetically, I should say that since S. 3446 was promulgated on June 2nd, Mr. White and I have conferred with your staff and given them the benefit of our further review of this consolidation. We are very pleased that the staff was most receptive and that there remain only a few items which still require your consideration.

Let me say at the outset that our clients applaud the purpose of the Bill as expressed in the Committee Print—to gather, organize rationally, and reenact the scattered statutes affecting the United States Merchant Marine into a comprehensive code of maritime law. Both the industry and its lawyers need such a code. All of us are at one in praising the Herculean job done by Pike & Fischer in preparing the draft of the revision. The fact that we are submitting only these few comments on a Bill that runs over 350 printed pages indicates the extraordinarily good job that has been done.

These comments spring from our understanding that this Bill would not include any amendments to the substantive law unless they were necessitated by recent organizational changes. We believe that S. 3446 is designed to consolidate rather than amend the shipping statutes. Consequently, we are still concerned by what

appears to be the apparent amendment of certain existing provisions. We submit, and hope you agree, that amendments of any of these statutes should be instituted only by separate legislation which will give all interested parties an opportunity to express their positions thereon. Substantive modifications should not be embraced within a proposed consolidation.

Most of the changes which still concern these Conferences are the result of the drafters' incorporation of segments of the Merchant Marine Act of 1936 within the regulatory provisions of the Shipping Act, 1916, now Title I of S. 3446. Although these provisions may be appropriate for the Maritime Administrator, their inclusion in Title I would produce unwarranted substantive changes in the powers and functions of the Federal Maritime Commission specified by the Shipping Act, 1916.

There are four specific provisions where the incorporation of sections from the 1936 Act into Title I provokes the concern of these Conferences.

1. Section 1304 of S. 3446 would amend Section 27 of the Shipping Act, 1916 to permit the Commission to issue subpoenas for the purpose of any investigation it deems necessary and proper. This authority appears in Section 214 of the Merchant Marine Act of 1936. Under Section 27 of the Shipping Act subpoenas can be issued only to investigate "alleged violations of this Act."

We urge that the subpoena power of the Commission not be enlarged or amended under the guise of a consolidation. Section 27 of the Shipping Act should be retained and should replace proposed Section 1304 in the Act.

Historically, the authority to issue subpoenas under Section 27 has been hotly contested. In 1961, the Commission sought to amend Section 27 to authorize the issuance of subpoenas during preliminary investigations in order to determine whether there was sufficient cause to charge violations of the Shipping Act. The Commission also requested authority to issue subpoenas in connection with any general investigations it might choose to institute. This comprehensive authority was refused. In urging these amendments, the Commission consistently has conceded that Section 27 does not grant such expansive subpoena powers. This subject matter presently is in litigation before the Court of Appeals for the Second Circuit on appeal from decisions in the District Court for the Southern District of New York. *Ludlow v. DeSmedt*, 249 F. Supp. 496 (S.D.N.Y. 1966) and *Caragher v. FMC*, 243 F. Supp. 136, 138, 139 (S.D.N.Y. 1965).

Because the Commission's subpoena power may extend to foreign carriers and foreign governments, the proposed amendment to Section 27 will have international ramifications. As such, this substantive change should not occur during the course of a consolidation. Due to the extreme importance of this question and our recommendation, we request that the comprehensive legal memorandum prepared by Messrs. Kirlin, Campbell & Keating, attached to this statement as Appendix B, be made a part of the record.

2. Section 1404 provides penalties for violations of the Commission's orders—a subject not covered by the Shipping Act, 1916. Section 32 of that Act reads as follows:

"Whoever violates any provision of this Act, except where a different penalty is provided, shall be guilty of a misdemeanor, punishable by fine of not to exceed \$5,000."

In 1961, the Federal Maritime Board, predecessor of the present Commission, and the Department of Commerce attempted to amend the Shipping Act to include penalties for violations of its orders, rules, and regulations. See *Index to Legislative History of Steamship Conference/Dual Rate Law, Senate Document 100, 87th Cong., 2nd Session*, p. 139. This proposal was rejected and does not appear in the 1961 amendments to the Shipping Act. Accordingly, a similar amendment should not be incorporated in a consolidation.

The language of Section 1404 is taken from Section 806(d) of the Merchant Marine Act of 1936, and may be appropriate in that connection. However, this provision should not be included in Title I, dealing with the Commission's functions.

3. Section 1305, concerning the immunity of witnesses, adopts the language of Section 214(c) of the Merchant Marine Act of 1936, rather than the present language of Section 28 of the Shipping Act, and requires the witness to claim his privilege against self-incrimination. Once again, this is the type of revision that should not be undertaken during a consolidation of various shipping statutes.

In this connection, we should call your attention to S. 2963 which was introduced in the Senate on February 23, 1966, by the Chairman, Senator Magnuson, and H.R. 12628, an identical Bill introduced in the House in early February. These Bills would *inter alia* amend Section 28 of the Shipping Act, 1916, to require a

subpoenaed witness to claim his privilege. We understand that no action has been taken and that none has been scheduled on either Bill.

4. Section 1103(j) requires that the Commission report to Congress, concerning "the results of its investigations, a summary of its transactions, and its recommendations for legislation, a statement of all receipts under this title, and the purposes for which all expenditures were made." This language has never appeared in the Shipping Act, 1916. Rather, it is lifted from Section 208 of the Merchant Marine Act of 1936.

We feel that Section 1103(j) should be omitted because it does not conform to the Commission's activities. The Commission does not engage in "transactions" in the same sense as the Administrator. Nor does it receive "receipts under this title." In fact, only the reference to "results of investigations" is relevant to the Commission.

Earlier, we objected to the codification of cross references as a part of the statute, however helpful they might be as footnotes. Our recommendation was followed except in the retention of Section 1303. This procedural provision still contains cross references to various substantive sections of the Shipping Act where the procedures in question could be applied. Even in this respect the section is incomplete since it omits Section 1207. It is our position that this cross reference could be misleading, and is unhelpful and inconsistent. It should be omitted.

Mr. Marshall and the other Chairmen have asked me to express their appreciation to this Committee for the careful, thoughtful manner in which this work has been carried out. They stand ready to provide any further assistance which the Committee may need.

#### APPENDIX A

#### LIST OF NEW YORK BASED CONFERENCES, AND THEIR CHAIRMEN, ASSOCIATED WITH STATEMENT (GROUPED GEOGRAPHICALLY)

##### LATIN AMERICA

Atlantic & Gulf/Panama Canal Zone, Colon & Panama City Conference  
 Atlantic & Gulf/West Coast of Central America & Mexico Conference  
 Atlantic & Gulf/West Coast of South America Conference  
 East Coast Colombia Conference  
 Havana Steamship Conference  
 Havana Northbound Rate Agreement  
 Leeward & Windward Islands & Guianas Conference  
 Santiago de Cuba Conference  
 United States Atlantic & Gulf-Haiti Conference  
 United States Atlantic & Gulf-Jamaica Conference  
 United States Atlantic & Gulf-Santo Domingo Conference  
 U.S. Atlantic & Gulf-Venezuela and Netherlands Antilles Conference  
 West Coast South America Northbound Conference

—Mr. Charles D. Marshall, *Chairman*

##### EUROPE

North Atlantic Baltic Freight Conference  
 North Atlantic Continental Freight Conference  
 North Atlantic French Atlantic Freight Conference  
 —Mr. Vincent G. Barnett, *Chairman*.  
 North Atlantic United Kingdom Freight Conference  
 —Mr. Richard J. Gage, *Chairman*.  
 North Atlantic Mediterranean Freight Conference  
 —Mr. David M. MacNeil, *Chairman*.

##### FAR EAST

India-Pakistan-Ceylon and Burma Outward Freight Conference  
 —James Pendleton, *Chairman*.

##### AFRICA

United States Atlantic & Gulf, South and East African Conference  
 —James Pendleton, *Chairman*.

##### AUSTRALIA

United States Atlantic & Gulf/Australia-New Zealand Conference  
 —Marcus Rough, *Chairman*.

## APPENDIX B

THE SUBPOENA POWER OF THE FEDERAL MARITIME COMMISSION UNDER S. 3446,  
THE PROPOSED MERCHANT MARINE ACT OF 1966

Section 1304 of S. 3446 (p. 53) relates to the subpoena of witnesses and the production of evidence and reads, in its entirety, as follows:

"(a) For the purpose of any investigation which, in the opinion of the Commission, is necessary and proper in carrying out the provisions of this title, any member of the Commission, or any officer or employee thereof designated by it, is empowered to subpoena witnesses, administer oaths and affirmations, take evidence, and require the production of any books, papers, or other documents which are relevant or material to the matter under investigation. Such attendance of witnesses and the production of such books, papers, or other documents may be required from any place in the United States or any territory, district, or possession thereof, or the Commonwealth of Puerto Rico, at any designated place of hearing. Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

"(b) Upon failure of any person to obey a subpoena issued by the Commission, it may invoke the aid of any United States district court within the jurisdiction in which such person resides or carries on business in requiring the attendance and testimony of witnesses and the production of books, papers, or other documents. Any such court may issue an order requiring such person to appear before the Commission, or member, officer, or employee designated by the Commission, there to produce books, papers, or any other documents, if so ordered, or to give testimony touching the matter under investigation or in question. Any failure to obey such order of the court may be punished by such court as a contempt thereof. Any process in any such case may be served in the judicial district wherein such person resides or wherever he may be found."

By its terms, this section would empower the Federal Maritime Commission to issue subpoenas "for the purposes of any investigation which, in the opinion of the Commission, is necessary and proper in carrying out the provisions of this title".<sup>1</sup> Presently, Section 27 of the Shipping Act empowers the Federal Maritime Commission to issue subpoenas "for the purposes of investigating alleged violations" of that Act and the Intercoastal Shipping Act. As is apparent, Section 1304 would greatly expand the Commission's subpoena authority beyond what was conferred by Congress in Section 27.

The reasons why Section 1304 is cast in the terms proposed are not difficult to discern. The section conferring subpoena powers on the Federal Maritime Commission drafted by Pike and Fischer appeared as subsections (a) and (b) of Section 7104 of the Committee Print (pp. 196-98). Owing to the uncertainty of Pike and Fischer over the present state of the law on the Commission's subpoena power, as is reflected in its notes to Section 7104, subsections (a) and (b) thereof overlapped and were listed as alternatives. Subsection (a) properly incorporates Section 27 of the Shipping Act and is, as Congress had intended, limited in application to investigations of "alleged violations" of the activities proscribed in the Shipping Act and the Intercoastal Shipping Act. Subsection (b), on the other hand, is purportedly based on Section 214 of the Merchant Marine Act of 1936. Like Section 1304, Section 7104(b) would, for the first time, empower the Federal Maritime Commission to issue subpoenas "for the purpose of any investigation which, in the opinion of the Commission, is necessary and proper."

It is clear from these words of subsection (b) and Section 1304 that the Commission could issue subpoenas regardless of whether it was doing so in connection with some statutory violation. Seemingly, subpoenas could be issued during "informal" investigations in which affected parties need not be informed of the precise issues under examination, and, owing to the broad language of the provision, subpoenas might even be issued to foreign governments during investigations of their activities under section 1301 of the proposed Act.

As enacted in 1936 and amended in 1938, Section 214(a) of the Merchant Marine Act, like Section 7104(b) and Section 1304(a), empowered the regulatory agency to issue subpoenas "for the purpose of any investigation which, in the opinion of the Commission, is necessary and proper in carrying out the provisions of this Act." The "Act" referred to in Section 214(a) was the Merchant Marine Act of 1936; Section 214 did not, in any respect, apply to the Shipping Act or to the Intercoastal Shipping Act.

<sup>1</sup> The "title" alluded to in this quotation is Title I of the proposed Act which effectively incorporates the substantive provisions of the Shipping Act and the Intercoastal Shipping Act.

Reorganization Plan No. 7 of 1961 replaced the then-Federal Maritime Board with the Federal Maritime Commission and the Maritime Administration. Generally, the former agency was charged with administration of the Shipping Act and the Intercoastal Shipping Act, the latter with administration of the several Merchant Marine Acts. Pike and Fischer's assessment of the impact of Reorganization Plan No. 7 on the subpoena power of the Federal Maritime Commission, which appears in the notes to Section 7104(b) (pp. 197), is grievously in error and is the only apparent reason for the drafting of Section 7104(b)(1) and the present form of Section 1304(a). Thus, this note states:

"Section 214(a) and (b) was made applicable to the Commission by section 103 of Reorganization Plan No. 7 of 1961, with respect to its functions under the 1916 act carried forward in title II and sections 7101 and 7102 of this consolidation. Therefore, reference to that title and those sections was added in subsection (b)(1)." [Emphasis supplied.]

However, a mere reading of the pertinent provision of Reorganization Plan No. 7 demonstrates, conclusively and beyond doubting, that Section 214(a) subpoena powers were *not* made applicable to the Commission's functions under the 1916 Act (that is, the Shipping Act and the Intercoastal Shipping Act), but were only made applicable to those functions under the 1936 Act which were transferred to the Commission. In its original statutory context, Section 214 of the Merchant Act, by its wording, related only to functions under that Act. Mindful of this, Congress, in Sections 103 and 103(e) (1) of Reorganization Plan No. 7, transferred to the Commission the procedural functions of Sections 204, 208, and 214 of the Merchant Marine Act of 1936 only "to the extent that they relate to the functions transferred to the Commission." The only transferred regulatory function to which these transferred procedural sections related was Section 212(e) of the Merchant Marine Act of 1936, the transfer of which was effected by Section 103(d) of Reorganization Plan No. 7 and which appears as Section 1302(b) of S. 3446.

At one point in its note, Pike and Fischer appears to recognize this fundamental distinction and the fact that only Section 27 applies to the regulatory functions under the Shipping Act and the Intercoastal Shipping Act: "Furthermore, it is questionable whether the provisions of section 214 may not be limited to the functions of the Commission derived from the 1936 act. No consolidation of the two sections was attempted since it might affect substance." The commentator's reservation is well taken. The legislative history of Section 27 and Section 214 reflect the fact that Congress has ever been mindful of the limitations contained in Section 27 and of the broader reach of Section 214. Presented with amendments to expand the regulatory agency's subpoena authority under the Shipping Act and the Intercoastal Shipping Act, Congress has considered these proposals carefully and has rejected each of them. The principal ground for Congressional caution has been the fact that the Shipping Act—unlike the Merchant Marine Act of 1936—involves the regulation of foreign-flag carriers as well as American-flag carriers and raises ticklish problems of international relations and foreign sovereignty. Equally persuasive has been the fact that American-flag carriers are more easily subject to the enforcement of subpoenas than their foreign-flag brethren, who have their main places of business abroad, and would, accordingly, labor under an undue and uneven regulatory burden if Section 27 was enlarged.

The Bill which became the Shipping Act was introduced in Congress by Representative Joshua Alexander, Chairman of the House Merchant Marine and Fisheries Committee, which had investigated the ocean shipping industry and the steamship conference system from 1912 to 1914 pursuant to a resolution passed by the House of Representatives.<sup>2</sup> During debate on the shipping bill, Mr. Alexander explained the meaning of Section 27:

"The provision of section 27 relating to the power of the Board to compel the attendance of witnesses and the production of documentary and other evidence are also substantially similar to those of the Interstate commerce act, except that the Board may exercise such power only 'for the purpose of investigating alleged violations of this act' instead of 'for the purpose of this act' as in the interstate commerce act." (53 Cong. Rec. 8081, May 16, 1916).<sup>3</sup>

In the very next session of the same Congress that enacted the Shipping Act, bills were introduced in both the Senate, S. 8168, 64th Cong., 2d Sess. (1917), and the House of Representatives, H.R. 21,009, 64th Cong., 2d Sess. (1917), to amend Section 27 to apply not only in investigation of violations of the Act but also in "performance of any of the duties prescribed by the Act". A statement

<sup>2</sup> H. Res. 425 and H. Res. 587, 62nd Cong., 2d Sess. (1912).

<sup>3</sup> The House Report on the bill interpreted section 27 in the same manner and used almost identical wording. H. Rept. No. 659, 64th Cong., 1st Sess. 32-34 (1916).

of the Shipping Board, a direct predecessor of the present Commission, which was created by the Shipping Act of 1916 and charged with its administration and enforcement by Section 3 of the Shipping Act, 39 Stat. 729 (1916) (Repealed, 49 Stat. 2016 [1936]), described this amendment as a broadening of the Shipping Board's functions". This evaluation of the amendment was included in the remarks of Mr. Alexander on the House bill which he introduced. (54 Cong. Rec. App. 822 [1916]) Apparently, Representative Alexander had second thoughts about the violation limitation in Section 27 and sought to strike a balance between that Section's restrictive phrasing and the language of Section 20 of the Interstate Commerce Act, 49 U.S.C. § 20. The bills amending Section 27 were reported on favorably by the Senate Committee on Commerce, S. Rept. No. 1107, 64th Cong., 2d Sess. (1917), and the House Committee on Merchant Marine and Fisheries, chaired by Mr. Alexander, H. Rept. No. 1536, 64th Cong., 2d Sess. (1917), the latter Report stating, on page 2:

"Section 27 of the shipping act is also amended and the powers of the board enlarged by providing that not only 'for the purpose of investigating alleged violations of the act,' but for the purpose of performing any of the duties described by the act, the board may by subpoena compel the attendance of witnesses, and the production of books, papers, documents, etc." [Emphasis supplied.]

This proposed amendment of Section 27 was not approved by Congress despite the administrators' conclusions that an enlarged power of subpoena was desirable.

When amendments to the Shipping Act were being considered by Congress in 1961, the Commission's predecessor, the Federal Maritime Board, tried on many occasions to have Congress expand its authority under Section 27. During the extensive hearings held by a Subcommittee of the Senate Committee on Commerce and a House Merchant Marine and Fisheries Subcommittee on H.R. 4299 and its successor bill, H.R. 6775, which was enacted as Public Law 87-346, 75 Stat. 762, October 3, 1961, Board officials continually urged such a change on Congress.

On March 20, 1961, the Department of Commerce, of which the Federal Maritime Board was then an adjunct, replied to a request of Chairman Bonner of the House Committee for the Department's views on H.R. 4299. After reviewing the Draft of H.R. 4299, the Secretary of Commerce recommended that several additional provisions be added to the bill. The Secretary stated that "These provisions are generally of a procedural nature, and are believed to be necessary for the Board to have the objective powers essential to carrying out its responsibilities under the regulatory provisions of the Shipping Act." H. Rept. No. 498, 87th Cong., 1st Sess. 22 (1961).

The Secretary then expanded on the additions to the Shipping Act which were being advanced by his Department:

"The Board's information-gathering powers under sections 21 and 27 of the Shipping Act, 1916, should be clarified and expanded so as to give the Board express power to inspect and to order the production of documents and information relevant to its responsibilities. In addition, all carriers and conferences should be required by statute to appoint and maintain agents in the United States upon whom may be served any process authorized by the Shipping Act." H. Rept. No. 498, *op. cit. supra*, 23

Detailing his proposed amendments, the Secretary requested that the then-Board be authorized "to exercise the power of subpoena, to swear witnesses, and to take and record testimony antecedent to the filing of any complaint on the Board's own motion." [Emphasis supplied.] In explaining this provision, the Secretary said:

"The purpose of this provision is to enable the Board to conduct proceedings analogous to those of a grand jury. A somewhat similar procedure is followed by the Federal Trade Commission under the authority vested in it in title 15, United States Code, section 49 and other sections of the Federal Trade Commission Act. While that act authorizes the Commission to file complaints charging violations thereof (15 United States Code, section 45(b)), other sections of the act authorize the Commission to invoke its powers in investigation of possible violations. At present, the statute does not clearly authorize the Board to exercise its power of subpoena in advance of a formal allegation of a violation of the Act. Where the Board becomes apprised of indications of a violation of the act, its investigation into the matter would be materially aided if it clearly were vested with the power to issue the subpoenas compelling the attendance of witnesses and the production of papers before a properly designated investigating officer." H. Rept. No. 498, *op. cit. supra*, 24. [Emphasis supplied.]

In furtherance of these ends, Thomas A. Stakem, Jr., Chairman of the Federal Maritime Board, and James L. Pimper, the Board's General Counsel, appeared

before the House Committee on March 20, 1961 and repeated verbatim the additions to the Shipping Act that were recommended by the Secretary of Commerce. *Hearings Before Special Subcommittee On Steamship Conferences Of The Committee On Merchant Marine And Fisheries On H.R. 4299*, House of Representatives, 87th Cong., 1st Sess. 23-59 (1961).

On March 23, 1961, the Department of Commerce and the Federal Maritime Board forwarded to Congress the draft language of the provisions proposed to be added to the act. The proposed revision of Section 27 read, in part, as follows:

"For the purpose of conducting hearings when alleged violations of this Act or rule or regulation issued thereunder,<sup>4</sup> or for the purpose of conducting investigative proceedings prior to the issuance of a complaint, the Board may by subpoena served at any place within the United States or its Districts, Territories or possessions compel the attendance of witnesses and the production of any report, record, book, paper or other document or tangible thing, at any designated place of hearing or investigative proceeding." H. Rept. No. 498, *op. cit. supra*, 27-28.

This "additional recommendation" of the Board was added to a Committee Print of H.R. 4299, dated March 23, 1961, but was dropped by the Subcommittee before Draft Revision No. 2 of H.R. 4299 was issued on April 13, 1961. See *Hearings on H.R. 4299, op. cit. supra*, 551.

On April 28, 1961, Mr. Stakem and Mr. Pimper, together with Mr. Edward Aptaker, Chief of the Division of Regulations, Office of the General Counsel, made another appearance before the House Committee again to urge adoption of their proposals. During a lengthy colloquy with Representative Johnson, Mr. Aptaker described the nature and extent of the Board's subpoena power under Section 27:

"Mr. Johnson, the problem is this: We do have the power to subpoena papers but we can apparently exercise that power only in connection with an alleged violation of the act. But in order to allege a violation of the act, you have to have information and evidence.

"Now, when the House Judiciary Committee started its investigations, it was voluntarily cooperated with by the steamship companies or afforded the opportunity in response to subpoenas which were not limited to an alleged violation of the act as our subpoena is, and, through the cooperation of the lines the staff of that subcommittee was able to look at the records themselves of all of the steamship companies that it visited.

"We do not have that power. We cannot inspect documents as such. We can subpoena documents only after we have alleged a violation of the act \* \* \*.

"We are hoping that we can get preliminary investigative powers of the same sort, issue subpoenas before the requirement is put on us to allege a violation; in other words, upon suspicion of a violation of the act for us to subpoena relevant papers. That will help us determine then whether we should open a formal proceeding." *Hearings on H.R. 4299, op. cit. supra*, 486-87. [Emphasis supplied.]

The notion imparted by the ambiguous note to Section 7104, and codified in that Section and in Section 1304, to the effect that Reorganization Plan No. 7 made Section 214 of the Merchant Marine Act applicable to the regulatory functions under the Shipping Act and the Intercoastal Shipping Act is decisively negated by the fact that the Federal Maritime Commission has never construed its power in this manner. In every instance since 1961 in which the Federal Maritime Commission has issued subpoenas under the Shipping Act, it has done so in connection with the investigation of alleged and purported violations of that Act. In no case during that time has the Federal Maritime Commission relied on any other statutory source for its power to subpoena under the Shipping Act but Section 27. In case after case, the Federal Maritime Commission has sought to enforce its subpoenas in the District Court, yet in no instance has the Commission raised the possibility that Section 214 applied to the Shipping Act provisions. Indeed, after the adoption of Reorganization Plan No. 7, the maritime agency continued to press Congress for an amendment to Section 27.

Thus, Mr. Stakem subsequently appeared before the Merchant Marine and Fisheries Subcommittee of the Senate Committee. On June 17, 1961 and on August 3, 1961, the Chairman of the Federal Maritime Board prompted Congress to restore to H.R. 6775 the amendments earlier advanced. *Hearings Before The Merchant Marine And Fisheries Subcommittee Of The Committee On Commerce On H.R. 6775*, Senate, 87th Cong., 1st Sess. 45, 596 (1961). This was not done. Congress did not adopt the Board's proposals for the expansion of Section 27.

<sup>4</sup> As in the original.

The provisions drafted by the Department of Commerce and the Federal Maritime Board were finally dismissed in the House Report on H.R. 6775, which called "particular attention" to the amendments put forth and quoted the full text thereof, stating: "Without approving or disapproving such additional provisions, your subcommittee took no action thereon feeling that their consideration should more appropriately be in connection with a separate legislative measure." H. Rept. No. 498, *op. cit. supra*, 2. To date, no such separate legislative measure has been considered or approved by Congress.

Referring to the cases of *Alcoa S.S. Co. v. F.M.C.*, 348 F. 2d 756 (D.C. Cir. 1965) and *Caragher v. F.M.C.*, 243 F. Supp. 136 S.D. N.Y. 1965), Pike and Fischer observed:

"It should be noted that the *Caragher* and *Alcoa* cases, although decided subsequent to Reorganization Plan No. 7 of 1961, did not mention the subpoena powers of the Commission derived from section 214 of the 1936 act, and transferred to the Commission by the 1961 reorganization plan." (Committee Print, p. 198.)

The Court's failure to consider the application of Section 214 to the Shipping Act and the Intercoastal Act is not remarkable. The drafter and the Intercoastal Act is not remarkable. The drafter of the present legislation is suggesting a novel and unheralded approach to construing Section 214 which has not previously been considered possible and which the foregoing exposition demonstrates is not, in fact, possible. As the Court of Appeals remarked in the *Alcoa* case, the Commission may subpoena documents under the Shipping Act and the Intercoastal Shipping Act "only" upon "alleging violation of the statute." In the *Caragher* case, which involved a subpoena issued in connection with an investigation under Section 18(b)(5) of the Shipping Act, the Court determined that Section 18(b)(5) did not forbid any activity or involve any violation but only empowered the Commission to disapprove certain rates. Continuing, the Court stated: "The Commission indeed does not contend otherwise but only that the power of subpoena is necessary for the proper performance of its function under that section. *Be that as it may, Congress has not seen fit to give it that power.*" 243 F. Supp. at 139. [Emphasis supplied.]

Pike and Fischer so drafted Section 7104(b)(1) as to resolve its doubts in favor of the broadest possible grant of subpoena power to the Federal Maritime Commission. It has been demonstrated that a correct reading of the statutes lends no support to that view. And, as shown, Congress is aware of the limitations contained in Section 27; there is no question here of legislative oversight or of inadvertent enactment. The language of Section 27 is clear and the intent of the legislators easily fathomable. In the period immediately after enactment of Reorganization Plan No. 7, of which Plan Congress was aware and to which the several committees frequently alluded during their extensive hearings on the contemplated shipping legislation, a forerunner of Section 7104(b)(1) and 1304(a) was proposed and not adopted. In view of these facts, it is submitted that the change proposed in Section 1304(a) is not required by "recent reorganizational changes" as specified by the Senate Commerce Committee. The substantive change proposed in that Section is of great significance and would substitute the "opinion of the Commission" for the precise standard enunciated in Section 27. With one motion and the changing of only a few words, the inherent check on the Commission's subpoena powers in Section 27 would disappear. Manifestly, the intention of Congress has always been that Shipping Act and Intercoastal Shipping Act subpoena should issue only in connection with alleged violation of those statutes. To preserve those intentions it is suggested that Section 7104(a) of the Committee Print be substituted in place of Section 1304(a).

The retention of Section 27 of the Shipping Act through the utilization of Section 7104(a) language would, in no manner, diminish the historical and sanctioned investigative powers of the Federal Maritime Commission. Section 212(a) of the Merchant Marine Act, which was transferred to the Federal Maritime Commission by Reorganization Plan No. 7 and which is the only section to which Section 214 applies, is incorporated as Section 1302(b) of S. 3446 and reads as follows:

"The Commission is authorized and directed to investigate any and all discriminatory rates, charges, classifications, and practices whereby exporters and shippers of cargo originating in the United States are required by any common carrier by water in the foreign trade of the United States to pay a higher rate from any United States port to a foreign port than the rate charged by such carrier on similar cargo from such foreign port to such United States port, and recommend to Congress measures by which such discrimination may be corrected."

The substitution of Section 7104(a) for the subpoena provision proposed would not handicap the Commission in its investigations under this subdivision. A power of subpoena empowering the Commission to issue subpoenas "for the purpose of any investigation" is, in fact, not in harmony with the rest of the statute and would render Section 21 of the Shipping Act (Section 1212 of S. 3446) obsolete and tautological. By its terms, this latter provision empowers the Federal Maritime Commission, at any time and whether or not it is conducting an investigation, to "require any common carrier by water, or other person subject to this title, or any officer, receiver, trustee, lessee, agent, or employee thereof, to file with it any periodical or special report, or any account, record, rate or charge, or any memorandum of any facts and transactions appertaining to the business of such carrier or other person subject to this title." Manifestly, this provision will enable the Commission—as it has in the past—to obtain all the data necessary to carry out its investigative functions and, particularly, to fulfill the investigative duties imposed by Section 212(e).

To this same end, the "words in any investigation instituted by the Commission," in lines 19 and 20 of Section 1305 of S. 3446, should be deleted so that this Section will conform exactly to its predecessor, Section 28 of the Shipping Act.

Mr. MAHONEY. Good. I would also say, too, that unlike Adlai Stevenson, that in this instance I think that since we were a committee of lawyers working for Mr. Marshall and our other clients, that if we had had more time I am afraid the statement would have been longer. Luckily, we did not.

I am a member of the firm of Casey, Lane & Mittendorf, of New York and London. I specialize in maritime administrative law.

As I said, my companion here on my right is Mr. Charles Marshall, chairman of the Associated Latin American Freight Conferences. As their name implies, Mr. Marshall's conferences, based in New York, cover the trade from the east coast and the gulf ports of the United States to the Caribbean, Central America, and the west coast of South America.

If you take a quick look at appendix A, which lists the New York-based conferences and their chairman associated with this statement, we have grouped them geographically. First is Mr. Marshall, Latin America; then Mr. Vincent Barnett, the chairman of the group of European conferences, Messrs. Richard Gage, David MacNeil, also European or Mediterranean; then Mr. Pendleton of the Far East and of Africa; and Mr. Rough, chairman of the Australian conferences.

Collectively they represent the majority of the conferences here in New York and geographically I think the scope of their conferences speaks for itself.

When your committee issued its committee print, entitled "A Draft of the Proposed Merchant Marine Act of 1966" last February, this is the one to which Mr. Fischer alluded, these conferences in recognition of the vital stake which shipping regulatory legislation has on them—as a matter of fact, it is the lifeblood to keep them going—asked our firm—or my firm, Casey, Lane—also Messrs. Burlingham, Underwood, Barron, Wright & White, to collaborate in reviewing the regulatory aspects of these statutes as far as it would affect our clients.

Mr. Burton White, one of the senior members of his firm, accompanied by Randolph Taylor, one of his associates, worked with my associate, Preben Jensen, and myself in doing a preliminary draft of the comments which we filed with your committee on April 6.

We did this in conjunction with, and side-by-side with, Admiral James' group, with CASL, and we for once in the shipping industry, as far as I could see, we did not step on one another's feet. We kept in our regulatory backyard and they focussed their fire on the promotional and other aspects of the shipping industry.

I am pleased to say that almost all of the comments which we make, and as you have heard earlier, those that are made by CASL, that were embodied in these comments in April have been, in fact, picked up and embodied in the present bill, S. 3446.

Let me say, too, that as a postscript to what my predecessor said, this is a very taxing, difficult job to rationalize these disparate statutes and to bring them together in some kind of a homogeneous group, because the language varies from over one legislative generation to another, and the job that Pike & Fischer has done in this instance is really quite remarkable.

Parenthetically, I might say that since June 2, when the bill S. 3446 appeared, Mr. White and I have conferred with Mr. Foster of your staff on several occasions and we have given them the benefit of a further review of some of the technical aspects and in most instances we are pleased to say—first, we say the staff was most receptive and there remains really here only a very few items which require your contribution.

Actually, the previous witnesses alluded to several of the remaining items. These concern sections 1304, subpenas, and 1305, immunity, concerns overlapping and it concerns the question of choices.

Let me say at the very outset before criticizing, and we do not really mean it to be critical, but before commenting on the sections of the statute that we applaud the purpose of this bill as expressed in the committee print, to gather, to organize rationally, to reenact the scattered statutes affecting the U.S. Merchant Marine into a comprehensive code of maritime law.

Both the industry and its lawyers need such a code very badly, and all of us are as one in praising the herculean job done by Pike & Fischer in preparing the draft of the revisions. I guess the proof of the pudding is the fact that we are submitting only these very few comments on a bill that runs 350 printed pages, which indicates the extraordinarily good job that has been done so far.

Our comments spring from our understanding that this bill should not include any amendments to the substantive law unless they are necessitated by recent organizational changes. We believe that S. 3446 is designed to consolidate rather than to amend the shipping statute. Consequently, we are still concerned by what appears to be the apparent amendment of certain existing provisions. We submit and hope you agree that amendments of any of these statutes should be instituted only by separate legislation, not in an omnibus proceeding of this sort, and in such a separate legislation it would give all interested parties—I note, Senator Hartke, you asked about the public and its interest. If you are going to have any substantive amendments, you obviously want to get all segments of the public into the picture. Anyway, substantive modifications should not be embraced within a proposed consolidation.

I think I will go right to the four specific provisions where the incorporation of sections from the 1936 act into title I provokes the concern of our conference.

First, as we have spoken of before, section 1304 of S. 3446 would amend section 27 of the Shipping Act, 1916, to permit the Commission to issue subpenas for the purpose of any investigation it deems necessary and proper.

Now, this authority actually appears in section 214 of Merchant Marine Act, but under section 27 of the Shipping Act subpoenas can be issued only to investigate "alleged violations of that act."

We urge that the subpoena power of the Commission not be enlarged or amended under the guise of the consolidation. Section 27 of the Shipping Act should be retained and should replace proposed section 1304 in the act.

Senator HARTKE. Let me ask you at that place. You say this authority appears in section 214 of the Merchant Marine Act of 1936?

Mr. MAHONEY. Yes, sir.

Senator HARTKE. What is the language used there? Do you know?

Mr. MAHONEY. Yes, I have it here.

I am reading, Senator, from page 23 of House committee print, 89th Congress, 2d session, Merchant Marine Act, 1936 and other related acts.

On the other side of the House—I do not know how they happened to do it, but belatedly they have gone ahead with not a consolidation, but I guess you describe it as a compendium of the various shipping acts, and they just did it this year.

Section 214(a) reads:

"For the purpose of any investigation which, in the opinion of the Commission, is necessary and proper in carrying out the provisions of this act, any member of the Commission," and so forth, "is empowered to subpoena witnesses, administer oath," and so forth, "take evidence and require the production of books which are relevant and material"—I am skipping a little bit—"to the matter under investigation."

214(a).

Do you want me to compare it with the 1916 act? I think you see the difference between the two. This is much more sweeping than section 27 of the Shipping Act, which empowers, permits the Commission to issue subpoenas for the purpose of only to investigate "alleged violations."

Senator HARTKE. In other words, one of them is very restricted. What I am trying to find out is though, and you will excuse me, I have not gone into this in depth, but in the provisions of the Merchant Marine Act of 1936 is it your intention to retain that?

Mr. MAHONEY. Oh, yes, our view would be, and I might say that in answer to the question you are asking me now, I would give the same answer for the four different comments we make.

We do not want to leave a void here. What we want to do is to have the provisions of the 1936 act continued in some title other than title I, because title I bears, or the thrust of title I is on the industry, the regulated industry, so we would just as soon have it appear in another position, but we want title I to reflect the 1916 act.

Senator HARTKE. All right, let me ask Mr. Fischer. Will you come on up here, sir?

Can you give from the study group's side an answer to this? Because this makes a prima facie case to me in which I would be inclined to agree. In other words, let me make it very clear, I am only speaking in my personal capacity as a member of the committee, not on behalf of all the other committee members, but I think this is a point I would like to have explained when the title comes, and I probably will be called upon to explain it, so I would like to have the views.

Go right ahead.

Mr. FISCHER. In our notes to section 7104 of the committee print of the draft that was circulated, we spell out in quite some detail how the two provisions, one from the 1916 act and the 1936 act, were put in 7104.

We put both of them in as 7104, and the one from the 1916 act as 7104(a) and the one from the 1936 act as 7104(b), and pointed out how they overlapped and how they got to be there and pointed out that a choice would have to be made as to which would be used.

Now, as we see it, the Reorganization Plan of 1961, whether by inadvertence or otherwise, when it transferred to the new Maritime Commission the functions which it now has, that would be in section 103 of Reorganization Plan No. 7, 1961, in 103(e) clearly although perhaps inadvertently also transferred to the Commission in connection with the functions that were transferred to the Commission which were mostly those under the Shipping Act, the subpoena power from the 1936 act.

Now, as I say, the argument is made, and we point out the argument in a note, that to the extent it purports to cover not only the 1936 act functions, but also the 1916 act functions that were transferred to the new Commission, that that might have been a matter of inadvertence.

As to that, we took no position; we pointed that out; that is, the position that exists. What this committee wants to do about it is a question for the committee, but that is the situation that exists.

Senator HARTKE. Let me see if I can put this in the proper scope.

Under the 1916 act and under section 27, the power to issue subpoenas related only to alleged violations of the act; is that correct?

Mr. FISCHER. That is right, Mr. Chairman.

Senator HARTKE. Under the 1936 Merchant Marine Act, the authority there was given to use the subpoena power for all investigations which they deemed, in their opinion, to be necessary and proper, which then became a question of whether or not there was a use of discretion was the only limiting power, while in the 1916 act there would have to be an alleged violation upon which there would be a basis for issuing of the subpoenas.

It is the contention then in the Reorganization Act of 1961 that in the consolidation, which was effected at that time, that the sweeping power of subpoena as given under the 1936 act also extended to the provisions of the 1916 law; is that correct?

Mr. FISCHER. We think by the terms of the Reorganization Plan that was done. Now whether it was done intentionally or by inadvertence, we do not know.

Senator HARTKE. Let me ask our witness, Mr. Mahoney, if that is a correct summation or is there an error?

Mr. MAHONEY. Yes; I think you summed up correctly what has happened and I think, Senator, you got on top of this very quickly, because it has taken two courts and the matter is now sub judicate in the Court of Appeals in the Second Circuit in these two cases, *Ludlow v. DeSmedt*—look at page 5 of my memorandum—*Caragher v. FMC*, both southern district cases which are on appeal to the Court of Appeals, and the thrust of this 22-page memorandum, which I think is a particularly good job and I can say that objectively, because I did not do it. It was done by Messrs. Kirlin, Campbell, and Keating,

who were the adversaries, or one of the adversaries, in the court proceeding.

I do not want to burden this record by annotating the arguments made in appendix B, but what they have done in appendix B, Senator, is to trace the history of section 27 from the Alexander committee report in 1916 and, in fact, take it through its legislative metamorphosis during the 1916 hearing, move all the way down through the 1961 hearings.

If you remember, Senator, in 1958 we had the *Isbrandtsen* decision, which cast a shadow on the contract rate, dual rate systems, that triggered a series of investigations here on both sides of the Hill, one in the House and Senator Engle, who was head of the special subcommittee of this committee, to investigate the powers of the Federal Maritime Commission as Congressman Bonner headed up the investigation over on the other side of the Hill.

At that time the Federal Maritime Commission—it was called then the Federal Maritime Board—and at that time the Board embraced both the regulatory authority and also the promotional authority, which in 1961 was split into two different groups.

Now you have the Maritime Commission, the agency, a quasi-regulatory agency on the one hand and the administration, on the other.

The Board and its father, the Department of Commerce then—it existed within the Department of Commerce—came before the appropriate congressional committees at the time that you people were reviewing the shipping industry, and they specifically asked that the power, the subpoena power which they had had under section 27, dating back to 1916, be extended in the way that they have it under the 1936 act.

They specifically asked for this and they were turned down flat.

That, in effect, is what this legislative memorandum shows, sir.

Senator HARTKE. Let me come on back, though, and see if I can put that at the moment in line with what we are trying to do here, and I am not trying to make the decision. I am trying to get the facts straight.

Mr. MAHONEY. My understanding is from Mr. Fischer—you correct me if I am wrong again—that there was in the reorganization plan no direct reference or comment concerning these two sections.

Mr. FISCHER. There was.

Mr. MAHONEY. There was direct comment?

Senator HARTKE. In the reorganization plan?

Mr. FISCHER. In the Reorganization Plan of 1961, this 214, the provision we are now talking about, the 1936 act, was specifically mentioned in 103(e) of that plan. It provides to the extent that they relate to the functions transferred to the Commission by the foregoing provisions "and foregoing provisions transfer all of the 1916 act and a lot of other functions to the Commission," transferred to the Commission the following functions: The functions with respect to adopting rules, regulations, making reports and recommendations to Congress, subpoenaing witnesses.

Now under provisions of sections—and then they say 214——

Senator HARTKE. What I am asking, that is in the plan?

Mr. FISCHER. That is in the plan.

Senator HARTKE. Was it discussed any time during the term of the reorganization other than by the direct reference in the plan itself?

Mr. FISCHER. We have not found anything.

Senator HARTKE. In other words, what you are saying here and see if I am correct, that when the reorganization plan came along, it did do the consolidation to which you refer, as you say, whether intentionally or by inadvertence you do not pass judgment, by virtue of the fact there is no commentary other than the plan itself.

Mr. FISCHER. So far as we know.

Senator HARTKE. We are all human. I am not trying to ask for perfection; we just strive for it, not ask for it.

That puts the fact into the place then again that as far as we are concerned at this place, we must pass on that judgment as to whether or not it was intended at that time or whether we intend at this time to make that change.

Now——

Mr. MAHONEY. Let's hear the last thing you said, whether we intended at this time. In this round?

Senator HARTKE. Yes. In other words, whether, without direct—and I think this is true, this will be a new law?

Mr. MAHONEY. Yes.

Senator HARTKE. And although the study was directed only at procedural changes, it would not prohibit the Congress, if it saw fit, to make substantive changes at the same time.

Mr. MAHONEY. No, I would certainly agree on that, but if you are going to make substantive changes, though we would urge you to use a forum and perhaps to give a little more wide publicity to this kind of thing, because first of all, the matter is in litigation, as I pointed out. It is a close question and it is in litigation up in New York; it is a matter, therefore, that if you are going to change it, I would think that it ought to be done with the greatest care, because so far we might think it was a sleeper.

Senator HARTKE. Let me say to you, sir, I am not going to express any opinions. I will assure you this: I ask the committee staff member, Mr. Foster, to make sure that at the time this is presented in executive sessions this will be presented in the fashion which both of you have explained it here today, and my own personal recommendation will be, frankly, of a nature of this type in which there is a difference of opinion, I would think that this should be reconciled with public hearings, and my opinion basically, without regard—I have no knowledge who is involved in this litigation. I hope it does not affect the litigation, because I have no intention to try to do so, but I do think whenever you are making procedural changes, which was my initial question which I indicated, which affect substantive rights, that not alone do the interested parties have a right to be heard but the public interest must be preserved by Congress. That is our job.

Mr. MAHONEY. I do not think Mr. Fischer and I disagree with that at all. We are both with you 100 percent. Both of us have done our job.

Senator HARTKE. That disposes of that as far as I am concerned, unless you have some additional comment you think is necessary.

Mr. MAHONEY. Not at all, sir. I will just move on.

The second paragraph we wanted to call your attention to was section 1404 of S. 3446. This provides penalties for violation of the Commission's orders.

Now, this is a subject which was not covered by the Shipping Act, 1916; section 32 of the Shipping Act reads as follows:

Whoever violates any provision of this act, except where a different penalty is provided, shall be guilty of a misdemeanor punishable by a fine of not to exceed \$5,000.

Here again in 1961, the Federal Maritime Board and the Department of Commerce attempted to amend the Shipping Act to include penalties for violations of its orders, rules and regulations. On this score, Senator Hartke, I would call your attention to the index of legislative history of the steamship conference, dual-rate law, which was prepared by your very able staff member, John Webster, some few years ago.

At page 139, where the history of the Commission, the Commission's predecessor, attempts to enlarge its power is set forth.

Now, this proposal, that is to enlarge the Commission's power to include penalty for violation of its orders, was rejected by Congress and does not appear in the 1961 amendments to the Shipping Act. Accordingly, in our view, a similar amendment should not be incorporated in a consolidation.

The language of section 1404 is lifted from section 806(d) of the Merchant Marine Act and certainly may be appropriate in that connection. We would suggest that it be kept in the codification in the Merchant Marine Act. We just say keep it away from the Shipping Act provisions of title I.

Senator HARTKE. Do you have any comment on this, Mr. Fischer?

Mr. FISCHER. Again, our only purpose in putting it here under the 1936 act in section 204(c), all the functions that were formerly under the Shipping Act were taken over by the 1936 act. Section 204(c) provided that the functions under the Shipping Act in effect were transferred to those enforcing the 1936 act.

So, we assumed, without knowing, that that would make section 806(d) of the Merchant Marine Act of 1936 applicable to violations of the 1916 act, as we put in our note to 7306 at page 210 of the draft.

Now, to the extent that we are in error on that, then it does not apply.

Senator HARTKE. Let me say to you, Mr. Fischer, I do not think anybody is questioning whether you are in error. I think this is a question of interpretation.

Mr. FISCHER. Yes.

Senator HARTKE. And I think it is only fair for you to place these things in the proper scope and I think it is good that we are having it brought out.

Let me make two observations here. The one is that this demonstrates a great danger which is inherent in such massive transfers of authority from one section of the Government to another without adequate preparation being made in advance and quite frequently, although I am a great believer in the basic Hoover Commission ideas of elimination of duplication and the streamlining of the Government, I think it is more important that Government give considerations, first, to the rights of individuals rather than to the rights of Government, because we are only instituted in the first purpose for the preservation of the rights of individuals, and if there is going to be an error, I would hope that would be an error on the side of maybe a little less efficiency and preservation of rights, because if you want

perfect efficiency, you have to have dictatorial rules. Of course, we are not interested in that.

That is why I feel both of these areas, if I personally were looking at it, that I would have a tendency to be overzealous toward the public interest, that is, not to give general subpoena powers unless there is something specific for which the purpose is intended, because it smacks of a police state.

The second thing in regard to penalties. I think that it is a basic rule of criminal law and concept of criminal law that criminal statutes are to be construed most strictly in favor of the accused, so this would mean that you would not by administrative fiat extend criminal sanctions, and I think you have gone pretty far in that direction already.

I might point out to both of you gentlemen. I do not know that this would directly affect you, that the reorganization as proposed by the Department of Transportation, which is now before the Government Operations Committee, has inherent in it some of these same difficulties, and just by virtue of looking at history, it sort of amuses me at times to see that we establish separate agencies, separate and distinct from the Department of Commerce for the very reason that we do not want the authority lodged in that administrative head. We wanted an agency which would view these things in the highest of priority and a little bit different outlook and then see the whole turn of history where we are coming back to a centralization of authority again.

I hope someone in the legal field would make an attempt to explore this. I have seen very little done by my brethren among the bar, especially in the law judicials and so forth.

Mr. MAHONEY. Why do you not suggest, Senator, to the educators of both the—well, I think the two in particular, two of the places we go to recruit our people, at Harvard and Columbia.

We have had recently in the requests from the educators of the Harvard Law Review, Yale Law Journal, Michigan as well, for suitable subjects of things we think of as suitable subjects for either notes or for law review articles. So a suggestion of that sort from you, I think, might very well provoke or get a fairly good article out of it.

Senator HARTKE. I will be glad to do that, but as an old editor of a law journal myself, I think they do merit quite a bit of consideration by members such as you are, and I think it is very appropriate.

Let me point out I do not think it is the lone responsibility of the law schools or journals, I think the bar itself has a responsibility in this field.

I hope we cannot fall into some of the traps that some of the other professions do of only giving consideration to our own personal interest in these items and understand the broad comprehensive responsibilities of associations toward the public interest.

Mr. MAHONEY. I was going to comment just a little bit more on this, and I think you will appreciate that as a head of a law journal that sometimes if the law firm makes a suggestion, it is regarded, not without some wisdom, I think, by the brothers on the law journal as something that is apt to be partisan because it is, perforce, a law firm or a lawyer probably has taken a specific portion for his clients on a specific matter, whereas if it came from a Senator or came from the Hill here, I think that they would regard it as being more disinterested. If you have the time, that is.

Senator HARTKE. We are off on an academic discussion again.

With regard to this subject, I think I understand again what the point of difference is and I think I can explain it adequately. Unless you have something further——

Mr. MAHONEY. I have two more.

Senator HARTKE. I mean, on section 2.

Mr. MAHONEY. No, sir; I have nothing more on that section.

Senator HARTKE. All right, your third point.

Mr. MAHONEY. 1305 concerns the immunity of witnesses.

Here again we are in the criminal field. This adopts the language of section 214 (c) of the Merchant Marine Act rather than the present language of section 28 of the Shipping Act and requires the witness to claim his privilege against self-incrimination.

Once again, this is the type of revision that should not be undertaken during a consolidation of various shipping statutes. Parenthetically in this connection, I ought to call your attention to S. 2963, which was introduced in the Senate on February 23 this year by Senator Magnuson, and H.R. 12628, an identical bill introduced in the House in early February.

I understand they were introduced at the request of the Federal Maritime Commission, the executive introduction, you know the name. I am not sure I know it. In any event, these bills would, inter alia, amend section 28 of the Shipping Act, 1916, to require a subpoenaed witness to claim his privilege. We understand that as of last Friday when I made inquiry here, that no action has been taken on either of those bills and none has been scheduled on either bill as yet.

Senator HARTKE. This in substance is the same basic problem involved.

Mr. MAHONEY. Right, exactly. Of course, in this instance you have a good case, you have two bills that are in the hopper that would provide the vehicle, if they want to do this, to have hearings on them separately.

Now, the fourth and last point is section 1103(j).

This requires that the Commission report to Congress concerning "the results of its investigations, a summary of its transaction, and its recommendations for legislation, a statement of all receipts under this title and the purposes for which all expenditures were made."

The language has never appeared in the Shipping Act, 1916. Rather, it is lifted from section 208 of the Merchant Marine Act.

We think that section 1103(b) should be omitted, because it does not conform to the Commission's activities. The Commission does not engage in transactions in the same case as the Administration. It does not receive receipts under this title.

The only reference would be, I think, to the "results of investigation," that would be relevant to the Commission.

The last sort of penumbral point—earlier we objected to the codification of cross-references as a part of the statute, however helpful they might be as footnotes, and our recommendation was followed except in the retention of section 1303. This still contains cross-references to various substantive sections of the Shipping Act where the procedures in question could be applied.

Even in this respect, the section is incomplete to the immediate section 1207. It is our opinion that cross-reference could be misleading and is unhelpful and inconsistent, and should be omitted.

Senator HARTKE. I know we are proceeding a little bit different than the ordinary procedure here, but I think we come out with a little better result for the record by having Mr. Fischer again to comment.

Mr. FISCHER. Again, I would like permission, Mr. Chairman, on this 1103(j), which is brandnew to us, to refer back to our notes as to what this is.

As I remember, this is a combination of two provisions that existed under the 1936 Act and one of the functions transferred to the Commission under the Reorganization Plan.

With the permission of the Chair we would like to investigate this and make a report on this after we have reviewed our notes on this. This is brandnew to me.

Senator HARTKE. All right. With regard to this section, here on 1303, this is in a summary statement?

Mr. FISCHER. That is 1103(j).

Senator HARTKE. That is the same one, right? No, that is not the same one, as I understand it from Mr. Mahoney.

Mr. FISCHER. 1103(j) I was referring to.

Senator HARTKE. 1303—

Mr. MAHONEY. That is at page 53.

Mr. FISCHER. There in accordance with the recommendations of memorandum of Casey, Lane & Burlingham, Cupper, and CASL, we eliminated cross-references pretty much throughout. We left them here just because we thought this was something special and we thought it would be of interest to those dealing with the act to know those provisions under which hearings are required.

It is just a helpful section pointing out all the other provisions in title I in which hearings are required.

Senator HARTKE. Let me ask you: Could the same general effect be had by incorporating these cross-references in a report rather than in the statute itself?

Mr. FISCHER. Well, it could to the extent that people had the report. This is something we considered desirable, certainly not essential.

Senator HARTKE. Then we will take cognizance of that.

Gentlemen, I want you to know that this is my first exposure to this, what apparently is a fine piece of legislative work, and again it demonstrates that the Congress has not forfeited all of its responsibilities and with the full recognition that if this were probable, to have been done on the administrative side instead of having a few people like Mr. Grinstein and Mr. Foster, we probably would have had to have a staff of about 1,500.

I want you to know you are getting your money's worth from these fine people.

Mr. MAHONEY. Mr. Marshall and others wished me to present our thanks for the careful and thoughtful way this work has been done. They stand ready to provide any further assistance which the committee and the staff may need or can use, and then I think I would say parenthetically that we are lucky here this morning to get as our chairman a man who has had sufficient exposure, so that he can take these things off the back wall very quickly. I must say I have not had a better time at a hearing for some time, and thank you very much, Senator.

Senator HARTKE. I want to thank you for that.

I will direct Mr. Foster to prepare a short memorandum for the rest of the members of the committee, which will be subject to your review prior to the time it is directed to the chairman, in the hopes that we can put these down in rather short order.

Personally I would be willing to take the time, if a public hearing is the decision of the committee, to listen to these matters. One of the real problems we have here is there is so much to be done and so little time to do it, and these are not, as you have indicated, things which pack the backroom and bring in the television cameras.

If you notice, the working press table is completely vacant.

If there is nothing further, I want to place in the record a statement in support of the bill with amendments from the American Merchant Marine Institute. Thank you gentlemen for coming and thank you for your diligence, and the hearings are now closed.

(Whereupon, at 11:40 a.m. the hearing was concluded.)

COMMENTS OF THE AMERICAN MERCHANT MARINE INSTITUTE ON S. 3446 THE MERCHANT MARINE ACT OF 1966

The American Merchant Marine Institute wishes at the outset to extend the appreciation of its members to the Committee on Commerce, its Chairman, its staff, and Pike & Fischer, Inc., for the splendid accomplishments reflected in S. 3446. Compilation and re-enactment of scattered statutes affecting the Merchant Marine into a comprehensive code has long been needed.

Our Institute supports and urges early enactment of S. 3446, the first phase of your Committee's recodification efforts; and, keeping in mind the Committee's purpose of avoiding amendments to substantive law except where required by reorganizational changes, the following few comments are submitted in the hope they will assist in perfecting the bill.

A. *General Comments*

It is our understanding that compilations and revisions with respect to the laws affecting the Bureau of Customs and the Coast Guard are also presently underway. In this connection, we have, of course, noted that S. 3446 and the Committee print have as a consequence omitted certain statutory provisions with the recommendation that they be included in the consolidations to be made by the Bureau of Customs or the Coast Guard. At such time as these revisions and consolidations are submitted by these agencies we believe the Committee may wish to review generally the question of proper placement of those provisions which have been omitted from the present bill and those which have been included, such as, for instance, those pertaining to ship mortgages (Title IV, Part D) which in large measure involve activities of the Bureau of Customs.

B. *Specific Comments*

We set forth below, identified by section of the Bill, our specific comments.

TITLE I—FEDERAL MARITIME COMMISSION

*Section 1103(g).*—This subsection, which requires the Commission to keep a true record of all its meetings and meet certain other formalities, is taken from former Section 201 of the Merchant Marine Act, 1936. When applied specifically to the Commission, however, the language does not appear wholly artistic and the Committee may wish to recast it using terms more pertinent to the functions of the Commission.

*Section 1103(h).*—This section seems plainly wrong. Reorganization Plan 6 of 1949, Sec. 2, (63 Stat. 1069) withdrew from the United States Maritime Commission and shifted to the Chairman the power of appointing all personnel. In Reorganization Plan 21 of 1950 (64 Stat. 1273) and in Reorganization Plan 7 of 1961 (75 Stat. 840) this power was left with the Chairman. Indeed, the present Bill in Section 1104(b) recognizes this fact. For this reason, Section 1103(h) should be deleted and any reference to the Civil Service Laws and Classification

Act of 1949, if still pertinent, should be included under Section 1104(b), where the Chairman is given the authority to appoint.

*Section 1103(j).*—This Section, derived from Section 208 of the Merchant Marine Act, 1936, 46 U.S.C. 1118, was apparently made applicable to the Federal Maritime Commission by Section 103(e)(2) of Reorganization Plan 7, 1961 (75 Stat. 840). As applied to the Commission, it appears somewhat archaic. Revision of the wording would seem to be appropriate: for example, change the phrase “a summary of its transactions” to read “a summary of its activities”.

#### *Conflict of interest*

*Section 1106.*—This Section, taken from the last sentence of Section 201(b) of the Merchant Marine Act, 1936, was specifically made applicable to the Commissioners composing the Federal Maritime Commission and all officers and employees thereof by Section 301 of the Reorganization Plan No. 7 of 1961 (75 Stat. 840).

The Section reads as follows:

“SEC. 1106. It shall be unlawful for any member, officer or employee of the Commission to be in the employ of any other person, firm, or corporation, or to have any pecuniary interest in, or hold any official relationship with, any carrier by water, shipbuilder, contractor, or other person, firm, association, or corporation with whom the Commission may have business relations.”

The language as applied to the activities of the Federal Maritime Commission, its members, and personnel, does not seem wholly apposite. For example, the terms “shipbuilder” and “contractor” which may have meaning within the Merchant Marine Act, 1936, may have no particular relevance to the functions and duties of the Federal Maritime Commission. On the other hand, such terms as “freight forwarder,” and “shipper” should perhaps be included in the enumeration. In any case, the phrase “business relations” is vague and does not easily comprehend the regulatory functions and duties which the Commission exercises. We suggest that the Committee may wish to reshape Section 1106 so that it bears a realistic relationship to the activities which the Commission performs and includes all persons as to whom a conflict of interest might arise in the discharge of the Commission’s duties.

*Section 1201.*—By including the Commonwealth of Puerto Rico in the phrase “or between such territories and possessions and the Commonwealth of Puerto Rico” (lines 3, 4, p. 17), the Bill has created unnecessary ambiguity which might lead to a narrowing of the Commission’s present jurisdiction. As presently set forth, the phrase might be read to be “between such territories and possessions [on the one hand] and the Commonwealth of Puerto Rico [on the other hand].” Such an interpretation would wipe out Commission jurisdiction over freight forwarding activities between two territories. We suggest that a change should be made to cure this ambiguity.

*Section 1303.*—This Section appears to serve no substantive purpose and to be a vestigial remainder of several cross reference sections which are eliminated from the earlier draft. There does not seem to be any reason for Section 1303 to be left in the Bill.

*Section 1304.*—This Section makes a radical change in the substantive power of the Federal Maritime Commission and should not be adopted in this Bill. Section 27 of the Shipping Act, 1916, currently restricts the authority of the Commission to issue subpoenas only to investigate “alleged violations of this Act.” Section 1304, which is taken from Section 214 of the Merchant Marine Act of 1936, would permit the Commission to issue subpoenas for the purpose of any investigation it deems necessary and proper.

The change appears contrary to the legislative history of Section 27, and the Commission and its predecessors have repeatedly sought and been denied authority to expand Section 27. As recently as 1961, both the Senate Committee on Commerce and the House Merchant Marine Fisheries Committee refused to expand the authority of the Commission to issue subpoenas. Moreover, the scope of Section 27 currently is being contested before the Court of Appeals for the 2nd Circuit on appeal from decisions in the District Court for the Southern District of New York. *Ludlow v. DeSmedt*, 249 F. Supp. 496 (S.D.N.Y. 1966) and *Caragher v. FMC*, 243 F. Supp. 136, 138, 139 S.D.N.Y. 1965).

We understand that it has been urged that Section 214 of the Merchant Marine Act became applicable to the functions of the Federal Maritime Commission by reason of Reorganization Plan 7 of 1961. If Reorganization Plan 7 can literally

be so read, this would be a result, we suggest, which was neither contemplated or considered by either of the Committees in Congress or the Maritime Commission itself. Even at best, the argument would appear to carry no further than an application of Section 214 to specific functions in the Merchant Marine Act, 1936, which were transferred to the Federal Maritime Commission. Since the consequences of this increase in power are far-reaching and would embrace questions affecting our international relations, we believe the Committee should not decide in a compilation and revision the question of any extension of the Federal Maritime Commission's subpoena power. This should be the subject of a separate thorough and searching review including full opportunity to be heard by all parties who may be affected.

Finally, we note that in adopting the language of Section 214 of the Merchant Marine Act, 1936, in place of Section 27, Shipping Act, 1916, the Bill changes and indeed may have weakened the authority of a court to enforce subpoenas which the Commission now can issue. Thus, Section 27 provides that subpoenas are enforceable under Section 29 of the Shipping Act, 1916, which covers the enforcement of Orders other than for payment of money. The language of Section 29 (now incorporated in the bill as Section 1401) is different than the language of Section 214 (b) (Section 1304 (b)). This change constitutes another reason why the question of the scope and extent of the Commission's subpoena power should be the subject of separate consideration and not resolved as part of a statutory consolidation.

*Section 1305.*—This Section also makes a substantive change in the law covering the immunity of witnesses who appear before the Commission. Under Section 28 of the Shipping Act, 1916, persons obtain immunity automatically, whereas under Section 1305, it would have to be claimed. That this represents a change of substance is confirmed by the fact that the Federal Maritime Commission recently secured the introduction of H.R. 12628 and S. 2963 to amend Section 28 to accomplish the same purpose.

*Section 1404.*—This Section provides penalties for violations of the Commission's orders, rules or regulations. No such provision currently exists in the Shipping Act, 1916. Section 32 of the Shipping Act, 1916, provides only that whoever violates "any provision" of the Act (except where a different penalty is provided) shall be guilty of a misdemeanor punishable by a fine of not to exceed \$5,000. An attempt was made by the Federal Maritime Board in 1961 to amend the Shipping Act to include penalties for violations of orders, rules and regulations and was rejected. *Senate Document 100, 87th Congress, 2nd Sess., Index to Legislative History of Steamship Conference/Dual Rate Law, p. 139.*

#### TITLE II—MERCHANT MARINE POLICY; FUNCTIONS OF THE DEPARTMENT OF COMMERCE

*Section 2101 (b).*—We recommend that Section 2101 (b) be changed by inserting either "this title and" or "Title II" immediately before the words "Title III. . . ." The purpose of the change is to make the declaration of policy set forth in the preceding paragraph applicable to Title II and thereby (1) assure that the Secretary of Commerce, Maritime Administrator and other officials are clearly governed in all respects by the policy declaration and (2) provide that the substantive authority to make contracts given the Secretary of Commerce under Sec. 2207, the power to make investigations, studies, reports, and recommendations to Congress set forth in Sec. 2301 and the authority with respect to Mobile Trade Fairs, Sec. 2302, all be carried out in accordance with the over-all policy for the Merchant Marine set forth in Section 2101 (a).

*Section 2301 (d) (8).*—In order to make sense and to bring the Section in conformity with the U.S. Code, the words "until such time as the Secretary" should be inserted immediately after the comma in line 18 at page 70.

*Section 2301 (e) (5).*—

1. An "s" should be added to the word "recommendation" in line 11 at page 72.

2. Consistent with our earlier observations in respect to Section 2101 (b), the language "to effectuate the purpose and policy of Titles III, IV, V and VI of this act" should include Title II in the enumeration.

*Section 2303.*—This Section serves no substantive purpose and is simply a cross reference. As such, it appears to be a vestigial remainder of the other cross references which were deleted from the draft bill.

TITLE IV—ACQUISITION, OPERATIONS, CHARTER, TRANSFER, MORTGAGE, AND INSURANCE OF VESSELS

*Sections 4105(a), 4401 and Part D.*—The Bill substitutes in Section 4105(a) the words “any officer or employee designated by the Secretary of the Treasury for that purpose” for the term “collector of the customs” found in the present Statute and in the Committee print. In Part D, however, the Bill still retains the term “collector of customs” throughout and Part D, Section 4401(a) provides that “‘collector of customs’ includes any officer or employee designated by the Secretary of the Treasury to carry out the functions referred to in this Part.” This in turn is the definition referred to in Section 2401 as Item (12).

It makes no sense to designate by different terms the official who must record a bill of sale (under Section 4402) and the official who cannot record it until there has been filed with him a written declaration (Section 4015(a)), when that official is the same person. This is the creation of unnecessary confusion and we suggest that the same term be used throughout the Bill. We believe that considering the long and historic use of “collector of customs” and its brevity as a term it would be better to use it as done in Part D. The definition in Section 4401(a) can then be applied also to Section 4105(a) by substituting in that Section the phrase “collector of customs, as defined in Section 4401(a)” in place of the phrase “any officer or employee designated by the Secretary of the Treasury for that purpose”.

*Section 4201.*—The only purpose of this Section is for cross reference. It serves no substantive purpose and we think as we have suggested with respect to similar Sections above that it should be deleted.

TITLE V—MERCHANT MARINE PERSONNEL, EDUCATION AND TRAINING

*Section 5103.*—The reference in line 9 at page 302 to the Section of the U.S. Code corresponding to Section 3709 of the Revised Statutes is incorrect. The correct Section is 41 USC 5, *not* 35.

## MARITIME LEGISLATION

THURSDAY, MAY 26, 1966

U.S. SENATE,  
COMMITTEE ON COMMERCE,  
SUBCOMMITTEE ON MERCHANT MARINE AND FISHERIES,  
Washington, D.C.

The subcommittee met at 10:08 a.m. in room 5110, New Senate Office Building, the Honorable E. L. Bartlett presiding.

Senator BARTLETT. The committee will be in order.

The subcommittee meets this morning to hear testimony on S. 2600, a bill to prevent vessels built or rebuilt outside the United States or documented under foreign registry from carrying cargoes restricted to vessels of the United States.

(The bill follows:)

[S. 2600, 89th Cong., 1st sess.]

A BILL To prevent vessels built or rebuilt outside the United States or documented under foreign registry from carrying cargoes restricted to vessels of the United States

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 2631 of title 10 of the United States Code is amended to read as follows:*

**“§ 2631. Supplies: preference to United States vessels**

“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. The term ‘vessels of the United States or belonging to the United States’ as used herein shall not be deemed to include any vessels which, subsequent to September 22, 1965, shall have been either (a) built outside the United States, (b) rebuilt outside the United States, or (c) documented under any foreign registry until such vessel shall have been documented under the laws of the United States for a period of three years. The terms ‘built outside the United States’ and ‘rebuilt outside the United States’ as used herein shall include the construction or alteration abroad of any major components of the hull or superstructure of the vessel.”

SEC. 2. Section 901(b) of the Merchant Marine Act, 1936 (46 U.S.C. 1241(b)), is amended by adding the following sentence at the end thereof: “The term ‘rebuilding abroad’ as used herein shall include the construction or alteration abroad of any major components of the hull or superstructure of the vessel.”

(The agency reports follow:)

THE GENERAL COUNSEL OF THE TREASURY,  
Washington, D.C., May 27, 1966.

Hon. WARREN G. MAGNUSON,  
Chairman, Committee on Commerce,  
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of this Department on S. 2600, “To prevent vessels built or rebuilt outside the United

States or documented under foreign registry from carrying cargoes restricted to vessels of the United States".

The proposed legislation would amend 10 U.S.C. 2631 to prohibit the use in carrying defense and military cargoes, of vessels built or rebuilt outside the United States or documented under foreign registry until such vessel shall have been documented under the laws of the United States for a period of three years.

Since the proposed legislation relates primarily to matters within the jurisdiction of the Department of Defense, the Treasury defers to the views of that agency.

However, it is noted that the bill provides that the term "vessels of the United States or belonging to the United States" shall not be deemed to include any vessel built or rebuilt outside the United States or documented under foreign registry. Since this exception may conflict with section 911(4), title 46, United States Code, and the Customs Regulations which provide that the term "vessel of the United States" means any vessel documented under the laws of the United States, the Committee may wish to consider more suitable language.

The Department has been advised by the Bureau of the Budget that there is no objection from the standpoint of the Administration's program to the submission of this report to your Committee.

Sincerely yours,

FRED B. SMITH,  
*General Counsel.*

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GENERAL SERVICES ADMINISTRATION,  
*Washington, D.C., May 25, 1966.*

Hon. WARREN G. MAGNUSON,  
*Chairman, Committee on Commerce,  
U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: Your letter of October 6, 1965, invited any comments that the General Services Administration may care to offer concerning S. 2600, 89th Congress, a bill "To prevent vessels built or rebuilt outside the United States or documented under foreign registry from carrying cargoes restricted to vessels of the United States."

The purpose of the bill is to amend section 2631 of title 10 of the United States Code to provide that vessels which, subsequent to September 22, 1965, shall have been either (a) built outside the United States, (b) rebuilt outside the United States, or (c) documented under foreign registry and not documented under the laws of the United States for a period of three years, shall not be used in the transportation by sea of supplies bought for the Army, Navy, Air Force, or Marine Corps.

Since S. 2600 involves matters of primary concern to the Department of Defense, that department is in a better position to advise your Committee with respect to the merits of the proposed legislation than is the General Services Administration.

The Bureau of the Budget has advised that, from the standpoint of the Administration's program, there is no objection to the submission of this report to your Committee.

Sincerely yours,

J. E. MOODY, *Acting Administrator.*

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DEPARTMENT OF STATE,  
*Washington, May 25, 1966.*

Hon. WARREN G. MAGNUSON,  
*Chairman, Committee on Commerce,  
U.S. Senate.*

DEAR MR. CHAIRMAN: Further reference is made to your letter of October 6, 1965, enclosing for comment a copy of S. 2600, a bill "To prevent vessels built or rebuilt outside the United States or documented under foreign registry from carrying cargoes restricted to vessels of the United States."

Since the proposed legislation relates to matters which are primarily the responsibility of the Department of Defense, we would defer to the views of that Department on S. 2600.

The Bureau of the Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

Sincerely,

DOUGLAS MACARTHUR II,  
*Assistant Secretary for Congressional Relations*  
(For the Secretary of State).

FEDERAL MARITIME COMMISSION,  
OFFICE OF THE CHAIRMAN,  
*Washington, D.C., January 26, 1966.*

HON. WARREN G. MAGNUSON,  
*Chairman, Committee on Commerce,*  
*U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in reply to your request of October 6, 1965, for the views of the Federal Maritime Commission with respect to S. 2600, a bill "To prevent vessels built or rebuilt outside the United States or documented under foreign registry from carrying cargoes restricted to vessels of the United States."

The proposed bill does not affect any of the functions of the Federal Maritime Commission, and we, therefore, defer substantive comment to agencies which are directly involved.

The Bureau of the Budget has advised that there would be no objection to the submission of this letter from the standpoint of the Administration's program.

Sincerely yours,

JOHN HARLLEE,  
*Rear Admiral, U.S. Navy (Retired),*  
*Chairman.*

U.S. DEPARTMENT OF JUSTICE,  
*Washington, D.C., October 29, 1965.*

HON. WARREN G. MAGNUSON,  
*Chairman, Committee on Commerce,*  
*U.S. Senate, Washington, D.C.*

DEAR SENATOR: This is in response to your request for the views of the Department of Justice on S. 2600, a bill "To prevent vessels built or rebuilt outside the United States or documented under foreign registry from carrying cargoes restricted to vessels of the United States."

This bill has been examined, but since its subject matter does not directly affect the activities of the Department of Justice we would prefer not to offer any comment concerning it.

Sincerely,

RAMSEY CLARK,  
*Deputy Attorney General.*

COMPTROLLER GENERAL OF THE UNITED STATES,  
*Washington, D.C., November 4, 1965.*

B-95832.

HON. WARREN G. MAGNUSON,  
*Chairman, Committee on Commerce,*  
*U.S. Senate.*

DEAR MR. CHAIRMAN: Your letter of October 6, 1965, invites our comments on S. 2600, a bill to prevent vessels built or rebuilt outside the United States or documented under foreign registry from carrying cargoes restricted to vessels of the United States.

We have no special information or knowledge that would assist in the consideration of S. 2600, and therefore have no comments to offer.

Sincerely yours,

FRANK H. WEITZEL,  
*Acting Comptroller General of the United States.*

Senator BARTLETT. The first witness is Mr. Nicholas Johnson, Maritime Administrator.

For the sake of the record, Mr. Johnson, would you be good enough to identify your associates?

**STATEMENT OF NICHOLAS JOHNSON, MARITIME ADMINISTRATOR, MARITIME ADMINISTRATION OF THE DEPARTMENT OF COMMERCE; ACCOMPANIED BY CARL DAVIS, GENERAL COUNSEL, MARITIME ADMINISTRATION, AND WILLIAM BURCHILL, GENERAL COUNSEL'S OFFICE**

Mr. JOHNSON. I would be pleased to.

On my right is Carl Davis, General Counsel of the Maritime Administration, and a member of the Maritime Subsidy Board; on my left is Bill Burchill, of the General Counsel's Office.

Senator BARTLETT. Proceed at your pleasure.

Mr. JOHNSON. Thank you.

I have a prepared statement which is relatively brief.

Senator BARTLETT. Why don't you read it, then.

Mr. JOHNSON. I will read it, if you wish.

Thank you for this opportunity to appear before your subcommittee to present the views of the Maritime Administration of the Department of Commerce, and of the Department, on S. 2600.

We recommend against favorable consideration of the bill.

The bill would have two effects. First, it would make American-flag vessels rebuilt in the United States with foreign built midbodies ineligible for 3 years to carry the share of cargo preference cargoes that is reserved to "privately owned U.S.-flag commercial vessels."

Second, it would in substance change the existing provisions that at least 50 percent of U.S. military cargoes be transported in "privately owned U.S.-flag commercial vessels"—the remainder being carried in American-flag vessels that do not meet the requirements of this definition—to a requirement that 100 percent of such cargoes be transported in "privately owned U.S.-flag commercial vessels," or in vessels belonging to the United States which have not been built abroad, rebuilt abroad, or documented abroad within 3 years.

The bill would do this by amending the Cargo Preference Act, to provide that vessels rebuilt in the United States with foreign built midbodies shall not be considered "privately owned U.S.-flag commercial vessels" until they have been documented under U.S. laws for 3 years, and by defining the term "vessels of the United States" in the 1904 Military Procurement Statute (10 U.S.C. 2631) in the same way as the term "privately owned U.S.-flag commercial vessel" would be defined in the cargo preference law as amended by the bill.

The 1904 military procurement statute provides that 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 unless the President finds that the freight charged by those vessels is excessive or otherwise unreasonable. That statute further provides that 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.

Within the meaning of this statute, "vessels of the United States," these are vessels documented under the laws of the United States.

Vessels built abroad or rebuilt abroad or which have been under foreign registry or ownership are entitled, under the U.S. documentation laws, to be documented for operation in foreign trade, though not for documentation for operation in domestic trade. Any such vessel, therefore, that is documented under U.S. laws is entitled to carry U.S. military supplies in foreign trade under the 1904 statute.

The 1904 statute, however, is in part overridden by the cargo preference law—section 901(b) of the Merchant Marine Act, 1936. The cargo preference law now provides that at least 50 percent of the gross tonnage of equipment, materials, or commodities shall be transported in “privately owned U.S.-flag commercial vessels”—to the extent such vessels are available at reasonable rates for U.S.-flag commercial vessels—whenever:

(a) The United States obtains for its own account or furnishes to any foreign nation any such equipment, material, or commodities, or

(b) The United States advances funds or credits, or guarantees the convertibility of foreign currency in connection with the furnishing of such equipment, material, or commodities.

The cargo preference law applies to the transportation of military supplies. At least 50 percent of such supplies, therefore, must be transported in “privately owned U.S.-flag commercial vessels.” The cargo preference law provides that the term “privately owned U.S.-flag commercial vessels” shall not be deemed to include any vessel which after September 21, 1961, shall have been (a) built outside the United States, or (b) rebuilt outside the United States, or (c) documented under any foreign registry, until the vessel shall have been documented under the laws of the United States for 3 years. The requirements of the cargo preference law, therefore, with respect to the type of American-flag vessel that can be utilized are considerably more strict than the requirements of the 1904 military procurement statute which the cargo preference law, in part, overrides.

There is a proviso to section 901(b), the cargo preference law, that a ship rebuilt abroad after September 21, 1961, will be a “privately owned U.S.-flag commercial vessel” if prior to September 21, 1961, the owner has contracted for such “rebuilding abroad” and has notified the Maritime Administration of such contract, and such rebuilding is completed and the vessel is documented under U.S. laws on its first arrival at a U.S. port not later than a year later, September 21, 1962.

The amendment the bill would make to section 901(b) is to define “rebuilding abroad” as including the construction or alteration abroad of any major components of the hull or superstructure of the vessel. The only place in section 901(b) where the term “rebuilding abroad” is used is in the foregoing proviso which expired on September 21, 1962.

We assume, therefore, that the term the bill intends to define is the term “rebuilt outside the United States”. The purpose of such an amendment would be to prevent vessels from being eligible for the share of cargo preference cargo which is reserved for “privately owned U.S.-flag commercial vessels” if the vessels are rebuilt in the United States with foreign built midbodies.

The term “rebuilt outside the United States” was taken from Public Law 714, 84th Congress, approved July 14, which amended section 27 of the Merchant Marine Act, 1920, to exclude from the coastwise

trade vessels rebuilt in the United States with foreign built midbodies. To exclude such vessels, section 27 of the Merchant Marine Act, 1920, was amended by Public Law 86-583, approved July 5, 1960, to exclude rebuilt vessels "unless the entire rebuilding, including the construction of any major components of the hull or superstructure of the vessel, is effected within the United States, its territories (not including trust territories), or its possessions."

The amendment to section 901(b) of the Merchant Marine Act, 1936, which defines "privately owned U.S.-flag commercial vessels" as excluding vessels "rebuilt outside the United States" was made by Public Law 87-266, approved September 21, 1961, and the foregoing history of the term "rebuilt outside the United States" was before the Congress at that time and was brought to their attention by the Department of Commerce testimony. It seems clear, therefore, that Congress did not intend to exclude from cargo preference for 3 years vessels which are rebuilt in the United States with foreign built midbodies. It also seems clear that one of the purposes of the bill is to exclude such vessels for 3 years.

We are opposed to the amendment the bill would make to section 901(b) of the Merchant Marine Act, 1936. This amendment would close off the possibility of upgrading the unsubsidized fleet by the rebuilding of vessels in U.S. shipyards with foreign-built midbodies. It is an advantage to shipowners to be able to upgrade their vessels in this way. The cost is considerably less than doing the entire rebuilding in the United States. It is also an advantage to U.S. shipyards in that it gives them considerable work that they otherwise might not get. It is an advantage to the United States in that it upgrades the unsubsidized fleet.

For the same reasons we are opposed to the amendment the bill would make to section 2631 of title 10 of the United States Code. In addition, we are opposed to this amendment because it would reduce the number of and quality of American-flag vessels available to the Defense Department in times of emergency.

We have been advised by the Bureau of the Budget that there is no objection to the submission of this statement to the committee from the standpoint of the administration's program.

Senator BARTLETT. Mr. Johnson, how many vessels are we talking about, or how many conceivably might we be talking about. Do you have any idea?

Mr. JOHNSON. At the present time I believe there are two, Mr. Chairman. I can insert those in the record at this point, if you wish. (The information requested above follows:)

American Bulk Carriers, Inc. (Samuel H. Wang, President) has commitments to jumboize two war-built T-2 tankers, the *Sabine* and the *Midlake*, in Bethlehem Shipyard, Beaumont, Texas.

Senator BARTLETT. All right.

If this bill were to become law, do you believe that it would hurt the shipyards by giving them less work?

Mr. JOHNSON. Yes, Mr. Chairman, that would be my view.

Senator BARTLETT. You don't think that on the contrary all of the reconstruction would be done within the United States?

Mr. JOHNSON. No, I think not. I think the result would be that the construction work simply would not be done anywhere. The option of an operator to use a foreign-built midbody often makes

possible for him the upgrading of a ship that otherwise would have to be scrapped or otherwise left uneconomical to use.

Senator BARTLETT. What might be the difference in cost, would you think, on a 10,000-tonner in doing the upgrading right within a U.S. shipyard or using foreign midbodies?

Mr. JOHNSON. As you know, Mr. Chairman, at the present time the lowest cost American yards that are awarded bids for Maritime Administration construction work run about 220 percent of the lowest cost foreign yards, and we would assume presumably that roughly the same differential would be applicable in the building of the midbodies. But, the precise costs involved would differ from ship to ship. If you like, I can try to provide something for the record as to what our experience has been in fact.

Senator BARTLETT. I think that answers it satisfactorily. You don't need to go further.

Mr. JOHNSON. Thank you.

Senator BARTLETT. There is great considerable demand at this time for cargo vessels in world trade, is there not?

Mr. JOHNSON. Yes, there is, Mr. Chairman.

Senator BARTLETT. And so far as you can project, this demand is going to continue?

Mr. JOHNSON. As you know, the shipping business is a cyclical business. Certainly all trade projections show for a rather substantial continued increase in world trade, and with the coming of more competitive and productive ships and lower freight rates, undoubtedly this increase will be accelerated.

But the cyclical changes that take place from time to time will undoubtedly also continue and whether a year from now or 2 years from now there will be the precise demand which there is now, or increased demand, is difficult to predict with certainty.

Senator BARTLETT. Vessel operators and fleet operators, in my experience, are an adventuresome lot of people. They are willing to take a chance, and if the outlook for traffic appeared good to one of these operators, and this bill were law, you don't think he would be tempted to do the whole job in a U.S. yard, notwithstanding?

Mr. JOHNSON. I did not mean to suggest that there would be no work done in American yards under the terms of this bill. And I would not say that now.

My position was only that it would seem to me highly probable that the impact of the bill would result in there being less work in American yards than there would be without it. Undoubtedly there would be some operators—who you have kindly described as “adventuresome”—who would nevertheless proceed, based upon current demand.

Senator BARTLETT. Have you any idea of what the cost is on the average of bringing one of these foreign midbodies in and placing it in an American ship, how much money is involved per vessel?

Mr. JOHNSON. I am sorry. I will have to provide that.

Senator BARTLETT. No trouble. I am sure some other witness will give an estimate. I just wanted to know whether it was a lot of money, a medium amount of money, or small. We will discover that before the hearing is over.

I have no further questions.

Mr. Foster?

Mr. FOSTER. Yes, Mr. Chairman. Thank you.

Have we had any upgrading of the nonsubsidized fleet here in the United States, other than those that have been upgraded due to acquiring foreign midbodies and bringing them into the United States?

Mr. JOHNSON. Yes, Mr. Foster, I have available for you, if you would like it, a list both of the ships "jumboized," as we say, in U.S. shipyards with U.S.-built components from 1961 through 1965, and also a list of vessels jumboized with foreign-built bodies, principally during 1961 and 1962. I can insert those in the record here if you wish.

(The information requested above follows:)

*Ships jumboized in U.S. shipyards with U.S. midbodies, 1961-65*

Name of ship	Type	Date	Present owner
Hess Bunker.....	T2, jumbo.....	1961	Hess Tankship Co.
Hess Petrol.....	do.....	1961	Do.
Hess Trader.....	do.....	1961	Do.
Texaco Illinois.....	do.....	1961	Texaco, Inc.
Texaco Nebraska.....	do.....	1961	Do.
Texaco Wyoming.....	do.....	1961	Do.
Hess Refiner.....	do.....	1962	Hess Tankship Co.
Houston.....	do.....	1962	Trinidad Corp.
Meadowbrook.....	T2, rebuilt.....	1962	Chas. Kurz & Co.
Seatrain Georgia.....	New midbody.....	1962	Seatrain Lines, Inc.
Seatrain Louisiana.....	do.....	1962	Do.
Marine Texan.....	T2, jumbo and converted (sulphur carrier).....	1964	Marine Sulphur Carriers Corp.
Marymar.....	C4, converted.....	1964	Bethlehem Steel Corp.
Montauk.....	Tanker converted to bulk.....	1964	Maimonides Transportation Corp.
Shenandoah.....	Tanker, rebuilt.....	1964	Keystone Shipping Co.
Texaco Minnesota.....	T2, jumbo.....	1964	Texaco, Inc.
Texaco Mississippi.....	do.....	1964	Do.
Calmar.....	C4, converted.....	1965	Bethlehem Steel Corp.
Globe Explorer.....	T2, converted to bulk.....	1965	Sea Liberties, Inc.
Hawaiian Queen.....	C4, converted containership.....	1965	Matson Navigation Corp.
Hawaiian Monarch.....	do.....	1965	Do.
Louisiana Brimstone.....	T2, converted to sulphur carrier.....	1965	Mutual Life Insurance Co.
Marine Voyager.....	Bulk lengthened.....	1965	Marine Navigation Co.
Missouri.....	C4, converted to bulk.....	1965	Meadowbrook Transport, Inc.
Pasadena.....	T2, jumbo.....	1965	Trinidad Corp.
Penmar.....	C4, converted.....	1965	Bethlehem Steel Corp.
Portmar.....	do.....	1965	Do.
Rambam.....	Rebuilt bulk from 2 tankers.....	1965	Maimonides Transportation Corp.
San Antonio.....	T2, jumbo.....	1965	Trinidad Corp.
Seamar.....	C4, converted.....	1965	Bethlehem Steel Corp.
Transartic.....	T2, converted to bulk.....	1965	Hudson Waterways Corp.
Yellowstone.....	C4, converted to bulk.....	1965	Rio Grande Transport, Inc.
Yorkmar.....	C4, converted.....	1965	Bethlehem Steel Corp.

Source: Maritime Administration, Office of Maritime Promotion, Division of Trade Studies, May 24, 1966.

*Ships with new midbodies built in foreign shipyards and installed in United States—  
1961-65*

Name of ship	Type	Midbody built	Date	Present owner
Chancellorsville.....	T2, jumbo.....	Japan.....	1961	Keystone Shipping Co.
Council Grove.....	do.....	Netherlands.....	1961	Tankships, Inc.
David D. Irwin.....	Tanker, jumbo.....	Japan.....	1961	Delmor Corp.
Fort Hoskins.....	T2, jumbo.....	Netherlands.....	1961	Tankships, Inc.
Northfield.....	do.....	Japan.....	1961	Paco Tankers, Inc.
Perryville.....	do.....	do.....	1961	Keystone Shipping Co.
Tullahoma.....	do.....	do.....	1961	Chas. Kurz & Co., Inc.
Austin.....	do.....	do.....	1962	Trinidad Corp.
Cantigny.....	do.....	Germany.....	1962	Tankships, Inc.
Elizabethport.....	Tanker converted to containership.	do.....	1962	Litton Industries Leasing Corp.
Inger.....	T2, converted to bulk	do.....	1962	Fox Shipping, Inc.
Marine Electric.....	do.....	do.....	1962	Marine Coal Transport Corp.
Prairie Grove.....	T2, jumbo.....	Denmark.....	1962	Mathiasen's Tanker In- dustries, Inc.
San Juan.....	Tanker converted to containership.	Germany.....	1962	Litton Industries Leasing Corp.
Tampico.....	T2, jumbo.....	Denmark.....	1962	Mathiasen's Tanker In- dustries, Inc.
Trojan.....	do.....	Japan.....	1962	Burco Shipping Corp.
Barbara.....	do.....	Spain.....	1963	Commerce Tankers Corp.
Los Angeles.....	Tanker converted to containership.	Germany.....	1963	Litton Industries Leasing Corp.
San Francisco.....	do.....	do.....	1963	Do.
Walter Rice.....	T2, converted to bulk	do.....	1963	Fox Shipping, Inc.

Mr. FOSTER. I think that will be helpful.

Can you give the committee an idea as to the number involved in each?

Mr. JOHNSON. Surely. Up through 1964—from 1961 through 1964—there were 17 ships jumboized in U.S. shipyards with U.S. components. There were 27 that were jumboized abroad during 1961 and 1962. In 1965 we have had a substantial amount of jumboizing in U.S. shipyards with U.S. components. But for the comparable periods involved, 1961 and 1962, the numbers done in the United States would be even less: 11 in the United States and 27 abroad.

Mr. FOSTER. Do I understand the trend to be increasing to jumboized in the United States and not abroad, from the figures you have given?

Mr. JOHNSON. As a consequence of the 1961 amendment the operators have in fact been precluded from having work done in foreign yards; that is correct.

The vessels involved here in U.S. shipyards come under the provisions of the Vessel Exchange Act, which requires by definition that the work be done in the United States. So there is in fact no option available to the owner. It is one of the conditions for exchanging the ship.

Mr. FOSTER. I would think that probably anything that was done prior to 1961 and 1962 depending upon the date of the contract and the date of delivery, would reflect the fact that quite a bit was being done before that law was passed, and you would expect there to be a reduction in that effort after that, I would think. So I think the more meaningful period would be after 1962, in terms of what the operators have been doing.

I think it would be helpful to try to find out whether or not most of the operators have been going abroad to obtain their midbodies when they were trying to jumboize, or have most of them been doing that here since 1962?

Mr. JOHNSON. It is my understanding that four U.S.-flag ships have gone abroad since 1962.

Mr. FOSTER. When I say go abroad, of course I mean going abroad to obtain the midbody. I am not talking about constructing abroad. I am talking about going abroad to get a midbody.

Mr. JOHNSON. That is correct.

Mr. FOSTER. Your understanding is that no operator has obtained a midbody from abroad to jumbo size since 1962?

Mr. JOHNSON. Our understanding is that four U.S.-flag vessels have been jumboized in the United States with foreign midbodies since 1962; they are:

Name	Type	Country building midbody	Year rebuilt	Present owner
Barbara.....	T-2 jumbo.....	Spain.....	1963.....	Commerce Tankers Corp. Litton Industries Leasing Corp. Do.
Los Angeles.....	Tankers converted to containership.	Germany.....	do.....	
San Francisco.....	do.....	do.....	do.....	Fox Shipping Inc.
Walter Rice.....	T-2 converted to bulk.....	do.....	do.....	

During 1963, 1964, and 1965, there were three ships redocumented under U.S. flag from foreign flag. But to my knowledge only one of those involved a foreign midbody inserted since 1962; the *Sandy Lake* was jumboized in 1965 in Japan as a Liberian tanker and then documented in the United States.

Mr. FOSTER. You wouldn't have to redocument the vessel if you were jumboizing here in U.S. shipyards by obtaining a foreign built midbody, would you?

Mr. JOHNSON. Yes, you would need to have it redocumented, Mr. Foster.

Mr. FOSTER. Thank you.

Thank you, Mr. Chairman.

Senator BARTLETT. Just perhaps one further question.

If they haven't been using these foreign midbodies, the center sections in the time you named, I am not quite clear as to what this—how this will be hurt by the bill.

Mr. JOHNSON. You are not quite clear as to what, Mr. Chairman?

Senator BARTLETT. What damage, what hurt this bill would do. In other words, why are you against it under these circumstances?

Mr. JOHNSON. I think our answer to that, Mr. Chairman, would be that this would simply impose an additional burden and restriction on the owners that is not now there. At least it would be further foreclosing an opportunity that exists to some extent today.

Senator BARTLETT. All right.

Thank you, gentlemen.

Mr. JOHNSON. Thank you, sir.

Senator BARTLETT. The next witness is Lane C. Kendall, Commercial Shipping Adviser, Military Sea Transportation Service, Department of the Navy, Washington, D.C.

Thank you, Mr. Kendall. Before you start, will you define for us your capacity as Commercial Shipping Adviser to the Commander, Military Sea Transportation Service? Are you with the Government?

STATEMENT OF LANE C. KENDALL, COMMERCIAL SHIPPING  
ADVISER TO THE COMMANDER, MILITARY SEA TRANSPORTA-  
TION SERVICE, WASHINGTON, D.C.

Mr. KENDALL. Yes, sir. I am a civilian attached directly to the staff of the Commander, Military Sea Transportation Service, who is vice admiral, U.S. Navy. I am the person responsible on his staff for keeping him informed of developments within the merchant marine and where policy matters are concerned, relating to the merchant marine, I am one of his principal advisers.

Senator BARTLETT. Sir, you are the busiest man in the Navy then?

Mr. KENDALL. I keep myself pretty busy, sir.

I have a short prepared statement, which I would like to read.

Senator BARTLETT. Please proceed.

Mr. KENDALL. The present bill, S. 2600, would amend the Cargo Preference Act of 1904 by describing very precisely what is acceptable American-flag ship for the purpose of transporting military cargo.

The description proposed in S. 2600 would prohibit the Military Sea Transportation Service from using, under any circumstances, ships of American registry which have been built, rebuilt, or converted in foreign shipyards after September 22, 1965, until they have been registered under the American flag for 3 years. In periods when American ships are in adequate supply, this provision would have little impact upon the operations of the Military Sea Transportation Service. When there is a shortage of American-flag ships, for any reason, the restrictions imposed by S. 2600 could interfere with the capability of the Military Sea Transportation Service to provide the American-flag sealift dictated by the Cargo Preference Act of 1904.

A specific example will make clear how S. 2600 would create problems in the carriage of military supplies to oversea destinations.

Military cargoes, by law, must be transported in ships of American registry when they are available. Often there is an urgent requirement that a certain military cargo be delivered by a specified date, and any delay can have serious consequences. Under the proposed legislation, if the only American ship that could meet the deadline delivery date were one which, although built and registered in the United States, had been rebuilt in a foreign shipyard within 3 years, that ship would be prohibited from carrying the cargo.

Ironically, under the circumstances that no American ship was available, the lift could be performed by a foreign-built and foreign-owned ship, and no laws would be violated.

It requires little imagination to envision a situation where a shortage of American-flag shipping might make it desirable, as an immediate means of meeting actual and pressing military transportation requirements, to transfer to American registry a number of ships owned by American citizens but built abroad. The provisions of S. 2600 would nullify any possible benefit to the military of this program, since it would be illegal to carry military goods in these ships until 3 years had passed.

Because limitations of this sort on the capability of the Military Sea Transportation Service would be unacceptable, the Department of Defense opposes the enactment of S. 2600.

(The attachment follows:)

DEPARTMENT OF THE NAVY,  
OFFICE OF LEGISLATIVE AFFAIRS,  
Washington, D.C., May 25, 1966.

HON. WARREN G. MAGNUSON,  
Chairman, Committee on Commerce,  
U.S. Senate, Washington, D.C.

MY DEAR MR. CHAIRMAN: Your request for comment on S. 2600, a bill "To prevent vessels built or rebuilt outside the United States or documented under foreign registry from carrying cargoes restricted to vessels of the United States," has been assigned to this Department by the Secretary of Defense for the preparation of a report thereon expressing the views of the Department of Defense.

This bill would limit the meaning of the term "vessel of the United States or belonging to the United States" so as to exclude from its application vessels which have been either (a) built outside the United States, (b) rebuilt outside the United States or (c) documented under any foreign registry until such vessel shall have been documented under the laws of the United States for a period of three years. The Department of the Navy, on behalf of the Department of Defense, is opposed to the enactment of this bill.

Under present law, (10 USC 2631) supplies of the Armed Forces must be shipped only in vessels of the United States or belonging to the United States, unless such ships are unavailable. The 1954 Cargo Preference Act (46 USC 1241(b)) requires that one-half of these military cargoes must be carried in privately-owned American-flag ships. Since its inception the Military Sea Transportation Service has complied with the spirit as well as the letter of these laws. In fiscal year 1965, 76% of the dry cargo and 65% of the petroleum lifted by Military Sea Transportation Service moved in privately-owned shipping.

A number of ships in the privately-owned U.S. flag merchant fleet engaged in carrying cargoes for the Department of Defense have been rebuilt or converted in foreign yards or have had major portions of their hull structure replaced with foreign built segments. Many tankers have been enlarged with foreign mid-bodies. It is likely that many of these ships would not be available for this purpose had not the work been performed in this manner.

In time of normal operations, the proposed legislation would have relatively little impact on the efficiency of Military Sea Transportation Service operations. However, in time of emergency, the restrictions that would be imposed by this legislation could be detrimental to support of the Armed Forces. It is submitted that the present laws (10 USC 2631 and 46 USC 1241(b)) provide adequate protection for the American merchant marine. Any additional restriction on the selection and use of ships could handicap the delivery of essential supplies of the Armed Forces.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Bureau of the Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report on S. 2600 for the consideration of the Committee.

For the Secretary of the Navy.

Sincerely yours,

F. R. DOWNS,  
Commander, U.S. Navy.  
Director, Legislative Division Acting.

Senator BARTLETT. Thank you, Mr. Kendall. Has the Department of Defense confronted such an imaginary situation as you described where there was an urgent requirement that couldn't be met?

Mr. KENDALL. And we have had to use foreign-flag ships?

Senator BARTLETT. Yes.

Mr. KENDALL. Yes, sir.

Senator BARTLETT. Are you experiencing a general shortage of ships now for the carriage of military cargo?

Mr. KENDALL. Shipping is in short supply, sir, and we have to use a great deal of ingenuity to meet our requirements.

Senator BARTLETT. This is amazing to me because I recall so clearly a couple of years ago, or 3 years ago, a statement issued by the Department of Defense which led the reader to believe that shipping

would no longer be required in any substantial sense for military purposes. Everything would be lifted by air. An opposite discovery has been made, I infer, with respect to the situation in Vietnam? You need ships?

Mr. KENDALL. We need ships, yes, sir, approximately 98 percent of the cargo that is delivered in Vietnam at the present time has been carried by ship.

Senator BARTLETT. Are you confronting a constant shortage of American-flag shipping in respect to carriage of military cargo to southeast Asia?

Mr. KENDALL. There is no constant shortage, sir, it is a matter of positioning of ships and the urgency with which a certain cargo may be required. This is what I meant when I said it requires a good deal of ingenuity on our part to meet the requirements. We do our utmost to use only American-flag ships to Vietnam. Only under quite unusual circumstances do we employ foreign-flag ships. Specifically, we would use a foreign-flag ship which had a capability not available under the American flag, such as extremely heavy lift capability. If we had to move a landing craft utility, LCU, which weighs 120 tons, there is no American-flag commercial ship which can handle that lift.

Senator BARTLETT. Ships of what foreign flags can do this?

Mr. KENDALL. There are some German ships and some Norwegian ships which are the principal heavy lift carriers.

Senator BARTLETT. A rough estimate, if it is permissible for you to tell the committee, what the percentage of the military cargo to southeast Asia is now being carried on foreign-flag vessels?

Mr. KENDALL. I believe, sir, that in the testimony before Senator Douglas' committee last week, the figure of about 4 percent was used. This is, I believe, a correct figure. I can verify that if you wish, sir.

Senator BARTLETT. That is close enough.

But would it be correct for us to believe that most of this 4 percent had to do with cargo of the type you described that could not be carried by American shipping in any case?

Mr. KENDALL. Pretty much, sir. We have had a few situations where the urgency of delivery was the overwhelming consideration, but this is very, very infrequent. The majority of the tonnage would be in the category which I described.

Senator BARTLETT. If that is so, then at this time, now, and now is a very important time because you are lifting so much cargo down there, the provisions of this bill really wouldn't be harmful, sir, only if we could not meet our requirements with American ships and there was some operators who were willing to bring foreign-flag ships under American registry, put American crews on board them, and run them as American ships. We would not be permitted to use those ships if 2600 were passed until a 3-year period had elapsed.

Do you think there would be any wild rush, no matter how much cargo was offered for the next 3 months in any given case, let's say, for these foreign owners to do this, to register—

Mr. KENDALL. If they expected the opportunity would last only 3 months, there would be no rush.

Senator BARTLETT. You can't give any guarantees to them that there will be a long-term contract, can you?

Mr. KENDALL. No, sir.

Senator BARTLETT. Thank you.

Mr. Foster?

Mr. FOSTER. Yes, sir, thank you.

At the present time, if American-flag vessels are not available, you can use foreign-flag vessels, is that true?

Mr. KENDALL. That is correct, sir.

Mr. FOSTER. If this legislation became law and there was a shortage of American-flag vessels under the definition of this law, this bill that is being proposed and there was a shortage, you would still be able to use foreign-flag vessels?

Mr. KENDALL. I would think so, sir, but I would like to consult counsel on this to be sure that I have interpreted the terms of this proposed law correctly. I don't see in a quick examination right now any difficulty in using a foreign-flag ship if no American-flag ship were available.

Mr. FOSTER. What is the basis of your present authority to use foreign-flag vessels?

Mr. KENDALL. The 1904 law says, as I recall it, exactly what is in the first sentence of the proposed amendment, but the Attorney General in 1907 ruled, and there has never been a change in that ruling, that a ship had to be available before the provisions of this law would be mandatory.

Mr. FOSTER. This doesn't change that wording?

Mr. KENDALL. Not that I can see.

Mr. FOSTER. Therefore not the interpretation that has been placed on it.

Mr. KENDALL. That is correct.

Mr. FOSTER. Your understanding is that you would still be able to use foreign-flag vessels, if nothing else were available?

Mr. KENDALL. Right, sir.

Mr. FOSTER. What is the limitation then that would be placed upon your moving anything at any time?

Mr. KENDALL. There would be no limitation placed upon us, sir, except in the sense that we consider that the mandate of this law to use American-flag ships is almost overwhelming and we would have to be absolutely certain that no American-flag ship could meet the requirements.

Mr. FOSTER. You feel that way now?

Mr. KENDALL. We do that right now, but under this amendment, if we had a ship which had been rebuilt abroad or had been rebuilt in an American yard with a foreign midbody, we would not be able to use that ship until 3 years had passed. It would be an American ship, but it wouldn't be available for military cargo.

Mr. FOSTER. Are you suggesting by that then that the Defense Department would be placed in a situation where actually if that vessel were a foreign vessel, you could use it, but because of this, you wouldn't even be able to use it?

Mr. KENDALL. That is correct, sir.

Mr. FOSTER. Does it follow from that, if we then made a change which said that these vessels that are built in U.S. shipyards with foreign midbodies during that 3-year period would be considered as foreign ships for purposes of emergency, that you would support the legislation?

Mr. KENDALL. I don't think it would change the provision of the statute, sir, because if the—I see what you have in mind. You would give us an exemption in this case?

Mr. FOSTER. Yes; just like you do in terms of foreign ships.

Mr. KENDALL. I think we would have no particular difficulty in agreeing to that, sir.

Mr. FOSTER. Thank you, Mr. Chairman.

Senator BARTLETT. Thank you, Mr. Kendall.

Mr. KENDALL. Thank you, sir.

Senator BARTLETT. The third witness is Alvin Shapiro, executive vice president, American Merchant Marine Institute.

**STATEMENT OF ALVIN SHAPIRO, EXECUTIVE VICE PRESIDENT, AMERICAN MERCHANT MARINE INSTITUTE; RICHARD KURRUS, COUNSEL FOR AMERICAN TRAMP SHIP OWNERS ASSOCIATION; HOYT HADDOCK, AFL-CIO MARITIME COMMITTEE; MARVIN COLES, COMMITTEE OF AMERICAN TANKER OWNERS; AND WALTER OATES, SHIPBUILDERS COUNCIL OF AMERICA**

Mr. SHAPIRO. Good morning, Mr. Chairman, I have some colleagues with me, if I may.

Mr. Chairman, I have just a very brief statement, if I may read it, I would appreciate it.

Senator BARTLETT. You may do so, but, first, for the record, so the record will be clear, will you identify those that accompanied you to the table?

Mr. SHAPIRO. With me, on my left, is Richard Kurrus, counsel for the American Tramp Ship Owners Association, one of the organizations joining in support of this statement with the American Merchant Marine Institute; Mr. Hoyt Haddock, AFL-CIO Maritime Committee, another organization joining with us; Mr. Marvin Coles, of the Committee of American Tanker Owners, third organization joining with us.

In the room, I believe although not here—here he is, Mr. Walter Oates, of the Shipbuilders Council of America, another organization joining with us in this statement, and Mr. Earl Clark is not here, although, the Joint Labor Management Maritime Committee does support us in this statement.

I am, therefore, Mr. Chairman, speaking on behalf of the American Merchant Marine Institute, but also for these other organizations, and, therefore, represent rather a broad cross section of the total American maritime industry.

Mr. Coles and Mr. Kerr may be able to answer some legal questions that may arise. There are some technical legal points that are involved in this legislation.

If I may divert almost before I start, Mr. Chairman, with your permission, if I were half a gambler, I would let the pro or con of this legislation rest with the two questions that counsel for this committee asked:

One was of the Maritime Administrator, there the problem was what happened when we precluded the use of foreign midbodies subsequent to 1962, which was the effective date of the preclusion. And I think a very close examination of that data—and I only heard the facts really for the first time when I was sitting in this room—I think a close examination of that data will reveal that, obviously, when people can't go abroad for midbodies and cannot build new ships,

they go to the United States for their midbodies and for the rejoining work.

I am almost willing, without the permission of all of my colleagues, to practically rest the case as the Maritime Administration addressed itself to this problem on that fact.

The second question Mr. Foster asked was the one about the never-never land, about this vessel which the MSTs indicated it would be using for a period of 3 years. We have absolutely no intention of encumbering the military. If the military can take recourse of foreign-flag vessels, when American-flag vessels aren't available, we certainly have no objection to their taking recourse to these vessels in that never-never land, when the military requires that they be used under any provision that this committee sees fit, which would, as Mr. Foster indicated, consider these vessels in that interim period as foreign-flag for that interim, by the military, when the American-flag vessels aren't available is perfectly acceptable to us.

We do not want to preclude the military from the use of any vessel, military or foreign, that it actually needs in the case of an emergency. We never have, and I will never come before you and urge that.

As a matter of fact, I have come before you on a number of occasions, Mr. Chairman, you will remember, and said, even in the commercial trades, when a shipper couldn't get an American-flag vessel, I had no objection to his using the foreign-flag vessel. Of course, tradings on whether our ships are there or not and for us to take a position that everybody in the world can go sit on a back seat as a shipper because we, as carriers, cannot render the services, I will stop associating myself with this industry, because I don't think that is a position for us ever to take.

The purpose of S. 2600 is to close two significant loopholes which are currently found in existing law dealing with the movement of Government-sponsored cargo under MSTs and other U.S. agencies on ships which have either been built abroad, rebuilt abroad, or documented abroad.

On July 5, 1960, Public Law 86-583 was enacted. This law amended section 27 of the Merchant Marine Act of 1920, by providing that no vessel may engage in the coastwise trade of the United States which had been rebuilt abroad unless the entire rebuilding, including the construction of any major components of the hull or superstructure, is effected within the United States. There was thus barred from this domestic trade what was becoming a common practice of building midbodies abroad and bringing them to the United States for insertion between the bow and stern sections of older existing vessels. This is the cutoff date you were concerned with in your questioning of Mr. Johnson.

On September 21, 1961, the Congress passed Public Law 87-266, amending section 901(b) of the Merchant Marine Act of 1936, the so-called consolidated Cargo Preference Act. This provided that U.S.-flag vessels which were either built outside the United States, rebuilt outside the United States, or documented outside the United States, could not carry any portion of the cargo preference cargoes reserved to privately owned U.S.-flag commercial vessels until they were first registered under U.S. law for a period of 3 years.

This latter action, like the earlier one, was taken because the Congress clearly recognized that one could not encourage the develop-

ment and maintenance of an American-owned, American-built merchant marine so long as recourse was available to flag transfer or foreign rebuilding.

Apparently we were mistaken in thinking that we had solved the problem. S. 2600 is intended to close the two gaps which have appeared subsequent to the last enactment.

The first breach which became apparent developed when the Military Sea Transportation Service of the Department of Defense interpreted existing law in a fashion which was hardly contemplated either by us or apparently by the Congress. You will recall the preference law under which U.S. military cargo moves was first enacted in 1904 and reenacted in 1956. It requires that vessels must be U.S.-flag registry only. MSTS feels, however, that once a vessel, regardless of where it was built, rebuilt or documented, is under U.S. flag, they are free to charter it. They have done so on a number of occasions.

You can appreciate, Mr. Chairman, that the dangers of the potential involved herein are vast since every ship in the world is eligible for MSTS charter upon its return to U.S. registry. The failure to include defense and military cargoes within the scope of Public Law 87-266 was certainly an oversight on our part, which we believe in all consistency should now be rectified.

Not related to this problem, Mr. Chairman, is a fact that I know you appreciate—that is, a vessel can come back to U.S. flag, be chartered by the military for a period of time, and become eligible (by neutralizing economic risks) as a U.S.-flag vessel, for operation in the Public Law 480 and other assistance program trades. Thus, the danger of MSTS's interpretation of existing law has two detrimental prongs.

One is in terms of its immediate charter; the other in terms of its ultimate eligibility for cargo, preference cargo, under the Farm Surplus Disposal or other acts.

The first section of S. 2600 would clarify existing law by providing that the term "vessels of the United States" shall not be deemed to include any ships which have been either built or rebuilt outside the United States or documented under foreign registry until such vessels have been documented under the laws of the United States for a period of 3 years. It further states that the terms "built outside the United States" and "rebuilt outside the United States" shall include the construction or alteration abroad of any major components of the hull or superstructure. This does nothing more than to give the same definition of American vessels that qualify to carry military cargo as is presently given to American vessels eligible to carry other Government-sponsored cargo.

The second breach in existing legislation which has developed also results from administrative interpretation, this time the Maritime Administration's interpretation of section 901(b) of the Merchant Marine Act of 1936, as amended. They have interpreted this law so as to allow a foreign-built midbody or other section of a ship to be towed back to the United States and joined with part of an existing American vessel and still have such a rebuilt vessel qualify for the carriage of cargo preference cargoes such as farm commodities under the Public Law 480 program. When an opening of this type develops under the scrutiny of a legal magnifying glass, there is truly no

telling how far it will go. We know of a number of plans in this direction already. I frankly am startled by the Maritime Administration ruling which apparently hinges not on the issue of where the cargo-carrying capacity or midbody of the vessel was built so much as where the rejoining process actually took place. I believe, Mr. Chairman, it is not unfair to say that such an interpretation of law is completely outside of the congressional purpose in passing Public Law 87-266 in the first place. The record will reveal that it was clearly beyond the scope of those who advocated the passage of that bill during the course of congressional testimony.

Thus, the second section of S. 2600 seeks to close this loophole by adding to section 901(b) of the 1936 act the proviso that the term "rebuilding abroad" shall include the construction or alteration of any major components of the hull or superstructure of the vessel.

In our judgment, this proposed legislation does not involve any new policy or principle, rather it is intended merely to prevent resort to vessel transactions entirely inconsistent with the purposes of earlier preference legislation and, I think you will agree, Mr. Bartlett, clear congressional intent. It is however, essential to foreclose some new-found ways to erode the status of American-flag unsubsidized merchant ships primarily and do other serious injury to the American maritime industry as a whole. Senator Bartlett, I do not want to come before you indicating that this problem is one which will disseminate the American merchant marine. Far greater in significance of anything that has happened to date is the potential damage that these two interpretations may hold and, in my personal opinion, will hold.

I think, however, that, as a matter of commonsense, equity, and to me clear-cut congressional intention, it is important that the air be clarified on this issue. I hope this time, once and for all.

All of us, Mr. Chairman, urge that S. 2600 be given the Congress' prompt consideration.

Senator BARTLETT. Thank you, Mr. Shapiro.

Mr. Foster?

Mr. FOSTER. Mr. Shapiro, would you help the committee with some facts about the size of the loopholes?

First, on the midbody problem, how many vessels have been rebuilt, jumbo sized here in the United States with foreign midbodies since 1962?

Mr. SHAPIRO. I will try to produce that for the record, Mr. Foster. I do believe the submission of the Maritime Administration would answer that question, but, again, it is data that I have not yet seen.

Mr. FOSTER. Our problem here, as I think you recognize, is that question was directed to the Maritime Administrator in an effort to try to determine the size of the loophole and information I got back, if I understood what I was getting back, was that it is not occurring.

Now, if it is not occurring, then I think the chairman's point that it therefore would follow that, if it is not occurring, why oppose the legislation, is an excellent question.

Mr. SHAPIRO. Yes, sir.

Mr. FOSTER. And yet, the Maritime Administrator insisted that there had been no documentation involving foreign midbodies coming into the United States in terms of this type of upgrading of the fleet, and we need to obtain the information from some source, if we can't get it from the Maritime Administration.

Mr. SHAPIRO. Mr. Foster, the real danger with this problem is one that is very difficult to visualize. I suspect one can say that it is not occurring and therefore either why oppose it or why support it? The point is we now know we are right on the brink of it actually occurring. We know of people who are very interested in going through this process.

Once this breach becomes obvious, and it is going to become terribly obvious, there is no limit as to how far it can go. So this is, let's say, a cause preventative, if you will, and that is the exact status we are in, and it is the same thing with MSTs. I mean, if you could say this only involves one vessel or four vessels, why fool around with it? It is not too consequential, I guess, on the basis of cold examination of the facts, that is true, but it is facetious to visualize American-flag construction when recourse can be taken to foreign midbodies activity. I mean the economics are such that it is just impossible to visualize that anybody is going to spend twice as much money on a midbody here, as he is going to spend abroad. It is just about that simple, Mr. Foster.

May Mr. Kurrus comment on that, please?

Mr. KURRUS. As I understand it, Mr. Foster, there are two parts to the inquiry. I don't believe there have been any vessels built with foreign midbodies and joined in the United States between the end of 1962 up to the present, but there is one, as I understand it, being joined at the present time, and there is another in contemplation, and apparently several others.

Second, as I also understand it, approximately six or seven vessels have been transferred from foreign-flag registry to American-flag registry for charter to MSTs. So, with respect to the two loopholes, there have been a significant number of vessels coming back from foreign-flag registry to American-flag registry for MSTs charter.

Mr. FOSTER. What was the length of those charters?

Mr. KURRUS. Some of them have been under charter, I believe, for as long as 2½ and 3 years for the carriage of coal to Europe.

Mr. SHAPIRO. This, in itself, Mr. Foster, if I may comment, is really not the answer, because, if the owner, and MSTs can get together on an agreeable rate, depending on the market, MSTs is perfectly free to charter it for whatever length it wants with the statutory limitation. And I think that statutory limitation is well beyond 3 years, so it may be a mere coincidence that these charters may be 1 or 2 years. They could have easily been 3 years. All somebody had to do is make a decision that he has a 3-year charter and MSTs make the decision it would take a 3-year charter on that rate, and it is a 3-year charter.

Mr. KURRUS. It might also be said that, at the time MSTs chartered these ships that were renegade foreign ships, several American-flag ships were available to carry the business, and I believe it is clear that MSTs chartered the "X" foreign-flag ships solely out of considerations of lower rates. Obviously, these vessels were willing to carry the cargo at less rate, or lower rate.

Mr. FOSTER. Are you suggesting, Mr. Shapiro, that, if Government policy would be such as to encourage foreign shipbuilding, that the Government, without any change in any legislation, could, through the chartering powers of MSTs, charter foreign-built vessels under U.S. flag and permit them to operate for 3 years under our present

law and thereafter be available perhaps not for subsidy, in terms of the subsidized operations, but would in terms of our bulk-carrier fleet, tramp fleet?

Mr. SHAPIRO. What I am saying, Mr. Foster, and I regret I missed the beginning of your inquiry, is that MSTTS has this authority right at this moment, and it is this authority we are trying to preclude; yes, sir.

Mr. FOSTER. Mr. Shapiro, the public announcements from the American Merchant Marine Institute, if I read them correctly, would reflect an interest in being permitted to build foreign and bring back under U.S. flag and use under U.S. flag, at least, perhaps, superficially, but, on the face of it, there appears to be some kind of a conflict between the American Merchant Marine Institute taking the position you would like, authority to build foreign and bring back under U.S. flag for U.S. operations and supporting this legislation.

Do you see any inconsistency?

Mr. SHAPIRO. Well, Mr. Foster, to be perfectly forthright, there is a kind of superficial conflict, but I think it is rather superficial and let me explain our position, and then I think you will see that the conflict disappears.

We took a position in support of the American shipbuilding community, and we said that this community, which deserves to be supported, should be supported by the United States in the form of subsidy. And we went on to say that this subsidy should be directly paid, et cetera, but that is rather irrelevant.

We also went on to say that, to the extent that the Government wants a private shipbuilding community, it should support it during the course of its existence through subsidy. If the Government decides it wants to the tune of \$10 million, that is a governmental decision, we would regret that it would be that small, but that would be its decision, or \$100 million, or \$200 million. So, we put this in the area of a Government decision to support the shipbuilding community.

We also went on to say that the Government's inadequate support of the shipbuilding community from time to time should not reflect itself on creating an inadequate merchant marine. Therefore, we should have authority when Government financing or shipyard construction is absent, or at minimal level, ship operators who are in a somewhat different business than building ships, should be able to go abroad to build their ships with full U.S. privileges, and here comes the obvious conflict. Ours is a policy statement in principal. And we stand behind it and, very frankly, my personal view is that the position is only half drawn. I wish it were an even stronger position in that regard, but that is rather another problem.

Until such time as the Government takes a firm policy position, should it ever take it, that building a product with full U.S. privileges is acceptable part of national policy in the interest of the maritime industry as a whole. We do not think these little hole-pecking processes should exist, which are accomplishing the same thing without clear congressional mandate.

So, if the time were to come when you were to say, "We want to build vessels abroad, because the U.S. Government is not producing enough construction subsidy money to allow Al Shapiro, Marvin Coles, or S.S. Steamship Co. to build new vessels at the economic burden of building them in the United States and therefore he wants

to build them abroad, we will support such a program"—We have supported such a program and will continue to support such a program. That is a basic policy approach. This is an accomplishment of the same thing through interpretations outside of the area of congressional intent. So, I think the two are really not as inconsistent as one might think.

We are doing here, through the existing situation, as S. 2600 wants to preclude what the institute wants to support, but, let's do it as a policy mandate of the U.S. Government, or, let's close it as a policy mandate of the U.S. Government. Let's not let maritime policy and the issue of construction of new vessels, or midbodies, be determined by very keen, perceptive lawyers privately employed. They are determining maritime policy now because they are finding the interpretations. This is their job. I don't want to degrade them, don't want to malign them, but they are setting the policy of building abroad, and S. 2600 is trying to preclude that.

When the U.S. Congress sets a policy of building abroad, you will find me here supporting that policy to the extent that the U.S. Government is unwilling to adequately support a shipyard industry.

Have I made the inconsistency disappear somewhat, at least?

Mr. FOSTER. I think you have, the point being that, if you are really talking about the long-term interest of the U.S. merchant marine and you are talking about a major upgrading of the fleet, one approach, according to the institute, would be building abroad. But, if you are talking about minor loopholes, patchwork here, and bringing in foreign-built midbodies, or whether someone is successful in getting to MSTs for sufficiently long charters to bring in a foreign vessel, either on the surface or subrosa, in terms of the length of the contract, and the assurance that they will have some type of activity under U.S. flag for a sufficient period to last out the 3 years, is a makeshift way of going about a business.

Thank you.

Mr. SHAPIRO. Precisely.

Mr. FOSTER. Thank you, Mr. Chairman.

Senator BARTLETT. Senator Dominick.

Senator DOMINICK. Mr. Chairman, I came in late, but I have read this bill and I have one question. We recently had testimony indicating that we didn't have enough ships in the merchant marine to handle our traffic and I just wonder if we pass this bill, if this means that all of our merchant marine is going to have to turn into carrying for defense purposes and how we are going to handle the ordinary work that they are doing?

Mr. SHAPIRO. Senator Dominick, this bill really doesn't reflect itself on how many we are going to have. It rather reflects itself on where the midbody, if you will, is going to be built for the vessel which ultimately becomes the U.S.-flag vessel.

I assured the committee and its chairman before you came in that while the MSTs came here in objection to the legislation as limiting or potentially limiting the availability of ships for its purpose, that this was not within the scope of our mission whatever. We had absolutely no objection to their providing in any shape, manner or form, and Mr. Foster, committee counsel, brought this out very clearly, that under no circumstances would this limitation as contained in this bill have any bearing on recourse of the military to vessels in a national emer-

gency when they found adequate American-flag vessels were not available to it.

Senator DOMINICK. I can sympathize with what you are trying to do, but the first sentence of the bill says: "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."

Mr. SHAPIRO. This is existing law, Senator Dominick.

Senator DOMINICK. It is largely, I gather, in the process of either being or looked aside or skirted.

Mr. SHAPIRO. May Mr. Coles reply to that, Senator Dominick? Senator DOMINICK. Yes.

Mr. COLES. Senator Dominick, that provision you have read has been part of the existing law since 1904 and I don't think there is any question but that American vessels must be used under that law. This bill would not in any way change it. What it does do is go to a definition of what is an American vessel, and close two loopholes which presently exist from congressional enactments passed approximately 1961 and which have been discovered. It does not in any way cut down the number of ships which can be used by MSTs. It does not change the ships they can use.

It merely says in effect that American built ships will have preference by MSTs cargo and only thereafter, can they go to these other ships which would be brought back.

Senator DOMINICK. Why don't we say that?

Mr. COLES. As a lawyer, I can say that we lawyers foul up language a good deal and we are now in a statutory system and this is the way we have to do it.

Senator DOMINICK. You would prefer to leave it the way it is because custom has indicated that this first sentence doesn't mean anything anyhow?

Mr. COLES. No, sir, quite the contrary, that sentence has a very real meaning. That sentence says, and it is part of the general law, that the military must use American ships so long as they are available at reasonable rates. Thereafter, it may turn to foreign ships or whatever it needs to meet its needs and, as Mr. Kendall testified for MSTs, they have about 4 percent of their lift by foreign ships today. This would not change in any way. This would merely say that where you take a foreign midbody, a foreign cargo-carrying section and bring it to the United States and put it on an old stern and bow or when you get a brandnew ship, built abroad with foreign labor and brought to the United States, that ship will not qualify as an American ship. It will have to qualify in effect as a foreign ship for the first 3 years.

Senator DOMINICK. Thank you.

Mr. COLES. It is merely a matter of relative priority, Senator Dominick.

Senator BARTLETT. Mr. Kenney.

Mr. KENNEY. If I may. First, I think it might be helpful to this record if you would explain what it takes to register a ship United States, if you could?

Mr. SHAPIRO. It must A, be approved by the Coast Guard for U.S.-flag registry. This is a physical examination of the vessel and its characteristics.

Mr. KENNEY. This is a safety inspection, in effect?

Mr. SHAPIRO. Safety and other miscellaneous things attached to safety. Beyond that, I will pass on to Mr. Coles, who probably has done some of this.

Mr. KENNEY. It has to be American owned?

Mr. COLES. I have never documented a ship as such. I think what Mr. Shapiro has said is this, you must meet the physical requirements of the Coast Guard; the ship must be owned by a company which is American controlled, that is, over 51 percent of the stock. The president and managing director must be an American citizen and that is just about it. You go through other formalities, but that is the sum and substance.

Mr. KENNEY. It has to have an American crew?

Mr. COLES. Yes, and thereafter, in other words, it isn't until you document that you need the crew. Thereafter you must have an American crew.

Mr. KENNEY. Who speaks English and so on.

Mr. COLES. There are certain waiver provisions.

Mr. KENNEY. I have some questions on the actual text of the bill, if I may. The new language in section 1 of the bill proposes to add to title 10, as I see it, some phrases from section 901(b) of the Merchant Marine Act. After this language was enacted into law in 1961, if I remember correctly, we had to revise it later to take account of those vessels for which a contract had in fact been let before the effective date of the act. Are we going to run into the same problem here?

Mr. COLES. I think you are half right and half wrong. They did provide at that time that where contracts had been made and commitments undertaken, that they would allow a time period within which vessels could qualify.

Senator BARTLETT. Because there were certain specific cases initially.

Mr. COLES. Yes.

Mr. KURRUS. That was the 1960 amendment however, not the 1961.

Mr. COLES. That was the 1960 amendment. Where the contracts had been made, where the midbodies were being constructed abroad, where the contracts had been made for joining, they allowed a 2-year period.

Mr. KENNEY. Isn't this likely to arise in this case?

Mr. COLES. No, the only situation I know of, there has been an application to the Maritime Administration to permit documentation with 50-50 privileges of two ships which would be built with preexisting foreign midbodies, foreign midbodies taken from old foreign ships, not new foreign-built midbodies.

There may be others which I don't know about, but that is the only one.

Mr. KENNEY. How about September 22, 1965, date?

Mr. COLES. That was the date upon which this legislation—something is wrong, because it is October 5. Perhaps it is the date upon which the House bill was enacted. I know, in other words, nothing which was done before introduction of the bill would be disqualified.

Mr. KENNEY. There are certain occasions when we get, I suppose, criticized and are uneasy about passing bills that are retroactive. What would happen if this were to become effective on the effective date of enactment?

Mr. COLES. I would think it would depend on what commitments were done. In other words, if a man had gone into a foreign shipyard and ordered a new midbody and put up \$1 million or \$2 million and that ship was well along, I say he should be protected. I couldn't argue to the contrary.

If a man has bought an existing midbody, it has the same value as he paid for it, otherwise I think I might feel differently.

Senator BARTLETT. You think there might be a wild rush to do it if the date were to be a year from now?

Mr. COLES. Senator Bartlett, that is the whole thing. Up to now no one has done it because I suppose people have felt that they could, should, or legally would be permitted to. This means that anybody who brings in a foreign midbody or foreign ship will have a shipping asset at a capital cost incredibly less than the identical asset built in America.

In the way of Gresham's law, bad money also drives out good, so cheap ships in the same market will always drive out American ships. If this thing ever really gets rolling and I'm sure human nature being what it is, if it is permitted, not only won't we build midbody ships, but darn little incentive to build high-cost new American ships.

Mr. KURRUS. May I add something, Mr. Kenney. After section 27 of the Merchant Marine Act of 1920 was amended, there was this period that was allowed people to close contracts and they would be protected by the legislation so that legislation would not, in effect, be retroactive. There was at that time a great scurry of activity by people to obtain contracts, some of which, I believe, were illusory. They were supposed to file these contracts with the Maritime Administration and a lot of the contracts that were filed with the Maritime Administration, people never went ahead on. In other words, there really weren't contracts, there weren't any damages on either side, and there weren't any consequences flowing on either side because of a failure to go ahead. It does seem to me that if somebody has made an irrevocable commitment to purchase a midbody or have a midbody constructed, that he ought to be protected. But it seems to me, also, that there are probably three requirements that ought to be met:

First of all, I don't think that anybody would proceed on such a plan as this without getting a ruling from the Maritime Administration. I would think that this ought to be the first condition.

Second, I think he ought to prove that he has an irrevocable commitment.

Mr. KENNEY. Approval from Maritime as to what?

Mr. KURRUS. A ruling that the plan which he proposes will qualify the vessel under the existing law under section 901(b) of the Merchant Marine to carry cargo, preference cargoes, because there is some question on any one of these specific cases as to whether or not the vessel would qualify.

Second, I think that the person who would propose to do it ought to prove he has a binding commitment to fabricate a midbody abroad or to purchase a midbody abroad.

Third, I think he should prove that he has a contract with a shipyard in the United States to have the vessel joined.

If somebody can prove that all of these things have been undertaken, it would seem to me that the legislation shouldn't reach that particular

person and the effect of the legislation shouldn't be retroactive for that person. But, I don't think that the legislation should protect the speculator who suddenly realizes that he may be able to get under the wire and realize a great windfall and a gain because of taking advantage of the legislation.

Mr. KENNY. My last question then concerns the draftsmanship of section 2, where the term "rebuilding abroad" is referred to there but doesn't appear to exist in the statute now. It should either be "rebuilt outside of the United States" or "built outside of the United States." Isn't that the terminology now?

Mr. SHAPIRO. Yes; that would have to be corrected.

Senator Bartlett, if I may ask your permission, Mr. Haddock would like to say a brief word.

Senator BARTLETT. I was going to give him and your other associates an adequate opportunity. Three of you have spoken very clearly and very positively on this subject. Mr. Haddock.

Mr. HADDOCK. Three points that I would like to emphasize. Administrator Johnson in reply to a question stated that when these midbodies were joined in the United States, the ship then had to get redocumented under the U.S. flag. I think you will find that this is incorrect. If the ship is documented and adds a midbody in the United States that was built abroad, the only thing it has to do is pay customs duty on the midbody that was brought in.

Then the MSTS witness stated that so long as there were U.S.-flagships available, that this law would not hurt it. But it is when U.S.-flagships are in short supply that it would probably be hurt by this legislation. Now, Mr. Kurrus pointed out that it was actually during the period when U.S. ships were in the greatest supply that MSTS spent considerable time finding ways to thumb its nose at Congress, disregard the advice of the chairman of this committee and the chairman of the House committee, and disregard certainly testimony that set the intent with respect to this legislation and chartered this type of ship which everyone thought was precluded under the prior amendment.

Now, certainly those ships should not be eligible for U.S. cargo from MSTS or anyone else. But really more important, I think, than any of this is the attitude of the executive departments of our Government toward Congress and toward the American merchant marine. They are constantly attempting to find ways to get around what Congress is trying to do. They are constantly trying to find ways to hurt the American merchant marine. It seems to me that Congress is going to have to say to them in very precise terms that in the future, administrators and their executive departments are instructed to find ways to carry out and help the American merchant marine, not ways to avoid existing laws and to hurt it.

Now, it is this kind of an attitude that we have literally had over the past 20 years that has put our merchant marine where it is today, this constant attempt to flout the intent of Congress, constant seeking of ways to get around what Congress says instead of finding ways to do what Congress intended for them to do.

I should like myself very much to see Congress come out quite strongly on this in one of its reports and make it quite clear that these agencies are required to try to help the American merchant marine, not to try to get around the laws which the Congress enacts.

Senator BARTLETT. Thank you, Mr. Haddock.

Do you have anything to say, sir?

Mr. OATES. Mr. Chairman, I just would like to address myself to one or two points that the Maritime Administrator made. One, I think the main thrust of his arguments was that passage of this bill would jeopardize the 50-50 act, the Cargo Preference Act, and the American-flag participation, and I would hope that my colleagues could express a judgment on that, I couldn't.

But in another point, he said that this bill would be harmful to the U.S. shipyard industry and I don't think any of our members would subscribe to that. During a question that put to him, Mr. Chairman, as to the number of ships we are talking about, I think he mentioned that there were two. As of April 1 of this year in the private shipyards, there were a total of about 20 major commercial ship conversions, including jumboizing and other major overhauls, major revisions, and we feel that at stake here is just about all of the major conversion work which is substantial that the yards are doing and have done in recent years. As of the first of this year, we had 24 major conversions. And I think it is ludicrous for him to say we would be unharmed by this measure.

And as Mr. Coles, I think, said a moment ago, it is not merely the reconstruction work, but each one of these vessels would displace a potential new contract for new construction.

Finally, I think that Mr. Foster's questioning showed very clearly that the Defense Department is in no way inhibited or would be inhibited by this legislation.

Senator BARTLETT. Thank you.

Any further questions?

Senator DOMINICK. I have just one and perhaps this has been gone into before, but let me ask for educational purposes. Is my understanding correct or incorrect that the American merchant marine is being used just about up to the limit at the present time? In other words, there are no empty bottoms going around as far as transportation of defense or any other kind of cargo?

Mr. HADDOCK. I think it is true that the depleted American merchant marine that has been depleted by maladministration on the part of the executive branches of the Government is being utilized to its limits, yes.

Senator DOMINICK. So that our present merchant marine fleet is being used to its limit just about now?

Mr. HADDOCK. Yes, sir, it is; no question about it.

And may I just add, Senator Dominick, when the 1936 act, which is the present maritime policy, was adopted, American ships were carrying more than 25 percent of the export-import commerce of the United States and the Congress in adopting this policy said that we must carry more cargo in our merchant marine, that this is too small a quantity to carry and then gave several reasons why.

At the present time, we are carrying less than 8 percent because of the maladministration on the part of the executive agencies of this legislation and frequent disregard of the intent of Congress, well, constant disregard with respect to the policy set forth in the act.

Mr. SHAPIRO. Senator Dominick, if the import of your question was, would redefining American-flag vessels result perhaps in either

the military or farm surplus commodities or even commercial trade, and commercial trade is not involved in this, would any of those movements be frustrated by limiting this definition of American-flag vessels or really returning it to what the Congress intended instead of the broadened impact that MSTs and the Maritime Administration have given it, the answer is "No."

We have absolutely no intention through this legislation of frustrating deliveries of merchandise and the military can go outside of this limited number of vessels, if you will, for essential deliveries and we constantly have the problem of waivers under the Cargo Preference Act, if in fact, the American-flag vessels are not available. So, there is no intention here to frustrate and no impact here that can possibly frustrate the physical delivery of materials which I suspect is what you are very much concerned about.

Senator DOMINICK. Thank you.

Senator BARTLETT. Thank you, gentlemen.

Mr. SHAPIRO. Thank you, sir.

Senator BARTLETT. Henry R. Dowd, Transocean Petroleum Carriers of New York.

We are glad to have you, Mr. Dowd.

**STATEMENT OF HENRY R. DOWD, PRESIDENT, TRANSOCEAN PETROLEUM CARRIERS, INC., NEW YORK, N.Y.; ACCOMPANIED BY CAPT. V. BRUER, PRESIDENT OF MARINE CARRIERS**

Mr. DOWD. Mr. Chairman, I thank you for this opportunity to appear here. I would like to introduce Captain Bruer, president of Marine Carriers.

I am president and director of Transocean Petroleum Carriers, Inc., and an officer and director of Marine Carriers Corp., U.S. Tankers Corp., and Virginia Lines, Inc., on whose behalf I appear here today. These companies own and operate seven American-flag vessels, which includes two 24,000-ton bulk carriers, two tankers, and three general cargo vessels. We are opposed to the passage of the proposed legislation in its present form, as we believe it is detrimental to the development and expansion of the American merchant marine. Since this bill will primarily affect independent American operators, I will limit my comment to this phase of the industry.

I would like to interpose here, that prior to Mr. Shapiro, AMI and other people indicated that conversions were being done. The majority of these are being done with subsidy funds where the people are reimbursed 50 percent of the cost.

Senator BARTLETT. Will you please restate that? I didn't quite get it.

Mr. DOWD. The majority of conversions previously referred to are being done by subsidized lines who recover 50 percent of the cost through subsidy. Now this is not available to the independent operator. I think this substantially changes the number of conversions that has been done since the passage of the law in 1961.

I will present our position in two sections; namely, (1) detrimental results following passage of the proposed law; and (2) positive action which could result by allowing additional vessels to be registered under the U.S. flag.

## 1. DETRIMENTAL RESULTS FOLLOWING PASSAGE OF THE PROPOSED LAW

(a) Stagnation and continued deterioration of the independently owned American fleet. Mr. Chairman, you gentlemen have listened to unending testimony setting forth the decline of the American merchant marine, and it is almost the unanimous consensus of opinion that additional American-flag tonnage is required.

It seems paradoxical that the purpose of the proposed bill is to prevent additional vessels from being documented under the flag of the United States when only during this past week, the Department of Defense has requested subsidized lines to supply 23 ships in order to fulfill military requirements and the subsidized lines propose to charter foreign-flag vessels to operate on American liner service to replace vessels withdrawn for the military. If we subscribe to any philosophy of preventing additional tonnage under the American flag, I believe the result will be a fatal blow to American merchant marine. Every expedient to keep American ships sailing should be utilized until a long-range maritime program is formulated.

(1) When the general agency ships are redelivered to the Maritime Administration, we will not have sufficient tonnage available, if the fleet continues to decline, to insure employment for qualified officers and seamen. We are faced with a serious problem of qualified personnel due to the retirement of older officers and seamen who started their seagoing careers during World War II. Therefore, we have, with the cooperation of the unions, encouraged your seamen to advance themselves as officers in the merchant marine by operating school for said seamen.

(2) If we prevent additional vessels from entering the American merchant marine, established independent companies will have to reduce the number of office personnel and technical staffs, as the reduced number of ships due to obsolescence and scrapping will not be able to financially bear the overhead burden.

(3) As a result of lack of opportunity, capital will be diverted from the American shipping industry and seek other sources of income. Unfortunately, this trend is already established with many of the American operators investing in foreign tonnage. This fact can be supported by the actions of some of the individuals who are testifying in favor of the proposed bill as directly or indirectly they have substantially increased their ownership of foreign tonnage.

(b) Statistics to support the decline of the American fleet have been presented in many hearings and perhaps the most unfortunate one is that we have had only 130 vessels built for American-flag operations since 1945, or an average of less than 7 vessels per year, which is less than one-half the number of vessels for the subsidized lines and 1 tanker. The total American merchant marine is comprised of approximately 900 vessels of which 600 ships will soon be or are obsolete because they are over 20 years old, and will have to be scrapped in the near future.

Our companies have been directly challenged with this problem as we primarily operated tankers, and have scrapped seven American war-built vessels totaling over 100,000 tons during the past 18 months, since we no longer could economically operate the vessels. We believe

our position is representative of many independent operators, as a substantial number of vessels have been scrapped during the past 3 years. The World War II vessels are getting older and the necessity of scrapping will increase in the next 4 years.

(c) In addition to the direct effects on the American merchant marine, the continued decline as a result of scrapping vessels leads to a loss of lifting capability for American vessels and foreign vessels automatically replace the American ships. This diversion of freight results in a serious loss of dollar earnings which adversely affects the Government's foreign exchange problem.

## 2. POSITIVE ACTION WHICH COULD RESULT BY ALLOWING ADDITIONAL VESSELS TO BE REGISTERED UNDER U.S. FLAG

(a) Registration of additional American vessels from foreign flag would enable the Defense Department to utilize privately owned American vessels and not force the subsidized lines to withdraw their vessels from commercial service. If the proposed legislation is amended and it is the intent of the Senate that American vessels be utilized in the present emergency, American owners would purchase foreign vessels and charter them to the military at competitive rates which would be more economical than reactivating vessels from the reserve fleet and operating them as general agency ships. Bringing some tonnage back from foreign flag with U.S. Government agency charters would not solve the problems of the American merchant marine, but it would enable many in the industry to survive a period of indecision which now confronts us.

At present it is economically impossible for independent operators to build new American vessels, as no subsidy is available. The possibility exists that a subsidy for building will be granted in the future or that the law will be changed so that American ships can be built in foreign countries. The uncertainty about the future, however, prohibits a prudent operator from building without a subsidy as others might have the same vessel within the next 5 years at a cost of less than 50 percent of the price of a ship contracted for today. If we optimistically assume that this uncertain situation will be clarified within 2 years, subsidy approved and the funds appropriated by Congress, it would still be a minimum of 4 years, or 1970, before any new independent owned vessels could be operating.

This hiatus should not be tolerated. I challenge the supporters of the proposed legislation to suggest any alternate action which might change the present difficult position. I do not believe that any injustice will be experienced by any American operators, if additional vessels are documented under the American flag as the demand for ships is greater than the supply, both now and for at least the next 5 years. Title II tanker owners have been afforded many considerations by mortgage moratoriums and trade-out privileges, and should now be willing to face the normal competition of the marketplace.

The last addition of independent tonnage was in 1962 when approximately 15 bulk carriers were redocumented under the American flag. This was prior to passage of Public Law 87-266 as amended September 21, 1961, 75 Stat. 565, which prohibited redocumented vessels from carrying Public Law 480 cargoes. These vessels have proved the most efficient in our merchant marine. They have employed Amer-

ican officers and seamen and carried the major portion of bulk commodities in our foreign trade. These vessels were documented under U.S. flag without cost to the U.S. Government, and they proved so economical that they are penalized under current Government regulations in carrying Public Law 480 cargoes at rates 20 percent below authorized rates paid to vessels under 15,000 tons, including the subsidized operators.

In freight cost alone, excluding the cost of subsidy for the subsidized operators, these vessels have saved the U.S. Government a minimum of \$5 million per year compared to the freight rate that would have been paid to the smaller, less efficient tonnage. If additional American vessels will offer at economical rates, I see no valid reason why the Department of Defense should not be able to charter American-flag vessels, employing American seamen, under the best rates and conditions available.

Furthermore, contrary to forecasts in 1961 bringing back the 15 bulk carriers did not disturb the freight market, and the shipyards have profited by substantial increased work and repairs.

Since the U.S. Department of Agriculture recently has increased acreage allocations by 15 percent for the current crop, primarily due to the requirements of foreign countries, it is reasonable to conclude that additional American ships will be required if we are to carry relatively the same percentage as in the past. I do not believe that anyone can seriously challenge the fact that the U.S. merchant marine is carrying a disproportionately low percentage of our foreign trade as the average figure is approximately 9 percent of our total foreign commerce. Surely we should strive to keep at least this minimum percentage. This can only be accomplished by redocumenting additional American tonnage.

We require new concepts in the industry, and the independent operators have made substantial contributions in the past: (a) the development of containerization by Sealand; (b) the concept of carrying grain in tankers and the adoption of American farm machinery to discharge the grain from tankers; and (c) the utilization of jumboized vessels, using World War II powerplants, greatly increasing productivity. However, we require ships to operate and cannot continue with obsolete tonnage.

In conclusion, I wish to clarify our position, that we concur with the intent and language of the bill to line 5 on page 2, which we understand is a reiteration but clarification of present legislation. We believe that lines 6 through 22 on page 2 should be deleted, and that American operators should be encouraged to redocument vessels under the U.S. flag in accordance with American Bureau of Shipping and U.S. Coast Guard regulations.

Senator BARTLETT. Thank you, Mr. Dowd.

Senator DOMINICK, do you have any questions?

Senator DOMINICK. I am interested in his last statement. Mr. Dowd, you say that the bill up to line 5 on page 2 is a clarification of present legislation. Is it identical in language?

Mr. DOWD. I was informed of this by our counsel, sir. I am not legal. I had previously mentioned that it was the same. I couldn't dispute it.

Senator DOMINICK. What you are saying in your testimony is that if you should be permitted to document vessels modified or

altered or built outside the United States, that you would be increasing the American merchant marine and that the subsequent repairs would benefit the shipyards here. Is this right?

Mr. DOWD. That is correct. Not only subsequent repairs but actual conversion.

Senator DOMINICK. And your concern over the bill is that if you put this bill in, this would mean you couldn't do that and that the cost of building new or modifying ships here would be simply too high for the independents, at least, to be able to stand?

Mr. DOWD. That is correct. There hasn't been a vessel built since 1945, since the war, by independent operators.

Senator DOMINICK. Thank you.

Senator BARTLETT. What classes would you describe as being independent?

Mr. DOWD. Independent operators, sir?

Senator BARTLETT. Right.

Mr. DOWD. I exclude the subsidized lines and major oil companies or primary carriers of their own cargo such as Bethlehem Steel. I would include the rest of the industry.

Senator BARTLETT. And the independents have acquired all their ships from abroad?

Mr. DOWD. No, sir; the majority of independent tonnage is war-built tonnage, which was acquired under the Ship Sales Act since the war. All of the larger size vessels, all of the bulk carriers have been redocumented from World War II powerplants and are now efficient 20,000 bulk carriers or 30,000-ton tankers.

Senator BARTLETT. But these are World War II ships and they are wearing out?

Mr. DOWD. Yes, sir. We estimate that to reactivate the vessel now would cost \$500,000.

Senator BARTLETT. Does this represent a considerable increase in cost?

Mr. DOWD. At the beginning of the current Vietnam situation there were some better ships in the fleet which they were reactivating at costs closer to \$200,000.

Senator BARTLETT. Mr. Foster?

Mr. FOSTER. Thank you, Mr. Chairman.

On the first page of your testimony, as I was reading and following you, I missed one point that you made, and I think you perhaps inserted the statement as you were reading, in which you referred to the number of vessels that were being rebuilt here in the United States by the subsidized operator with 50 percent subsidy. Would you clarify that and expand on that a bit, give us some ships, some examples of that?

Mr. DOWD. Isbrandtsen purchased two vessels from Bethlehem Steel affiliates, built in 1946, and they jumboized the vessels, adopted container carriers, approximately \$7 million, and they received 50 percent subsidy of the cost.

Mr. FOSTER. Fifty percent subsidy on conversion?

Mr. DOWD. On the conversion cost.

I think I would like to insert one thing that the people who testified previously were speaking basically in a hopeful vein. There have been very few ships brought back to the United States since the requirement of the bulk carriers in 1962 by independent operators. At

present there is an interest, due to the extra business available. American ships do not have the capability to carry 50 percent of the bulk cargo or the military cargo, and no one that I can think of, and I have contacted the majority of independent owners, is contemplating building a ship when the possibility exists that there will be vessels built with subsidy sometime in the future. This is economically impossible. These people are taking the position that just because temporary demand, someone is going out and investing \$10 to \$15 million, this hasn't been factual. The only alternative today is if some of the operators, the military, can use the ships for a year or two, or they see the Department of Agriculture program sustaining itself, they will make a sizable investment by bringing a foreign vessel back, spending approximately \$1 million in American yards for jumboizing of the vessel and for Coast Guard requirements and then operate the ship with American crews. So in my thinking this is progress.

Mr. FOSTER. Under what program are you referring to there, are you talking about an operator who would get a foreign midbody and bring it back and jumboize it here and then use this in the grain trade, under Public Law 480 immediately?

Mr. DOWD. Yes, sir.

Mr. FOSTER. You are talking about that?

Mr. DOWD. One phase, that is correct, and the other is the military.

Mr. FOSTER. And the other one being a company that would bring in a foreign vessel, that may or may not be and then later changed in any way here, bring it back in under U.S. registry and get a contract with MSTs?

Mr. DOWD. The Coast Guard regulations are so stringent, that I think it is impossible to bring back a foreign vessel with an expense of less than \$300,000 even if the vessel was built in Japan 6 months ago. So in any case you have a major expenditure for the shipyards to redocument vessels in the United States.

Mr. FOSTER. And your company has done both of these?

Mr. DOWD. Yes; we have brought back bulk carriers. We presently have applications pending before the Maritime Commission to bring back tankers, and we will bring back other ships as the opportunity presents.

Mr. FOSTER. Help me here. You bring back ships in order to get them in the grain trade?

Mr. DOWD. Yes.

Mr. FOSTER. What I am—

Mr. DOWD. For the grain trade we have an application pending before the Maritime to redocument a 30,000-ton tanker by utilizing an American stern section, a midbody which is presently under foreign flag but was built in the United States, and doing the work in a U.S. shipyard at a cost of slightly in excess of \$1 million. We would also be willing, provided we can obtain a charter from the Military Sea Transport, to bring back modern liner-type vessels, constructed within the last 4 or 5 years, providing a charter was available. They could utilize this vessel for American sealift rather than foreign ships, which it is now forced to re y on.

Mr. FOSTER. Have you got any type of charter with MSTs on the foreign-flag vessels that have been brought back into U.S. operations, U.S. flag?

Mr. DOWD. We have brought back a bulk carrier which is presently carrying coal to Rotterdam, to Europe. It is a 24,000-ton bulk carrier.

Mr. FOSTER. Under agreement with MSTs?

Mr. DOWD. We executed at the time a 1-year charter, and we took the risk that this ship would be required. We were correct in our assumption, because there are not enough bulk carriers available today for the military to carry their percentage of cargo.

Mr. FOSTER. On page 2 you indicated that you have the cooperation of the unions in this venture?

Mr. DOWD. No.

Mr. FOSTER. I thought that is what you said on page 2?

Mr. DOWD. No; we said we cooperated with the unions in setting up schools to train seamen to be officers with the implication that there would be employment for these people when they are trained.

Mr. FOSTER. You said that you believe that your position was representative of many independent operators. Do you have any others that have associated themselves with your statement?

Mr. DOWD. I have spoken with other people; bulk carrier corporations have applications pending at present. The development of the subsidized lines possibly chartering foreign ships has many people interested in this aspect of bringing ships back. We would much rather try to arrange for the military to use American ships than have subsidized lines charter foreign vessels. That would open up all kinds of possibilities, which would defeat any purpose of the American merchant marine.

Mr. FOSTER. Thank you.

Senator BARTLETT. Mr. Dowd, just one point upon which I need clarification. You told us that World War II vessels are being retired because they are too old. And then you mention in the final page of your statement some new concepts in the industry. And the final one was utilization of jumbo-sized vessels using World War II powerplants. Now, should we understand that while the hull of the World War II vessel may become obsolescent or obsolete, that the powerplant has a much longer life?

Mr. DOWD. This is primarily true of T-2 tankers which are turbo-electric plants, which are used by the public utilities and they have a useful life of 40 to 50 years.

Senator BARTLETT. That clears that up.

Captain, do you have anything to add to Mr. Dowd's statement?

Captain BRUER. I don't have anything. Thank you very much.

Senator BARTLETT. Thank you.

#### STATEMENT OF ARCHIBALD E. KING, PRESIDENT, ISTHMIAN LINES, NEW YORK, N.Y.

Mr. KING. I want to thank you, first, Mr. Chairman. I have a statement here and I want to thank you first for this opportunity of appearing before the subcommittee.

Senator BARTLETT. Mr. King, will you please identify the gentleman with you?

Mr. KING. My name is Archibald King, I am president of the Isthmian Lines, Inc., of New York, and also on behalf of its affiliate—

Senator BARTLETT. You are accompanied by whom?

Mr. KING. Mr. Robert N. Kharasch, an eminent counsel.

States Marine Lines, Inc., Isthmian, is a Delaware corporation, 100 percent owned by American citizens, and owns 24 C-3-type vessels which it acquired 20 years ago pursuant to the Ship Sales Act, 1946, and since acquisition has continuously employed them in common carrier liner service, primarily in trade between the United States and the Middle East and all south Asia, including the Indian subcontinent, and between the United States and southeast Asia, which starts in the Philippines and includes Vietnam and Indonesia, Malaysia, and Thailand. We, also, maintain a domestic service between Atlantic and gulf ports and the Hawaiian Islands, which is vital to the economy of the State of Hawaii. States Marine Lines, Inc., has been in the shipping business over 35 years and has owned and operated American-flag vessels for over 25 years and presently has 25 vessels serving the United States in both MSTs and commercial operations. All of our vessels were purchased with private capital and have been operated without one cent of subsidy under the Merchant Marine Act of 1936. We have been and now are applicants for operating-differential subsidy under the 1936 act; but as I will explain later, we see no present possibility of receiving subsidy in sufficient time to enable us to replace our present fleets.

As unsubsidized lines, we face in 1966 a multitude of threats to our continued existence as a vital part of the American merchant marine, in foreign as well as domestic trade. It may be useful to cite a few of the major threats.

1. We have experienced continuously increased operating costs, and on the other hand have been unable to secure more than nominal increases in the level of freight rates. The margin of profit in the postwar period is now narrowed to the point where continued long-term operations are seriously prejudiced, and vessel replacement at American building costs is impossible.

2. The requirements of the U.S. Coast Guard and the dictates of sound operating practice which have always been strongly followed in our company policy, have resulted in an extremely high level of ship maintenance—at a very considerable cost—but despite our success in maintaining the vessels (on which we have never suffered a total loss of any vessel, incidentally), we are now faced with a serious threat of discriminatory action in the world insurance markets in the form of additional cargo insurance premiums assessed against our war-built vessels, now over 21 years of age.

3. Implementation by the Department of Defense of its current policy of seeking competitive bids for liner service is potentially disastrous to us and to all other unsubsidized lines, since we will be forced to bid against the competition of subsidized carriers who have the advantage of receiving from the U.S. Government a contribution of approximately \$1,300 per vessel-day of operating expenses.

We have proved to our satisfaction over the past several years that given reasonable levels of rates and reasonable volume of Government sponsored shipments, (both military and AID), by extremely careful cost control, and by the pursuit of scheduling and operating practices directed toward optimum utilization of vessel time, it has been possible to survive from an operating point of view without direct Government subsidy. We have, also, thoroughly proved that on American costs an

unsubsidized operator cannot replace his vessels at American construction costs. For the decade just past, we in Isthmian Lines and our associates in States Marine Lines have hoped that the Government would adopt a subsidy policy which would permit the orderly, rational and economic replacement of vessels in the presently unsubsidized segment of the American merchant marine. Various studies have been undertaken and reports and recommendations such as the Interagency Task Force Report of 1965 and the President's Maritime Advisory Committee Report have been submitted; but as of the present day, we see no clear indication that a firm policy will be adopted in the foreseeable future and currently available construction subsidy funds are insufficient to meet the replacement timetable of the presently subsidized fleet, which obviously means there is nothing but a great big vacuum as far as our company is concerned.

Where economic conditions in a particular trade make it possible, we have always operated with vessels built in the United States and manned by American seamen. We sincerely believe that the military security, as well as the commercial interests of our country are best served by the preservation of the competitively viable American merchant marine. We still have hope that the administration and the Congress will find a workable solution to the problems now faced by the merchant marine, but the commercial necessity of our companies to replace vessels has now become so urgent that we are obliged to take the only step possible for our own preservation. We expect very shortly to request bids from shipyards in various parts of the world, including the United States. We anticipate—we are sorry to say—that acceptable bids will most likely be received from European or Japanese shipyards.

We would greatly prefer to operate such vessels under American flag, employ American officers and crews, and by the addition of such units to update the American merchant fleet. If, as suggested by the Interagency Task Force Report, operating subsidy were obtainable on foreign built vessels, it would be possible to transfer such vessels to American registry and to employ American seagoing labor.

When we say that such operation would be "possible" we mean that it would be possible under present military cargo rates and availability of such cargoes for shipment in American trades make the possibility of profitable operation based solely on commercial business extremely doubtful, even by vessels receiving full construction and operating subsidy. The cost studies submitted to MSTC in January 1966, by the American-flag lines show without a shadow of doubt that the current military rates are fair and reasonable—but are only marginally profitable for American-flag unsubsidized vessels. The cost studies, also, show beyond doubt that the present number of sailings by American vessels both subsidized and unsubsidized cannot be maintained without cargo volume supplied by the military services.

Our company recognized in the fall of 1965 that any reduction in volume or in rates of military cargo would be disastrous for the unsubsidized vessels, who carry roughly one-third of all military berth liner cargoes. Recognizing that the proposed system of competitive bidding would very likely disrupt the customary fair allocation of available cargo between all American lines in a particular trade and would result in rates which would be disastrously unremunerative for unsubsidized vessels, we requested the introduction of remedial

legislation amending the so-called 1904 act. This bill was introduced by Senator Magnuson in October 1965, and became S. 2700. For reasons which I am sure are very apparent to this committee, S. 2700 was not supported by the subsidized lines and, in our opinion, is not likely to pass without the active support of the Department of Defense.

My company has served the commerce of the United States with three fleets of American-flag vessels spanning over half a century—without any direct financial support from our Government. Our vessels also served the national defense needs of the United States in World Wars I and II. We intend to continue in business on whatever basis proves economically feasible. The only feasible way to replace our fleet while maritime policy remains in a state of suspense and subsidies are unavailable, is to build abroad. Provided future developments permit, we will want to bring any newly constructed vessels under the American flag. If in the meantime military cargo—which under any circumstances will be essential to American-flag operation—is made unavailable to vessels built or modified abroad, these vessels can never be added to the active American merchant marine fleet.

The measure now before this committee, S. 2600, would raise an insurmountable economic barrier to the repatriation of vessels built or modified abroad with American capital, and without any readily discernible benefit to American shipyards—the ostensible beneficiaries of the measure.

This measure will not provide a single dollar of additional shipbuilding funds to sustain American yards—quite the reverse. If foreign-built vessels were registered under the American flag, they would be compelled by the punitive customs duties on foreign repairs to perform most repairs and upkeep in American yards—if operated under foreign flag much of this source of revenue will be lost to these yards.

If construction and operating subsidy funds should—under some major reversal of the policy which has prevailed during most of the postwar period—become available in sufficient volume to permit replacement of all presently unsubsidized vessels in the American fleet, we would see some substantial virtue to the measure. However, that happy day does not by any indication appear to be around the corner.

Until the Congress has been apprised by the Department of Defense and by the administration in general of its plans for the merchant marine of the future, we strongly urge rejection of the present measure or any similar measure having the effect of narrowing the possibility of rebuilding the American merchant marine with private resources.

Senator BARTLETT. Mr. King, when did your two companies come together?

Mr. KING. 1965 sir.

Senator BARTLETT. States Marine Lines is wholly owned?

Mr. KING. States Marine Lines acquired the total stockownership of Isthmian Lines, Inc., at that time, 1965.

Senator BARTLETT. Does Federal Maritime control your freight rates?

Mr. KING. No, sir; we are, of course, under regulatory supervision of the Commission. In the domestic trade and Hawaii and islands

trade, we have a fairly stringent regulation, I would say, that gets down to the matter of whether we can wind up with 1 cent or 2 cents, which is about the way they operate it there, sir. But in the foreign trades, they do not have that same type of regulatory control.

Senator BARTLETT. ICC is in charge in the coastal and intercoastal trade, and Maritime with respect to Hawaii trade?

Mr. KING. Yes, sir.

Senator BARTLETT. Who controls the rates in foreign trade?

Mr. KING. Those rates are really not controlled in any sense by governmental authority, sir. The rates are established through freight conferences or individually by steamship operators, if they are not in conferences, and the marketplace is the real controller of that, because when you are in foreign trades, you are up against foreign competition and then of course on complaint of discrimination or somebody feeling that a shipper or Government agency feeling that something has been done that is discriminatory or detrimental. If they can take issue and file a complaint with the FMC, then FMC comes into action on it. They cannot set the exact freight rate anyhow, sir.

Senator BARTLETT. The reason I asked these questions is that you said that operating costs are going up steadily and you have only had nominal increases in rates.

Mr. KING. It is; yes, sir.

Senator BARTLETT. Now, are these handicaps peculiar to American-flag vessels or do they relate to the flags of all nations?

Mr. KING. In our domestic trade, because of the FMC control, and Hawaii, I would say that the level of rates there are coming under such close scrutiny and stringent attention, I might say of Admiral Harley and his staff, along with the competitive pressures of the marketplace in general, is the answer to why those rates have not gone up in relationship to cost increases.

Insofar as the foreign trade rates are concerned, it is essentially the marketplace, the competition of foreign flags or the efforts on the part of the steamship operators to look at an American product, be it farm, agriculture, or manufactured product and what competition it may encounter, say in a common purchasing area against Europe, Japan, Australia, or somebody else producing the same things.

Senator BARTLETT. What I am trying to get at though, Mr. King, is this: have these large increases in operating costs been peculiar to you U.S.-flag carriers or have they also had their effect upon flagships of other nations?

Mr. KING. They have been much sharper under the American flag, Senator. After all, under the American flag on American ships, you are going by American living standards and wages and living conditions and working conditions and all the rest, whereas we may meet half a dozen varied nations in competition in any one of our foreign operations. While it is true that there has been some effort in most of these nations to get something better, I mean for their seagoing personnel, if you take one of our seamen averaging roughly \$600 a month, and including statutory overtime and compare that with say a Japanese seaman, that has gone a great step forward from \$40 a month to \$50 a month, I think that is the best illustration I can give you.

Senator BARTLETT. There is a big difference, we realize that. What I am wondering though, whether, for example, these inflations are pressures which have built up in Western Europe, for example, during the last decade or so, have caused the European ship personnel to face the same handicaps that confront you in respect to rapidly rising costs?

Mr. KING. I think it is strictly a matter of degree, and we are much farther ahead. We have gone up much higher. We have also been higher, and we have gone up much more sharply than these other people have.

I think a good illustration of that is what is going on in Britain right now, where the British seamen are now trying to achieve a 40-hour week. Well, we have had a 40-hour week at sea since about the end of World War II.

Senator BARTLETT. Now you spoke, Mr. King, about the Department of Defense proposed policy of seeking competitive bids for liner service.

Mr. KING. Yes, sir.

Senator BARTLETT. And you said that if this is done, the subsidized lines will have a great advantage—let me get the rate of \$1,300 a day or thereabouts in the present system and that is my question. In letting contracts, does the Department of Defense take this into account and give operators such as you the equivalent of \$1,300?

Mr. KING. No, sir. They do not do it that way, Senator. What we have been doing since the institution of MSTS is to arrive at rates by negotiation with the MSTS and the companies who are carrying under MSTS contracts. I might say at the request or suggestion of MSTS at the time, the contractors organized themselves into two groups; one based in San Francisco and the other based in New York to coordinate the thinking of carriers and to carry on the negotiations with the Department of Defense or MSTS. So they arrived at rate levels for different categories of cargo in different areas by that manner. And then the cargo was allocated amongst the participating lines on a basis of frequency of service. I might illustrate, if there were 10 sailings from New York to Le Havre, on the regular run of the business, because this is done as part of the liner operation, if there were 5 of those by U.S. lines, and 5 spread among 5 other people, the U.S. lines would get a 50-percent participation in that Le Havre business, half of the 10 total sailings. Now, if their sailings fell down over a few months to four, then their allocation would be adjusted accordingly.

Senator BARTLETT. All right.

Mr. KING. No reference at all to the subsidy, sir, that was basically your question, it had nothing to do with it.

Senator BARTLETT. Then the U.S. lines going over there to France, and they getting \$1,300 a day more than you, and the Department of Defense doesn't take any cognizance of the fact that you aren't subsidized and give you a better break in the negotiating of cargoes?

Mr. KING. No, sir; at no time. There is just one level of rates right across the board. What it does do, of course, it means that the boys who have the subsidy contracts in these areas, they do an awful lot better than we do. Let's face it.

Senator BARTLETT. Your conclusion is that their business on those routes is somewhat more profitable?

Mr. KING. Yes sir; it just has to be, at least to the extent of that \$1,300 a day per vessel.

Senator BARTLETT. These two companies which you are representing here today, depend on military cargo for what share of their business?

Mr. KING. Roughly one-third, or 30 to 35 percent, in that range, as it is now.

Senator BARTLETT. If we withdraw our troops from Europe and leave there only a token force, as has been suggested, if peace should come in southeast Asia, the effect would be fairly disastrous upon the merchant marine?

Mr. KING. A very, very heavy impact, there is no question about that, sir.

Senator BARTLETT. You said, Mr. King, that you are going to call for some bids now and you anticipate, and doubtless correctly, that the bids from the foreign yards will be lower. Do you care to tell us how many ships you plan to build initially?

Mr. KING. Those bids, Senator, will probably be out or the invitations will probably be out over this weekend, and our first invitation is for four, with a possible four additional, depending on how the economics work out.

Senator BARTLETT. What type of ship and how big?

Mr. KING. It is going to be something in the general area, about like these C-4's in general capacity, sir. In other words, we will say, 14,000 to 15,000 tons deadweight capacity. We are trying to diversify it in order to be able to cater pretty much to the existing requirements in the American foreign trade to be able to handle container cargo, bulk cargoes, like wide cargoes, as well as what is known generally in our vernacular, as bulk cargo. We are trying to have a fairly diverse ship. I might say in putting our invitations out, we have incorporated all of the latest U.S. Coast Guard requirements, so that we will be up to those. We will be up to that level, and it will be a good ship. Thank you.

Senator BARTLETT. Thank you, Mr. King.

Mr. FOSTER. Thank you, Mr. Chairman. It is my understanding that if you went out on bid and had foreign construction, that under the present law it would be possible for you to bring those back and document those as U.S.-flag vessels with U.S. crew and integrate them straight into your present operation to the extent that you are carrying military cargo. Is that true?

Mr. KING. Military, at this time, yes sir, ahead of what is proposed in 2600, we could do that today, yes sir. That is right.

Mr. FOSTER. You could bring them straight in, and integrate them in with the fleet you have, without any contract or prior arrangement or anything else?

Mr. KING. That is correct. We could do that, this would foreclose it.

Mr. FOSTER. This bill, if it were passed, would not permit you to accomplish that?

Mr. KING. That is correct.

Mr. FOSTER. Thank you.

Senator BARTLETT. Thank you, gentlemen.

Senator BARTLETT. Mr. Wang.

STATEMENT OF SAMUEL H. WANG, PRESIDENT, AMERICAN BULK CARRIERS, INC., GIVEN BY GERALD GREENWALD, ESQ., WASHINGTON, D.C.

Mr. GREENWALD. Mr. Chairman, my name is Gerald Greenwald. I am an attorney with offices at 839 17th Street NW., in the District of Columbia, and I am the attorney for American Bulk Carriers, Inc.

Mr. Samuel Wang, president of the corporation, has fallen ill. He had intended to address the committee personally, but upon his taking ill he called me and asked me if I would please read his statement to the committee and amplify it as best I can if there is any questioning.

Mr. Wang is president of the American Bulk Carriers, Inc., a Delaware corporation with offices at 201 East 42d Street in New York City, which owns and operates through subsidiaries seven U.S.-flag vessels. Its stockholders have no interest in or affiliation with any foreign-flag vessels.

Two of American Bulk Carrier's wholly owned subsidiary corporations are Ship Operators Corp., owner of the American-flag tanker *Sabine*, and York Agents, Inc., owner of the American-flag tanker *Midlake*.

In Mr. Wang's opinion S. 2600 is not in the best interests of the U.S. merchant marine. It should be noted that almost all of the unsubsidized vessels added to our merchant marine in the past 10 years have been vessels built or rebuilt abroad or American-built vessels rebuilt in the United States with foreign components.

In 1961 Congress enacted Public Law 87-266 which imposed a 3-year disability for carriage of preference cargoes for vessels built or rebuilt abroad. This 3-year disability was sufficient to discourage any further registration of these vessels under American flag except in a very few cases. The effect of S. 2600 will similarly be to discourage any rebuilding in the United States with foreign-built components.

In 1961 the House committee report accompanying the bill which became Public Law 87-266 stated that, "Its sponsors contend that this sort of protection will provide an incentive to American-flag tramp operators to build new vessels in the United States."

This hope has been absolutely and completely unfulfilled. Except for the lengthening of two T-2 tankers, there has been no building or rebuilding of tramp vessels in U.S. shipyards since the enactment of Public Law 87-266.

I might interject here, as the Maritime Administrator testified earlier, there have been a number of vessels rebuilt in American shipyards in recent years, but of those vessels, I should say 24 of the vessels mentioned by the Maritime Administrator, are vessels that have been released from the national defense reserve of fleets under special Government programs, and in that sense represent a form of Government assistance in the upgrading of the merchant marine. We are referring now only to ships which have done their rebuilding program without the benefit of any Government assistance.

Going back to Mr. Wang's statement, rebuilding in the United States with foreign-built components serves the U.S. merchant marine by the addition of large vessels which meet American standards

for new construction and have useful lives almost as long as that of new vessels.

Rebuilding in the United States with foreign-built components serves the U.S. shipbuilding industry in that the shipowner spends over \$1 million in the yard to accomplish the rebuilding project.

Rebuilding in the United States with foreign-built components reduces our deficit in balance of payments by increasing our ability to carry 50 percent of Government-financed cargoes in American-flag vessels, a goal which we do not presently meet.

Cargoes now reserved for U.S.-flag vessels must be shipped on foreign-flag vessels with the resulting payment of foreign transportation costs.

This statement expresses only the opinion of one person, Mr. Wang, that this legislation is detrimental to the merchant marine. If, however, the committee decides that S. 2600 would be beneficial to the merchant marine, then Mr. Wang asks the committee to consider several deficiencies in the present bill.

S. 2600 provides both for the amendment of 10 U.S.C. 2631 relating to the transportation by sea of military cargo and for the amendment of section 901(b) of the Merchant Marine Act of 1936—the cargo preference law.

As to the proposed amendment to title 10, U.S.C. 2631, it should be noted that the proposed definition of "vessels of the United States or belonging to the United States" is made applicable retroactive to September 22, 1965.

In the past, Congress has enacted parallel restrictions on coastwise and cargo preference eligibility, but it has never made such restrictions retroactive.

If such restrictive legislation is permitted to have retroactive effect, it will be impossible for shipowners to make any plans in reliance on existing law. Moreover, as we point out below, the effective date of restrictive legislation of this nature has in the past included a grace period for shipowners whose projects are in process at the time of enactment.

Since the proposed amendment to title 10, U.S.C. 2631, seems intended to make that statute parallel to the cargo preference laws, S. 2600 should be amended so as to accomplish this result by eliminating its retroactivity and by following the general principles of the Cargo Preference Act as to effective date.

As to section 2 of S. 2600—the amendment to the Cargo Preference Act—while the language is not entirely clear, the intent seems to be to change the meaning of the words "rebuilt outside the United States."

Both the *Sabine* and the *Midlake* are war-built U.S.-flag tankers with full cargo preference and coastwise trading rights. Each of these vessels will be rebuilt and enlarged in the Beaumont (Texas) Shipyard of the Bethlehem Steel Corp., by inserting a foreign-built midbody.

We have obtained the ruling of the U.S. Maritime Administration that the rebuilt *Sabine* and the rebuilt *Midlake* fall within the definition of a privately owned U.S.-flag commercial vessel within the meaning of section 901(b) of the Merchant Marine Act, 1936, as amended, and that the rebuilt vessels would continue to be eligible to carry cargo preference cargoes.

In reliance upon the present Cargo Preference Act and the Maritime Administration rulings, we have made substantial commitments. We have invested a large amount of money in engineering which is required for such a rebuilding project. We have made commitments to the shipyard. The shipyard has advised us that it has turned away other work in order to have its manpower and facilities available to accomplish these projects. We have incurred expense in bringing the vessels into the shipyard at Beaumont. All of these commitments were made in good faith and in reliance upon existing legislation and rulings obtained from the Maritime Administration.

In order that the proposed amendment to the cargo preference law shall not work hardships on us or on any other shipowners similarly situated, we propose that the bill be amended by adding the following provision:

This Act shall be effective from the date of enactment hereof, provided, however, that no vessel shall be deemed to have lost its status as a privately owned United States flag commercial vessel hereunder if it is rebuilt within the United States with a foreign-built component under a contract executed before such date of enactment; and if the work of rebuilding is commenced not later than one year after such date of enactment.

No similar act with respect to cargo preference on coastwise eligibility has failed to include a provision extending the effective date of the legislation in consideration of shipowners who have made commitments in good faith and in reliance upon existing law.

In Public Law 714-84, an amendment of the coastwise laws, Congress provided:

This Act shall be effective from the date of enactment hereof; Provided, however, That no vessel shall be deemed to have lost its coastwise privileges hereunder if it is rebuilt under a contract entered into before such date of enactment and if the work of rebuilding is commenced not later than six months after such date of enactment.

In Public Law 86-583, another amendment of the coastwise laws, Congress provided:

Sec. 4. This Act shall be effective from the time of enactment hereof: Provided, however, That no vessel shall be deemed to have lost its coastwise privileges as a result of the amendments made by this Act if it is rebuilt within the United States, its territories (not including trust territories), or its possessions under a contract executed before such date of enactment and if the work of rebuilding is commenced not later than twenty-four months after such date of enactment.

In Public Law 87-266, an amendment to the cargo preference law, Congress added the following proviso:

*Provided, however,* That the provisions of this amendment shall not apply where, (1) prior to the enactment of this amendment, the owner of a vessel, or contractor for purchase of a vessel, originally constructed in the United States and rebuilt abroad or contracted to be rebuilt abroad, has notified the Maritime Administration in writing of its intent to document such vessel under United States registry, and such vessel is so documented on its first arrival at a United States port not later than one year subsequent to the date of the enactment of this amendment, or (2) where prior to the enactment of this amendment, the owner of a vessel under United States registry has made a contract for the rebuilding abroad of such vessel and has notified the Maritime Administration of such contract, and such rebuilding is completed and such vessel is thereafter documented under United States registry on its first arrival at a United States port not later than one year subsequent to the date of the enactment of this amendment.

The principle embodied in our proposed amendment to S. 2600 has been urged before this committee at previous hearings by Mr. Alvin

Shapiro of American Merchant Marine Institute, Mr. Marvin J. Coles and Mr. Richard Kurrus, all of whom are here today.

Testifying before this committee with respect to S. 3189, which became Public Law 86-583, Mr. Coles stated:

As I said a moment ago, Skarship has made very serious and substantial commitments. We have poured a good deal of money into this venture. The shipyards, I think, have made substantial commitments. Now unless these vessels have their coastwise rights they are for all practical purposes useless because they could not be taken off the Great Lakes and used on the ocean because these vessels are being prepared to a Great Lakes design. This is a very long ship in which the ratio of length to depth is greater than 14 to 1 and which, hence, cannot be classified for use on the oceans.

If they didn't have the coastwise privileges they would either be completely useless or could be made usable only by expenditures of very, very substantial additional amounts.

In view of this, Mr. Chairman, it is our belief that this statute should not be retroactive. We don't believe that there should be any taking away of existing rights under existing law by an ex post facto statute. We don't believe that any shipowner who has a ship in existence should be told, 'We are sorry, but you are not permitted to have coastwise rights which you previously had,' and we don't believe that what we have we should be deprived of by an ex post facto statute. (Hearings on S. 3189, 86th Congress, 2d Session, pp. 184-85.)

Testifying before this committee with respect to the same bill, Mr. Kurrus stated:

I don't know, and I am sure nobody else knows, how many contracts would, or could, be entered into between now and the date of enactment, but I would like to present what I consider to be a solution to the problem.

The principle with which I believe everyone is agreed is that those people who have proceeded in good faith in reliance on rulings from the Bureau of Customs should be allowed to go ahead under the existing law. Also, I should like to note that, in my opinion, no responsible company would go ahead and sign a contract for such rebuilding without a specific ruling from the Bureau of Customs in his favor. (P. 196.)

Testifying before this committee with respect to the same bill, Mr. Shapiro stated:

A number of our members have very direct interest in this piece of legislation. They have made commitments on the basis of existing law. These were honest, valid commitments, backed by honest, valid contracts. They would like not to be penalized as is provided in certain sections of this bill on the basis of their behavior in the past; that is, these were straightforward transactions, within the law, permission was granted or they were given a very distinct notion that they were within the law on the basis of customs rulings and they went ahead. (P. 190)

Mr. Wang urges the committee to embody this principle of fairness in S. 2600 by amending S. 2600 in the manner he has proposed if, and I repeat, if this committee believes, as we do not, that S. 2600 is in the best interest of the U.S. merchant marine.

Thank you for this opportunity to appear before the committee.

Senator BARTLETT. Thank you.

(Discussion off the record.)

Senator BARTLETT. The committee will recess subject to the call of the Chair. I think that we will leave the record open for whatever additional statements might be submitted for one week from this very day.

(Whereupon, at 12:40 p.m., the committee recessed, subject to call of the Chair.)

