

**Calendar No. 432**

110TH CONGRESS }  
*1st Session* }

SENATE

{ REPORT  
110-200

MARITIME ADMINISTRATION AUTHORITIES  
ACT OF 2007

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R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND  
TRANSPORTATION

ON

S. 1778



OCTOBER 19, 2007.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

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### MARITIME ADMINISTRATION AUTHORITIES ACT OF 2007

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OCTOBER 19, 2007.—Ordered to be printed  
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Mr. INOUYE, from the Committee on Commerce, Science, and  
Transportation, submitted the following

### REPORT

[To accompany S. 1778]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1778) to authorize certain activities of the Maritime Administration, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill (as amended) do pass.

#### PURPOSE OF THE BILL

The bill would clarify the authority of the MARAD to charter commercial vessels to other Federal agencies; authorize the MARAD to operate or lease its own vessels directly while retaining reimbursement for their use; and permit the chartering of National Defense Reserve Fleet (NDRF) vessels to state or local governments. It also would require the MARAD to dispose of all ships designated as “high priority” under the agency’s obsolete vessel disposal program within one year of their designation. “High priority” vessels are those that pose the most significant danger to the environment or have the highest cost to maintain. The bill would allow the MARAD to extend the period of time between which Ready Reserve Force (RRF) vessels must be activated and undergo sea trials from 24 months to 30 months in order to align sea trial requirements with the Coast Guard requirements for dry-docking. In addition, the bill would include several technical corrections requested by the House Law Revision Counsel and the Administration.

#### BACKGROUND AND NEEDS

The mission of the MARAD is to promote the development and maintenance of an adequate, well-balanced U.S. merchant marine,

capable of serving as a naval and military auxiliary in time of war or national emergency, and sufficient to carry the Nation's waterborne domestic commerce and a substantial portion of its waterborne foreign commerce. The MARAD also seeks to ensure that the United States enjoys adequate shipbuilding and repair service, efficient ports, effective intermodal water and land transportation systems, and adequate reserve shipping capacity in times of national emergency.

To meet its mission, the MARAD administers various U.S. merchant marine support programs within the Department of Transportation (DOT). These programs include the Maritime Security Program (MSP), the Title XI Maritime Loan Guarantee Program, the Small Shipyard and Maritime Community Assistance Program, the Deepwater Port Licensing Program, various cargo preference programs, maintenance of the RRF and the NDRF, and operation of the United States Merchant Marine Academy (USMMA) at Kings Point, New York. The MARAD has approximately 754 employees, including RRF and USMMA staff.

The MARAD's operations and training account funds the administration and staffing of the MARAD programs (other than the Title XI guaranteed loan program and RRF costs), the USMMA, State maritime school costs associated with Federal training ships, training courses for merchant mariners, various operating programs, and research and development. The MARAD appropriations do not include funding for cargo preference or RRF/NDRF maintenance funding. RRF/NDRF maintenance is funded by the Department of Defense (DOD) and administered by the MARAD.

The MSP provides funded operating agreements to privately owned, U.S.-flagged, and U.S.-crewed vessels operating in international trade. This fleet is also available to support the DOD sustainment in a contingency. Currently, MSP is authorized through fiscal year 2015 and subject to a separate annual appropriation.

The purpose of the Title XI Maritime Loan Guarantee Program is to promote the growth and modernization of the U.S. merchant marine and U.S. shipyards. The program enables owners of eligible vessels and eligible shipyards to obtain long-term financing with attractive terms by using the credit of the United States Government to guarantee commercial loans.

#### SUMMARY OF PROVISIONS

Several provisions of this bill would give the MARAD additional vessel chartering authority, including the ability to charter commercial vessels to other Federal agencies and State and local governments while obtaining reimbursement for their use.

The bill would establish a priority system for the disposal of obsolete government vessels in the agency's Ship Disposal Program. Vessels that pose a significant risk to the environment or have high maintenance costs are to be designated as "high priority" and would be required to be disposed of within one year.

The bill extends from 24 months to 30 months the period of time during which RRF vessels must be activated and undergo sea trials. This change allows the MARAD to align the sea trial requirement with the United States Coast Guard's (USCG) requirement for vessels to be dry-docked twice every five years. Aligning

this requirement would alleviate the need for the MARAD to conduct sea trials out of sequence.

The bill would include several technical corrections, which update the newly codified title 46, United States Code, to reflect amendments made in P.L. 109-304 and P.L. 109-364. Additionally, the bill also includes an Administration-requested technical correction to Section 3509 of the FY 2007 Department of Defense Authorization bill, the Large Passenger Ship Crew Requirements provision.

#### LEGISLATIVE HISTORY

The bill was introduced on July 12, 2007. On July 19, 2007, the Committee considered this bill in an executive session and ordered S. 1778 to be reported favorably, as amended, by voice vote. The Committee accepted an amendment offered by Senator Snowe, which limited the MARAD's vessel chartering authority under Section 103 to vessels that are U.S.-flagged, and an amendment offered by Senator Vitter, which requires the Administrator to develop a comprehensive review process for traditional and non-traditional applications submitted for the vessel loan guarantee program and requires the review of a traditional application not exceed 90 days from the date the application is submitted.

#### ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

AUGUST 24, 2007.

Hon. DANIEL K. INOUE,  
*Chairman, Committee on Commerce, Science, and Transportation,  
U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1778, the Maritime Administration Authorities Act of 2007.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Deborah Reis.

Sincerely,

PETER R. ORSZAG,  
*Director.*

Enclosure.

#### *S. 1778—Maritime Administration Authorities Act of 2007*

Summary: S. 1778 would amend various laws governing the activities of the Maritime Administration (MARAD) and would authorize appropriations for the agency for fiscal year 2008. CBO estimates that appropriation of the amounts authorized by the legislation for MARAD operations and for the disposal of obsolete vessels would result in outlays of \$112 million in 2008 and \$141 million over the 2008–2012 period. Enacting S. 1778 would have no effect on revenues or direct spending.

The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no cost on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 1778 is shown in the following table. The costs of this legislation fall within budget function 400 (transportation).

	By fiscal year, in millions of dollars—					
	2007	2008	2009	2010	2011	2012
SPENDING SUBJECT TO APPROPRIATION						
Spending for MARAD Operations and Ship Disposal						
Under Current Law:						
Budget Authority <sup>1</sup> .....	132	0	0	0	0	0
Estimated Outlays .....	129	30	14	0	0	0
Proposed Changes: <sup>2</sup>						
Authorization Level .....	0	141	0	0	0	0
Estimated Outlays .....	0	112	18	11	0	0
Spending for MARAD Operations and Ship Disposal						
Under S. 1778:						
Authorization Level <sup>1</sup> .....	132	141	0	0	0	0
Estimated Outlays .....	129	142	32	11	0	0

<sup>1</sup>The 2007 level is the amount appropriated for that year.

<sup>2</sup>The authorization levels do not include \$62.5 million specifically authorized by the bill for grants to small shipyards and maritime communities, reimbursements to ship operators for vessel repair and maintenance costs incurred at domestic shipyards, or the subsidy and administrative costs of maritime loan guarantees because all of those programs are authorized for 2008 by existing statutes.

Basis of estimate: S. 1778 would authorize the appropriation of \$123 million for MARAD operations and \$18 million for the agency's program to dispose of obsolete vessels in the National Defense Reserve Fleet. The bill also would authorize \$20 million for grants to small shipyards and maritime communities, \$19.5 million for reimbursements to vessel owners for repairs made in U.S. shipyards, \$20 million for the cost of making maritime loan guarantees, and \$3 million for related administrative costs.

The authorization level shown in the above table includes the amounts specified by the bill for MARAD operations and ship disposal. Amounts specified for other programs have been excluded because those programs are already authorized for fiscal year 2008 under current law. We estimate that appropriation of the amounts authorized for operations and ship disposal would increase outlays by \$112 million in 2008 and by \$141 million over the 2008–2012 period. Estimated outlays are based on historical spending patterns for MARAD activities.

Intergovernmental and private-sector impact: The bill contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no cost on state, local, or tribal governments.

Estimate prepared by: Federal costs: Deborah Reis; Impact on state, local, and tribal governments: Elizabeth Cove; Impact on the private sector: Jacob Kuipers.

Estimate approved by: Peter H. Fontaine, Assistant Director for Budget Analysis.

#### REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

## NUMBER OF PERSONS COVERED

This program would not affect the number of people subject to regulation.

## ECONOMIC IMPACT

The bill would not have any additional economic impact on the Federal government or private sector.

## PRIVACY

This program would not impact privacy issues.

## PAPERWORK

This program would not create new mandatory paperwork or reporting requirements.

## SECTION-BY-SECTION ANALYSIS

*Section 1. Short Title.*

Section 101 would state the short title, the “Maritime Administration Authorities Act of 2007.”

## TITLE I—MARITIME ADMINISTRATION

*Section 101. Authorization of Appropriations.*

Section 101 would authorize appropriations for fiscal year 2008 as follows: \$122,890,545 for operations and training expenses; \$19,500,000 for paying reimbursement under section 3517 of the Maritime Security Act of 2003; \$20,000,000 for assistance to small shipyards; \$18,000,000 for ship disposal; \$20,000,000 for the Title XI loan guarantee program; and \$3,408,000 for implementation costs in connection with several of the programs.

*Section 102. Commercial Vessel Chartering Authority.*

Section 102 would clarify the MARAD’s ability to charter only U.S.-flag commercial vessels to other Federal agencies. This provision would allow the Secretary of Transportation to acquire or otherwise obtain the use of private vessel assets and other related property whenever the Secretary deems such charter to be appropriate.

*Section 103. Maritime Administration Vessel Chartering Authority.*

Section 103 would authorize the MARAD to operate or lease its own vessels directly and to obtain reimbursement for the use of its vessels. This section would add “vessels” to the list of property that may be leased or operated by the Secretary under section 50303 of title 46, United States Code.

*Section 104. Chartering to State and Local Governmental Instrumentalities.*

Section 104 would amend the MARAD’s authority to charter vessels to States, local governments, or U.S. territories. This would allow the MARAD to respond more immediately to requests for assistance when deployment is critical for response and recovery activities.

*Section 105. Disposal of Obsolete Government Vessels.*

Section 105 would clarify that ship disposal transactions include both sales and contracts for services. This section would require the disposal of all deteriorated high priority ships within one year of their designation. Higher priority would be given to vessels that pose the most significant environmental danger or have high maintenance costs.

*Section 106. Vessel Transfer Authority.*

Section 3504 of the National Defense Authorization Act of 2007, Public Law 109-364, authorized the Secretary “to transfer or otherwise make available without reimbursement to any other department a vessel under the jurisdiction of the DOT, upon request by the Secretary of the department that receives the vessel.” However, there continues to be a conflict between Section 3504 (49 U.S.C. 301 note) and Section 11(b) of the Merchant Ships Sales Act of 1946 (50 App. U.S.C. 1744(b)), which bars Federal agencies outside of the DOD from most uses of NDRF vessels. Section 106 would resolve one aspect of this conflict by allowing NDRF vessels to be available to other Federal agencies on request to the Secretary of Transportation with prior consent of the Secretary of Defense.

*Section 107. Sea Trials for Ready Reserve Force Vessels.*

Section 107 would extend from 24 months to 30 months the period of time between which RRF vessels must be activated and undergo sea trials. This change would align the MARAD’s requirement for sea trials with USCG regulations, which require that vessels must be dry-docked twice in five years. This change would alleviate the need to conduct out of sequence sea trials and eliminate unwarranted expenses to the RRF program.

*Section 108. Review of Applications for Loans and Guarantees.*

This section would require the Administrator to develop a comprehensive review process for traditional and non-traditional applications to the vessel loan guarantee program. The application review process for traditional or routine cases would be required not to exceed 90 days from the date the complete application is submitted to the MARAD to the date the Administrator either approves or denies the application.

TITLE II—TECHNICAL CORRECTIONS

*Section 201. Statutory Construction.*

Section 201 would clarify that the amendments made by title II of this bill make no substantive change to existing law. Various provisions of maritime law were codified as part of title 46, United States Code, by Public Law 109-304, enacted October 6, 2006. Section 18(a) of that law provided that it was codifying existing law as in effect on April 30, 2005, and that any amendments to such law enacted after that date should be given effect even though not reflected in the text of the newly codified provisions. This title would update the newly codified provisions to reflect those amendments. It also would amend certain of those provisions based on public comments to the codification bill that were submitted too



late to be reflected in that bill and would make technical corrections to Public Law 109-304 and Public Law 109-364.

*Section 202. Personal Injury to or Death of Seamen.*

Section 202 would modify the language of section 30104 of title 46, United States Code, which codified section 20(a) of the Act of March 4, 1915, as amended by section 33 of the Act of June 5, 1920 (formerly 46 App. U.S.C. 688(a)) to ensure the same meaning as former section 20(a), as interpreted by the courts. The amendment would be made retroactive to the date of the codification by Public Law 109-304 to ensure that no inadvertent substantive change was made, temporarily or otherwise, by that codification.

*Section 203. Amendments to Chapter 537 Based on Public Law 109-163.*

Section 203 would update chapter 537 of Title 46, United States Code, relating to ship mortgage loans and guarantees, to reflect the amendments made by section 3507 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109-163).

*Section 204. Additional Amendments Based on Public Law 109-163.*

Section 204 would update various provisions codified in Title 46, United States Code, to reflect the amendments made by sections 515(g)(2), 3502, 3509, and 3510 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109-163). It also would add a new section 54101 to title 46, United States Code, based on section 3506 of that Act.

*Section 205. Amendments Based on Public Law 109-171.*

Section 205 would update section 60301 of title 46, United States Code, to reflect the amendments made by section 4001 of the Deficit Reduction Act of 2005 (Public Law 109-171).

*Section 206. Amendments Based on Public Law 109-241.*

Section 206 would update various provisions codified in title 46, United States Code, to reflect the amendments made by sections 303, 307, 308, 310, 901(q), and 902(o) of the Coast Guard and Maritime Transportation Act of 2006 (Public Law 109-241).

*Section 207. Amendments Based on Public Law 109-364.*

Section 207 would update cross references in section 1017(b)(2) of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364, 10 U.S.C. 2631 note) to reflect the codification in title 46, United States Code, of the provisions referenced.

Additionally, this section would update various provisions codified in title 46, United States Code, to reflect the amendments made by sections 3505, 3506, 3508, and 3510(a) and (b) of that Act.

*Section 208. Miscellaneous Amendments.*

Section 208 would delete the reference to Canton Island in section 55101(b) of title 46, United States Code, because Canton Island is no longer a territory or possession of the United States. It also would amend section 55110 to improve the heading, and in

section 80102, would substitute the words “salvage” and “salvaging” for “wreckers” and “wrecking”.

*Section 209. Application of Sunset Provision to Codified Provision.*

This section would ensure that the tax rate in section 53511(f)(2) of title 46, United States Code, is the same as it would have been under former section 607(h)(6)(A) of the Merchant Marine Act, 1936. This section would not amend section 53511(f)(2) of title 46, United States Code, directly, in case of any further amendment to the sunset provision in section 303 of Public Law 108-27.

*Section 210. Technical Corrections.*

This section would make technical corrections to Public Law 109-304 and to provisions enacted or amended by that law. Additionally, it would make a technical change to section 8103 (k)(3)(C)(iv) of title 46, United States Code, to clarify “section” to mean section 252 of the Immigration and Nationality Act.

## CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

### NATIONAL MARITIME HERITAGE ACT OF 1994

#### SEC. 6. FUNDING.

[16 U.S.C. 5405]

(a) AVAILABILITY OF FUNDS FROM SALE AND SCRAPPING OF OBSOLETE VESSELS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the amount of funds credited in a fiscal year to the Vessel Operations Revolving Fund established by the Act of June 2, 1951 (46 App. U.S.C. 1241a), that is attributable to the sale of obsolete vessels in the National Defense Reserve Fleet that are scrapped or sold under section 508 or 510(i) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1158 or 1160(i)) shall be available until expended as follows:

(A) 50 percent shall be available to the Administrator of the Maritime Administration for such acquisition, maintenance, repair, reconditioning, or improvement of vessels in the National Defense Reserve Fleet as is authorized under other Federal law.

(B) 25 percent shall be available to the Administrator of the Maritime Administration for the payment or reimbursement of expenses incurred by or on behalf of State maritime academies or the United States Merchant Marine Academy for facility and training ship maintenance, repair, and modernization, and for the purchase of simulators and fuel.

(C) The remainder shall be available to the Secretary to carry out the Program, as provided in subsection (b).

(2) APPLICATION.—Paragraph (1) does not apply to amounts credited to the Vessel Operations Revolving Fund before July 1, 1994.

(b) USE OF AMOUNTS FOR PROGRAM.—

(1) IN GENERAL.—Except as provided in paragraph (2), of amounts available each fiscal year for the Program under subsection (a)(1)(C)—

(A) ½ shall be used for grants under section 4(b); and

(B) ½ shall be used for grants under section 4(c).

(2) USE FOR INTERIM PROJECTS.—Amounts available for the Program under subsection (a)(1)(C) that are the proceeds of any of the first 8 obsolete vessels in the National Defense Re-

serve Fleet that are sold or scrapped after July 1, 1994, under section 508 or 510(i) of the Merchant Marine Act, 1936 (46 U.S.C. 1158 or 1160(i)) are available to the Secretary for grants for interim projects approved under section 4(j) of this Act.

(3) ADMINISTRATIVE EXPENSES.—

(A) IN GENERAL.—Not more than 15 percent or \$500,000, whichever is less, of the amount available for the Program under subsection (a)(1)(C) for a fiscal year may be used for expenses of administering the Program.

(B) ALLOCATION.—Of the amount available under subparagraph (A) for a fiscal year—

(i)  $\frac{1}{2}$  shall be allocated to the National Trust for expenses incurred in administering grants under section 4(b); and

(ii)  $\frac{1}{2}$  shall be allocated as appropriate by the Secretary to the National Park Service and participating State Historic Preservation Officers.

(c) DISPOSALS OF VESSELS.—

(1) REQUIREMENT.—The Secretary of Transportation shall dispose (*either by sale or purchase of disposal services*) of all vessels described in paragraph (2)—

【(A) by September 30, 2006;】

(A) *in accordance with a priority system for disposing of vessels, as determined by the Secretary, which shall include provisions requiring the Maritime Administration to—*

(i) *dispose of all deteriorated high priority ships that are available for disposal, within 12 months of their designation as such; and*

(ii) *give priority to the disposition of those vessels that pose the most significant danger to the environment or cost the most to maintain;*

(B) in the manner that provides the best value to the Government, except in any case in which obtaining the best value would require towing a vessel and such towing poses a serious threat to the environment; and

(C) in accordance with the plan of the Department of Transportation for disposal of those vessels and requirements under sections 508 and 510(i) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1158, 1160(i)).

(2) VESSELS DESCRIBED.—The vessels referred to in paragraph (1) are the vessels in the National Defense Reserve Fleet after July 1, 1994, that—

(A) are not assigned to the Ready Reserve Force component of that fleet; and

(B) are not specifically authorized or required by statute to be used for a particular purpose.

(d) TREATMENT OF AMOUNTS AVAILABLE.—Amounts available under this section shall not be considered in any determination of the amounts available to the Department of the Interior.

**DEFICIT REDUCTION ACT OF 2005**

**TITLE IV—TRANSPORTATION PROVISIONS**

**SEC. 4001. EXTENSION OF VESSEL TONNAGE DUTIES.**

[(a) EXTENSION OF DUTIES.—Section 36 of the Act entitled “An Act to provide revenue, equalize duties and encourage the industries of the United States, and for other purposes”, approved August 5, 1909 (36 Stat. 111; 46 U.S.C. App. 121), is amended—

[(1) by striking “9 cents per ton” and all that follows through “2002,” the first place it appears and inserting “4.5 cents per ton, not to exceed in the aggregate 22.5 cents per ton in any one year, for fiscal years 2006 through 2010,”; and

[(2) by striking “27 cents per ton” and all that follows through “2002,” and inserting “13.5 cents per ton, not to exceed 67.5 cents per ton per annum, for fiscal years 2006 through 2010,”.

[(b) CONFORMING AMENDMENT.—The Act entitled “An Act concerning tonnage duties on vessels entering otherwise than by sea”, approved March 8, 1910 (36 Stat. 234; 46 U.S.C. App. 132), is amended by striking “9 cents per ton” and all that follows through “and 2 cents” and inserting “4.5 cents per ton, not to exceed in the aggregate 22.5 cents per ton in any one year, for fiscal years 2006 through 2010, and 2 cents”.]

**NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL  
YEAR 2006**

**SEC. 515. REDESIGNATION OF THE NAVAL RESERVE AS THE NAVY RESERVE.**

(a) REDESIGNATION OF RESERVE COMPONENT.—

(1) REDESIGNATION.— The reserve component of the Armed Forces known as the Naval Reserve is redesignated as the Navy Reserve.

(2) CONFORMING REPEAL.—Section 517 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108–375; 118 Stat. 1884; 10 U.S.C. 10101 note) is repealed.

(b) CONFORMING AMENDMENTS TO TITLE 10, UNITED STATES CODE.—

(1) TEXT AMENDMENTS.—Title 10, United States Code, is amended by striking “Naval Reserve” each place it appears in the following provisions and inserting “Navy Reserve”:

- (A) Section 513(a).
- (B) Section 516.
- (C) Section 526(b)(2)(C)(i).
- (D) Section 971(a).
- (E) Section 5001(a)(1).
- (F) Section 5143.
- (G) Section 5596(c).
- (H) Section 6323(f).
- (I) Section 6327.
- (J) Section 6330(b).
- (K) Section 6331(a)(2).
- (L) Section 6336.

- (M) Section 6389.
- (N) Section 6911(c)(1).
- (O) Section 6913(a).
- (P) Section 6915.
- (Q) Section 6954(b)(3).
- (R) Section 6956(a)(2).
- (S) Section 6959.
- (T) Section 7225.
- (U) Section 7226.
- (V) Section 7605(1).
- (W) Section 7852.
- (X) Section 7853.
- (Y) Section 7854.
- (Z) Section 10101(3).
- (AA) Section 10108.
- (BB) Section 10172.
- (CC) Section 10301(a)(7).
- (DD) Section 10303.
- (EE) Section 12004(e)(2).
- (FF) Section 12005.
- (GG) Section 12010.
- (HH) Section 12011(a)(2).
- (II) Section 12012(a).
- (JJ) Section 12103.
- (KK) Section 12205.
- (LL) Section 12207(b)(2).
- (MM) Section 12732.
- (NN) Section 12774(b) (other than the first place it appears).
- (OO) Section 14002(b).
- (PP) Section 14101(a)(1).
- (QQ) Section 14107(d).
- (RR) Section 14302(a)(1)(A).
- (SS) Section 14313(b).
- (TT) Section 14501(a).
- (UU) Section 14512(b).
- (VV) Section 14705(a).
- (WW) Section 16201(d)(1)(B)(ii).

(2) SUBSECTION CAPTION AMENDMENTS.—Such title is further amended in sections 971(a) and 5143(a) by striking “Naval Reserve” and inserting “Navy Reserve”.

(3) SECTION HEADING AMENDMENTS.—Such title is further amended as follows:

(A) The heading of section 5143 is amended to read as follows:

**“Sec. 5143. Office of Navy Reserve: appointment of Chief”.**

(B) The heading of section 6327 is amended to read as follows: “Sec. 6327. Officers and enlisted members of the Navy Reserve and Marine Corps Reserve: 30 years; 20 years; retired pay”.

(C) The heading of section 6389 is amended to read as follows: “Sec. 6389. Navy Reserve and Marine Corps Reserve; officers: elimination from active status; computation of total commissioned service”.

(D) The heading of section 7225 is amended to read as follows: "Sec. 7225. Navy Reserve flag".

(E) The heading of section 7226 is amended to read as follows: "Sec. 7226. Navy Reserve yacht pennant".

(F) The heading of section 10108 is amended to read as follows: "Sec. 10108. Navy Reserve: administration".

(G) The heading of section 10172 is amended to read as follows: "Sec. 10172. Navy Reserve Force".

(H) The heading of section 10303 is amended to read as follows: "Sec. 10303. Navy Reserve Policy Board".

(I) The heading of section 12010 is amended to read as follows: "Sec. 12010. Computations for Navy Reserve and Marine Corps Reserve: rule when fraction occurs in final result".

(J) The heading of section 14306 is amended to read as follows: "Sec. 14306. Establishment of promotion zones: Navy Reserve and Marine Corps Reserve running mate system".

(4) TABLES OF SECTIONS AMENDMENTS.—Such title is further amended as follows:

(A) The item relating to section 5143 in the table of sections at the beginning of chapter 513 is amended to read as follows: "5143. Office of Navy Reserve: appointment of Chief."

(B) The item relating to section 6327 in the table of sections at the beginning of chapter 571 is amended to read as follows: "6327. Officers and enlisted members of the Navy Reserve and Marine Corps Reserve: 30 years; 20 years; retired pay."

(C) The item relating to section 6389 in the table of sections at the beginning of chapter 573 is amended to read as follows: "6389. Navy Reserve and Marine Corps Reserve; officers: elimination from active status; computation of total commissioned service."

(D) The items relating to sections 7225 and 7226 in the table of sections at the beginning of chapter 631 are amended to read as follows: "7225. Navy Reserve flag. "7226. Navy Reserve yacht pennant."

(E) The item relating to section 10108 in the table of sections at the beginning of chapter 1003 is amended to read as follows: "10108. Navy Reserve: administration."

(F) The item relating to section 10172 in the table of sections at the beginning of chapter 1006 is amended to read as follows: "10172. Navy Reserve Force."

(G) The item relating to section 10303 in the table of sections at the beginning of chapter 1009 is amended to read as follows: "10303. Navy Reserve Policy Board."

(H) The item relating to section 12010 in the table of sections at the beginning of chapter 1201 is amended to read as follows: "12010. Computations for Navy Reserve and Marine Corps Reserve: rule when fraction occurs in final result."

(I) The item relating to section 14306 in the table of sections at the beginning of chapter 1405 is amended to read

as follows: “14306. Establishment of promotion zones: Navy Reserve and Marine Corps Reserve running mate system.”.

(c) CONFORMING AMENDMENT TO TITLE 14, UNITED STATES CODE.—Section 705 of title 14, United States Code, is amended by striking “Naval Reserve” each place it appears and inserting “Navy Reserve”.

(d) CONFORMING AMENDMENTS TO TITLE 37, UNITED STATES CODE.—

(1) TEXT AMENDMENTS.—Title 37, United States Code, is amended by striking “Naval Reserve” each place it appears in the following provisions and inserting “Navy Reserve”:

- (A) Section 101(24)(C).
- (B) Section 201(d).
- (C) Section 205(a)(2)(I).
- (D) Section 301c(d).
- (E) Section 319(a).
- (F) Section 905.

(2) SUBSECTION CAPTION AMENDMENT.—Section 301c(d) of such title is further amended by striking “Naval Reserve” and inserting “Navy Reserve”.

(e) CONFORMING AMENDMENTS TO TITLE 38, UNITED STATES CODE.—Title 38, United States Code, is amended by striking “Naval Reserve” each place it appears in the following provisions and inserting “Navy Reserve”:

- (1) Section 101(27)(B).
- (2) Section 3002(6)(C).
- (3) Section 3202(1)(C)(iii).
- (4) Section 3452(a)(3)(C).

(f) CONFORMING AMENDMENTS TO OTHER CODIFIED TITLES.—

(1) TITLE 5, UNITED STATES CODE.—Section 2108(1)(B) of title 5, United States Code, is amended by striking “Naval Reserve” and inserting “Navy Reserve”.

(2) TITLE 18, UNITED STATES CODE.—Section 2387(b) of title 18, United States Code, is amended by striking “Naval Reserve” and inserting “Navy Reserve”.

(3) TITLE 46, UNITED STATES CODE.—Title 46, United States Code, is amended as follows:

(A) Sections 8103(g) and 8302(g) are amended by striking “Naval Reserve” each place it appears and inserting “Navy Reserve”.

(B) The heading of section 8103 is amended to read as follows: “Sec. 8103. Citizenship and Navy Reserve requirements”.

(C) The table of sections at the beginning of chapter 81 is amended by striking the item relating to section 8103 and inserting the following new item: “8103. Citizenship and Navy Reserve requirements.”.

(g) CONFORMING AMENDMENTS TO OTHER LAWS.—

(1) Section 2301(4)(C) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6671(4)(C)) is amended by striking “Naval Reserve” and inserting “Navy Reserve”.

¶(2) The Merchant Marine Act, 1936 is amended—



[(A) by striking “Naval Reserve” each place it appears in sections 301(b) (46 U.S.C. App. 1131(b)), 1303 (46 U.S.C. App. 1295b), and 1304 (46 U.S.C. App. 1295c) and inserting “Navy Reserve”; and

[(B) by striking “Naval Reserve” in sections 1303(c) and 1304(h) and inserting “Navy Reserve”:]

(3) The Military Selective Service Act is amended—

(A) in section 6(a)(1) (50 U.S.C. App. 456(a)(1)), by striking “United States Naval Reserves” and inserting “members of the United States Navy Reserve”; and

(B) in section 16(i) (50 U.S.C. App. 466(i)), by striking “Naval Reserve” and inserting “Navy Reserve”.

(h) OTHER REFERENCES.—Any reference in any law, regulation, document, record, or other paper of the United States to the Naval Reserve, other than a reference to the Naval Reserve regarding the United States Naval Reserve Retired List, shall be considered to be a reference to the Navy Reserve.

\* \* \* \* \*

**[SEC. 3502. PAYMENTS FOR STATE AND REGIONAL MARITIME ACADEMIES.**

[(a) ANNUAL PAYMENT.—Section 1304(d)(1)(C)(ii) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1295c(d)(1)(C)(ii)) is amended by striking “\$200,000” and inserting “\$300,000 for fiscal year 2006, \$400,000 for fiscal year 2007, and \$500,000 for fiscal year 2008 and each fiscal year thereafter”.

[(b) SCHOOL SHIP FUEL PAYMENT.—Section 1304(c)(2) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1295c(c)(2)) is amended—

[(1) by striking “The Secretary may pay to any State maritime academy” and inserting “(A) The Secretary shall, subject to the availability of appropriations, pay to each State maritime academy”; and

[(2) by adding at the end the following: “(B) The amount of the payment to a State maritime academy under this paragraph shall not exceed—

[(i) \$100,000 for fiscal year 2006;

[(ii) \$200,000 for fiscal year 2007; and [(iii) \$300,000 for fiscal year 2008 and each fiscal year thereafter.”.]

\* \* \* \* \*

**[SEC. 3506. ASSISTANCE FOR SMALL SHIPYARDS AND MARITIME COMMUNITIES.**

[(a) ESTABLISHMENT OF PROGRAM.—Subject to the availability of appropriations, the Administrator of the Maritime Administration shall establish a program to provide assistance to State and local governments—

[(1) to provide assistance in the form of grants, loans, and loan guarantees to small shipyards for capital improvements; and

[(2) for maritime training programs in communities whose economies are substantially related to the maritime industry.

[(b) AWARDS.—In providing assistance under the program, the Administrator shall—

[(1) take into account—



[(3) PROCEDURAL SAFEGUARDS.—The Administrator, in consultation with the Office of the Inspector General, shall issue guidelines to establish appropriate accounting, reporting, and review procedures to ensure that—

[(A) grant funds are used for the purposes for which they were made available;

[(B) grantees have properly accounted for all expenditures of grant funds; and

[(C) grant funds not used for such purposes and amounts not obligated or expended are returned.

[(4) PROJECT APPROVAL REQUIRED.—The Administrator may not award a grant under this section unless the Administrator determines that—

[(A) sufficient funding is available to meet the matching requirements of subsection (e);

[(B) the project will be completed without unreasonable delay; and

[(C) the recipient has authority to carry out the proposed project.

[(g) AUDITS AND EXAMINATIONS.—All grantees under this section shall maintain such records as the Administrator may require and make such records available for review and audit by the Administrator.

[(h) SMALL SHIPYARD DEFINED.—In this section, the term “small shipyard” means a shipyard that—

[(1) is a small business concern (within the meaning of section 3 of the Small Business Act (15 U.S.C. 632); and

[(2) does not have more than 600 employees.

[(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Administrator of the Maritime Administration for each of fiscal years 2006 through 2010 to carry out this section—

[(1) \$5,000,000 for training grants; and

[(2) \$25,000,000 for capital and related improvement grants.]

**SEC. 3507. TRANSFER OF AUTHORITY FOR TITLE XI NON-FISHING LOAN GUARANTEE DECISIONS TO MARITIME ADMINISTRATION.**

[(a) IN GENERAL.—Title XI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1271 et seq.), as amended by subsection (d) of this section, is amended—

[(1) by striking “Secretary” each place it appears and inserting “Secretary or Administrator” in—

[(A) section 1101(c), (f), and (g);

[(B) section 1102;

[(C) section 1103(a), (b), (c), (e), (g), and (h);

[(D) section 1104A, except in—

[(i) subsection (b)(7) and the undesignated paragraph that follows;

[(ii) paragraphs (1), (2), (3)(B), and (4) of subsection (d);

[(iii) subsection (e)(2)(F) the second place it appears;

[(iv) subsection (j); and

[(v) subsection (n)(1) the first place it appears;

- [(E) section 1104B;
  - [(F) section 1105(a), (b), (c), and (e);
  - [(G) section 1105(d) the first, second, third, fifth, and last places it appears; and
  - [(H) sections 1108, 1109 (except the second place it appears in subsection (c)), and 1113 (as redesignated by subsection (d) of this section);
- [(2) by striking “Secretary” and inserting “Administrator” in—
- [(A) section 1103(i);
  - [(B) section 1103(j) the first place it appears;
  - [(C) section 1104A(b)(7) each place it appears but not in the undesignated paragraph that follows subsection (b)(7);
  - [(D) section 1104A(d)(1)(A) each place it appears except the first;
  - [(E) section 1104A(d)(3) each place it appears except in subparagraph (B);
  - [(F) section 1104A(j)(1) the first, fifth, and seventh places it appears;
  - [(G) section 1104A(n) each place it appears except the first;
  - [(H) section 1110 each place it appears except the first and fourth places it appears in subsection (b);
  - [(I) section 1111(a) and (b)(2) each place it appears;
  - [(J) section 1111(b)(4) each place it appears except the first; and
  - [(K) section 1112 each place it appears; and
- [(3) by striking “Secretary’s” in sections 1108(g)(1) and 1109(d)(3) and inserting “Secretary’s or Administrator’s”.
- [(b) ADDITIONAL AND CONFORMING TITLE XI CHANGES.—
- [(1) Section 1101 of the Merchant Marine Act, 1936 (46 U.S.C. App. 1271) is amended—
- [(A) by striking “title,” and all that follows in subsection (n) and inserting “title.”; and
  - [(B) by adding at the end the following: “(p) The term ‘Administrator’ means the Administrator of the Maritime Administration.”.
- [(2) Section 1103(j) of such Act (46 U.S.C. App. 1273(j)) is amended by adding at the end the following: “The Secretary of Defense shall determine whether a vessel satisfies paragraphs (1) and (2) by not later than 30 days after receipt of a request from the Administrator for such a determination.”.
- [(3) Section 1104A(d) of such Act (46 U.S.C. App. 1274(d)) is amended—
- [(A) by striking “Secretary of Transportation” in paragraphs (1)(A) and (3)(B) and inserting “Administrator”;
  - [(B) by striking “the waiver” in paragraph (4)(B) and inserting “if deemed necessary by the Secretary or Administrator, the waiver”;
  - [(C) by striking “the increased” in paragraph (4)(B) and inserting “any significant increase in”.
- [(4) Section 1104A(f) of such Act (46 U.S.C. App. 1273(f)) is amended—

[(A) by striking “financial structures, or other risk factors identified by the Secretary or Administrator.” in paragraph (2), as amended by subsection (a) of this section, and inserting “or financial structures.”;

[(B) by striking “financial structures, or other risk factors identified by the Secretary or Administrator.” in paragraph (3), as amended by subsection (a) of this section, and inserting “or financial structures.”; and

[(C) by adding at the end the following: “(5) A third party independent analysis conducted under paragraph (2) shall be performed by a private sector expert in assessing such risk factors who is selected by the Administrator.”.

[(5) Section 1104A(j)(2) of such Act (46 U.S.C. App. 1273(j)(2)) is amended by striking “The Secretary of Transportation” and inserting “The Administrator”.

[(6) Section 1104A(m) of such Act (46 U.S.C. App. 1273(m)) is amended by striking the last sentence and inserting “If the Secretary or Administrator has waived a requirement under section 1104A(d), the loan agreement shall include requirements for additional payments, collateral, or equity contributions to meet such waived requirement upon the occurrence of verifiable conditions indicating that the obligor’s financial condition enables the obligor to meet the waived requirement.”.

[(7) Section 1104A(n)(1) of such Act (46 U.S.C. App. 1273(n)(1)) is amended by striking “The Secretary of Transportation” and inserting “The Administrator”.

[(8) Section 1111 of such Act (46 U.S.C. 1279(f)) is amended by striking “Secretary of Transportation” each place it appears and inserting “Administrator”.

(c) CONFORMING CHANGES IN OTHER STATUTES.—

[(1) Section 401(a) of the Ocean Shipping Reform Act of 1998 (46 U.S.C. App. 1273a(a)) is amended by striking “Secretary of Transportation” and inserting “Administrator of the Maritime Administration”.

[(2) Section 101 of Public Law 85–469 (46 U.S.C. 1280) is amended by inserting “or the Administrator of the Maritime Administration” after “Secretary”.

[(3) Section 3527 of the Maritime Security Act of 2003 (46 U.S.C. App. 1280b) is amended by striking “Secretary of Transportation” and inserting “Administrator of the Maritime Administration”.]

(4) Section 3528 of the Maritime Security Act of 2003 (46 U.S.C. App. 1271 note) is repealed.

[(d) TECHNICAL CORRECTION OF SECTION NUMBERING.—Title XI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1271 et seq.) is amended by redesignating the second sections 1111 and 1112, as added by section 303 of the Sustainable Fisheries Act (Public Law 104–297; 110 Stat. 3616), as sections 1113 and 1114, respectively.]

\* \* \* \* \*

**[SEC. 3509. UNITED STATES MARITIME SERVICE.**

[Section 1306(a) of the Maritime Education and Training Act of 1980 (46 U.S.C. App. 1295e(a)), is amended by inserting “and to perform functions to assist the United States merchant marine, as

determined necessary by the Secretary,” after “United States” the second place it appears.

**[SEC. 3510. AWARDS AND MEDALS.**

【Section 5(c) of the Merchant Marine Decorations and Medals Act (46 U.S.C. App. 2004(c)) is amended by striking “provide at cost, or authorize for the manufacture and sale at reasonable prices by private persons—” and inserting “provide—”.】

COAST GUARD AND MARITIME TRANSPORTATION ACT OF  
2006

\* \* \* \* \*

**[SEC. 303. CERTIFICATION OF VESSEL NATIONALITY IN DRUG SMUGGLING CASES.**

【Section 3(c)(2) of the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1903(c)(2)) is amended by striking the last two sentences and inserting the following: “The response of a foreign nation to a claim of registry under subparagraph (A) or (C) may be made by radio, telephone, or similar oral or electronic means, and is conclusively proved by certification of the Secretary of State or the Secretary’s designee.”.】

\* \* \* \* \*

**[SEC. 307. TRAINING OF CADETS AT UNITED STATES MERCHANT MARINE ACADEMY.**

【Section 1303(f) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1295b(f)) is amended—

【(1) by striking “and” at the end of paragraph (2);

【(2) by striking the period at the end of paragraph (3) and inserting “; and”; and

【(3) by adding at the end the following: “(4) on any other vessel considered by the Secretary to be necessary or appropriate or in the national interest.”.】

**[SEC. 308. REPORTS FROM MORTGAGEES OF VESSELS.**

【Section 12120 of title 46, United States Code, is amended by striking “owners, masters, and charterers” and inserting “owners, masters, charterers, and mortgagees”.】

\* \* \* \* \*

**[SEC. 310. SETTING, RELOCATING, AND RECOVERING ANCHORS.**

【Section 12105 of title 46, United States Code, is amended by adding at the end the following:

【“(c)(1) Only a vessel for which a certificate of documentation with a registry endorsement is issued may engage in—

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

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

【“(2) Nothing in paragraph (1) authorizes the employment in the coastwise trade of a vessel that does not meet the requirements of section 12106 of this title.”.】

\* \* \* \* \*

**SEC. 901. MISCELLANEOUS TECHNICAL CORRECTIONS.**

\* \* \* \* \*

【(q) ACTS OF TERRORISM REPORT.—Section 905 of the Omnibus Diplomatic Security and Antiterrorism Act of 1986 (46 U.S.C. App. 1802; 100 Stat. 890) is amended by striking “Not later than February 28, 1987, and annually thereafter, the Secretary of Transportation shall report” and inserting “The Secretary of the department in which the Coast Guard is operating shall report annually”.】

\* \* \* \* \*

**SEC. 902. CORRECTION OF REFERENCES TO SECRETARY OF TRANSPORTATION AND DEPARTMENT OF TRANSPORTATION; RELATED MATTERS.**

\* \* \* \* \*

【(o) MERCHANT MARINE ACT, 1920.—Section 27 of the Merchant Marine Act, 1920 (46 U.S.C. App. 883) is amended in the matter following the ninth proviso (pertaining to transportation of a foreign-flag incineration vessel) by striking “Satisfactory inspection shall be certified in writing by the Secretary of Transportation” and inserting “Satisfactory inspection shall be certified, in writing, by the Secretary of Homeland Security.”.】

**JOHN WARNER NATIONAL DEFENSE AUTHORIZATION ACT  
FOR FISCAL YEAR 2007**

\* \* \* \* \*

**SEC. 1017. OBTAINING CARRIAGE BY VESSEL: CRITERION REGARDING OVERHAUL, REPAIR, AND MAINTENANCE OF VESSELS IN THE UNITED STATES.**

(a) ACQUISITION POLICY.—In order to maintain the national defense industrial base, the Secretary of Defense shall issue an acquisition policy that establishes, as a criterion required to be considered in obtaining carriage by vessel of cargo for the Department of Defense, the extent to which an offeror of such carriage had overhaul, repair, and maintenance work for covered vessels of the offeror performed in shipyards located in the United States.

(b) COVERED VESSELS.—A vessel is a covered vessel of an offeror under this section if the vessel is—

(1) owned, operated, or controlled by the offeror; and

(2) qualified to engage in the carriage of cargo in the coastwise or non-contiguous trade under [section 27 of the Merchant Marine Act, 1920 (46 U.S.C. 883), section 12106 of title 46, United States Code, and section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802)] *sections 12112, 50501, and 55102 of title 46, United States Code.*

(c) APPLICATION OF POLICY.—The acquisition policy shall include rules providing for application of the policy to covered vessels as expeditiously as is practicable based on the nature of carriage obtained, and by no later than June 1, 2007.

## (d) REGULATIONS.—

(1) IN GENERAL.—The Secretary shall prescribe regulations as necessary to carry out the acquisition policy and submit such regulations to the Committees on Armed Services of the Senate and the House of Representatives, by not later than June 1, 2007.

## (2) INTERIM REGULATIONS.—

(A) IN GENERAL.—The Secretary may prescribe interim regulations as necessary to carry out the acquisition policy. For this purpose, the Secretary is excepted from compliance with the notice and comment requirements of section 553 of title 5, United States Code.

(B) SUBMISSION TO CONGRESS.—Upon the issuance of interim regulations under this paragraph, the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives the interim regulations and a description of the acquisition policy developed (or being developed) under subsection (a).

(C) EXPIRATION.—All interim regulations prescribed under the authority of this paragraph that are not earlier superseded by final regulations shall expire no later than June 1, 2007.

(e) ANNUAL REPORT.—The Secretary, acting through the United States Transportation Command, shall annually submit to the Committees on Armed Services of the Senate and the House of Representatives a report regarding overhaul, repair, and maintenance performed on covered vessels of each offeror of carriage to which the acquisition policy applies.

## (f) DEFINITIONS.—In this section:

(1) FOREIGN SHIPYARD.—The term “foreign shipyard” means a shipyard that is not located in the United States.

(2) UNITED STATES.—The term “United States” means—

(A) any State of the United States; and

(B) Guam.

\* \* \* \* \*

**[SEC. 3505. UNITED STATES MERCHANT MARINE ACADEMY GRADUATES: SERVICE REQUIREMENTS.**

[(a) ALTERNATE SERVICE.—Section 1303(e) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1295b(e)) is amended by adding at the end the following:

[(6)(A) An individual who for the 5-year period following graduation from the Academy, serves as a commissioned officer on active duty in an armed force of the United States or as a commissioned officer of the National Oceanic and Atmospheric Administration or the Public Health Service shall be excused from the requirements of subparagraphs (C), (D), and (E) of paragraph (1).

[(B) The Secretary may modify or waive any of the terms and conditions set forth in paragraph (1) through the imposition of alternative service requirements.”

[(b) APPLICATION.—Paragraph (6) of section 1303(e) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1295b(e)), as added by this section, applies only to an individual who enrolls as a cadet at the



United States Merchant Marine Academy, and signs an agreement under paragraph (1) of that section, after the date of the enactment of this Act.

\* \* \* \* \*

**[SEC. 3506. UNITED STATES MERCHANT MARINE ACADEMY GRADUATES: SERVICE OBLIGATION PERFORMANCE REPORTING REQUIREMENT.**

[(a) IN GENERAL.—Section 1303(e) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1295b(e)) is further amended by adding at the end the following:

[(7)(A) Subject to any otherwise applicable restrictions on disclosure in section 552a of title 5, United States Code, the Secretary of Defense, the Secretary of the department in which the Coast Guard is operating, the Administrator of the National Oceanic and Atmospheric Administration, and the Surgeon General of the Public Health Service—

[(i) shall report the status of obligated service of an individual graduate of the Academy upon request of the Secretary; and

[(ii) may, in their discretion, notify the Secretary of any failure of the graduate to perform the graduate’s duties, either on active duty or in the Ready Reserve component of their respective service, or as a commissioned officer of the National Oceanic and Atmospheric Administration or the Public Health Service, respectively.

[(B) A report or notice under subparagraph (A) shall identify any graduate determined to have failed to comply with service obligation requirements and provide all required information as to why such graduate failed to comply.

[(C) Upon receipt of such a report or notice, such graduate may be considered to be in default of the graduate’s service obligations by the Secretary, and subject to all remedies the Secretary may have with respect to such a default.”

[(b) APPLICATION.—The amendment made by this section does not apply with respect to an agreement entered into under section 1303(e) of the Merchant Marine Act, 1936 (46 U.S.C. 1295b(e)) before the date of the enactment of this Act.

\* \* \* \* \*

**[SEC. 3508. QUALIFYING RESERVE DUTY FOR RECEIPT OF STUDENT INCENTIVE PAYMENTS.**

[Section 1304(g)(2) of title XIII of the Merchant Marine Act, 1936 (46 U.S.C. App. 1295c(g)(2)) is amended to read as follows:

[(2) Each agreement entered into under paragraph (1) shall require the individual to accept enlisted reserve status in the United States Naval Reserve (including the Merchant Marine Reserve, United States Naval Reserve) or the United States Coast Guard Reserve before receiving any student incentive payments under this subsection.”

\* \* \* \* \*

**[SEC. 3510. MISCELLANEOUS MARITIME ADMINISTRATION PROVISIONS.**

**[(a) TECHNICAL CORRECTION REGARDING WAR RISK INSURANCE FOR MERCHANT MARINE VESSELS.—**

**[(1) IN GENERAL.—**Section 1208(a) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1288(a)) is amended—

**[(A)** by striking “Upon the request of the Secretary of Transportation, the Secretary of the Treasury may invest or reinvest all or any part of the fund in securities of the United States or in securities guaranteed as to principal and interest by the United States.”; and

**[(B)** by inserting after “to the credit of such fund.” the following: “Payments of return premiums, losses, settlements, judgments, and all liabilities incurred by the United States under this title shall be made from such fund through the Fiscal Service of the Department of the Treasury.”.

**[(2) EFFECTIVE DATE.—**The amendments made by paragraph (1) shall be effective as if enacted by section 3502 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (118 Stat. 2195).

**[(b) RIGHT TO USE MARITIME ADMINISTRATION DECORATION.—**Section 8 of the Merchant Marine Decorations and Medals Act (46 U.S.C. App. 2007) is amended by inserting “or the Secretary of Transportation,” after “Act.”.]

**(c) INTERMODAL CENTERS.—**

**(1) IN GENERAL.—**Notwithstanding section 5309(m)(6)(B) of title 49, United States Code, half of the amounts appropriated or made available under subsections (b) and (c) of section 5338 of title 49, United States Code, for capital projects under section 5309(m)(6)(B) of that title for fiscal years 2006 through 2009 shall be made available and used, in accordance with section 9008(a) of Public Law 109–59, for an intermodal or marine facility comprising a component of the Hawaii Port Infrastructure Expansion Program.

**(2) SUPPLEMENTARY FUNDING.—**Any amount made available under paragraph (1) shall be in addition to any amounts authorized to be appropriated under subsections (b) and (c) of section 9008 of Public Law 109–59.

**(d) TECHNICAL CORRECTION.—**

**(1) CORRECTION.—**Section 3509 of the National Defense Authorization Act for Fiscal Year 2006 (119 Stat. 3557) is amended by striking “Maritime Education and Training Act of 1980” and inserting “Merchant Marine Act, 1936”.

**(2) EFFECTIVE DATE.—**This subsection shall be effective immediately after section 3509 of the National Defense Authorization Act for Fiscal Year 2006 (119 Stat. 3557) takes effect.

## TITLE 46, UNITED STATES CODE

## SHIPPING

## SUBTITLE II. VESSELS AND SEAMEN

## CHAPTER 81. GENERAL

**§ 8103. Citizenship and Navy Reserve requirements**

(a) Except as otherwise provided in this title, only a citizen of the United States may serve as master, chief engineer, radio officer, or officer in charge of a deck watch or engineering watch on a documented vessel.

(b)(1) Except as otherwise provided in this section, on a documented vessel—

(A) each unlicensed seaman must be—

(i) a citizen of the United States;

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

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

(B) not more than 25 percent of the total number of unlicensed seamen on the vessel may be aliens lawfully admitted to the United States for permanent residence.

(2) Paragraph (1) of this subsection does not apply to—

(A) a yacht;

(B) a fishing vessel fishing exclusively for highly migratory species (as that term is defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802)); and

(C) a fishing vessel fishing outside of the exclusive economic zone.

(3) The Secretary may waive a citizenship requirement under this section, other than a requirement that applies to the master of a documented vessel, with respect to—

(A) an offshore supply vessel or other similarly engaged vessel of less than 1,600 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title that operates from a foreign port;

(B) a mobile offshore drilling unit or other vessel engaged in support of exploration, exploitation, or production of offshore mineral energy resources operating beyond the water above the outer Continental Shelf (as that term is defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a)); and

(C) any other vessel if the Secretary determines, after an investigation, that qualified seamen who are citizens of the United States are not available.

(c) On each departure of a vessel (except a passenger vessel) for which a construction or operating differential subsidy has been granted, all of the seamen of the vessel must be citizens of the United States.

(d)(1) On each departure of a passenger vessel for which a construction or operating differential subsidy has been granted, at

least 90 percent of the entire complement (including licensed individuals) must be citizens of the United States.

(2) An individual not required by this subsection to be a citizen of the United States may be engaged only if the individual has a declaration of intention to become a citizen of the United States or other evidence of admission to the United States for permanent residence. An alien may be employed only in the steward's department of the passenger vessel.

(e) If a documented vessel is deprived for any reason of the services of an individual (except the master and the radio officer) when on a foreign voyage and a vacancy consequently occurs, until the vessel's return to a port at which in the most expeditious manner a replacement who is a citizen of the United States can be obtained, an individual not a citizen of the United States may serve in—

(1) the vacancy; or

(2) a vacancy resulting from the promotion of another individual to fill the original vacancy.

(f) A person employing an individual in violation of this section or a regulation prescribed under this section is liable to the United States Government for a civil penalty of \$500 for each individual so employed.

(g) A deck or engineer officer employed on a vessel on which an operating differential subsidy is paid, or employed on a vessel (except a vessel of the Coast Guard or Saint Lawrence Seaway Development Corporation) owned or operated by the Department of Transportation or by a corporation organized or controlled by the Department, if eligible, shall be a member of the Navy Reserve.

(h) The President may—

(1) suspend any part of this section during a proclaimed national emergency; and

(2) when the needs of commerce require, suspend as far and for a period the President considers desirable, subsection (a) of this section for crews of vessels of the United States documented for foreign trade.

(i)(1) Except as provided in paragraph (3) of this subsection, each unlicensed seaman on a fishing, fish processing, or fish tender vessel that is engaged in the fisheries in the navigable waters of the United States or the exclusive economic zone must be—

(A) a citizen of the United States;

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

(C) any other alien allowed to be employed under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.); or

(D) an alien allowed to be employed under the immigration laws of the Commonwealth of the Northern Mariana Islands if the vessel is permanently stationed at a port within the Commonwealth and the vessel is engaged in the fisheries within the exclusive economic zone surrounding the Commonwealth or another United States territory or possession.

(2) Not more than 25 percent of the unlicensed seamen on a vessel subject to paragraph (1) of this subsection may be aliens referred to in clause (C) of that paragraph.

(3) This subsection does not apply to a fishing vessel fishing exclusively for highly migratory species (as that term is defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802)).

(j) RIDING GANG MEMBER.—This section does not apply to an individual who is a riding gang member.

(k) CREW REQUIREMENTS FOR LARGE PASSENGER VESSELS.—

(1) CITIZENSHIP AND NATIONALITY.—Each unlicensed seaman on a large passenger vessel shall be—

(A) a citizen of the United States;

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

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

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

(2) PERCENTAGE LIMITATION FOR ALIEN SEAMEN.— Not more than 25 percent of the unlicensed seamen on a vessel described in paragraph (1) of this subsection may be aliens referred to in subparagraph (B) or (C) of that paragraph.

(3) SPECIAL RULES FOR CERTAIN UNLICENSED SEAMEN.—

(A) QUALIFICATIONS.—An unlicensed seaman described in paragraph (1)(C) of this subsection—

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

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

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

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

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

(II) that consisted of a search of all information reasonably available to the owner or managing op-

erator in the seaman's country of citizenship and any other country in which the seaman receives employment referrals, or resides;

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

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

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

(B) RESTRICTIONS.—An unlicensed seaman described in paragraph (1)(C) of this subsection—

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

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

(C) STATUS, DOCUMENTATION, AND EMPLOYMENT.—An unlicensed seaman described in subparagraph (C) or (D) of paragraph (1) of this subsection—

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

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

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

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

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

(iv) may be employed for a period of service on board not to exceed 36 months in the aggregate as a non-immigrant crewman described in section 101(a)(15)(D)(i) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(D)(i)) on vessels engaged in domestic voyages notwithstanding the departure requirements and time limitations of such section *and section 252 of the Immigration and Nationality Act (8 U.S.C. 1282)* and the regulations and rules promulgated thereunder.

(4) MERCHANT MARINER'S DOCUMENT REQUIREMENTS NOT AFFECTED.—This subsection shall not be construed to affect any requirement under Federal law that an individual must hold a merchant mariner's document.

(5) DEFINITIONS.—In this subsection:

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

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

#### CHAPTER 101. GENERAL

##### § 10101. Definitions

In this part—

(1) “master” means the individual having command of a vessel.

(2) “owner” means the person to whom the vessel belongs.

(3) “seaman” means an individual (except scientific personnel *on an oceanographic research vessel*, a sailing school instructor, or a sailing school student) engaged or employed in any capacity on board a vessel.

(4) “fishing vessel” includes—

(A) a fish tender vessel; or

(B) a fish processing vessel entered into service before January 1, 1988, and not more than 1,600 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title or entered into service after December 31, 1987, and having not more than 16 individuals on board primarily employed in the preparation of fish or fish products.

#### CHAPTER 121. DOCUMENTATION OF VESSELS

##### § 12111. Registry endorsement

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

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

(c) CERTAIN VESSELS OWNED BY TRUSTS.—

(1) NONAPPLICATION OF BENEFICIARY CITIZENSHIP REQUIREMENT.—For the issuance of a certificate of documentation with only a registry endorsement, the beneficiaries of a trust are not required to be citizens of the United States if the trust qualifies under paragraph (2) and the vessel is subject to a charter to a citizen of the United States.

(2) REQUIREMENTS FOR TRUST TO QUALIFY.—

(A) IN GENERAL.—Subject to subparagraph (B), a trust qualifies under this paragraph with respect to a vessel only if—

(i) each trustee is a citizen of the United States; and  
(ii) the application for documentation of the vessel includes the affidavit of each trustee stating that the trustee is not aware of any reason involving a beneficiary of the trust that is not a citizen of the United States, or involving any other person that is not a citizen of the United States, as a result of which the beneficiary or other person would hold more than 25 percent of the aggregate power to influence or limit the exercise of the authority of the trustee with respect to matters involving any ownership or operation of the vessel that may adversely affect the interests of the United States.

(B) **AUTHORITY OF NON-CITIZENS.**—If any person that is not a citizen of the United States has authority to direct or participate in directing a trustee for a trust in matters involving any ownership or operation of the vessel that may adversely affect the interests of the United States or in removing a trustee for a trust without cause, either directly or indirectly through the control of another person, the trust is not qualified under this paragraph unless the trust instrument provides that persons who are not citizens of the United States may not hold more than 25 percent of the aggregate authority to so direct or remove a trustee.

(C) **OWNERSHIP BY NON-CITIZENS.**—Subparagraphs (A) and (B) do not prohibit a person that is not a citizen of the United States from holding more than 25 percent of the beneficial interest in a trust.

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

(d) **ACTIVITIES INVOLVING MOBILE OFFSHORE DRILLING UNITS.**—  
(1) **IN GENERAL.**—*Only a vessel for which a certificate of documentation with a registry endorsement is issued may engage in—*

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

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

(2) **COASTWISE TRADE NOT AUTHORIZED.**—*Nothing in paragraph (1) authorizes the employment in the coastwise trade of a vessel that does not meet the requirements of section 12112 of this title.*

\* \* \* \* \*



**§ 12113. Fishery endorsement**

(a) REQUIREMENTS.—A fishery endorsement may be issued for a vessel that—

- (1) satisfies the requirements of section 12103 of this title and, if owned by an entity, the entity satisfies the ownership requirements in subsection (c);
- (2) was built in the United States;
- (3) if rebuilt, was rebuilt in the United States;
- (4) was not forfeited to the United States Government after July 1, 2001, for a breach of the laws of the United States; and
- (5) otherwise qualifies under the laws of the United States to engage in the fisheries.

(b) AUTHORIZED ACTIVITY.—

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

(2) USE BY PROHIBITED PERSONS.—A fishery endorsement is invalid immediately if the vessel for which it is issued is used as a fishing vessel while it is chartered or leased to an individual who is not a citizen of the United States or to an entity that is not eligible to own a vessel with a fishery endorsement.

(c) OWNERSHIP REQUIREMENTS FOR ENTITIES.—

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

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

(A) include the right to—

- (i) direct the business of the entity;
- (ii) limit the actions of or replace the chief executive officer, a majority of the board of directors, any general partner, or any person serving in a management capacity of the entity; or
- (iii) direct the transfer, operation, or manning of a vessel with a fishery endorsement; but

(B) do not include the right to simply participate in the activities under subparagraph (A), or the exercise of rights under loan or mortgage covenants by a mortgagee eligible to be a preferred mortgagee under section 31322(a) of this title, except that a mortgagee not eligible to own a vessel with a fishery endorsement may only operate such a vessel to the extent necessary for the immediate safety of the vessel or for repairs, drydocking, or berthing changes.

(3) EXCEPTIONS.—This subsection does not apply to a vessel when it is engaged in the fisheries in the exclusive economic zone under the authority of the Western Pacific Fishery Management Council established under section 302(a)(1)(H) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)(1)(H)) or to a purse seine vessel when it is

engaged in tuna fishing in the Pacific Ocean outside the exclusive economic zone or pursuant to the South Pacific Regional Fisheries Treaty, provided that the owner of the vessel continues to comply with the eligibility requirements for a fishery endorsement under the Federal law that was in effect on October 1, 1998. A fishery endorsement issued pursuant to this paragraph is valid for engaging only in the activities described in this paragraph.

(d) REQUIREMENTS BASED ON LENGTH, TONNAGE, OR HORSEPOWER.—

(1) APPLICATION.—This subsection applies to a vessel that—

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

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

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

(2) REQUIREMENTS.—A vessel subject to this subsection is not eligible for a fishery endorsement unless—

(A) (i) a certificate of documentation was issued for the vessel and endorsed with a fishery endorsement that was effective on September 25, 1997;

(ii) the vessel is not placed under foreign registry after October 21, 1998; and

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

(B) the owner of the vessel demonstrates to the Secretary that the regional fishery management council of jurisdiction established under section 302(a)(1) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)(1)) has recommended after October 21, 1998, and the Secretary of Commerce has approved, conservation and management measures in accordance with the American Fisheries Act (Public Law 105–277, div. C, title II) (16 U.S.C. 1851 note) to allow the vessel to be used in fisheries under the council's authority.

(e) VESSELS MEASURING 100 FEET OR GREATER.—

(1) IN GENERAL.—The Administrator of the Maritime Administration shall administer subsections (c) and (d) with respect to vessels 100 feet or greater in registered length. The owner of each such vessel shall file a statement of citizenship setting forth all relevant facts regarding vessel ownership and control with the Administrator on an annual basis to demonstrate compliance with those provisions.

(2) REGULATIONS.—Regulations to implement this subsection shall conform to the extent practicable with the regulations establishing the form of citizenship affidavit set forth in part 355 of title 46, Code of Federal Regulations, as in effect on September 25, 1997, except that the form of the statement shall be written in a manner to allow the owner of the vessel to satisfy any annual renewal requirements for a certificate of documentation for the vessel and to comply with this subsection

and subsections (c) and (d), and shall not be required to be notarized.

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

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

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

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

(f) VESSELS MEASURING LESS THAN 100 FEET.—The Secretary shall establish reasonable and necessary requirements to demonstrate compliance with subsections (c) and (d), with respect to vessels measuring less than 100 feet in registered length, and shall seek to minimize the administrative burden on individuals who own and operate those vessels.

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

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

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

\* \* \* \* \*

**§ 12131. Command of documented vessels**

(a) IN GENERAL.—Except as provided in subsection (b), a documented vessel may be placed under the [command] *command* only of a citizen of the United States.

(b) EXCEPTIONS.—Subsection (a) does not apply to—

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

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

\* \* \* \* \*

### § 12139. Reports

(a) IN GENERAL.—To ensure compliance with this chapter and laws governing the qualifications of vessels to engage in the coast-wise trade and the fisheries, the Secretary may require owners, masters, [and charterers] *charterers, and mortgagees* of documented vessels to submit reports in any reasonable form and manner the Secretary may prescribe.

(b) VESSELS REBUILT OUTSIDE UNITED STATES.—

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

(2) TONNAGE.—The tonnage referred to in paragraph (1) is—

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

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

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

#### SUBTITLE III. MARITIME LIABILITY

##### CHAPTER 301. GENERAL LIABILITY PROVISIONS

### § 30104. Personal injury to or death of seamen

[(a) CAUSE OF ACTION.—A seaman injured in the course of employment or, if the seaman dies from the injury, the personal representative of the seaman may elect to bring a civil action at law, with the right of trial by jury, against the employer. Laws of the United States regulating recovery for personal injury to, or death of, a railway employee apply to an action under this section.

[(b) VENUE.—An action under this section shall be brought in the judicial district in which the employer resides or the employer's principal office is located.]

*(a) CAUSE OF ACTION.—A seaman injured in the course of employment or, if the seaman dies from the injury, the personal representative of the seaman may bring an action against the employer. In such an action, the laws of the United States regulating recovery for personal injury to, or death of, a railway employee shall apply. Such an action may be maintained in admiralty or, at the plaintiff's election, as an action at law, with the right of trial by jury.*

*(b) VENUE.—When the plaintiff elects to maintain an action at law, venue shall be in the judicial district in which the employer resides or the employer's principal office is located.*

## SUBTITLE V. MERCHANT MARINE

## PART A. GENERAL

## CHAPTER 503. ADMINISTRATIVE

**§ 50303. Operating property and extending term of notes**

(a) GENERAL AUTHORITY.—The Secretary of Transportation may—

(1) operate or lease docks, wharves, piers, *vessels*, or real property under the Secretary's ~~control;~~ *control, except that the prior consent of the Secretary of Defense for such use shall be required with respect to any vessel in the Ready Reserve Force or in the National Defense Reserve Fleet which is maintained in a retention status for the Department of Defense;* and

(2) make extensions and accept renewals of—

(A) promissory notes and other evidences of indebtedness on property; and

(B) mortgages and other contracts securing the property.

(b) TERMS OF TRANSACTIONS.—A transaction under subsection (a) shall be on terms the Secretary considers necessary to carry out the purposes of this subtitle, but consistent with sound business practice.

(c) AVAILABILITY OF AMOUNTS.—Amounts received by the Secretary from a transaction under this section are available for expenditure by the Secretary as provided in this subtitle.

**§ 50304. Sale and transfer of property**

(a) AUTHORITY TO SELL.—The Secretary of Transportation may sell property (other than vessels transferred under section 4 of the Merchant Marine Act, 1920 (ch. 250, 41 Stat. 990)) on terms the Secretary considers appropriate.

(b) TRANSFERS FROM MILITARY TO CIVILIAN CONTROL.—When the President considers it in the interest of the United States, the President may transfer to the Secretary of Transportation possession and control of property described in the second paragraph of section 17 of the Merchant Marine Act, 1920 (ch. 250, 41 Stat. 994), as originally enacted, that is possessed and controlled by the Secretary of a military department.

(c) TRANSFERS FROM CIVILIAN TO MILITARY CONTROL.—When the President considers it necessary, the President by executive order may transfer to the Secretary of a military department possession and control of property described in section 17 of the Merchant Marine Act, 1920 (ch. 250, 41 Stat. 994), as originally enacted, that is possessed and controlled by the Secretary of Transportation. The President's order shall state the need for the transfer and the period of the need. When the President decides that the need has ended, the possession and control shall revert to the Secretary of Transportation. The property may not be sold except as provided by law.

(d) VESSEL CHARTERS TO OTHER DEPARTMENTS.—*On a reimbursable or non-reimbursable basis, as determined by the Secretary of Transportation, the Secretary may charter or otherwise make available a vessel under the jurisdiction of the Secretary to any other de-*

*partment, upon the request by the Secretary of the department that receives the vessel. The prior consent of the Secretary of Defense for such use shall be required with respect to any vessel in the Ready Reserve Force or in the National Defense Reserve Fleet which is maintained in a retention status for the Department of Defense.*

CHAPTER 505. OTHER GENERAL PROVISIONS

**§ 50503. Oceanographic research vessels**

**[An oceanographic research vessel (as defined in section 2101 of this title) is deemed not to be engaged in trade or commerce.]**

(a) *DEFINITIONS.*—*In this section, the terms “oceanographic research vessel” and “scientific personnel” have the meaning given those terms in section 2101 of this title.*

(b) *NOT SEAMEN.*—*Scientific personnel on an oceanographic research vessel are deemed not to be seamen under part G of subtitle II, section 30104, or chapter 303 of this title.*

(c) *NOT ENGAGED IN TRADE OR COMMERCE.*—*An oceanographic research vessel is deemed not to be engaged in trade or commerce.*

**§ 50504. Sailing school vessels**

(a) *DEFINITIONS.*—*In this section, the terms “sailing school instructor”, “sailing school student”, and “sailing school vessel” have the meaning given those terms in section 2101 of this title.*

(b) *NOT SEAMEN.*—*A sailing school student or sailing school instructor is deemed not to be a seaman under—*

(1) **[parts B, F, and G of subtitle II] part B, F, or G of subtitle II, section 30104, or chapter 303** of this title; or

(2) the maritime law doctrines of maintenance and cure or warranty of seaworthiness.

(c) *NOT MERCHANT VESSEL OR ENGAGED IN TRADE OR COMMERCE.*—*A sailing school vessel is deemed not to be—*

(1) a merchant vessel under section 11101(a)-(c) of this title;

or

(2) a vessel engaged in trade or commerce.

(d) *EVIDENCE OF FINANCIAL RESPONSIBILITY.*—*The owner or charterer of a sailing school vessel shall maintain evidence of financial responsibility to meet liability for death or injury to sailing school students and sailing school instructors on a voyage on the vessel. The amount of financial responsibility shall be at least \$50,000 for each student and instructor. Financial responsibility under this subsection may be evidenced by insurance*

PART B. MERCHANT MARINE SERVICE

CHAPTER 513. UNITED STATES MERCHANT MARINE ACADEMY

**§ 51306. Cadet commitment agreements**

(a) *AGREEMENT REQUIREMENTS.*—*A citizen of the United States appointed as a cadet at the United States Merchant Marine Academy must sign, as a condition of the appointment, an agreement to—*

(1) complete the course of instruction at the Academy;

(2) fulfill the requirements for a license as an officer in the merchant marine of the United States before graduation from the Academy;

(3) maintain a valid license as an officer in the merchant marine of the United States for at least 6 years after graduation from the Academy, accompanied by the appropriate national and international endorsements and certification required by the Coast Guard for service aboard vessels on domestic and international voyages;

(4) apply for, and accept if tendered, an appointment as a commissioned officer in the [Naval Reserve] *Navy Reserve* (including the Merchant Marine Reserve, [Naval Reserve] *Navy Reserve*), the Coast Guard Reserve, or any other reserve unit of an armed force of the United States, and, if tendered the appointment, to serve for at least 6 years after graduation from the Academy;

(5) serve the foreign and domestic commerce and the national defense of the United States for at least 5 years after graduation from the Academy—

(A) as a merchant marine officer on a documented vessel or a vessel owned and operated by the United States Government or by a State;

(B) as an employee in a United States maritime-related industry, profession, or marine science (as determined by the Secretary of Transportation), if the Secretary determines that service under subparagraph (A) is not available to the individual;

(C) as a commissioned officer on active duty in an armed force of the United States, as a commissioned officer in the National Oceanic and Atmospheric Administration, or in other maritime-related Federal employment which serves the national security interests of the United States, as determined by the Secretary; or

(D) by a combination of the service alternatives referred to in subparagraphs (A)-(C); and

(6) report to the Secretary on compliance with this subsection.

(b) FAILURE TO COMPLETE COURSE OF INSTRUCTION.—

(1) ACTIVE DUTY.—If the Secretary of Transportation determines that an individual who has attended the Academy for at least 2 years has failed to fulfill the part of the agreement described in subsection (a)(1), the individual may be ordered by the Secretary of Defense to serve on active duty in one of the armed forces of the United States for a period of not more than 2 years. In cases of hardship as determined by the Secretary of Transportation, the Secretary of Transportation may waive this paragraph in whole or in part.

(2) RECOVERY OF COST.—If the Secretary of Defense is unable or unwilling to order an individual to serve on active duty under paragraph (1), or if the Secretary of Transportation determines that reimbursement of the cost of education provided would better serve the interests of the United States, the Secretary of Transportation may recover from the individual the cost of education provided by the Government.

## (c) FAILURE TO CARRY OUT OTHER REQUIREMENTS.—

(1) ACTIVE DUTY.—If the Secretary of Transportation determines that an individual has failed to fulfill any part of the agreement described in subsection (a)(2)-(6), the individual may be ordered to serve on active duty for a period of at least 3 years but not more than the unexpired period (as determined by the Secretary) of the service required by subsection (a)(5). The Secretary of Transportation, in consultation with the Secretary of Defense, shall determine in which service the individual shall serve. In cases of hardship as determined by the Secretary of Transportation, the Secretary of Transportation may waive this paragraph in whole or in part.

(2) RECOVERY OF COST.—If the Secretary of Defense is unable or unwilling to order an individual to serve on active duty under paragraph (1), or if the Secretary of Transportation determines that reimbursement of the cost of education provided would better serve the interests of the United States, the Secretary of Transportation may recover from the individual the cost of education provided. The Secretary may reduce the amount to be recovered to reflect partial performance of service obligations and other factors the Secretary determines merit a reduction.

(d) ACTIONS TO RECOVER COST.—To aid in the recovery of the cost of education provided by the Government under a commitment agreement under this section, the Secretary of Transportation may—

(1) request the Attorney General to bring a civil action against the individual; and

(2) make use of the Federal debt collection procedures in chapter 176 of title 28 or other applicable administrative remedies.

## (e) ALTERNATIVE SERVICE.—

(1) SERVICE AS COMMISSIONED OFFICER.—*An individual who, for the 5-year period following graduation from the Academy, serves as a commissioned officer on active duty in an armed force of the United States or as a commissioned officer of the National Oceanic and Atmospheric Administration or the Public Health Service shall be excused from the requirements of paragraphs (3) through (5) of subsection (a).*

(2) MODIFICATION OR WAIVER.—*The Secretary may modify or waive any of the terms and conditions set forth in subsection (a) through the imposition of alternative service requirements.*

## (f) SERVICE OBLIGATION PERFORMANCE REPORTING REQUIREMENT.—

(1) IN GENERAL.—*Subject to any otherwise applicable restrictions on disclosure in section 552a of title 5, the Secretary of Defense, the Secretary of the department in which the Coast Guard is operating, the Administrator of the National Oceanic and Atmospheric Administration, and the Surgeon General of the Public Health Service—*

*(A) shall report the status of obligated service of an individual graduate of the Academy upon request of the Secretary; and*



*(B) may, in their discretion, notify the Secretary of any failure of the graduate to perform the graduate's duties, either on active duty or in the Ready Reserve component of their respective service, or as a commissioned officer of the National Oceanic and Atmospheric Administration or the Public Health Service, respectively.*

*(2) INFORMATION TO BE PROVIDED.—A report or notice under paragraph (1) shall identify any graduate determined to have failed to comply with service obligation requirements and provide all required information as to why such graduate failed to comply.*

*(3) CONSIDERED AS IN DEFAULT.—Upon receipt of such a report or notice, such graduate may be considered to be in default of the graduate's service obligations by the Secretary, and subject to all remedies the Secretary may have with respect to such a default.*

**§ 51307. Places of training**

The Secretary of Transportation may provide for the training of cadets at the United States Merchant Marine Academy—

- (1) on vessels owned or subsidized by the United States Government;
- (2) on other documented vessels, with the permission of the owner; **[and]**
- (3) in shipyards or plants and with industrial or educational **[organizations.] organizations; and**
- (4) on any other vessel considered by the Secretary to be necessary or appropriate or in the national interest.

\* \* \* \* \*

**§ 51311. Midshipman status in the **[Naval Reserve] Navy Reserve****

(a) APPLICATION REQUIREMENT.—Before being appointed as a cadet at the United States Merchant Marine Academy, a citizen of the United States must agree to apply for midshipman status in the **[Naval Reserve] Navy Reserve** (including the Merchant Marine Reserve, **[Naval Reserve] Navy Reserve**).

(b) APPOINTMENT.—

(1) IN GENERAL.—A citizen of the United States appointed as a cadet at the Academy shall be appointed by the Secretary of the Navy as a midshipman in the **[Naval Reserve] Navy Reserve** (including the Merchant Marine Reserve, **[Naval Reserve] Navy Reserve**).

(2) RIGHTS AND PRIVILEGES.—The Secretary of the Navy shall provide for cadets of the Academy who are midshipmen in the United States **[Naval Reserve] Navy Reserve** to be—

- (A) issued an identification card (referred to as a “military ID card”); and
- (B) entitled to all rights and privileges in accordance with the same eligibility criteria as apply to other members of the Ready Reserve of the reserve components of the armed forces.

(3) COORDINATION.—The Secretary of the Navy shall carry out paragraphs (1) and (2) in coordination with the Secretary of Transportation.

CHAPTER 515. STATE MARITIME ACADEMY SUPPORT PROGRAM

**§ 51504. Use of training vessels**

(a) APPLICATIONS TO USE VESSELS.—The Governor of a State sponsoring a State maritime academy (or the Governor of the State designated to conduct the affairs of a regional maritime academy) may apply in writing to the Secretary of Transportation to obtain the use of a training vessel for the academy. A vessel provided under this section remains the property of the United States Government.

(b) GENERAL AUTHORITY.—Subject to subsection (c), the Secretary may provide to a State maritime academy, for use as a training vessel, a suitable vessel under the control of the Secretary or made available to the Secretary under subsection (e). If a suitable vessel is not available, the Secretary may build and provide a suitable vessel.

(c) APPROVAL REQUIREMENTS.—The Secretary may provide a vessel under this section only if—

(1) an application has been made under subsection (a);

(2) the State maritime academy satisfies section 51506(a) of this title; and

(3) a suitable port will be available for the safe mooring of the vessel while the academy is using the vessel.

(d) PREPARATION AND MAINTENANCE.—A vessel provided under this section shall be—

(1) repaired, reconditioned, and equipped (with all apparel, charts, books, and instruments of navigation) as necessary for use as a training vessel; and

(2) maintained in good repair by the Secretary.

(e) AGENCY VESSELS.—An agency may provide to the Secretary, for use by a State maritime academy, a vessel (including equipment) that—

(1) is suitable for training purposes; and

(2) can be provided without detriment to the service to which the vessel is assigned.

[(f) FUEL COSTS.—The Secretary may pay to a State maritime academy the costs of fuel used by a vessel provided under this section while used for training.]

(f) FUEL COSTS.—

(1) *IN GENERAL.*—Subject to the availability of appropriations, the Secretary shall pay to each State maritime academy the costs of fuel used by a vessel provided under this section while used for training.

(2) *MAXIMUM AMOUNTS.*—The amount of the payment to a State maritime academy under paragraph (1) may not exceed—

(A) \$100,000 for fiscal year 2006;

(B) \$200,000 for fiscal year 2007; and

(C) \$300,000 for fiscal year 2008 and each fiscal year thereafter.

(g) REMOVING VESSELS FROM SERVICE AND VESSEL SHARING.—The Secretary may not—

(1) take a vessel, currently in use as a training vessel under this section, out of service to implement an alternative program (including vessel sharing) unless the vessel is incapable of being maintained in good repair as required by subsection (d); or

(2) implement a program requiring a State maritime academy to share its training vessel with another State maritime academy, except with the express consent of Congress.

#### **§ 51505. Annual payments for maintenance and support**

(a) PAYMENT AGREEMENTS.—The Secretary of Transportation may make an agreement (effective for not more than 4 years) with the following academies to provide annual payments to those academies for their maintenance and support:

(1) One State maritime academy in each State that satisfies section 51506(a) of this title.

(2) Each regional maritime academy that satisfies section 51506(a) of this title.

(b) PAYMENTS.—

(1) IN GENERAL.—Subject to paragraph (2), an annual payment to an academy under subsection (a) shall be at least equal to the amount given to the academy for its maintenance and support by the State in which it is located, or, for a regional maritime academy, by all States cooperating to sponsor the academy.

(2) MAXIMUM.—The amount under paragraph (1) may not be more than \$25,000. However, if the academy satisfies section 51506(b) of this title, the amount shall be—

(A) \$100,000 for a State maritime academy; and

(B) ~~[\$200,000]~~ *\$300,000 for fiscal year 2006, \$400,000 for fiscal year 2007, and \$500,000 for fiscal year 2008 and each fiscal year thereafter* for a regional maritime academy.

\* \* \* \* \*

#### **§ 51509. Student incentive payment agreements**

(a) GENERAL AUTHORITY.—If a State maritime academy has an agreement with the Secretary of Transportation under section 51505 of this title, the Secretary may make an agreement with a student at the academy who is a citizen of the United States to make student incentive payments to the individual. An agreement with a student may not be effective for more than 4 academic years. The Secretary shall allocate payments under this section among the various State maritime academies in an equitable manner.

(b) PAYMENTS.—Payments under an agreement under this section shall be equal to \$4,000 each academic year and be paid, as prescribed by the Secretary, while the individual is attending the academy. The payments shall be used for uniforms, books, and subsistence.

(c) **[MIDSHIPMAN AND ENLISTED] ENLISTED RESERVE STATUS.**—An agreement under this section shall require the student to accept **[midshipman and] enlisted reserve status in the [Naval Reserve] Navy Reserve** (including the Merchant Marine Reserve, **[Naval Reserve] Navy Reserve**) or the *Coast Guard Reserve* before receiving any payments under the agreement.

(d) **AGREEMENT REQUIREMENTS.**—An agreement under this section shall require the student to—

(1) complete the course of instruction at the academy the individual is attending;

(2) take the examination for a license as an officer in the merchant marine of the United States before graduation from the academy and fulfill the requirements for such a license within 3 months after graduation from the academy;

(3) maintain a valid license as an officer in the merchant marine of the United States for at least 6 years after graduation from the academy, accompanied by the appropriate national and international endorsements and certification required by the Coast Guard for service aboard vessels on domestic and international voyages;

(4) accept, if tendered, an appointment as a commissioned officer in the **[Naval Reserve] Navy Reserve** (including the Merchant Marine Reserve, **[Naval Reserve] Navy Reserve**), the Coast Guard Reserve, or any other reserve unit of an armed force of the United States, and, if tendered the appointment, to serve for at least 6 years after graduation from the academy;

(5) serve the foreign and domestic commerce and the national defense of the United States for at least 3 years after graduation from the academy—

(A) as a merchant marine officer on a documented vessel or a vessel owned and operated by the United States Government or by a State;

(B) as an employee in a United States maritime-related industry, profession, or marine science (as determined by the Secretary), if the Secretary determines that service under subparagraph (A) is not available to the individual;

(C) as a commissioned officer on active duty in an armed force of the United States, as a commissioned officer in the National Oceanic and Atmospheric Administration, or in other maritime-related Federal employment which serves the national security interests of the United States, as determined by the Secretary; or

(D) by a combination of the service alternatives referred to in subparagraphs (A)-(C); and

(6) report to the Secretary on compliance with this subsection.

(e) **FAILURE TO COMPLETE COURSE OF INSTRUCTION.**—

(1) **ACTIVE DUTY.**—If the Secretary of Transportation determines that an individual who has accepted the payments described in subsection (b) for a minimum of 2 academic years has failed to fulfill the part of the agreement described in subsection (d)(1), the individual may be ordered by the Secretary of Defense to serve on active duty in the armed forces of the United States for a period of not more than 2 years. In cases

of hardship as determined by the Secretary of Transportation, the Secretary of Transportation may waive this paragraph in whole or in part.

(2) RECOVERY OF COST.—If the Secretary of Defense is unable or unwilling to order an individual to serve on active duty under paragraph (1), or if the Secretary of Transportation determines that reimbursement of the cost of education provided would better serve the interests of the United States, the Secretary of Transportation may recover from the individual the amount of student incentive payments, plus interest and attorney fees. The Secretary may reduce the amount to be recovered to reflect partial performance of service obligations and other factors the Secretary determines merit a reduction.

(f) FAILURE TO CARRY OUT OTHER REQUIREMENTS.—

(1) ACTIVE DUTY.—If the Secretary of Transportation determines that an individual has failed to fulfill any part of the agreement described in subsection (d)(2)-(6), the individual may be ordered to serve on active duty for a period of at least 2 years but not more than the unexpired period (as determined by the Secretary) of the service required by subsection (d)(5). The Secretary of Transportation, in consultation with the Secretary of Defense, shall determine in which service the individual shall serve. In cases of hardship as determined by the Secretary of Transportation, the Secretary of Transportation may waive this paragraph in whole or in part.

(2) RECOVERY OF COST.—If the Secretary of Defense is unable or unwilling to order an individual to serve on active duty under paragraph (1), or if the Secretary of Transportation determines that reimbursement of the cost of education provided would better serve the interests of the United States, the Secretary of Transportation may recover from the individual the amount of student incentive payments, plus interest and attorney fees. The Secretary may reduce the amount to be recovered to reflect partial performance of service obligations and other factors the Secretary determines merit a reduction.

(g) ACTIONS TO RECOVER COST.—To aid in the recovery of the cost of education provided by the Government under a commitment agreement under this section, the Secretary of Transportation may—

(1) request the Attorney General to bring a civil action against the individual; and

(2) make use of the Federal debt collection procedures in chapter 176 of title 28 or other applicable administrative remedies.

\* \* \* \* \*

**§ 51511. Midshipman status in the [Naval Reserve] *Navy Reserve***

A citizen of the United States attending a State maritime academy may be appointed by the Secretary of the Navy as a midshipman in the [Naval Reserve] *Navy Reserve* (including the Merchant Marine Reserve, [Naval Reserve] *Navy Reserve*).

## CHAPTER 517. OTHER SUPPORT FOR MERCHANT MARINE TRAINING

**§ 51701. United States Maritime Service**

(a) GENERAL AUTHORITY.—The Secretary of Transportation may establish and maintain a voluntary organization, to be known as the United States Maritime Service, for the training of citizens of the United States to serve on merchant vessels **[of the United States.]** *of the United States and to perform functions to assist the United States merchant marine, as determined necessary by the Secretary.*

(b) SPECIFIC AUTHORITY.—The Secretary may—

(1) determine the number of individuals to be enrolled for training and reserve purposes in the Service;

(2) fix the rates of pay and allowances of the individuals without regard to chapter 51 or subchapter III of chapter 53 of title 5;

(3) prescribe the course of study and the periods of training for the Service; and

(4) prescribe the uniform of the Service and the rules on providing and wearing the uniform.

(c) RANKS, GRADES, AND RATINGS.—The ranks, grades, and ratings for personnel of the Service shall be the same as those prescribed for personnel of the Coast Guard.

(d) MEDALS AND AWARDS.—The Secretary may establish and maintain a medals and awards program to recognize distinguished service, superior achievement, professional performance, and other commendable achievement by personnel of the Service.

## CHAPTER 519. MERCHANT MARINE AWARDS

**[§ 51907. Manufacture and sale of awards and replacements**

**[The Secretary of Transportation may—**

**[(1) authorize private persons to manufacture decorations and medals authorized under this chapter or a prior law; and**

**[(2) provide at cost, or authorize private persons to sell at reasonable prices, replacements for those decorations and medals.]**

**§ 51907. Provision of decorations, medals, and replacements**

*The Secretary of Transportation may provide—*

*(1) the decorations and medals authorized by this chapter and replacements for those decorations and medals; and*

*(2) replacements for decorations and medals issued under a prior law.*

**§ 51908. Prohibition against unauthorized manufacture, sale, possession, or display of awards**

(a) PROHIBITION.—Except as authorized **[under this chapter]** *by this chapter or the Secretary of Transportation*, a person may not manufacture, sell, possess, or display a decoration or medal provided for in this chapter.

(b) CIVIL PENALTY.—A person violating this section is liable to the United States Government for a civil penalty of not more than \$2,000.

## PART C. FINANCIAL ASSISTANCE PROGRAMS

## CHAPTER 531. MARITIME SECURITY FLEET

**§ 53105. Obligations and rights under operating agreements**

(a) OPERATION OF VESSEL.—An operating agreement under this chapter shall require that, during the period a vessel is operating under the agreement—

(1) the vessel—

(A) shall be operated exclusively in the foreign commerce or in mixed foreign commerce and domestic trade allowed under a registry endorsement issued under section 12111 of this title; and

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

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

(b) ANNUAL PAYMENTS BY SECRETARY.—

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

(2) OPERATING AGREEMENT IS OBLIGATION OF UNITED STATES GOVERNMENT.—An operating agreement under this chapter constitutes a contractual obligation of the United States Government to pay the amounts provided for in the agreement to the extent of actual appropriations.

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

(d) NATIONAL SECURITY REQUIREMENTS.—

(1) IN GENERAL.—A contractor with respect to an operating agreement (including an agreement terminated under section 53104(c)(2)) shall continue to be bound by the provisions of section 53107 until the date the operating agreement would terminate according to its terms.

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

(e) TRANSFER OF OPERATING AGREEMENTS.—

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

(2) LIMITATION.—The Secretary of Defense may not approve under paragraph (1) transfer of an operating agreement to a

person that is not a citizen of the United States under [section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802),] *section 50501 of this title*, unless the Secretary of Defense determines that there is no person who is a citizen under such section and is interested in obtaining the operating agreement for a vessel that is otherwise eligible to be included in the Fleet under section 53102(b) and meets the requirements of the Department of Defense.

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

#### CHAPTER 537. LOANS AND GUARANTEES

### § 53701. Definitions

In this chapter:

(1) ACTUAL COST.—The term “actual cost” means the sum of—

(A) all amounts paid by or for the account of the obligor as of the date on which a determination is made under section 53715(d)(1) of this title; and

(B) all amounts that the Secretary *or Administrator* reasonably estimates the obligor will become obligated to pay from time to time thereafter, for the construction, reconstruction, or reconditioning of the vessel, including guarantee fees that will become payable under section 53714 of this title in connection with all obligations issued for construction, reconstruction, or reconditioning of the vessel or equipment to be delivered, and all obligations issued for the delivered vessel or equipment.

(2) ADMINISTRATOR.—*The term “Administrator” means the Administrator of the Maritime Administration.*

[(2)] (3) CONSTRUCTION, RECONSTRUCTION, AND RECONDITIONING.—The terms “construction”, “reconstruction”, and “reconditioning” include designing, inspecting, outfitting, and equipping.

[(3)] (4) DEPRECIATED ACTUAL COST.—The term “depreciated actual cost” of a vessel means—

(A) if the vessel was not reconstructed or reconditioned, the actual cost of the vessel depreciated on a straight line basis over the useful life of the vessel as determined by the Secretary *or Administrator*, not to exceed 25 years from the date of delivery by the builder; or

(B) if the vessel was reconstructed or reconditioned, the sum of—

(i) the actual cost of the vessel depreciated on a straight line basis from the date of delivery by the builder to the date of the reconstruction or reconditioning, using the original useful life of the vessel, and from the date of the reconstruction or reconditioning, using a useful life of the vessel determined by the Secretary *or Administrator*; and



(ii) any amount paid or obligated to be paid for the reconstruction or reconditioning, depreciated on a straight line basis using a useful life of the vessel determined by the Secretary or Administrator.

[(4)] (5) ELIGIBLE EXPORT VESSEL.—The term “eligible export vessel” means a vessel that—

(A) is constructed, reconstructed, or reconditioned in the United States for use in world-wide trade; and

(B) will, on delivery or redelivery, become or remain documented under the laws of a country other than the United States.

[(5)] (6) FISHERY FACILITY.—

(A) IN GENERAL.—Subject to subparagraph (B), the term “fishery facility” means—

(i) for operations on land—

(I) a structure or appurtenance thereto designed for the unloading and receiving from vessels, the processing, the holding pending processing, the distribution after processing, or the holding pending distribution, of fish from a fishery;

(II) the land necessary for the structure or appurtenance; and

(III) equipment that is for use with the structure or appurtenance and that is necessary for performing a function referred to in subclause (I);

(ii) for operations not on land, a vessel built in the United States and used for, equipped to be used for, or of a type normally used for, the processing of fish; or

(iii) for aquaculture, including operations on land or elsewhere—

(I) a structure or appurtenance thereto designed for aquaculture;

(II) the land necessary for the structure or appurtenance;

(III) equipment that is for use with the structure or appurtenance and that is necessary for performing a function referred to in subclause (I); and

(IV) a vessel built in the United States and used for, equipped to be used for, or of a type normally used for, aquaculture.

(B) REQUIRED OWNERSHIP.—Under subparagraph (A), the structure, appurtenance, land, equipment, or vessel must be owned by—

(i) an individual who is a citizen of the United States; or

(ii) an entity that is a citizen of the United States under section 50501 of this title and that is at least 75 percent owned (as determined under that section) by citizens of the United States.

(6)] (7) FISHING VESSEL.—The term “fishing vessel” has the meaning given that term in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802),

and any reference in this chapter to a vessel designed principally for commercial use in the fishing trade or industry is deemed to be a reference to a fishing vessel.

[(7)] (8) MORTGAGE.—The term “mortgage” includes—

(A) a preferred mortgage as defined in section 31301 of this title; and

(B) a mortgage on a vessel that will become a preferred mortgage when filed or recorded under chapter 313 of this title.

[(8)] (9) OBLIGATION.—The term “obligation” means an instrument of indebtedness issued for a purpose described in section 53706 of this title, except—

(A) an obligation issued by the Secretary *or Administrator* under section 53723 of this title; and

(B) an obligation eligible for investment of funds under section 53715(f) or 53717 of this title.

[(9)] (10) OBLIGEE.—The term “obligee” means the holder of an obligation.

[(10)] (11) OBLIGOR.—The term “obligor” means a party primarily liable for payment of the principal of or interest on an obligation.

[(11)] (12) OCEAN THERMAL ENERGY CONVERSION FACILITY OR PLANTSHIP.—The term “ocean thermal energy conversion facility or plantship” means an at-sea facility or vessel, whether mobile, floating unmoored, moored, or standing on the seabed, that uses temperature differences in ocean water to produce electricity or another form of energy capable of being used directly to perform work, and includes—

(A) equipment installed on the facility or vessel to use the electricity or other form of energy to produce, process, refine, or manufacture a product;

(B) a cable or pipeline used to deliver the electricity, freshwater, or product to shore; and

(C) other associated equipment and appurtenances of the facility or vessel to the extent they are located seaward of the high water mark.

[(12)] SECRETARY.—The term “Secretary” means—

[(A) the Secretary of Commerce with respect to fishing vessels and fishery facilities; and

[(B) the Secretary of Transportation with respect to other vessels and general shipyard facilities (as defined in section 53733(a) of this title).]

(13) SECRETARY.—*The term “Secretary” means the Secretary of Commerce with respect to fishing vessels and fishery facilities.*

[(13)] (14) VESSEL.—The term “vessel” means any type of vessel, whether in existence or under construction, including—

(A) a cargo vessel;

(B) a passenger vessel;

(C) a combination cargo and passenger vessel;

(D) a tanker;

(E) a tug or towboat;

(F) a barge;

(G) a dredge;

(H) a floating drydock with a capacity of at least 35,000 lifting tons and a beam of at least 125 feet between the wing walls;

(I) an oceanographic research vessel;

(J) an instruction vessel;

(K) a pollution treatment, abatement, or control vessel;

(L) a fishing vessel whose ownership meets the citizenship requirements under section 50501 of this title for documenting vessels to operate in the coastwise trade; and

(M) an ocean thermal energy conversion facility or plantship that is or will be documented under the laws of the United States.

### § 53702. General authority

(a) IN GENERAL.—The Secretary *or Administrator*, on terms the Secretary *or Administrator* may prescribe, may guarantee or make a commitment to guarantee the payment of the principal of and interest on an obligation eligible to be guaranteed under this chapter. A guarantee or commitment to guarantee shall cover 100 percent of the principal and interest.

(b) DIRECT LOANS FOR FISHERIES.—

(1) IN GENERAL.—Notwithstanding any other provision of this chapter, any obligation involving a fishing vessel, fishery facility, aquaculture facility, individual fishing quota, or fishing capacity reduction program issued under this chapter after October 11, 1996, shall be a direct loan obligation for which the Secretary shall be the obligee, rather than an obligation issued to an obligee other than the Secretary and guaranteed by the Secretary. A direct loan obligation under this subsection shall be treated in the same manner and to the same extent as an obligation guaranteed under this chapter except with respect to provisions of this chapter that by their nature can only be applied to obligations guaranteed under this chapter.

(2) INTEREST RATE.—Notwithstanding any other provision of this chapter, the annual rate of interest an obligor shall pay on a direct loan obligation under this subsection is 2 percent plus the additional percent the Secretary must pay as interest to borrow from the Treasury the funds to make the loan.

### § 53703. Application procedures

(a) TIME FOR DECISION.—

(1) IN GENERAL.—The Secretary *or Administrator* shall approve or deny an application for a loan guarantee under this chapter within 270 days after the date on which the signed application is received by the Secretary *or Administrator*.

(2) EXTENSION.—On request by an applicant, the Secretary *or Administrator* may extend the 270-day period in paragraph (1) to a date not later than 2 years after the date on which the signed application was received by the Secretary *or Administrator*.

(b) CERTIFICATION OF REVIEW.—The Secretary *or Administrator* may not guarantee or make a commitment to guarantee an obligation under this chapter unless the Secretary *or Administrator* certifies that a full and fair consideration of all the regulatory require-

ments, including economic soundness and financial requirements applicable to the obligor and related parties, and a thorough assessment of the technical, economic, and financial aspects of the loan application, has been made.

**§ 53704. Funding limits**

(a) GENERAL LIMITATIONS.—The total unpaid principal amount of obligations guaranteed under this chapter and outstanding at one time may not exceed \$ 12,000,000,000. Of that amount—

(1) \$850,000,000 shall be limited to obligations related to fishing vessels and fishery facilities; and

(2) \$3,000,000,000 shall be limited to obligations related to eligible export vessels.

(b) ADDITIONAL LIMITATIONS.—Additional limitations may not be imposed on new commitments to guarantee loans for any fiscal year, except in amounts established in advance by annual authorization laws. A vessel eligible for a guarantee under this chapter may not be denied eligibility because of its type.

(c) LIMITS BASED ON RISK FACTORS.—

(1) DEFINITION.—In this subsection, the term “cost” has the meaning given that term in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a).

(2) SYSTEM OF RISK CATEGORIES.—The Secretary *or Administrator* shall—

(A) establish, and update annually, a system of risk categories for obligations guaranteed under this chapter that categorizes the relative risk of guarantees based on the risk factors set forth in paragraph (4);

(B) determine annually for each risk category a subsidy rate equivalent to the cost of obligations in the category, expressed as a percentage of the amount guaranteed for obligations in the category; and

(C) ensure that each risk category is comprised of loans that are relatively homogeneous in cost and share characteristics predictive of defaults and other costs, given the facts known at the time of obligation or commitment, using a risk category system that is based on historical analysis of program data and statistical evidence concerning the likely costs of defaults or other costs that are expected to be associated with the loans in the category.

(3) USE OF SYSTEM.—

(A) PLACING OBLIGATION IN CATEGORY.—Before making a guarantee under this chapter for an obligation, and annually for projects subject to a guarantee, the Secretary *or Administrator* shall apply the risk factors specified in paragraph (4) to place the obligation in a risk category established under paragraph (2).

(B) REDUCTION OF AVAILABLE AMOUNT.—The Secretary *or Administrator* shall consider the total amount available to the Secretary for making guarantees under this chapter to be reduced by the amount determined by multiplying—

(i) the amount guaranteed under this chapter for an obligation; by

(ii) the subsidy rate for the category in which the obligation is placed under subparagraph (A).

(C) ESTIMATED COST.—The estimated cost to the United States Government of a guarantee under this chapter for an obligation is deemed to be the amount determined under subparagraph (B) for the obligation.

(D) RESTRICTION ON FURTHER GUARANTEES.—The Secretary or Administrator may not guarantee obligations under this chapter after the total amount available to the Secretary or Administrator under appropriations laws for the cost of loan guarantees is considered to be reduced to zero under subparagraph (B).

(4) RISK FACTORS.—The risk factors referred to in this subsection are—

(A) if applicable, the country risk for each eligible export vessel financed or to be financed by an obligation;

(B) the period for which an obligation is guaranteed or to be guaranteed;

(C) the amount of an obligation guaranteed or to be guaranteed in relation to the total cost of the project financed or to be financed by the obligation;

(D) the financial condition of an obligor or applicant for a guarantee;

(E) if applicable, other guarantees related to the project;

(F) if applicable, the projected employment of each vessel or equipment to be financed with an obligation;

(G) if applicable, the projected market that will be served by each vessel or equipment to be financed with an obligation;

(H) the collateral provided for a guarantee for an obligation;

(I) the management and operating experience of an obligor or applicant for a guarantee;

(J) whether a guarantee under this chapter is or will be in effect during the construction period of the project; and

(K) the concentration risk presented by an unduly large percentage of loans outstanding by any one borrower or group of affiliated borrowers.

\* \* \* \* \*

#### § 53706. Eligible purposes of obligations

(a) IN GENERAL.—To be eligible for a guarantee under this chapter, an obligation must aid in any of the following:

(1) (A) Financing (including reimbursement of an obligor for expenditures previously made for) the construction, reconstruction, or reconditioning of a vessel (including an eligible export vessel) designed principally for research, or for commercial use—

(i) in the coastwise or intercoastal trade;

(ii) on the Great Lakes, or on bays, sounds, rivers, harbors, or inland lakes of the United States;

(iii) in foreign trade as defined in section 109(b) of this title;

(iv) as an ocean thermal energy conversion facility or plantship;

(v) as a floating drydock in the construction, reconstruction, reconditioning, or repair of vessels; or

(vi) as an eligible export vessel in worldwide trade.

(B) A guarantee under subparagraph (A) may not be made more than one year after delivery of the vessel (or redelivery if the vessel was reconstructed or reconditioned) unless the proceeds of the obligation are used to finance the construction, reconstruction, or reconditioning of a vessel or of facilities or equipment related to marine operations.

(2) Financing (including reimbursement of an obligor for expenditures previously made for) the construction, reconstruction, reconditioning, or purchase of a vessel owned by citizens of the United States and designed principally for research, or for commercial use in the fishing industry.

(3) Financing the purchase, reconstruction, or reconditioning of a vessel or fishery facility—

(A) for which an obligation was guaranteed under this chapter; and

(B) that, under subchapter II of this chapter—

(i) is a vessel or fishery facility for which an obligation was accelerated and paid;

(ii) was acquired by the Federal Ship Financing Fund or successor account under section 53717 of this title; or

(iii) was sold at foreclosure begun or intervened in by the Secretary *or Administrator*.

(4) Financing any part of the repayment to the United States Government of any amount of a construction-differential subsidy paid for a vessel.

(5) Refinancing an existing obligation (regardless of whether guaranteed under this chapter) issued for a purpose described in paragraphs (1)-(4), including a short-term obligation incurred to obtain temporary funds with the intention of refinancing.

(6) Financing or refinancing (including reimbursement of an obligor for expenditures previously made for) the construction, reconstruction, reconditioning, or purchase of a fishery facility.

(7) Financing or refinancing—

(A) the purchase of individual fishing quotas in accordance with section 303(d)(4) of the Magnuson-Stevens Fishery Conservation and Management Act (including the reimbursement of obligors for expenditures previously made for such a purchase);

(B) activities that assist in the transition to reduced fishing capacity; or

(C) technologies or upgrades designed to improve collection and reporting of fishery-dependent data, to reduce bycatch, to improve selectivity or reduce adverse impacts of fishing gear, or to improve safety.

(b) NON-VESSELS TREATED AS VESSELS.—An obligation guaranteed under subsection (a)(6) or (7) shall be treated, for purposes of this chapter, in the same manner and to the same extent as an obliga-

tion that aids in financing the construction, reconstruction, reconditioning, or purchase of a vessel, except with respect to provisions that by their nature can only be applied to vessels.

[(c) PRIORITIES FOR CERTAIN VESSELS.—In guaranteeing or making a commitment to guarantee an obligation under this chapter, the Secretary shall give priority to—

[(1) a vessel that is otherwise eligible for a guarantee and is constructed with assistance under subtitle D of the Maritime Security Act of 2003 (46 U.S.C. 53101 note); and

[(2) after applying paragraph (1), a vessel that is otherwise eligible for a guarantee and that the Secretary of Defense determines—

[(A) is suitable for service as a naval auxiliary in time of war or national emergency; and

[(B) meets a shortfall in sealift capacity or capability.]

(c) PRIORITIES FOR CERTAIN VESSELS.—

(1) VESSELS.—*In guaranteeing or making a commitment to guarantee an obligation under this chapter, the Administrator shall give priority to—*

(A) *a vessel that is otherwise eligible for a guarantee and is constructed with assistance under subtitle D of the Maritime Security Act of 2003 (46 U.S.C. 53101 note); and*

(B) *after applying subparagraph (A), a vessel that is otherwise eligible for a guarantee and that the Secretary of Defense determines—*

(i) *is suitable for service as a naval auxiliary in time of war or national emergency; and*

(ii) *meets a shortfall in sealift capacity or capability.*

(2) TIME FOR DETERMINATION.—*The Secretary of Defense shall determine whether a vessel satisfies paragraph (1)(B) not later than 30 days after receipt of a request from the Administrator for such a determination.*

### § 53707. Findings related to obligors and operators

(a) RESPONSIBLE OBLIGOR.—The Secretary or Administrator may not guarantee or make a commitment to guarantee an obligation under this chapter unless the Secretary or Administrator finds that the obligor is responsible and has the ability, experience, financial resources, and other qualifications necessary for the adequate operation and maintenance of each vessel that will serve as security for the guarantee.

(b) OPERATORS OF LINER VESSELS.—The [Secretary of Transportation] Administrator may not guarantee or make a commitment to guarantee a loan for the construction, reconstruction, or reconditioning of a liner vessel under this chapter unless the Chairman of the Federal Maritime Commission certifies that the operator of the vessel has not been found by the Commission to have committed, within the previous 5 years—

(1) a violation of part A of subtitle IV of this title that involves unjust or unfair discriminatory treatment or undue or unreasonable prejudice or disadvantage with respect to a United States shipper, ocean transportation intermediary, ocean common carrier, or port; or

(2) a violation of part B of subtitle IV of this title.

(c) OPERATORS OF FISHING VESSELS.—The Secretary [of Commerce] may not guarantee or make a commitment to guarantee a loan for the construction, reconstruction, or reconditioning of a fishing vessel under this chapter if the operator of the vessel has been—

(1) held liable, or the vessel has been held liable in rem, for a civil penalty under section 308 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1858) and the operator has not paid the penalty;

(2) found guilty of an offense under section 309 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1859) and not paid the assessed fine or served the assessed sentence;

(3) held liable for a civil or criminal penalty under section 105 of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1375) and not paid the assessed fine or served the assessed sentence; or

(4) held liable for a civil penalty by the Coast Guard under this title or title 33 and not paid the assessed fine.

(d) WAIVERS CONCERNING FINANCIAL CONDITION.—The Secretary or Administrator shall prescribe regulations concerning circumstances under which waivers of, or exceptions to, otherwise applicable regulatory requirements concerning financial condition can be made. The regulations shall require that—

(1) the economic soundness requirements in section 53708(a) of this title are met after the waiver of the financial condition requirement; and

(2) if the Secretary or Administrator considers necessary, the waiver shall provide for the imposition of other requirements on the obligor designed to compensate for [the increased] any significant increase in risk associated with the obligor's failure to meet regulatory requirements applicable to financial condition.

#### § 53708. Findings related to economic soundness

(a) BY [SECRETARY OF TRANSPORTATION] ADMINISTRATOR.—The [Secretary of Transportation] Administrator may not guarantee or make a commitment to guarantee an obligation under this chapter unless the [Secretary] Administrator finds that the property or project for which the obligation will be executed will be economically sound. In making that finding, the [Secretary] Administrator shall consider—

(1) the need in the particular segment of the maritime industry for new or additional capacity, including any impact on existing equipment for which a guarantee under this chapter is in effect;

(2) the market potential for employment of the vessel over the life of the guarantee;

(3) projected revenues and expenses associated with employment of the vessel;

(4) any charter, contract of affreightment, transportation agreement, or similar agreement or undertaking relevant to the employment of the vessel;

(5) other relevant criteria; and



- (6) for inland waterways, the need for technical improvements, including increased fuel efficiency or improved safety.
- (b) BY SECRETARY [OF COMMERCE].—The Secretary [of Commerce] may not guarantee or make a commitment to guarantee an obligation under this chapter unless the Secretary finds, at or prior to the time the commitment is made or the guarantee becomes effective, that—
- (1) the property or project for which the obligation will be executed will be economically sound; and
  - (2) for a fishing vessel, the purpose of the financing or refinancing is consistent with—
    - (A) the wise use of the fisheries resources and the development, advancement, management, conservation, and protection of the fisheries resources; or
    - (B) the need for technical improvements, including increased fuel efficiency or improved safety.
- (c) USED FISHING VESSELS AND FACILITIES.—The Secretary [of Commerce] may not guarantee or make a commitment to guarantee an obligation under this chapter for the purchase of a used fishing vessel or used fishery facility unless the vessel or facility will be—
- (1) reconstructed or reconditioned in the United States and will contribute to the development of the United States fishing industry; or
  - (2) used—
    - (A) in the harvesting of fish from an underused fishery; or
    - (B) for a purpose described in the definition of “fishery facility” in section 53701 of this title with respect to an underused fishery.
- (d) INDEPENDENT ANALYSIS.—The Secretary or Administrator may make a determination that aspects of an application under this chapter require independent analysis to be conducted by third party experts due to risk factors associated with markets, technology, [financial structures, or other risk factors identified by the Secretary. Any independent analysis conducted under this subsection shall be performed by a party chosen by the Secretary.] or *financial structures. A third party independent analysis conducted under this subsection shall be performed by a private sector expert in assessing such risk factors who is selected by the Secretary or Administrator.*
- (e) ADDITIONAL EQUITY BECAUSE OF INCREASED RISKS.—Notwithstanding any other provision of this chapter, the Secretary or Administrator may make a determination that an application under this title requires additional equity because of increased risk factors associated with markets, technology, [financial structures, or other risk factors identified by the Secretary.] or *financial structures.*

#### § 53709. Amount of obligations

- (a) IN GENERAL.—The principal of an obligation may not be guaranteed in an amount greater than the amount determined by multiplying the percentage applicable under subsection (b) by—

(1) the amount paid by or for the account of the obligor (as determined by the Secretary or Administrator, which determination shall be conclusive) for the construction, reconstruction, or reconditioning of the vessel used as security for the guarantee; or

(2) if the obligor creates an escrow fund under section 53715 of this title, the actual cost of the vessel.

(b) LIMITATIONS ON AMOUNT BORROWED.—

(1) IN GENERAL.—Except as otherwise provided, the principal amount of an obligation guaranteed under this chapter may not exceed 75 percent of the actual cost or depreciated actual cost, as determined by the Secretary or Administrator, of the vessel used as security for the guarantee.

(2) CERTAIN APPROVED VESSELS.—The principal amount may not exceed 87.5 percent of the actual cost or depreciated actual cost if—

(A) the size and speed of the vessel are approved by the Secretary or Administrator;

(B) the vessel is or would have been eligible for mortgage aid for construction under section 509 of the Merchant Marine Act, 1936, or would have been eligible except that the vessel was built with a construction-differential subsidy and the subsidy has been repaid; and

(C) the vessel is of a type described in that section for which the minimum down payment required by that section is 12.5 percent of the cost of the vessel.

(3) BARGES.—For a barge constructed without a construction-differential subsidy or for which the subsidy has been repaid, the principal amount may not exceed 87.5 percent of the actual cost or depreciated actual cost.

(4) FISHING VESSELS AND FISHERY FACILITIES.—For a fishing vessel or fishery facility, the principal amount may not exceed 80 percent of the actual cost or depreciated actual cost. However, debt for the vessel or facility may not be placed through the Federal Financing Bank.

(5) OTEC.—For an ocean thermal energy conversion facility or plantship constructed without a construction-differential subsidy, the principal amount may not exceed 87.5 percent of the actual cost or depreciated actual cost of the facility or plantship.

(6) ELIGIBLE EXPORT VESSELS.—For an eligible export vessel, the principal amount may not exceed 87.5 percent of the actual cost or depreciated actual cost.

(c) SECURITY INVOLVING MULTIPLE VESSELS.—The principal amount of an obligation having more than one vessel as security for the guarantee may not exceed the sum of the principal amounts allowable for all the vessels.

(d) PROHIBITION ON UNIFORM PERCENTAGE LIMITATIONS.—The Secretary or Administrator may not establish a percentage under any provision of subsection (b) that is to be applied uniformly to all guarantees or commitments to guarantee made under that provision.

(e) PROHIBITION ON MINIMUM PRINCIPAL AMOUNT.—The Secretary may not establish, as a condition of eligibility for a guarantee

under this chapter, a minimum principal amount for an obligation covering the reconstruction or reconditioning of a fishing vessel or fishery facility. For purposes of this chapter, the reconstruction or reconditioning of a fishing vessel or fishery facility does not include the routine minor repair or maintenance of the vessel or facility.

**§ 53710. Contents of obligations**

(a) IN GENERAL.—An obligation guaranteed under this chapter must—

(1) provide for payments by the obligor satisfactory to the Secretary *or Administrator*;

(2) provide for interest (exclusive of guarantee fees and other fees) at a rate not more than the annual rate on the unpaid principal that the Secretary *or Administrator* determines is reasonable, considering the range of interest rates prevailing in the private market for similar loans and the risks assumed by the Secretary *or Administrator*;

(3) have a maturity date satisfactory to the Secretary *or Administrator*, but—

(A) not more than 25 years after the date of delivery of the vessel used as security for the guarantee; or

(B) if the vessel has been reconstructed or reconditioned, not more than the later of—

(i) 25 years after the date of delivery of the vessel;

or

(ii) the remaining years of useful life of the vessel as determined by the Secretary *or Administrator*; and

(4) provide, or a related agreement must provide, that if the vessel used as security for the guarantee is a delivered vessel, the vessel shall be—

(A) in class A-1, American Bureau of Shipping, or meet other standards acceptable to the Secretary *or Administrator*, with all required certificates, including marine inspection certificates of the Coast Guard or, in the case of an eligible export vessel, of the appropriate foreign authorities under a treaty, convention, or other international agreement to which the United States is a party, and with all outstanding requirements and recommendations necessary for class retention accomplished, unless the Secretary *or Administrator* permits a deferment of repairs necessary to meet these requirements; and

(B) well equipped, in good repair, and in every respect seaworthy and fit for service.

(b) PROVISIONS FOR CERTAIN PASSENGER VESSELS.—

(1) IN GENERAL.—With the [Secretary's] *Administrator's* approval, if the vessel used as security for the guarantee is a passenger vessel having the tonnage, speed, passenger accommodations, and other characteristics described in section 503 of the Merchant Marine Act, 1936, an obligation guaranteed under this chapter or a related agreement may provide that—

(A) the only recourse by the United States Government against the obligor for payments under the guarantee will be repossession of the vessel and assignment of insurance claims; and

(B) the obligor's liability for payments under the guarantee will be satisfied and discharged by the surrender of the vessel and all interest in the vessel to the Government in the condition described in paragraph (2).

(2) SURRENDER OF VESSEL.—

(A) IN GENERAL.—On surrender, the vessel must be—

(i) free and clear of all liens and encumbrances except the security interest conveyed to the **[Secretary]** *Administrator* under this chapter;

(ii) in class; and

(iii) in as good order and condition (ordinary wear and tear excepted) as when acquired by the obligor.

(B) COVERING DEFICIENCIES BY INSURANCE.—To the extent covered by insurance, a deficiency related to a requirement in subparagraph (A) may be satisfied by assignment of the obligor's insurance claims to the Government.

(c) OTHER PROVISIONS TO PROTECT SECURITY INTERESTS.—An obligation guaranteed under this chapter and any related agreement must contain other provisions for the protection of the security interests of the Government (including acceleration, assumption, and subrogation provisions and the issuance of notes by the obligor to the Secretary *or Administrator*), liens and releases of liens, payment of taxes, and other matters that the Secretary *or Administrator* may prescribe.

**§ 53711. Security interest**

(a) IN GENERAL.—The Secretary *or Administrator* may guarantee an obligation under this chapter only if the obligor conveys or agrees to convey to the Secretary *or Administrator* a security interest the Secretary *or Administrator* considers necessary to protect the interest of the United States Government.

(b) MULTIPLE VESSELS AND TYPES OF SECURITY.—The security interest may relate to more than one vessel and may consist of more than one type of security. If the security interest relates to more than one vessel, the obligation may have the latest maturity date allowable under section 53710(a)(3) of this title for any of the vessels used as security for the guarantee. However, the Secretary *or Administrator* may require such payments of principal prior to maturity, with respect to all related obligations, as the Secretary *or Administrator* considers necessary to maintain adequate security for the guarantee.

**§ 53712. Monitoring financial condition and operations of obligor**

(a) IN GENERAL.—The Secretary *or Administrator* shall monitor the financial condition and operations of the obligor on a regular basis during the term of the guarantee. The Secretary *or Administrator* shall document the results of the monitoring on an annual or quarterly basis depending on the condition of the obligor. If the Secretary *or Administrator* determines that the financial condition of the obligor warrants additional protections to the Secretary *or Administrator*, the Secretary *or Administrator* shall take appropriate action under subsection (b). If the Secretary *or Administrator* determines that the financial condition of the obligor jeop-

ardizes its continued ability to perform its responsibilities in connection with the guarantee of an obligation by the Secretary or Administrator, the Secretary or Administrator shall make an immediate determination whether default should take place and whether further measures described in subsection (b) should be taken to protect the interests of the Secretary or Administrator while ensuring that program objectives are met.

(b) CONTRACT PROVISIONS TO PROTECT SECRETARY.—The Secretary or Administrator shall include provisions in a loan agreement with an obligor that provides additional authority to the Secretary or Administrator to take action to limit potential losses in connection with a defaulted loan or a loan that is in jeopardy due to the deteriorating financial condition of the obligor. [These provisions include requirements for additional collateral or greater equity contributions that are effective upon the occurrence of verifiable conditions relating to the obligor's financial condition or the status of the vessel or shipyard project.] *If the Secretary or Administrator has waived a requirement under section 53707(d) of this title, the loan agreement shall include requirements for additional payments, collateral, or equity contributions to meet the waived requirement upon the occurrence of verifiable conditions indicating that the obligor's financial condition enables the obligor to meet the waived requirement.*

#### § 53713. Administrative fees

(a) IN GENERAL.—The Secretary or Administrator shall charge and collect from the obligor fees the Secretary or Administrator considers reasonable for—

- (1) investigating an application for a guarantee;
- (2) appraising property offered as security for a guarantee;
- (3) issuing a commitment;
- (4) providing services related to an escrow fund under section 53715 of this title; and
- (5) inspecting property during construction, reconstruction, or reconditioning.

(b) TOTAL FEE LIMITATION.—The total fees under subsection (a) may not exceed 0.5 percent of the original principal amount of the obligations to be guaranteed.

(c) FEES FOR INDEPENDENT ANALYSIS.—The Secretary or Administrator may charge and collect fees to cover the costs of independent analysis under section 53708(d) of this title. Notwithstanding section 3302 of title 31, any fee collected under this subsection shall—

- (1) be credited as an offsetting collection to the account that finances the administration of the loan guarantee program;
- (2) be available for expenditure only to pay the costs of activities and services for which the fee is imposed; and
- (3) remain available until expended.

#### § 53714. Guarantee fees

(a) REGULATIONS.—Subject to this section, the Secretary or Administrator shall prescribe regulations to assess a fee for guaranteeing an obligation under this chapter.

(b) COMPUTATION OF FEE.—

(1) IN GENERAL.—The amount of the fee for a guarantee under this chapter shall be equal to the sum of the amounts determined under paragraph (2) for the years in which the guarantee is in effect.

(2) PRESENT VALUE FOR EACH YEAR.—The amount referred to in paragraph (1) for a year in which the guarantee is in effect is the present value of the amount calculated under paragraph (3). To determine the present value, the Secretary *or Administrator* shall apply a discount rate determined by the Secretary of the Treasury, considering current market yields on outstanding obligations of the United States Government having periods to maturity comparable to the period to maturity for the guaranteed obligation.

(3) CALCULATION OF AMOUNT.—The amount referred to in paragraph (2) shall be calculated by multiplying—

(A) the estimated average unpaid principal amount of the obligation that will be outstanding during the year (excluding the average amount, other than interest, on deposit during the year in an escrow fund under section 53715 of this title); by

(B) the fee rate set under paragraph (4).

(4) SETTING FEE RATES.—To set the fee rate referred to in paragraph (3)(B), the Secretary *or Administrator* shall establish a formula that—

(A) takes into account the security provided for the guaranteed obligation; and

(B) is a sliding scale based on the creditworthiness of the obligor, using—

(i) the lowest allowable rate under paragraph (5) for the most creditworthy obligors; and

(ii) the highest allowable rate under paragraph (5) for the least creditworthy obligors.

(5) PERMISSIBLE RANGE OF RATES.—The fee rate set under paragraph (4) shall be—

(A) for a delivered vessel or equipment, at least 0.5 percent and not more than 1 percent; and

(B) for a vessel to be constructed, reconstructed, or reconditioned or equipment to be delivered, at least 0.25 percent and not more than 0.5 percent.

(c) WHEN FEE COLLECTED.—A fee for the guarantee of an obligation under this chapter shall be collected not later than the date on which an amount is first paid on the obligation.

(d) FINANCING THE FEE.—A fee paid under this section is eligible to be financed under this chapter and shall be included in the actual cost of the obligation guaranteed.

(e) NOT REFUNDABLE.—A fee paid under this section is not refundable. However, an obligor shall receive credit for the amount paid for the remaining term of the obligation if the obligation is refinanced and guaranteed under this chapter after the refinancing.

#### **§ 53715. Escrow fund**

(a) IN GENERAL.—If the proceeds of an obligation guaranteed under this chapter are to be used to finance the construction, reconstruction, or reconditioning of a vessel that will serve as secu-

urity for a guarantee under this chapter, the Secretary *or Administrator* may accept and hold in escrow, under an escrow agreement with the obligor, a portion of the proceeds of all obligations guaranteed under this chapter whose proceeds are to be so used which is equal to—

(1) the excess of—

(A) the principal amount of all obligations whose proceeds are to be so used; over

(B) 75 percent or 87.5 percent, whichever is applicable under section 53709(b) of this title, of the amount paid by or for the account of the obligor for the construction, reconstruction, or reconditioning of the vessel; plus

(2) any interest the Secretary *or Administrator* may require on the amount described in paragraph (1).

(b) SECURITY INVOLVING BOTH UNCOMPLETED AND DELIVERED VESSELS.—If the security for the guarantee of an obligation relates both to a vessel to be constructed, reconstructed, or reconditioned and to a delivered vessel, the principal amount of the obligation shall be prorated for purposes of subsection (a) under regulations prescribed by the Secretary.

(c) DISBURSEMENT BEFORE TERMINATION OF AGREEMENT.—

(1) PURPOSES.—The Secretary *or Administrator* shall disburse amounts in the escrow fund, as specified in the escrow agreement, to—

(A) pay amounts the obligor is obligated to pay for—

(i) the construction, reconstruction, or reconditioning of a vessel used as security for the guarantee; and  
(ii) interest on the obligations;

(B) redeem the obligations under a refinancing guaranteed under this chapter; and

(C) pay any excess interest deposits to the obligor at times provided for in the escrow agreement.

(2) MANNER OF PAYMENT.—If a payment becomes due under the guarantee before the termination of the escrow agreement, the amount in the escrow fund at the time the payment becomes due, including realized income not yet paid to the obligor, shall be paid into the appropriate account under section 53717 of this title. The amount shall be credited against amounts due or to become due from the obligor to the Secretary *or Administrator* on the guaranteed obligations or, to the extent not so required, be paid to the obligor.

(d) PAYMENTS REQUIRED BEFORE DISBURSEMENT.—

(1) IN GENERAL.—No disbursement shall be made under subsection (c) to any person until the total amount paid by or for the account of the obligor from sources other than the proceeds of the obligation equals at least 25 percent or 12.5 percent, whichever is applicable under section 53709(b) of this title, of the aggregate actual cost of the vessel, as previously approved by the Secretary *or Administrator*. If the aggregate actual cost of the vessel has increased since the Secretary's *or Administrator's* initial approval or if it increases after the first disbursement is permitted under this subsection, then no further disbursements shall be made under subsection (c) until the total amount paid by or for the account of the obligor from sources

other than the proceeds of the obligation equals at least 25 percent or 12.5 percent, as applicable, of the increase, as determined by the *Secretary or Administrator*, in the aggregate actual cost of the vessel. This paragraph does not require the *Secretary or Administrator* to consent to finance any increase in actual cost unless the *Secretary or Administrator* determines that such an increase in the obligation meets all the terms and conditions of this chapter or other applicable law.

(2) DOCUMENTED PROOF OF PROGRESS REQUIREMENT.—The *Secretary or Administrator* shall, by regulation, establish a transparent, independent, and risk-based process for verifying and documenting the progress of projects under construction before disbursing guaranteed loan funds. At a minimum, the process shall require documented proof of progress in connection with the construction, reconstruction, or reconditioning of a vessel or vessels before disbursements are made from the escrow fund. The *Secretary or Administrator* may require that the obligor provide a certificate from an independent party certifying that the requisite progress in construction, reconstruction, or reconditioning has taken place.

(e) DISBURSEMENT ON TERMINATION OF AGREEMENT.—

(1) IN GENERAL.—If a payment has not become due under the guarantee before the termination of the escrow agreement, the balance of the escrow fund at the time of termination shall be disbursed to—

(A) prepay the excess of—

(i) the principal amount of all obligations whose proceeds are to be used to finance the construction, reconstruction, or reconditioning of the vessel used or to be used as security for the guarantee; over

(ii) 75 percent or 87.5 percent, whichever is applicable under section 53709(b) of this title, of the actual cost of the vessel to the extent paid; and

(B) pay interest on that prepaid amount of principal.

(2) REMAINING BALANCE.—Any remaining balance of the escrow fund shall be paid to the obligor.

(f) INVESTMENT.—The *Secretary or Administrator* may invest and reinvest any part of an escrow fund in obligations of the United States Government with maturities such that the escrow fund will be available as required for purposes of the escrow agreement. Investment income shall be paid to the obligor when received.

(g) TERMS TO PROTECT GOVERNMENT.—The escrow agreement shall contain other terms the *Secretary or Administrator* considers necessary to protect fully the interests of the Government.

#### **§ 53716. Deposit fund**

(a) IN GENERAL.—There is a deposit fund in the Treasury for purposes of this section. The *Secretary or Administrator*, in accordance with an agreement under subsection (b), may deposit into and hold in the fund cash belonging to an obligor to serve as collateral for a guarantee made under this chapter with respect to the obligor.

(b) AGREEMENT.—The *Secretary or Administrator* and an obligor shall make a reserve fund or other collateral account agreement to



govern the deposit, withdrawal, retention, use, and reinvestment of cash of the obligor held in the fund. The agreement shall contain—

- (1) terms and conditions required by this section;
- (2) terms that grant to the United States Government a security interest in all amounts deposited into the fund; and
- (3) any additional terms considered by the Secretary *or Administrator* to be necessary to protect fully the interests of the Government.

(c) INVESTMENT.—The Secretary *or Administrator* may invest and reinvest any part of the amounts in the fund in obligations of the Government with maturities such that amounts in the fund will be available as required for purposes of the agreement under subsection (b). Cash balances in the fund in excess of current requirements shall be maintained in a form of uninvested funds, and the Secretary of the Treasury shall pay interest on these funds.

(d) WITHDRAWALS.—

(1) IN GENERAL.—Cash deposited into the fund may not be withdrawn without the consent of the Secretary *or Administrator*.

(2) USE OF INCOME.—Subject to paragraph (3), the Secretary *or Administrator* may pay any income earned on cash of an obligor deposited into the fund in accordance with the agreement with the obligor under subsection (b).

(3) RETENTION AGAINST DEFAULT.—The Secretary *or Administrator* may retain and offset any or all of the cash of an obligor in the fund, and any income realized thereon, as part of the Secretary's *or Administrator's* recovery against the obligor in case of a default by the obligor on an obligation.

#### § 53717. Management of funds in the Treasury

(a) DEFINITION.—In this section, the term “FCRA” means the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.).

(b) LOAN GUARANTEES BY [SECRETARY OF TRANSPORTATION] ADMINISTRATOR.—

(1) WHEN NOT SUBJECT TO FCRA.—The [Secretary of Transportation] Administrator shall account for payments and disbursements involving obligations guaranteed under this chapter and not subject to FCRA in an account in the Treasury entitled the Federal Ship Financing Fund Liquidating Account (a liquidating account as defined in FCRA).

(2) WHEN SUBJECT TO FCRA.—The [Secretary of Transportation] Administrator shall account for payments and disbursements involving obligations guaranteed under this chapter and subject to FCRA in a separate account in the Treasury entitled the Federal Ship Financing Guaranteed Loan Financing Account (a financing account as defined in FCRA).

(c) LOAN GUARANTEES BY SECRETARY [OF COMMERCE].—

(1) WHEN NOT SUBJECT TO FCRA.—The Secretary [of Commerce] shall account for payments and disbursements involving obligations guaranteed under this chapter and not subject to FCRA in a separate account in the Treasury established for this purpose.

(2) WHEN SUBJECT TO FCRA.—The Secretary [of Commerce] shall account for payments and disbursements involving obli-

gations guaranteed under this chapter and subject to FCRA in a separate account in the Treasury established for this purpose.

(d) **DIRECT LOANS BY SECRETARY [OF COMMERCE].**—The Secretary [of Commerce] shall account for payments and disbursements involving direct loans made under this chapter in a separate account in the Treasury established for this purpose.

#### § 53718. Annual report to Congress

The [Secretary of Transportation] *Administrator* shall report to Congress annually on the loan guarantee program under this chapter. Each report shall include—

- (1) the size, in dollars, of the portfolio of loans guaranteed;
- (2) the size, in dollars, of projects in the portfolio facing financial difficulties;
- (3) the number and type of projects covered;
- (4) a profile of pending loan applications;
- (5) the amount of appropriations available for new guarantees;
- (6) a profile of each project approved since the last report; and
- (7) a profile of any defaults since the last report.

\* \* \* \* \*

#### § 53721. Rights of obligee

(a) **DEMANDS BY OBLIGEEES.**—Except as provided in subsection (c), if an obligor has continued in default for 30 days in the payment of principal or interest on an obligation guaranteed under this chapter, the obligee or the obligee's agent may demand that the Secretary *or Administrator* pay the unpaid principal amount of the obligation and the unpaid interest on the obligation to the date of payment. The demand must be made within the earlier of—

- (1) a period that may be specified in the guarantee or a related agreement; or
- (2) 90 days from the date of the default.

(b) **PAYMENTS BY SECRETARY OR ADMINISTRATOR.**—

(1) **IN GENERAL.**—If a demand is made under subsection (a), the Secretary *or Administrator* shall pay to the obligee or the obligee's agent the unpaid principal amount of the obligation and the unpaid interest on the obligation to the date of payment. Payment shall be made within the earlier of—

- (A) a period that may be specified in the guarantee or a related agreement; or
- (B) 30 days from the date of the demand.

(2) **IF NO EXISTING DEFAULT.**—The Secretary *or Administrator* is not required to make payment under this subsection if, within the appropriate period under paragraph (1), the Secretary *or Administrator* finds that the obligor was not in default or that the default was remedied before the demand.

(c) **ASSUMPTION OF RIGHTS AND OBLIGATIONS BEFORE DEMAND.**—An obligee or the obligee's agent may not demand payment under this section if the Secretary *or Administrator*, before the demand and on terms that may be provided in the obligation or a related

agreement, has assumed the obligor's rights and duties under the obligation and any related agreement and made any payment in default. However, the guarantee of the obligation remains in effect after the Secretary or Administrator's assumption.

**§ 53722. Actions by Secretary or Administrator**

(a) GENERAL AUTHORITY.—On default under an obligation or related agreement between the Secretary or Administrator and the obligor, the Secretary or Administrator, on terms that may be provided in the obligation or agreement, may—

(1) assume the obligor's rights and duties under the obligation or agreement, make any payment in default, and notify the obligee or the obligee's agent of the default and the Secretary's or Administrator's assumption; or

(2) notify the obligee or the obligee's agent of the default.

(b) DEMANDS BY OBLIGEEES.—

(1) DEMAND.—If the Secretary or Administrator proceeds under subsection (a)(2), the obligee or the obligee's agent may demand that the Secretary or Administrator pay the unpaid principal amount of the obligation and the unpaid interest on the obligation. The demand must be made within the earlier of—

(A) a period that may be specified in the guarantee or a related agreement; or

(B) 60 days from the date of the Secretary's or Administrator's notice.

(2) PAYMENT.—If a demand is made under paragraph (1), the Secretary or Administrator shall pay to the obligee or the obligee's agent the unpaid principal amount of the obligation and the unpaid interest on the obligation to the date of payment. Payment shall be made within the earlier of—

(A) a period that may be specified in the guarantee or a related agreement; or

(B) 30 days from the date of the demand.

(c) CONTINUED EFFECT OF GUARANTEE.—A guarantee of an obligation remains in effect after an assumption of the obligation by the Secretary or Administrator.

(d) ADDITIONAL RESPONSES.—If there is a default on an obligation, the Secretary or Administrator shall conduct operations under this chapter in a manner that—

(1) maximizes the net present value return from the sale or disposition of assets associated with the obligation, including prompt referral to the Attorney General for collection as appropriate;

(2) minimizes the amount of any loss realized in the resolution of the guarantee;

(3) ensures adequate competition and fair and consistent treatment of offerors; and

(4) requires appraisal of assets by an independent appraiser.

**§ 53723. Payments by Secretary or Administrator and issuance of obligations**

(a) CASH PAYMENT.—Amounts required to be paid by the Secretary or Administrator under section 53721 or 53722 of this title shall be paid in cash.

(b) ISSUANCE OF OBLIGATIONS.—If amounts in the appropriate account under section 53717 of this title are not sufficient to make a payment required under section 53721 or 53722 of this title, the Secretary or Administrator may issue obligations to the Secretary of the Treasury. The Secretary or Administrator, with the approval of the Secretary of the Treasury, shall prescribe the form, denomination, maturity, and other terms (except the interest rate) of the obligations. The Secretary of the Treasury shall set the interest rate for the obligations, considering the current average market yield on outstanding marketable obligations of the United States Government of comparable maturities during the month before the obligations are issued.

(c) PURCHASE OF OBLIGATIONS.—The Secretary of the Treasury shall purchase the obligations issued under this section. To purchase the obligations, the Secretary of the Treasury may use as a public debt transaction the proceeds from the sale of securities issued under chapter 31 of title 31. The purposes for which securities may be issued under that chapter are extended to include the purchase of obligations under this subsection. The Secretary of the Treasury may sell obligations purchased under this section. A redemption, purchase, or sale of the obligations by the Secretary of the Treasury is a public debt transaction of the Government.

(d) DEPOSITS AND REDEMPTIONS.—The Secretary or Administrator shall deposit amounts borrowed under this section in the appropriate account under section 53717 of this title and make redemptions of the obligations from that account.

**§ 53724. Rights to secured property**

(a) ACQUISITION OF SECURITY RIGHTS.—When the Secretary or Administrator makes a payment on, or assumes, an obligation under section 53721 or 53722 of this title, the Secretary or Administrator acquires the rights under the security agreement with the obligor in the security held by the Secretary or Administrator to guarantee the obligation.

(b) USE AND DISPOSITION OF SECURED PROPERTY.—Notwithstanding any other law relating to the acquisition, handling, or disposal of property by the United States Government, the Secretary or Administrator has the right, in the Secretary's or Administrator's discretion, to complete, reconstruct, recondition, renovate, repair, maintain, operate, charter, or sell any property acquired under a security agreement with an obligor, or to place a vessel so acquired in the National Defense Reserve Fleet. The terms of a sale under this subsection shall be as approved by the Secretary or Administrator.

**§ 53725. Actions against obligor**

(a) IN GENERAL.—For a default under a guaranteed obligation or related agreement, the Secretary or Administrator may take any action against the obligor or another liable party that the Secretary

or *Administrator* considers necessary to protect the interests of the United States Government. A civil action may be brought in the name of the United States or the obligee. The obligee shall make available to the Government all records and evidence necessary to prosecute the action.

(b) TITLE, POSSESSION, AND PURCHASE.—

(1) IN GENERAL.—The *Secretary or Administrator* may—

(A) accept a conveyance of title to and possession of property from the obligor or another party liable to the *Secretary or Administrator*; and

(B) purchase the property for an amount not greater than the unpaid principal amount of the obligation and interest thereon.

(2) PAYMENT OF EXCESS.—If, through the sale of property, the *Secretary or Administrator* receives an amount of cash greater than the unpaid principal amount of the obligation, the unpaid interest on the obligation, and the expenses of collecting those amounts, the *Secretary or Administrator* shall pay the excess to the obligor.

\* \* \* \* \*

**§ 53731. Commercial demonstration ocean thermal energy conversion facilities and plantships**

(a) IN GENERAL.—Under subchapter I of this chapter, the **[Secretary]** *Administrator* may guarantee or make a commitment to guarantee the payment of the principal of and interest on an obligation that aids in financing (including reimbursement of an obligor for expenditures previously made for) the construction, reconstruction, or reconditioning of a commercial demonstration ocean thermal energy conversion facility or plantship. This section may be used to guarantee obligations for a total of not more than 5 separate facilities and plantships or a demonstrated 400 megawatt capacity, whichever comes first.

(b) APPLICABILITY OF OTHER PROVISIONS.—Except as otherwise provided in this section, a guarantee or commitment to guarantee under this section is subject to all the provisions applicable to a guarantee or commitment to guarantee under subchapter I of this chapter.

(c) ECONOMIC SOUNDNESS.—The required determination of economic soundness under section 53708 of this title applies to a guarantee or commitment to guarantee for that portion of a facility or plantship not to be supported with appropriated Federal funds.

(d) REASONABLENESS OF RISK.—A guarantee or commitment to guarantee may not be made under this section unless the Secretary of Energy, in consultation with the **[Secretary,]** *Administrator*, certifies to the **[Secretary]** *Administrator* that, for the facility or plantship for which the guarantee or commitment to guarantee is sought, there is sufficient guarantee of performance and payment to lower the risk to the United States Government to a reasonable level. In deciding whether to issue such a certification, the Secretary of Energy shall consider—

(1) the successful demonstration of the technology to be used in the facility at a scale sufficient to establish the likelihood of technical and economic viability in the proposed market; and

(2) the need of the United States to develop new and renewable sources of energy and the benefits to be realized from the construction and successful operation of the facility or plantship.

(e) AMOUNT OF OBLIGATION.—The total principal amount of an obligation guaranteed under this section may not exceed 87.5 percent of—

(1) the actual cost or depreciated actual cost of the facility or plantship; or

(2) if the facility or plantship is supported with appropriated Federal funds, the total principal amount of that portion of the actual cost or depreciated actual cost for which the obligor is obligated to secure financing under the agreement between the obligor and the Department of Energy or other Federal agency.

(f) OTEC DEMONSTRATION FUND.—

(1) IN GENERAL.—There is a special subaccount, known as the OTEC Demonstration Fund, in the account established under section 53717(b)(1) of this title.

(2) USE AND OPERATION.—The OTEC Demonstration Fund shall be used for obligation guarantees authorized under this section that do not qualify under subchapter I of this chapter. Except as otherwise provided in this section, the OTEC Demonstration Fund shall be operated in the same manner as the parent account. However—

(A) amounts received by the **【Secretary】 Administrator** under subchapter I of this chapter related to guarantees or commitments to guarantee made under this section shall be deposited only in the OTEC Demonstration Fund; and

(B) when obligations issued by the **【Secretary】 Administrator** under section 53723 of this title related to the OTEC Demonstration Fund are outstanding, any amount received by the **【Secretary】 Administrator** under subchapter I of this chapter related to ocean thermal energy conversion facilities or plantships shall be deposited in the OTEC Demonstration Fund.

(3) TRANSFERS.—Assets in the OTEC Demonstration Fund may be transferred to the parent account when and to the extent the balance in the OTEC Demonstration Fund exceeds the total guarantees or commitments to guarantee made under this section then outstanding, plus obligations issued by the **【Secretary】 Administrator** under section 53723 of this title related to the OTEC Demonstration Fund.

(4) LIABILITY.—The parent account is not liable for a guarantee or commitment to guarantee made under this section.

(5) MAXIMUM UNPAID PRINCIPAL AMOUNT.—The total unpaid principal amount of the obligations guaranteed with the backing of the OTEC Demonstration Fund and outstanding at any one time may not exceed \$1,650,000,000.

(g) ISSUANCE AND PAYMENT OF OBLIGATIONS.—Section 53723 of this title applies to the OTEC Demonstration Fund. However, obligations issued by the **【Secretary】 Administrator** under that section

related to the OTEC Demonstration Fund shall be payable only from proceeds realized by the OTEC Demonstration Fund.

(h) TAXATION OF INTEREST.—Interest on an obligation guaranteed under this section shall be included in gross income under chapter 1 of the Internal Revenue Code of 1986 (26 U.S.C. ch. 1).

**§ 53732. Eligible export vessels**

(a) APPLICABLE TERMS.—The [Secretary] *Administrator* may guarantee an obligation for an eligible export vessel in accordance with—

(1) the terms applicable under this chapter for vessels documented under the laws of the United States; or

(2) other terms the [Secretary] *Administrator* determines are more favorable than those terms and compatible with export credit terms offered by foreign governments for the sale of vessels built in foreign shipyards.

(b) INTERAGENCY COUNCIL.—

(1) ESTABLISHMENT.—There is an interagency council to carry out this section.

(2) COMPOSITION.—The council is composed of the following individuals or their designees:

(A) The Secretary of Transportation, who is the chairman of the council.

(B) The Secretary of the Treasury.

(C) The Secretary of State.

(D) The Assistant to the President for Economic Policy.

(E) The United States Trade Representative.

(F) The President and Chairman of the Export-Import Bank of the United States.

(3) FUNCTIONS.—The council shall—

(A) obtain information on shipbuilding loan guarantees, direct and indirect subsidies, and other favorable treatment of shipyards provided by foreign governments to shipyards in competition with United States shipyards;

(B) consult regularly with United States shipbuilders to obtain the essential information about international shipbuilding competition on which to set terms for loan guarantees under subsection (a)(2); and

(C) provide guidance to the [Secretary] *Administrator* in establishing terms for loan guarantees under subsection (a)(2).

(4) ANNUAL REPORT.—Not later than January 31 of each year, the [Secretary] *Administrator* shall submit to Congress a report on activities of the [Secretary] *Administrator* under this section during the preceding year. The report shall include—

(A) documentation of sources of information about assistance by governments of other countries to shipyards in those countries; and

(B) a summary of recommendations made to the [Secretary] *Administrator* during the preceding year about applications submitted to the [Secretary] *Administrator* during that year for loan guarantees to construct eligible export vessels.

## (c) REQUIRED FINDINGS.—

(1) BENEFIT TO SHIPBUILDING INDUSTRY.—The **【Secretary】 Administrator** may not guarantee or make a commitment to guarantee an obligation for an eligible export vessel unless the **【Secretary】 Administrator** finds that the construction, reconstruction, or reconditioning of the vessel will aid in the transition of United States shipyards to commercial activities or will preserve shipbuilding assets that would be essential in time of war or national emergency.

(2) PRIORITY OF DOCUMENTED VESSELS.—The **【Secretary】 Administrator** may not make a commitment to guarantee an obligation for an eligible export vessel unless the **【Secretary】 Administrator** determines that making the commitment will not result in denial of an economically sound application for a commitment to guarantee an obligation for a vessel documented under the laws of the United States and operating in the domestic or foreign commerce of the United States. The **【Secretary】 Administrator** has sole discretion in making the determination. In making the determination, the **【Secretary】 Administrator** shall consider—

(A) the status and economic soundness of pending applications for commitments to guarantee obligations for vessels documented under the laws of the United States that are operating or will be operating in the domestic or foreign commerce of the United States; and

(B) the amount of guarantee authority available.

(d) RESTRICTION ON TRANSFER OF VESSEL.—The **【Secretary】 Administrator** may not guarantee or make a commitment to guarantee an obligation for an eligible export vessel unless the owner of the vessel agrees with the **【Secretary】 Administrator** that the vessel will not be transferred to a country designated by the Secretary of Defense as a country whose interests are hostile to the interests of the United States.

## (e) REVIEW BY SECRETARY OF DEFENSE.—

(1) NOTIFICATION.—The **【Secretary】 Administrator** shall promptly notify the Secretary of Defense of the receipt of an application for a loan guarantee for an eligible export vessel.

(2) DISAPPROVAL.—The Secretary of Defense, within 30 days after receiving the notice, may disapprove the guarantee based on an assessment of the potential use of the vessel in a manner that may harm the national security interests of the United States. The Secretary of Defense may not disapprove a guarantee solely because of the type of vessel to be constructed.

(3) DELEGATION.—The authority of the Secretary of Defense to disapprove a guarantee under this subsection may be delegated only to a civilian officer of the Department of Defense appointed by the President by and with the advice and consent of the Senate.

(4) PROHIBITION.—The **【Secretary】 Administrator** may not make a loan guarantee disapproved by the Secretary of Defense under this subsection.

(f) EXPIRATION OF AUTHORITY.—The **【Secretary】 Administrator** may not issue a commitment to guarantee an obligation for an eligible export vessel under this chapter after the last date on which



such a commitment may be issued under any treaty or convention entered into after November 30, 1993, that prohibits guarantee of such an obligation.

**§ 53733. Shipyard modernization and improvement**

(a) DEFINITIONS.—In this section:

(1) ADVANCED SHIPBUILDING TECHNOLOGY.—The term “advanced shipbuilding technology” includes—

(A) numerically controlled machine tools, robots, automated process control equipment, computerized flexible manufacturing systems, associated computer software, and other technology for improving shipbuilding and related industrial production that advance the state-of-the-art; and

(B) novel techniques and processes designed to improve shipbuilding quality, productivity, and practice, and to promote sustainable development, including engineering design, quality assurance, concurrent engineering, continuous process production technology, energy efficiency, waste minimization, design for recyclability or parts reuse, inventory management, upgraded worker skills, and communications with customers and suppliers.

(2) GENERAL SHIPYARD FACILITY.—The term “general shipyard facility” means—

(A) for operations on land—

(i) a structure or appurtenance thereto designed for the construction, reconstruction, repair, rehabilitation, or refurbishment of a vessel, including a graving dock, building way, ship lift, wharf, or pier crane;

(ii) the land necessary for the structure or appurtenance; and

(iii) equipment that is for use with the structure or appurtenance and that is necessary for performing a function referred to in clause (i); and

(B) for operations not on land, a vessel, floating drydock, or barge built in the United States and used for, equipped to be used for, or of a type normally used for, performing a function referred to in subparagraph (A)(i).

(3) MODERN SHIPBUILDING TECHNOLOGY.—The term “modern shipbuilding technology” means the best available proven technology, techniques, and processes appropriate to enhancing the productivity of shipyards.

(b) GENERAL AUTHORITY.—Under subchapter I of this chapter, the **【Secretary】** *Administrator* may guarantee or make a commitment to guarantee the payment of the principal of and interest on an obligation for advanced shipbuilding technology and modern shipbuilding technology of a general shipyard facility in the United States. Only a private shipyard is eligible to receive a guarantee.

(c) APPLICABILITY OF OTHER PROVISIONS.—Except as otherwise provided in this section, a guarantee or commitment to guarantee under this section is subject to all the provisions applicable to a guarantee or commitment to guarantee under subchapter I of this chapter.

(d) AMOUNT OF OBLIGATION.—The principal amount of an obligation guaranteed under this chapter may not exceed 87.5 percent of

the actual cost of the advanced shipbuilding technology or modern shipbuilding technology.

(e) TRANSFER OF AMOUNTS.—The **Secretary** *Administrator* may accept the transfer of amounts from a department, agency, or instrumentality of the United States Government and may use those amounts to cover the cost (as defined in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a)) of making guarantees or commitments to guarantee under this section.

**§ 53734. Replacement of vessels because of changes in operating standards**

(a) GENERAL AUTHORITY.—Notwithstanding any other provision of this chapter, the *Secretary or Administrator*, on terms the *Secretary or Administrator* may prescribe, may guarantee or make a commitment to guarantee the payment of the principal of and interest on an obligation that aids in financing or refinancing (including reimbursement of an obligor for expenditures previously made for) a contract for the construction or reconstruction of a vessel if—

(1) the vessel is designed and to be used for commercial use in coastwise, intercoastal, or foreign trade;

(2) the construction or reconstruction is necessary to replace a vessel that cannot continue to be operated because of a change required by law in the standards for the operation of vessels, and the applicant for the guarantee or commitment would not otherwise legally be able to continue operating vessels in the trades in which the applicant operated vessels before the change;

(3) the applicant is presently engaged in transporting cargoes in vessels of the type and class that will be constructed or reconstructed under this section and agrees to employ vessels constructed or reconstructed under this section as replacements only for vessels made obsolete by the change in operating standards;

(4) the capacity of the vessels to be constructed or reconstructed under this section will not increase the cargo carrying capacity of the vessels being replaced;

(5) the *Secretary or Administrator* has not determined that the market demand for the vessel over its useful life will diminish so as to make granting the guarantee fiduciarily imprudent;

(6) the vessel, if to be reconstructed, will have a useful life of at least 15 years after the reconstruction; and

(7) the *Secretary or Administrator* has considered the criteria specified in section 53708(a)(3)-(5) of this title.

(b) TERM AND AMOUNT OF OBLIGATION.—

(1) TERM.—The term of an obligation guaranteed under this section may not exceed 25 years.

(2) AMOUNT.—The amount of an obligation guaranteed under this section may not exceed 87.5 percent of the actual cost or depreciated actual cost to the applicant for the construction or reconstruction of the vessel. The *Secretary or Administrator* may not establish a percentage under this paragraph that is to be applied uniformly to all guarantees or commitments to guarantee made under this section.

(c) **APPLICABILITY OF OTHER PROVISIONS.**—A guarantee or commitment to guarantee under this section is also subject to sections 53701, 53702(a), 53704, 53705, 53707(a), 53708(d) and (e), 53709(a), 53710(a)(1), (2), and (4) and (c), 53711(a), 53713, 53714, 53717, and 53721—53725 of this title.

(d) **SECURITY AGAINST DEFAULT.**—The Secretary *or Administrator* shall require by regulation that an applicant under this section provide adequate security against default.

(e) **GUARANTEE FEES.**—The Secretary *or Administrator* may establish a fee for the guarantee of an obligation under this section that is in addition to the fee established under section 53714 of this title. The fee may be—

(1) an annual fee of not more than an additional 1 percent added to the fee established under section 53714 of this title; or

(2) a fee based on the amount of the obligation versus the percentage of the obligor's fleet being replaced by vessels constructed or reconstructed under this section.

#### PART D. PROMOTIONAL PROGRAMS

##### CHAPTER 551. COASTWISE TRADE

#### § 55101. Application of coastwise laws

(a) **IN GENERAL.**—Except as provided in subsection (b), the coastwise laws apply to the United States, including the island territories and possessions of the United States.

(b) **EXCEPTIONS.**—The coastwise laws do not apply to—

(1) American Samoa;

(2) the Northern Mariana Islands, except as provided in section 502(b) of the Covenant To Establish a Commonwealth of the Northern Mariana Islands in Political Union With the United States of America (48 U.S.C. 1801 note); or

[(3) Canton Island until the President declares by proclamation that the coastwise laws apply to Canton Island; or]

[(4)] (3) the Virgin Islands until the President declares by proclamation that the coastwise laws apply to the Virgin Islands.

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#### § 55105. Transportation of hazardous waste

(a) **IN GENERAL.**—The transportation of hazardous waste, as defined in section 1004(5) of the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6903(5)), from a point in the United States to sea for incineration is deemed to be transportation of merchandise under section 55102 of this title.

(b) **NONAPPLICATION TO CERTAIN FOREIGN VESSELS.**—

(1) **IN GENERAL.**—Subsection (a) does not apply to transportation performed by a foreign ocean incineration vessel owned by or under construction on May 1, 1982, for a corporation wholly owned by citizens of the United States under section 50501(a)-(c) of this title.

(2) **STANDARDS FOR INCINERATION EQUIPMENT.**—Incineration equipment on a vessel described in paragraph (1) must meet

standards of the Coast Guard and the Environmental Protection Agency.

(3) INSPECTION.—A vessel described in paragraph (1) shall be inspected by the Coast Guard, regardless of whether inspected by the nation in which it is registered. The inspection shall be the same as would be required of a vessel of the United States, including drydock inspection and internal examination of tanks and void spaces. The inspection may be made concurrently with an inspection by that nation or within one year after the initial issuance or next scheduled issuance of the Safety of Life at Sea Safety Construction Certificate. In making the inspection, the Coast Guard shall refer to the condition of the hull and superstructure established by the initial foreign certification as the basis for evaluating the current condition of the hull and superstructure. The Coast Guard shall allow the substitution of fittings, material, apparatus, equipment, and appliances different from those required for vessels of the United States if satisfied they are equivalent and at least as effective as those required for vessels of the United States. A satisfactory inspection under this paragraph shall be certified in writing by the [Secretary of the department in which the Coast Guard is operating.] *Secretary of Homeland Security.*

(c) EFFECTIVE DATE.—Subsection (a) is not effective until an appropriate vessel has been built and documented under chapter 121 of this title.

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**§ 55110. Transportation of *valueless material or dredged material***

Section 55102 of this title applies to the transportation of valueless material or dredged material, regardless of whether it has commercial value, from a point in the United States or on the high seas within the exclusive economic zone, to another point in the United States or on the high seas within the exclusive economic zone.

\* \* \* \* \*

PART F. GOVERNMENT-OWNED MERCHANT VESSELS

CHAPTER 575. CONSTRUCTION, CHARTER, AND SALE OF VESSELS

\* \* \* \* \*

**§ 57533. *Vessel chartering authority***

*The Secretary of Transportation may enter into contracts or other agreements on behalf of the United States to purchase, charter, operate, or otherwise acquire the use of any vessels documented under chapter 121 of this title and any other related real or personal property. The Secretary is authorized to use this authority as the Secretary deems appropriate.*

## SUBTITLE VI. CLEARANCE, TONNAGE TAXES, AND DUTIES

## CHAPTER 603. TONNAGE TAXES AND LIGHT MONEY

**§ 60301. Regular tonnage taxes**

(a) LOWER RATE.—A tax is imposed at the rate of **[2 cents per ton (but not more than a total of 10 cents per ton per year)]** *4.5 cents per ton, not to exceed a total of 22.5 cents per ton per year, for fiscal years 2006 through 2010, and 2 cents per ton, not to exceed a total of 10 cents per ton per year, for each fiscal year thereafter*, at each entry in a port of the United States of—

(1) a vessel entering from a foreign port or place in North America, Central America, the West Indies Islands, the Bahama Islands, the Bermuda Islands, or the coast of South America bordering the Caribbean Sea; or

(2) a vessel returning to the same port or place in the United States from which it departed, and not entering the United States from another port or place, except—

(A) a vessel of the United States;

(B) a recreational vessel (as defined in section 2101 of this title); or

(C) a barge.

(b) HIGHER RATE.—A tax is imposed at the rate of **[6 cents per ton (but not more than a total of 30 cents per ton per year)]** *13.5 cents per ton, not to exceed a total of 67.5 cents per ton per year, for fiscal years 2006 through 2010, and 6 cents per ton, not to exceed a total of 30 cents per ton per year, for each fiscal year thereafter*, on a vessel at each entry in a port of the United States from a foreign port or place not named in subsection (a)(1).

(c) EXCEPTION FOR VESSELS ENTERING OTHER THAN BY SEA.—Subsection (a) does not apply to a vessel entering other than by sea from a foreign port or place at which tonnage, lighthouse, or other equivalent taxes are not imposed on vessels of the United States.

## SUBTITLE VII. SECURITY AND DRUG ENFORCEMENT

## CHAPTER 703. MARITIME SECURITY

**§ 70306. Report on terrorist threats**

(a) CONTENT.—**[Not later than February 28 of each year, the Secretary shall submit a report]** *The Secretary shall submit an annual report to Congress on the threat from acts of terrorism to United States ports and vessels operating from those ports. The Secretary shall include a description of activities undertaken under title I of the Maritime Transportation Security Act of 2002 (Public Law 107–295, 116 Stat. 2066) and an analysis of the effect of those activities on port security against acts of terrorism.*

(b) SUBMISSION.—The report shall be submitted to the Committee on International Relations and the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Foreign Relations and the Committee on Commerce, Science, and Transportation of the Senate. Any classified information in the report shall be submitted separately as an addendum.

## CHAPTER 705. MARITIME DRUG LAW ENFORCEMENT

**§ 70502. Definitions**

(a) APPLICATION OF OTHER DEFINITIONS.—The definitions in section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802) apply to this chapter.

(b) VESSEL OF THE UNITED STATES.—In this chapter, the term “vessel of the United States” means—

(1) a vessel documented under chapter 121 of this title or numbered as provided in chapter 123 of this title;

(2) a vessel owned in any part by an individual who is a citizen of the United States, the United States Government, the government of a State or political subdivision of a State, or a corporation incorporated under the laws of the United States or of a State, unless—

(A) the vessel has been granted the nationality of a foreign nation under article 5 of the 1958 Convention on the High Seas; and

(B) a claim of nationality or registry for the vessel is made by the master or individual in charge at the time of the enforcement action by an officer or employee of the United States who is authorized to enforce applicable provisions of United States law; and

(3) a vessel that was once documented under the laws of the United States and, in violation of the laws of the United States, was sold to a person not a citizen of the United States, placed under foreign registry, or operated under the authority of a foreign nation, whether or not the vessel has been granted the nationality of a foreign nation.

(c) VESSEL SUBJECT TO THE JURISDICTION OF THE UNITED STATES.—

(1) IN GENERAL.—In this chapter, the term “vessel subject to the jurisdiction of the United States” includes—

(A) a vessel without nationality;

(B) a vessel assimilated to a vessel without nationality under paragraph (2) of article 6 of the 1958 Convention on the High Seas;

(C) a vessel registered in a foreign nation if that nation has consented or waived objection to the enforcement of United States law by the United States;

(D) a vessel in the customs waters of the United States;

(E) a vessel in the territorial waters of a foreign nation if the nation consents to the enforcement of United States law by the United States; and

(F) a vessel in the contiguous zone of the United States, as defined in Presidential Proclamation 7219 of September 2, 1999 (43 U.S.C. 1331 note), that—

(i) is entering the United States;

(ii) has departed the United States; or

(iii) is a hovering vessel as defined in section 401 of the Tariff Act of 1930 (19 U.S.C. 1401).

(2) CONSENT OR WAIVER OF OBJECTION.—Consent or waiver of objection by a foreign nation to the enforcement of United

States law by the United States under paragraph (1)(C) or (E)—

- (A) may be obtained by radio, telephone, or similar oral or electronic means; and
  - (B) is proved conclusively by certification of the Secretary of State or the Secretary's designee.
- (d) VESSEL WITHOUT NATIONALITY.—

(1) IN GENERAL.—In this chapter, the term “vessel without nationality” includes—

- (A) a vessel aboard which the master or individual in charge makes a claim of registry that is denied by the nation whose registry is claimed;
- (B) a vessel aboard which the master or individual in charge fails, on request of an officer of the United States authorized to enforce applicable provisions of United States law, to make a claim of nationality or registry for that vessel; and
- (C) a vessel aboard which the master or individual in charge makes a claim of registry and for which the claimed nation of registry does not affirmatively and unequivocally assert that the vessel is of its nationality.

[(2) VERIFICATION OR DENIAL.—A claim of registry under paragraph (1)(A) or (C) may be verified or denied by radio, telephone, or similar oral or electronic means. The denial of such a claim is proved conclusively by certification of the Secretary of State or the Secretary's designee.]

(2) RESPONSE TO CLAIM OF REGISTRY.—*The response of a foreign nation to a claim of registry under paragraph (1)(A) or (C) may be made by radio, telephone, or similar oral or electronic means, and is proved conclusively by certification of the Secretary of State or the Secretary's designee.*

(e) CLAIM OF NATIONALITY OR REGISTRY.—A claim of nationality or registry under this section includes only—

- (1) possession on board the vessel and production of documents evidencing the vessel's nationality as provided in article 5 of the 1958 Convention on the High Seas;
- (2) flying its nation's ensign or flag; or
- (3) a verbal claim of nationality or registry by the master or individual in charge of the vessel.

## MERCHANT SHIP SALES ACT OF 1946

### SEC. 11. NATIONAL DEFENSE RESERVE FLEET.

[50 U.S.C. App. 1744]

(a) FLEET COMPONENTS.—The Secretary of Transportation shall maintain a National Defense Reserve Fleet, including any vessel assigned by the Secretary to the Ready Reserve Force component of the fleet, consisting of those vessels owned or acquired by the United States Government that the Secretary of Transportation, after consultation with the Secretary of the Navy, determines are of value for national defense purposes and that the Secretary of Transportation decides to place and maintain in the fleet.

(b) PERMITTED USES.—Except as otherwise provided by law, a vessel in the fleet may be used—

(1) for an account of an agency of the United States Government in a period during which vessels may be requisitioned under section 902 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1242); or

(2) on the request of the Secretary of Defense, and in accordance with memoranda of agreement between the Secretary of Transportation and the Secretary of Defense, for—

(A) testing for readiness and suitability for mission performance;

(B) defense sealift functions for which other sealift assets are not reasonably available; and

(C) support of the deployment of the United States armed forces in a military contingency, for military contingency operations, or for civil contingency operations upon orders from the National Command Authority;

(3) for otherwise lawfully permitted storage or transportation of non-defense-related cargo as directed by the Secretary of Transportation with the concurrence of the Secretary of Defense; **[or]**

(4) for training purposes to the extent authorized by the Secretary of Transportation with the concurrence of the Secretary of **[Defense.]** *Defense*; or

(5) *on a reimbursable basis, for charter to the government of any State, locality, or Territory of the United States, except that the prior consent of the Secretary of Defense for such use shall be required with respect to any vessel in the Ready Reserve Force or in the National Defense Reserve Fleet which is maintained in a retention status for the Department of Defense.*

(c) **READY RESERVE FORCE MANAGEMENT.**—

(1) **MINIMUM REQUIREMENTS.**—To ensure the readiness of vessels in the Ready Reserve Force component of the National Defense Reserve Fleet, the Secretary of Transportation shall, at a minimum—

(A) maintain all of the vessels in a manner that will enable each vessel to be activated within a period specified in plans for mobilization of the vessels;

**[(B) activate and conduct sea trials on each vessel at least once every twenty-four months;]**

*(B) activate and conduct sea trials on each vessel at least once every 30 months;*

(C) maintain in an enhanced activation status those vessels that are scheduled to be activated within 5 days;

(D) locate those vessels that are scheduled to be activated within 5 days near embarkation ports specified for those vessels; and

(E) notwithstanding section 2109 of title 46, United States Code, have each vessel inspected by the Secretary of the department in which the Coast Guard is operating to determine if the vessel meets the safety standards that would apply under part B of subtitle II of that title if the vessel were not a public vessel.

(2) **VESSEL MANAGERS.**—

(A) **ELIGIBILITY FOR CONTRACT.**—A person, including a shipyard, is eligible for a contract for the management of



a vessel in the Ready Reserve Force if the Secretary determines, at a minimum, that the person has—

(i) experience in the operation of commercial-type vessels or public vessels owned by the United States Government; and

(ii) the management capability necessary to operate, maintain, and activate the vessel at a reasonable price.

(B) CONTRACT REQUIREMENT.—The Secretary of Transportation shall include in each contract for the management of a vessel in the Ready Reserve Force a requirement that each seaman who performs services on any vessel covered by the contract hold the license or merchant mariner's document that would be required under chapter 71 or chapter 73 of title 46, United States Code, for a seaman performing that service while operating the vessel if the vessel were not a public vessel.

(d) APPLICABILITY OF LIMITATIONS ON OVERHAUL, REPAIR, AND MAINTENANCE IN FOREIGN SHIPYARDS.—

(1) APPLICATION OF LIMITATION.—The provisions of section 7310 of title 10, United States Code, shall apply to vessels specified in subsection (b), and to the Secretary of Transportation with respect to those vessels, in the same manner as those provisions apply to vessels specified in subsection (b) of such section, and to the Secretary of the Navy, respectively.

(2) COVERED VESSELS.—Vessels specified in this paragraph are vessels maintained by the Secretary of Transportation in support of the Department of Defense, including any vessel assigned by the Secretary of Transportation to the Ready Reserve Force that is owned by the United States.

(e) EXEMPTION OF FLEET FROM 46 U.S.C. 3703A.—Vessels in the National Defense Reserve Fleet are exempt from the provisions of section 3703a of title 46, United States Code.

#### CHAPTER 541—MISCELLANEOUS

Sec.

54101. Assistance for small shipyards and maritime communities.

#### **§ 54101. Assistance for small shipyards and maritime communities**

(a) ESTABLISHMENT OF PROGRAM.—Subject to the availability of appropriations, the Administrator of the Maritime Administration shall establish a program to provide assistance to State and local governments—

(1) to provide assistance in the form of grants, loans, and loan guarantees to small shipyards for capital improvements; and

(2) for maritime training programs in communities whose economies are substantially related to the maritime industry.

(b) AWARDS.—In providing assistance under the program, the Administrator shall—

(1) take into account—

(A) the economic circumstances and conditions of maritime communities; and

- (B) *the local, State, and regional economy in which the communities are located; and*
- (2) *strongly encourage State, local, and regional efforts to promote economic development and training that will enhance the economic viability of and quality of life in maritime communities.*
- (c) *USE OF FUNDS.—Assistance provided under this section may be used—*
- (1) *to make capital and related improvements in small shipyards located in or near maritime communities;*
- (2) *to encourage, assist in, or provide training for residents of maritime communities that will enhance the economic viability of those communities; and*
- (3) *for such other purposes as the Administrator determines to be consistent with and supplemental to such activities.*
- (d) *PROHIBITED USES.—Grants awarded under this section may not be used to construct buildings or other physical facilities or to acquire land unless such use is specifically approved by the Administrator in support of subsection (c)(3).*
- (e) *MATCHING REQUIREMENTS.—*
- (1) *FEDERAL FUNDING.—Except as provided in paragraph (2), Federal funds for any eligible project under this section shall not exceed 75 percent of the total cost of such project.*
- (2) *EXCEPTIONS.—*
- (A) *SMALL PROJECTS.—Paragraph (1) shall not apply to grants under this section for stand alone projects costing not more than \$25,000. The amount under this subparagraph shall be indexed to the consumer price index and modified each fiscal year after the annual publication of the consumer price index.*
- (B) *REDUCTION IN MATCHING REQUIREMENT.—If the Administrator determines that a proposed project merits support and cannot be undertaken without a higher percentage of Federal financial assistance, the Administrator may award a grant for such project with a lesser matching requirement than is described in paragraph (1).*
- (f) *APPLICATION.—*
- (1) *IN GENERAL.—The Administrator shall determine who, as an eligible applicant, may submit an application, at such time, in such form, and containing such information and assurances as the Administrator may require.*
- (2) *MINIMUM STANDARDS FOR PAYMENT OR REIMBURSEMENT.—Each application submitted under paragraph (1) shall include—*
- (A) *a comprehensive description of—*
- (i) *the need for the project;*
- (ii) *the methodology for implementing the project;*
- and*
- (iii) *any existing programs or arrangements that can be used to supplement or leverage assistance under the program.*
- (3) *PROCEDURAL SAFEGUARDS.—The Administrator, in consultation with the Office of the Inspector General, shall issue*

*guidelines to establish appropriate accounting, reporting, and review procedures to ensure that—*

*(A) grant funds are used for the purposes for which they were made available;*

*(B) grantees have properly accounted for all expenditures of grant funds; and*

*(C) grant funds not used for such purposes and amounts not obligated or expended are returned.*

*(4) PROJECT APPROVAL REQUIRED.—The Administrator may not award a grant under this section unless the Administrator determines that—*

*(A) sufficient funding is available to meet the matching requirements of subsection (e);*

*(B) the project will be completed without unreasonable delay; and*

*(C) the recipient has authority to carry out the proposed project.*

*(g) AUDITS AND EXAMINATIONS.—All grantees under this section shall maintain such records as the Administrator may require and make such records available for review and audit by the Administrator.*

*(h) SMALL SHIPYARD DEFINED.—In this section, the term “small shipyard” means a shipyard that—*

*(1) is a small business concern (within the meaning of section 3 of the Small Business Act (15 U.S.C. 632)); and*

*(2) does not have more than 600 employees.*

*(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Administrator of the Maritime Administration for each of fiscal years 2006 through 2010 to carry out this section—*

*(1) \$5,000,000 for training grants; and*

*(2) \$25,000,000 for capital and related improvement grants.*

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**SEC. 9. SUBTITLE VI OF TITLE 46.**

**[(a) REDESIGNATION.—Title 46, United States Code, is amended by redesignating subtitle VI as subtitle VII.]**

\* \* \* \* \*

**SEC. 15. ADDITIONAL AMENDMENTS TO TITLE 46.**

Title 46, United States Code, is amended as follows:

\* \* \* \* \*

(10) In section 3205(d), strike “Secretary of the Treasury shall withhold or revoke the clearance required by section 4197 of the Revised Statutes ([46 App. U.S.C.] 46 U.S.C. App. 91)” and substitute “Secretary of Homeland Security shall withhold or revoke the clearance required by section 60105 of this title”.

\* \* \* \* \*

[(21) In section 6101, redesignate the second subsection (g) and subsection (h) as subsections (h) and (i), respectively.]

\* \* \* \* \*

(30) In section 31325(b)(3)(B), strike “section 9 or 37 of the [Shipping Act, 1936] *Shipping Act, 1916* (46 App. U.S.C. 808, 835)” and substitute “section 56101 or 56102 of this title”.

\* \* \* \* \*

[(33)(A) Sections 70118 and 70119, as added by section 801(a) of the Coast Guard and Maritime Transportation Act of 2004 (Public Law 108-293, 118 Stat. 1078), are redesignated as sections 70117 and 70118, respectively, and moved to appear immediately after section 70116 of title 46, United States Code.

[(B) Sections 70117 and 70118, as added by section 802(a)(2) of such Act, are redesignated as sections 70120 and 70121, respectively, and moved to appear immediately after section 70119 of title 46, United States Code.

[(C) In section 70120(a) (as redesignated by subparagraph (B)), strike “section 70120” and substitute “section 70119”.

(D) In section 70121(a) (as redesignated by subparagraph (B))—

[(i) strike “section 70120” and substitute “section 70119”; and]

(ii) strike “section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91)” and substitute “section 60105 of this title”.

\* \* \* \* \*

**SEC. 16. RECREATIONAL BOATING SAFETY TECHNICAL AMENDMENTS.**

\* \* \* \* \*

(c) CROSS REFERENCES.—

(1) Section 4 of the Dingell-Johnson Sport Fish Restoration Act (16 U.S.C. 777c) is amended by striking “13106” wherever appearing and substituting “13107”.

[(2) Section 9504(c) of the Internal Revenue Code of 1986 (26 U.S.C. 9504(c)) is amended by striking “section 13106” and substituting “section 13107”.]

\* \* \* \* \*

**SEC. 19. REPEALS.**

The following provisions are repealed, except with respect to rights and duties that matured, penalties that were incurred, or proceedings that were begun before the date of enactment of this Act:

\* \* \* \* \*

Act of June 29, 1936	
[[1111]]1113 .....	1279f
[[1112]]1114 .....	1279g