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MARITIME ADMINISTRATION AUTHORIZATION ACT FOR FISCAL YEAR 2012

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

S. 1430



DECEMBER 7, 2011.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

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MARITIME ADMINISTRATION AUTHORIZATION ACT FOR FISCAL YEAR 2012

DECEMBER 7, 2011.—Ordered to be printed

Mr. ROCKEFELLER, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany S. 1430]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1430) to authorize certain maritime programs of the Department of Transportation, and for other purposes, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

This legislation is the annual authorization act for the Maritime Administration (MARAD) within the Department of Transportation (DOT). The legislation would authorize appropriations for MARAD for FY 2012. The bill would require a report of future marine transportation system requirements, including intercoastal and inland waterway needs; authorize the use of vessels within the National Defense Reserve Fleet (NDRF) for civil contingency operations; make modifications to the recycling and donation program for obsolete NDRF Vessels; authorize a demonstration program to evaluate emerging energy-efficient marine technologies; require the Government Accountability Office (GAO) to conduct a study of the maritime workforce; reduce certain reporting requirements for DOT's ship-scrapping programs; and modify and extend existing authorizations for the Maritime Security Program (MSP).

BACKGROUND AND NEEDS

MARAD was authorized through fiscal year (FY) 2011 in the National Defense Authorization Act for Fiscal Year 2011 (P.L. 111–383). MARAD administers various U.S. merchant marine support

programs within DOT including: the MSP; the title XI guaranteed loan program; various cargo preference programs; the Small Shipyard Assistance Program; the maintenance of the Ready Reserve Force (RRF) and NDRF; a Marine Highway Program; and the operation of the U.S. Merchant Marine Academy at Kings Point, NY.

SUMMARY OF PROVISIONS

The bill would require the Secretary of Transportation (Secretary) to submit reports on the status of the Nation's intercoastal and intracoastal waterways, and on the potential for using container-on-barge transportation on inland waterways systems. The bill would also expand the criteria by which the Secretary can designate America's Marine Highways, to include short sea shipping projects that mitigate congestion or have environmental benefits. The legislation would allow the Secretary of Defense's designee to approve of the use of NDRF vessels to be used for foreign disaster relief operations and humanitarian assistance efforts, if requested by outside agencies. The legislation would create a Green Ships Program that would use MARAD facilities to identify, evaluate, demonstrate, and improve upon promising technologies for ships to comply with environmental laws.

The legislation would also eliminate paperwork by allowing ship scrapping information to be available through MARAD briefings to Congress instead of in annual reports. The legislation would extend operating agreements in MSP through 2025, and authorize appropriations to operators. In addition, the legislation would establish the priority for replacement in MSP to be military requirements of the Secretary of Defense and would authorize MARAD to purchase vessels leaving MSP to enter RRF. The legislation would also require the Comptroller General to conduct a study of the training needs of the maritime workforce and the sufficiency of current training programs to serve them. The legislation would authorize funds for all MARAD-administered programs.

LEGISLATIVE HISTORY

S. 1430 was introduced by Senator Lautenberg and was cosponsored by Senator Rockefeller, on July 27, 2011. The bill was amended by a manager's amendment from Senator Lautenberg at the Commerce Committee, to address issues relating to ship recycling. The Senate Committee on Commerce, Science, and Transportation reported the bill favorably as amended on November 4, 2011. The staff members assigned to this legislation are: Dan Easley, Democratic Counsel; and Mike Meenan, Republican Counsel.

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:

NOVEMBER 14, 2011.

Hon. JOHN D. ROCKEFELLER IV,
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. 1430, the Maritime Administration Authorization Act for Fiscal Year 2012.

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

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

S. 1430—Maritime Administration Authorization Act for Fiscal Year 2012

Summary: S. 1430 would amend various laws governing the activities of the Maritime Administration (MARAD) and would authorize appropriations for that agency for fiscal year 2012. Assuming appropriation of the amounts specifically authorized ($185 million) and estimated to be necessary ($3 million), CBO estimates that implementing S. 1430 would cost $188 million over the 2012–2016 period. Pay-as-you-go procedures apply to the legislation; however, CBO estimates that the bill would have no significant net impact on direct spending and would not affect revenues.

S. 1430 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

Estimated cost to the Federal Government: The estimated budgetary impact of S. 1430 is shown in the following table. The costs of this legislation fall within budget function 400 (transportation).

	By fiscal year, in millions of dollars—					
	2012	2013	2014	2015	2016	2012–2016
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Estimated Authorization Level	188	0	0	0	0	188
Estimated Outlays	150	24	14	0	0	188

Basis of estimate: For this estimate, CBO assumes that S. 1430 will be enacted in 2012 and that the amounts authorized by the bill will be appropriated for 2012. Estimated outlays are based on historical spending patterns for MARAD activities.

CBO estimates that S. 1430 would authorize the appropriation of $188 million for MARAD activities. That amount includes $162 million for operations and training, $19 million for the agency's program to dispose of obsolete vessels in the National Defense Reserve Fleet, and $4 million for the administrative costs of loan guarantees. The bill also would require MARAD to complete a study of the Marine Transportation System and the Maritime workforce that CBO estimates would cost $3 million to complete. Assuming appropriation of the amounts specifically authorized and estimated to be necessary, CBO estimates that implementing S. 1430 would cost $188 million over the 2012–2016 period.

Section 5 of the legislation would authorize MARAD to establish a green ships program to study technologies to reduce pollution from ships. The bill would authorize MARAD to offset some or all

of the costs of that program by charging fees to industry stakeholders who submit their technologies to MARAD for testing. Those amounts would be available to be spent without further appropriation, and CBO estimates that spending of those collections would not result in any significant net change in direct spending. In 2011, MARAD received an appropriation of about $3 million through the Operations and Training account for a similar technology testing program.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. Pay-as-you-go procedures apply to S. 1430 because enacting the legislation could affect direct spending. However, CBO estimates that enacting the bill would have no significant net effect on direct spending in any year. (Enacting S. 1430 would not affect revenues.)

Intergovernmental and private-sector impact: S. 1430 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Federal costs: Sarah Puro; Impact on state, local, and tribal governments: Ryan Miller; Impact on the private sector: Vi Nguyen.

Estimate approved by: Theresa Gullo, Deputy 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

S. 1430 as reported by the Committee is consistent with previous MARAD authorizations and would not affect the number of people subject to regulation.

ECONOMIC IMPACT

S. 1430 as reported, would not have significant impact on the Nation's economy.

PRIVACY

S. 1430 would have no impact on the personal privacy of individuals.

PAPERWORK

S. 1430, as reported, should not increase paperwork requirements for individuals and businesses.

CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title, Amendment of Title 46, United States Code; Table of Contents.

Section 1 would state the short title, the "Maritime Administration Authorization Act for Fiscal Year 2012," as well as clarify that any amendments are to title 46 United States Code, unless otherwise stated.

Section 2. Marine Transportation System.

Section 2 would require the Secretary, in consultation with the Secretary of Defense and the commanding officer of the Army Corps of Engineers, and in concurrence with the U.S. Coast Guard, to submit a report on the status of the Nation's coastal and inland waterways. The report would describe the state of marine transportation infrastructure; provide estimates of the investment levels require to maintain and improve the infrastructure; and describe the overall environmental management of the maritime transportation system. This section would also allow the Secretary to investigate, make determinations concerning, and develop a repository of statistical information relating to intercoastal and intracoastal water transportation.

Section 2 would require MARAD to assess the potential for using container-on-barge transportation on the inland waterways system and submit a report with MARAD's findings, conclusions, and recommendations. The factors to be considered in the assessment include: environmental benefits of increasing container-on-barge movements; regional differences in the inland waterways system; existing programs for establishing awareness of deep sea shipping operations; mechanisms to ensure that the implementation of the plan would not be inconsistent with the antitrust laws; and potential frequency of service at inland river ports.

Section 3. Short Sea Transportation Program Amendments.

This section would broaden benefits of using America's Marine Highway beyond surface congestion to include promoting more efficient use of the Nation's waterways. The Secretary would be authorized to designate a project as a short sea shipping project if such project would mitigate landside congestion or promote more efficient use of the navigable waters of the United States.

Section 4. Use of National Defense Reserve Fleet and Ready Reserve Force Vessels.

Section 4 would allow the use of NDRF vessels for civil contingency operations when requested by another agency of the government of any State, locality, territory or political subdivision of the United States, for foreign disaster relief and humanitarian assistance operations. MARAD vessels have assisted in several natural disaster relief efforts (Hurricane Katrina, the earthquake in Haiti). In these instances, MARAD's RRF, a subset of the NDRF, and NDRF vessels were activated and used to assist in performing recovery efforts. At present, NDRF vessels can only be used in these situations upon the request of the Secretary of Defense. Section 4 would extend this authority to make a request to other Federal agencies, such as the Department of State or the Federal Emer-

gency Management Agency, as well as any State, locality, territory, or other political subdivision of the United States. The concurrence of the Secretary of Defense's designee would still be necessary for use of any NDRF vessels.

Section 5. Green Ships Program.

Section 5 would create a program that seeks to identify, evaluate, demonstrate, and improve upon promising technologies that facilitate compliance with United States and international environmental laws and standards, and disseminate the results to the public. This provision would provide MARAD with the necessary authority and resources to build upon its existing efforts to assist the maritime industry in reducing air emissions and improve fuel economy. By creating a more formal partnership with the Environmental Protection Agency, the Committee believes these efforts would be more effective in producing tangible results which can be applied throughout the maritime industry. The program would use MARAD vessels as analysis and testing platforms and also utilize partnership and cooperative efforts with academic, public and non-governmental entities. The Committee expects that MARAD would support qualified projects not only in the developmental and verification stage, but also to assist in the deployment of newly verified technologies which may need support from this program to gain wider industry acceptance and utilization. Proving how effective certain technologies are is likely to be economically valuable to vessel operators; therefore evaluating developing technology should prove to be a very cost-effective way to encourage technology adoption by industry. Section 5 would also create a fund in the United States Treasury for appropriated funds, collected fees, and any other funds received for the program, to carry out the program. This provision would also require that the Secretary submit an annual report to the Senate Committee on Commerce, Science, and Transportation, the House of Representatives Committee on Armed Services, and the House of Representatives Committee on Transportation and Infrastructure on the activities, expenditures, and results of the program during the preceding fiscal year.

Section 6. Waiver of Navigation and Vessel Inspection Laws.

Section 6 would modify existing law (46 U.S.C. 501(b)) to require certification to Congress of the non-availability of qualified U.S. flag capacity to meet national defense requirements in the event that a waiver of navigation or vessel inspection laws is granted. The amendment would ensure continued appropriate Congressional notification in the event that waivers of navigation or vessel inspection laws are granted, yet would not constrain officials from granted such waivers should the need arise.

Section 7. Ship Scrapping Reporting Requirement.

Section 7 would modify existing MARAD reporting requirements to allow ship scrapping information to be provided through briefings to Congress in lieu of the annual report process. This provision would require MARAD, upon request, to provide Congress with information on its recycling program on a timely basis. Section 7 eliminates the production of annual ship disposal reports to Congress.

Section 8. Extension of Maritime Security Fleet Program.

This section would authorize the Secretary to extend existing operating agreements in MSP through September 30, 2025. Currently, the existing agreements are renewed automatically on a yearly basis through FY 2015, subject to the availability of appropriations. For those operating agreements where the contractor does not wish to enter into an extension, the Secretary would be authorized to award the operating agreement to a new contractor on the basis of military need for the new vessel in conjunction with the Secretary of Defense. After February 28, 2015, contractors would no longer be able to transfer the agreements.

Section 8 would also clarify the priority for selecting replacement vessels for MSP. It would specify that the primary consideration for determining priority for replacement of MSP vessels is established by military requirements of the Secretary of Defense. After consideration of military requirements, priority would be given to applicants that are U.S. citizens under section 50501 of title 46, United States Code. It would further specify that the second or later replacements must not be any less commercially or militarily useful than the initial replacement vessel.

Section 8 would authorize MARAD to purchase vessels, that were under a MSP operating agreement and that have been replaced by their owners, for inclusion in the RRF component of the NDRF. The purchase would be subject to the vessel owner's agreement and the concurrence of the Secretary of Defense. The vessels would be required to have participated in the Marine Security Program for at least three years and meet recapitalization requirements for the RRF. The vessels would be purchased at fair market value, as determined by MARAD. Currently, there is no program to replace or recapitalize RRF vessels as they approach the end of their useful lives. This would be a cost effective method to rejuvenate the RRF because these ships, which are under a U.S. flag, would not require upgrading to U.S. standards and could continue in a maritime security role as RRF ships.

Section 8 would authorize the requested appropriations for the MSP for years 2016 through 2025. The requests are as follows: $186 million per year for years 2012 through 2018; $210 million per year in years 2019 through 2021; and $222 million per year in years 2022 through 2025. Additionally, this provision would authorize the requested appropriations to escalate payments per vessel per year for the years 2016 through 2025. The requests are as follows: $3.1 million for each vessel for each FY 2016 through 2018; $3.5 million for each vessel for each FY 2019 through 2021; and $3.7 million for each vessel for each FY 2022 through 2025. The higher payments spread over ten years are necessary to induce these militarily useful vessels to remain under U.S. flag and contribute to the U.S. economy and jobs.

This section would also clarify the definition for foreign commerce in chapter 531 of title 46, United States Code, by eliminating an obsolete restriction on foreign-to-foreign trade that was originally used in the operating-differential subsidy program.

Section 9. Maritime Workforce Study.

Section 9 would require the Comptroller General of the United States to conduct a study on the training needs of the maritime

workforce. The study would analyze the impact upon U.S. mariners of all sectors of the maritime industry of training requirements imposed by; domestic and international regulations and conventions, companies, and Government agencies that charter or operate vessels. It would also evaluate the ability of the Nation's maritime training infrastructure to meet the current needs of the maritime industry, and include recommendations both for enhancing the capabilities of the Nation's maritime training infrastructure.

Section 10. Maritime Administration Vessel Recycling Contract Accountability.

Section 10 would direct the DOT Inspector General within 12 months after the enactment of this Act to conduct an assessment of the source selection procedures and practices used to award MARAD's NDRF vessel recycling contracts. In addition, the Inspector General shall assess the process, procedures and practices used for MARAD's qualification of vessel recycling facilities.

Section 11. Prohibition on Maritime Administration Receipt of Polar Icebreakers.

Section 11 would prohibit MARAD from receiving, maintaining, dismantling, or recycling either the Coast Guard Cutter POLAR SEA (WAGB 11) or the Coast Guard Cutter POLAR STAR (WAGB 10) until the Congress has received the polar icebreaker business case analysis (required under 124 Stat. 2928) or until the Coast Guard has replaced the vessels with two "in commission, active" heavy polar icebreakers. The amendment would also place additional strictures on the Coast Guard to prevent: placement the vessels into inactive status; the appointment of a decommissioning officer; expending funds for decommissioning of the vessels; the transfer or relinquishment of ownership; or the change in the homeport of either cutter.

Section 12. Authorization of Appropriations.

Section 12 would authorize appropriations for Operations and Training, including at the U.S. Merchant Marine Academy and State Maritime Schools; title XI Loans, Ship Disposal, and MSP.

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):

TITLE 46. SHIPPING

SUBTITLE I. GENERAL

CHAPTER 5. OTHER GENERAL PROVISIONS

§ 501. Waiver of navigation and vessel-inspection laws

(a) ON REQUEST OF SECRETARY OF DEFENSE.—On request of the Secretary of Defense, the head of an agency responsible for the administration of the navigation or vessel-inspection laws shall

waive compliance with those laws to the extent the Secretary considers necessary in the interest of national defense.

(b) BY HEAD OF AGENCY.—When the head of an agency responsible for the administration of the navigation or vessel-inspection laws considers it necessary in the interest of national defense, the individual, following a determination by the Maritime Administrator, acting in the Administrator's capacity as Director, National Shipping Authority, of the non-availability of qualified United States flag capacity to meet national defense requirements, may waive compliance with those laws to the extent, in the manner, and on the terms the individual, in consultation with the Administrator, acting in that capacity, prescribes. *A waiver shall be accompanied by a certification by the individual and the Administrator to the Committee on Commerce, Science, and Transportation and the Committee on Armed Services of the Senate, and the Committee on Transportation and Infrastructure and the Committee on Armed Services of the House of Representatives that it is not possible to use a United States flag vessel or United States flag vessels collectively to meet the national defense requirements.*

(c) TERMINATION OF AUTHORITY.—The authority granted by this section shall terminate at such time as the Congress by concurrent resolution or the President may designate.

TITLE 46. SHIPPING

SUBTITLE V. MERCHANT MARINE

PART A. GENERAL

CHAPTER 501. POLICY, STUDIES, AND REPORTS

§ 50109. Miscellaneous studies

(a) FOREIGN SUBSIDIES.—The Secretary of Transportation shall investigate, determine, and keep current records of the extent and character of the governmental aid and subsidies granted by foreign governments to their merchant marine.

(b) LAWS APPLICABLE TO AIRCRAFT.—The Secretary shall investigate, determine, and keep current records of the provisions of law relating to shipping that should be made applicable to aircraft engaged in foreign commerce to further the policy in section 50101 of this title, and any appropriate legislation in this regard.

(c) AID FOR COTTON, COAL, LUMBER, AND CEMENT.—The Secretary shall investigate, determine, and keep current records of the advisability of enactment of suitable legislation authorizing the Secretary, in an economic or commercial emergency, to aid farmers and producers of cotton, coal, lumber, and cement in any section of the United States in the transportation and landing of their products in any foreign port, which products can be carried in dry-cargo vessels by reducing rates, by supplying additional tonnage to any American operator, or by operation of vessels directly by the Secretary, until the Secretary considers the special rate reduction and operation unnecessary for the benefit of those farmers and producers.

[(d) INTERCOASTAL AND INLAND WATER TRANSPORTATION.—The Secretary shall investigate, determine, and keep current records of

intercoastal and inland water transportation, including their relation to transportation by land and air.]

(d) MARINE TRANSPORTATION SYSTEM.—

(1) REPORT ON WATERWAYS.—Not later than October 1, 2012, the Secretary, in consultation with the Secretary of Defense and the commanding officer of the Army Corps of Engineers, and with the concurrence of the Secretary of the department in which the Coast Guard is operating, shall submit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Armed Services and the Committee on Transportation and Infrastructure of the House of Representatives on the status of the Nation's coastal and inland waterways that—

(A) describes the state of the United States' marine transportation infrastructure, including intercoastal infrastructure, intracoastal infrastructure, inland waterway infrastructure, ports, and marine facilities;

(B) provides estimates of the investment levels required—

(i) to maintain the infrastructure; and

(ii) to improve the infrastructure; and

(C) describes the overall environmental management of the maritime transportation system and the integration of environmental stewardship into the overall system.

(2) MARINE TRANSPORTATION.—The Secretary may investigate, make determinations concerning, and develop a repository of statistical information relating to marine transportation, including its relationship to transportation by land and air, to facilitate research, assessment, and maintenance of the maritime transportation system. As used in this paragraph, the term "marine transportation" includes intercoastal transportation, intracoastal transportation, inland waterway transportation, ports, and marine facilities.

(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as may be necessary to carry out this subsection.

(e) OBSOLETE TONNAGE AND TRAMP SERVICE.—The Secretary shall make studies and reports to Congress on—

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

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

(f) MORTGAGE LOANS.—The Secretary shall investigate the legal status of mortgage loans on vessel property, with a view to the means of improving the security of those loans and of encouraging investment in American shipping.

TITLE 46. SHIPPING

SUBTITLE V. MERCHANT MARINE

PART A. GENERAL

CHAPTER 503. ADMINISTRATIVE

§ ***50307. Green ships program***

(a) IN GENERAL.—The Secretary of Transportation may establish a green ships program to engage in the environmental study, research, development, assessment, and deployment of emerging marine technologies and practices related to the marine transportation system through the use of public vessels under the control of the Maritime Administration or private vessels under Untied States registry, and through partnerships and cooperative efforts with academic, public, private, and non-governmental entities and facilities.

(b) PROGRAM REQUIREMENTS.—The program shall—

(1) identify, study, evaluate, test, demonstrate, or improve emerging marine technologies and practices that are likely to achieve environmental improvements by—

(A) reducing air emissions, water emissions, or other ship discharges;

(B) increasing fuel economy or the use of alternative fuels and alternative energy (including the use of shore power); or

(C) controlling aquatic invasive species; and

(2) be coordinated with the Environmental Protection Agency, the United States Coast Guard, and other Federal, State, local, or tribal agencies, as appropriate.

(c) PROGRAM COORDINATION.—Program coordination under subsection (b)(2) may include—

(1) activities that are associated with the development or approval of validation and testing regimes; and

(2) certification or validation of emerging technologies or practices that demonstrate significant environmental benefits.

(d) FUNDING AND FEES.—

(1) IN GENERAL.—In carrying out the green ships program, the Secretary of Transportation may apply such funds as may be appropriated and such funds or resources as may become available by gift, cooperative agreement, or otherwise, including the collection of fees, for the purposes of the program and its administration.

(2) ESTABLISHMENT OF FEES.—Pursuant to section 9701 of title 31, the Secretary of Transportation may promulgate regulations establishing fees to recover reasonable costs to the Secretary and to academic, public, and non-governmental entities associated with the program.

(3) FEE DEPOSIT.—Any fees collected under this section shall be deposited in a special fund of the United States Treasury for services rendered under the program, which thereafter shall remain available until expended to carry out the Secretary of Transportation's activities for which the fees were collected.

(e) REPORT.—The Secretary of Transportation shall report on the activities, expenditures, and results of the green ships program

during the preceding fiscal year in the annual budget submission to Congress.

TITLE 46. SHIPPING

SUBTITLE V. MERCHANT MARINE

PART C. FINANCIAL ASSISTANCE PROGRAMS

CHAPTER 531. MARITIME SECURITY FLEET

§ 53101. Definitions

In this chapter:

(1) BULK CARGO.—The term "bulk cargo" means cargo that is loaded and carried in bulk without mark or count.

(2) CONTRACTOR.—The term "contractor" means an owner or operator of a vessel that enters into an operating agreement for the vessel with the Secretary under section 53103.

(3) FLEET.—The term "Fleet" means the Maritime Security Fleet established under section 53102(a).

[(4) FOREIGN COMMERCE.—The term "foreign commerce"—

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

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

[(ii) commerce or trade between foreign countries; and

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

(4) FOREIGN COMMERCE.—The term "foreign commerce" means—

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

(B) commerce or trade between foreign countries.

[(5) LASH VESSEL.—The term "LASH vessel" means a lighter aboard ship vessel.[1]**]**

[(6) PARTICIPATING FLEET VESSEL.—The term "participating fleet vessel" means any vessel that—

[(A) on October 1, 2005—

[(i) meets the requirements of paragraph (1), (2), (3), or (4) of section 53102(c); and

[(ii) is less than 25 years of age, or less than 30 years of age in the case of a LASH vessel; and

[(B) on December 31, 2004, is covered by an operating agreement under subtitle B of title VI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1187 et seq.).[2]**]**

[1] This amendment takes effect on December 31, 2014

[2] This amendment takes effect on December 31, 2014

(5) PARTICIPATING FLEET VESSEL.—The term "participating fleet vessel" means any vessel that—

(A) on October 1, 2015—

(i) meets the requirements of paragraph (1), (2), (3), or (4) of section 53102(c); and

(ii) is less than 20 years of age if the vessel is a tank vessel, or is less than 25 years of age for all other vessel types; and

(B) on December 31, 2014, is covered by an operating agreement under this chapter.

[(7)]*(6)* PERSON.—The term "person" includes corporations, partnerships, and associations existing under or authorized by the laws of the United States, or any State, Territory, District, or possession thereof, or of any foreign country.

[(8)]*(7)* PRODUCT TANK VESSEL.—The term "product tank vessel" means a double hulled tank vessel capable of carrying simultaneously more than 2 separated grades of refined petroleum products.

[(9)]*(8)* SECRETARY.—The term "Secretary" means the Secretary of Transportation.

[(10)]*(9)* TANK VESSEL.—The term "tank vessel" has the meaning that term has under section 2101 of this title.

[(11)]*(10)* UNITED STATES.—The term "United States" includes the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, the Virgin Islands.

[(12)]*(11)* UNITED STATES CITIZEN TRUST.—

(A) Subject to subparagraph (C), the term "United States citizen trust" means a trust that is qualified under this paragraph.

(B) A trust is qualified under this paragraph with respect to a vessel only if—

(i) each of the trustees is a citizen of the United States; and

(ii) the application for documentation of the vessel under chapter 121 of this title includes the affidavit of each trustee stating that the trustee is not aware of any reason involving a beneficiary of the trust that is not a citizen of the United States, or involving any other person that is not a citizen of the United States, as a result of which the beneficiary or other person would hold more than 25 percent of the aggregate power to influence or limit the exercise of the authority of the trustee with respect to matters involving any ownership or operation of the vessel that may adversely affect the interests of the United States.

(C) If any person that is not a citizen of the United States has authority to direct or participate in directing a trustee for a trust in matters involving any ownership or operation of the vessel that may adversely affect the interests of the United States or in removing a trustee for a trust without cause, either directly or indirectly through the control of another person, the trust is not qualified under this paragraph unless the trust instrument provides that persons who are not citizens of the United States may

not hold more than 25 percent of the aggregate authority to so direct or remove a trustee.

(D) This paragraph shall not be considered to prohibit a person who is not a citizen of the United States from holding more than 25 percent of the beneficial interest in a trust.

[(13)]*(12)* UNITED STATES-DOCUMENTED VESSEL.—The term "United States-documented vessel" means a vessel documented under chapter 121 of this title.

§ 53102. Establishment of Maritime Security Fleet

* * * * * * *

[(b) VESSEL ELIGIBILITY.—A vessel is eligible to be included in the Fleet if—

[(1) the vessel meets the requirements of paragraph (1), (2), (3), or (4) of subsection (c);

[(2) the vessel is operated (or in the case of a vessel to be constructed, will be operated) in providing transportation in foreign commerce;

[(3) the vessel is self-propelled and is—

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

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

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

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

[(E) any other type of vessel that is 15 years of age or less on the date the vessel is included in the Fleet;

[(4) the vessel is—

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

[(B) determined by the Secretary to be commercially viable; and

[(5) the vessel—

[(A) is a United States-documented vessel; or

[(B) is not a United States-documented vessel, but—

[(i) the owner of the vessel has demonstrated an intent to have the vessel documented under chapter 121 of this title if it is included in the Fleet; and

[(ii) at the time an operating agreement for the vessel is entered into under this chapter, the vessel is eligible for documentation under chapter 121 of this title.]

(b) VESSEL ELIGIBILITY.—A vessel is eligible to be included in the Fleet if—

(1) the vessel meets the requirements of paragraph (1), (2), (3), or (4) of subsection (c);

(2) the vessel is operated (or in the case of a vessel to be constructed, will be operated) in providing transportation in foreign commerce;

(3) the vessel is self-propelled and—

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

(B) is any other type of vessel that is 15 years of age or less on the date the vessel is included in the Fleet;

(4) the vessel—

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

(B) is commercially viable, as determined by the Secretary; and

(5) the vessel—

(A) is a United States-documented vessel; or

(B) is not a United States-documented vessel, but—

(i) the owner of the vessel has demonstrated an intent to have the vessel documented under chapter 121 of this title if it is included in the Fleet; and

(ii) at the time an operating agreement for the vessel is entered into under this chapter, the vessel is eligible for documentation under chapter 121 of this title.

* * * * * * *

§ 53103. Award of operating agreements

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

[(b) PROCEDURE FOR APPLICATIONS.—

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

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

[(3) PARTICIPATING FLEET VESSELS.—

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

[(B) VESSEL UNDER DEMISE CHARTER.—For purposes of subparagraph (A), in the case of a vessel that is subject to a demise charter that terminates by its terms on September 30, 2005 (without giving effect to any extension provided therein for completion of a voyage or to effect the actual redelivery of the vessel), or that is terminable at will by the owner of the vessel after such date, only the

owner of the vessel shall be treated as having the authority referred to in paragraph (1).

[(C) VESSEL OWNED BY UNITED STATES CITIZEN TRUST.—For purposes of subparagraph (B), in the case of a vessel owned by a United States citizen trust, the term "owner of the vessel" includes a beneficial owner of the vessel with respect to such trust.]

(b) EXTENSION OF EXISTING OPERATING AGREEMENTS.—

(1) OFFER TO EXTEND.—Not later than 60 days after the date of enactment of the Maritime Administration Authorization Act for Fiscal Year 2012, the Secretary shall offer, to an existing contractor, to extend, through September 30, 2025, an operating agreement that is in existence on the date of enactment of that Act. The terms and conditions of the extended operating agreement shall include terms and conditions authorized under this chapter, as amended from time to time.

(2) TIME LIMIT.—An existing contractor shall have not later than 120 days after the date the Secretary offers to extend an operating agreement to agree to the extended operating agreement.

(3) SUBSEQUENT AWARD.—The Secretary may award an operating agreement to an applicant that is eligible to enter into an operating agreement for fiscal years 2016 through 2025 if the existing contractor does not agree to the extended operating agreement under paragraph (2).

[(c) PRIORITY FOR AWARDING AGREEMENTS.—

[(1) IN GENERAL.—Subject to the availability of appropriations, the Secretary shall enter into operating agreements according to the following priority:

[(A) NEW TANK VESSELS.—First, for any tank vessel that—

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

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

[(iii) during the period of an operating agreement under this chapter that applies to the vessel, will be owned and operated by one or more persons that are citizens of the United States under section 50501 of this title,

except that the Secretary shall not enter into operating agreements under this subparagraph for more than 5 such vessels.

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

[(C) CERTAIN VESSELS OPERATED BY SECTION 50501 CITIZENS.—Third, to the extent amounts are available after applying subparagraphs (A) and (B), for any other vessel that is eligible to be included in the Fleet under section 53102(b), and that, during the period of an operating agreement under this chapter that applies to the vessel, will be—

[(i) owned and operated by one or more persons that are citizens of the United States under section 50501 of this title; or

[(ii) owned by a person that is eligible to document the vessel under chapter 121 of this title, and operated by a person that is a citizen of the United States under section 50501 of this title.

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

[(2) REDUCTION IN NUMBER OF SLOTS FOR PARTICIPATING FLEET VESSELS.—The number in paragraph (1)(B) shall be reduced by 1—

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

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

[(3) DISCRETION WITHIN PRIORITY.—The Secretary—

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

[(B) shall award operating agreements within a priority—

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

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

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

[(4) TREATMENT OF TANK VESSEL TO BE REPLACED.—

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

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

[(II) the replacement vessel is eligible to be included in the Fleet under section 53102(b); or

[(ii) (I) not later than 9 months after the first date amounts are available to carry out this chapter, the operator of the existing tank vessel enters into an agreement to charter one or more tank vessels to be

built in the United States and operated as a documented vessel or documented vessels;

[(II) the combined tonnage of the vessels required to be chartered under subclause (I) is equal to or greater than the tonnage of the existing tank vessel subject to an operating agreement;

[(III) the operator enters into an agreement with the Secretary that is substantially the same as an Emergency Preparedness Agreement under section 53107 of this title, under which the operator shall make available commercial transportation resources as provided in that section;

[(IV) if the person that is the owner or operator of the existing tank vessel owns or operates more than one existing tank vessel subject to an operating agreement, the combined tonnage of those vessels required to be chartered under subclause (I) by that person is equal to or greater than the combined tonnage of all such existing tank vessels owned or operated by such person that are subject to operating agreements.

[(B) No payment under this chapter may be made for an existing tank vessel with respect to which a binding contract is entered into under subparagraph (A)(i) for which an operating agreement is awarded under this paragraph after the earlier of—

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

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

[(C) For purpose of subparagraph (A)(ii), tonnage shall be measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title.

[(D) No payment under this chapter may be made for an existing tank vessel with respect to which an agreement is entered into under subparagraph (A)(ii) for any period occurring—

[(i) after the date that is 5 years after the first date that amounts became available to carry out this chapter, if the vessel or vessels required to be chartered under subparagraph (A)(ii) have not been delivered; or

[(ii) after delivery of the vessel or vessels required to be chartered under such subparagraph, if any of such vessels is not chartered by the operator of the existing tank vessel.

(c) PROCEDURE FOR AWARDING NEW OPERATING AGREEMENTS.—The Secretary may enter into a new operating agreement with an applicant that meets the requirements of section 53102(c) (for vessels that meet the qualifications of section 53102(b)) on the basis of priority for vessel type established by military requirements of the Secretary of Defense. The Secretary shall allow an applicant at least 30 days to submit an application for a new operating agree-

ment. After consideration of military requirements, priority shall be given to an applicant that is a U.S. citizen under section 50501 of this title. The Secretary may not approve an application without the consent of the Secretary of Defense. The Secretary shall enter into an operating agreement with the applicant or provide a written reason for denying the application.

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

§ 53104. Effectiveness of operating agreements

(a) EFFECTIVENESS, GENERALLY.—The Secretary may enter into an operating agreement under this chapter for fiscal year 2006. Except as provided in subsection (b), the agreement shall be effective only for 1 fiscal year, but shall be renewable, subject to the availability of appropriations, for each subsequent fiscal year through the end of fiscal year 2025.

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

(c) TERMINATION.—

(1) TERMINATION BY SECRETARY.—If the contractor with respect to an operating agreement materially fails to comply with the terms of the agreement—

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

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

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

(2) EARLY TERMINATION BY CONTRACTOR, GENERALLY.—An operating agreement under this chapter shall terminate on a date specified by the contractor if the contractor notifies the Secretary, by not later than 60 days before the effective date of the termination, that the contractor intends to terminate the agreement.

[(3) EARLY TERMINATION BY CONTRACTOR, WITH AVAILABLE REPLACEMENT.—An operating agreement under this chapter shall terminate upon the expiration of the 3-year period beginning on the date a vessel begins operating under the agreement, if—

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

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

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

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

[(I) owned and operated by one or more persons that are citizens of the United States under section 50501 of this title; or

[(II) owned by a person that is eligible to document the vessel under chapter 121 of this title, and operated by a person that is a citizen of the United States under section 50501 of this title.]

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

(e) RELEASE OF VESSELS FROM OBLIGATIONS.—If [an operating agreement under this chapter is terminated under subsection (c)(3), or if] funds are not appropriated for payments under an operating agreement under this chapter for any fiscal year by the 60th day of that fiscal year, then—

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

(2) the owner or operator of the vessel may transfer and register such vessel under a foreign registry that is acceptable to the Secretary of Transportation and the Secretary of Defense, notwithstanding section 56101 of this title; and

(3) if chapter 563 of this title is applicable to such vessel after registration of the vessel under such a registry, then the vessel is available to be requisitioned by the Secretary of Transportation pursuant to chapter 563.

§ 53105. Obligations and rights under operating agreements

* * * * * * *

[(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 50501 of this title unless the Secretary of Defense determines that there is no person who is a citizen under such sec-

tion 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.]

(e) TRANSFER OF OPERATING AGREEMENTS.—A contractor under an operating agreement may transfer the agreement (including all rights and obligations under the operating agreement) to any person that is eligible to enter into the operating agreement under this chapter if the Secretary and the Secretary of Defense determine that the transfer is in the best interests of the United States. A transaction shall not be considered a transfer of an operating agreement if the same legal entity with the same vessels remains the contracting party under the operating agreement.

[(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.]

(f) REPLACEMENT VESSELS.—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 the replacement of the vessel.

§ 53106. Payments

(a) ANNUAL PAYMENT.—

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

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

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

(C) $3,100,000 for each of fiscal years 2012 though 2025.]

(C) $3,100,000 for each of fiscal years 2012, 2013, 2014, 2015, 2016, 2017, and 2018;

(D) $3,500,000 for each of fiscal years 2019, 2020, and 2021; and

(E) $3,700,000 for each of fiscal years 2022, 2023, 2024, and 2025.

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

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

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

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

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

(3) more than—

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

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

(C) 30 years of age, in the case of [a LASH vessel.] *a lighter aboard ship vessel.* [This amendment takes effect on December 31, 2014]

(d) REDUCTIONS IN PAYMENTS.—With respect to payments under this chapter for a vessel covered by an operating agreement, the Secretary—

(1) except as provided in paragraph (2), shall not reduce any payment for the operation of the vessel to carry military or other preference cargoes under section 55302(a), 55304, 55305, or 55314 of this title, section 2631 of title 10, or any other cargo preference law of the United States;

(2) shall not make any payment for any day that the vessel is engaged in transporting more than 7,500 tons of civilian bulk preference cargoes pursuant to section 55302(a), 55305, or 55314 of this title, section 901(a), 901(b), or 901b of the Merchant Marine Act, 1936 (46 U.S.C. App. 1241(a), 1241(b), or 1241f), that is bulk cargo; and

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

(e) LIMITATION REGARDING NONCONTIGUOUS DOMESTIC TRADE.—

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

(2) LIMITATION ON APPLICATION.—Paragraph (1) shall not apply to any person that is a citizen of the United States within the meaning of section 50501 of this title, applying the 75 percent ownership requirement of that section.

(3) PARTICIPATES IN A NONCONTIGUOUS DOMESTIC TRADE DEFINED.—In this subsection the term "participates in a noncontiguous domestic trade" means directly or indirectly owns, charters, or operates a vessel engaged in transportation of cargo between a point in the contiguous 48 States and a point in Alaska, Hawaii, or Puerto Rico, other than a point in Alaska north of the Arctic Circle.

[(f) PRIORITY IN ALLOCATION OF AVAILABLE AMOUNTS.—If the amount available for a fiscal year for making payments under operating agreements under this chapter is not sufficient to pay the full amount authorized under each agreement pursuant to this section for such fiscal year, the amount available shall be allocated among

such agreements in a manner that gives priority to payments for vessels that are subject to agreements under section 3517 of the Maritime Security Act of 2003 (46 U.S.C. 53101 note).]

§ 53107. National security requirements

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(b) TERMS OF AGREEMENT.—

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

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

(2) BASIC TERMS.—

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

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

(3) DEFENSE MEASURES AGAINST UNAUTHORIZED SEIZURES.—

(A) The Emergency Preparedness Agreement for any operating agreement that first takes effect or is renewed after the date of enactment of the National Defense Authorization Act for Fiscal Year 2010 shall require that any vessel operating under the agreement in the carriage of cargo for the Department of Defense in an area that is designated by the Coast Guard as an area of high risk of piracy shall be equipped with, at a minimum, appropriate non-lethal defense measures to protect the vessel, crew, and cargo from unauthorized seizure at sea.

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

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[§ 53109. Special rule regarding age of participating fleet vessel

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

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§ 53111. Authorization of appropriations

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

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

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

[(3) $186,000,000 for each fiscal year thereafter through fiscal year 2025.**]**

(3) $186,000,000 for each of fiscal years 2012, 2013, 2014, 2015, 2016, 2017, and 2018;

(4) $210,000,000 for each of fiscal years 2019, 2020, and 2021; and

(5) $222,000,000 for each fiscal year thereafter through fiscal year 2025.

§ 53112. Acquisition of fleet vessels

(a) IN GENERAL.—Notwithstanding section 2218(f) of title 10, United States Code, upon replacement of any vessel subject to an operating agreement under this chapter, and subject to agreement by the vessel owner, the Secretary is authorized, subject to concurrence with the Secretary of Defense, to acquire the vessel being replaced for inclusion in the National Defense Reserve Fleet.

(b) REQUIREMENTS.—In order to be eligible for acquisition by the Secretary under this section, a vessel shall—

(1) have been included in a Maritime Security Program Operating Agreement for not less than 3 years; and

(2) meet recapitalization requirements for the Ready Reserve Force.

(c) FAIR MARKET VALUE.—The Maritime Administration shall establish a fair market value for the acquisition of an eligible vessel under this section.

(d) APPROPRIATIONS.—A vessel acquisition under this section shall be subject to the availability of appropriations and the appropriations shall be part of the National Defense Reserve Fleet appropriations and separate from Maritime Security Program appropriations.

TITLE 46. SHIPPING

SUBTITLE V. MERCHANT MARINE

PART D. PROMOTIONAL PROGRAMS

CHAPTER 556. SHORT SEA TRANSPORTATION

§ 55601. Short sea transportation program

(a) ESTABLISHMENT.—The Secretary of Transportation shall establish a short sea transportation program and designate short sea transportation projects to be conducted under the program to mitigate landside congestion *and to promote more efficient use of the navigable waters of the United States*.

(b) PROGRAM ELEMENTS.—The program shall encourage the use of short sea transportation through the development and expansion of—

(1) documented vessels;

(2) shipper utilization;

(3) port and landside infrastructure; and

(4) marine transportation strategies by State and local governments.

(c) SHORT SEA TRANSPORTATION ROUTES.—The Secretary shall designate short sea transportation routes as extensions of the surface transportation system to focus public and private efforts to use the waterways to relieve landside congestion along coastal corridors *and to promote more efficient use of the navigable waters of the United States*. The Secretary may collect and disseminate data for the designation and delineation of short sea transportation routes.

[(d) PROJECT DESIGNATION.—The Secretary may designate a project to be a short sea transportation project if the Secretary determines that the project may—

[(1) offer a waterborne alternative to available landside transportation services using documented vessels; and

[(2) provide transportation services for passengers or freight (or both) that may reduce congestion on landside infrastructure using documented vessels.]

(d) PROJECT DESIGNATION.—The Secretary may designate a project as a short sea transportation project if the Secretary determines that the project—

(1) mitigates landside congestion; or

(2) promotes more efficient use of the navigable waters of the United States.

(e) ELEMENTS OF PROGRAM.—For a short sea transportation project designated under this section, the Secretary may—

(1) promote the development of short sea transportation services;

(2) coordinate, with ports, State departments of transportation, localities, other public agencies, and the private sector and on the development of landside facilities and infrastructure to support short sea transportation services; and

(3) develop performance measures for the short sea transportation program.

(f) MULTISTATE, STATE AND REGIONAL TRANSPORTATION PLANNING.—The Secretary, in consultation with Federal entities and State and local governments, shall develop strategies to encourage

the use of short sea transportation for transportation of passengers and cargo. The Secretary shall—

(1) assess the extent to which States and local governments include short sea transportation and other marine transportation solutions in their transportation planning;

(2) encourage State departments of transportation to develop strategies, where appropriate, to incorporate short sea transportation, ferries, and other marine transportation solutions for regional and interstate transport of freight and passengers in their transportation planning; and

(3) encourage groups of States and multi-State transportation entities to determine how short sea transportation can address congestion, bottlenecks, and other interstate transportation challenges.

(g) GRANTS.—

(1) IN GENERAL.—The Secretary shall establish and implement a short sea transportation grant program to implement projects or components of a project designated under subsection (d).

(2) APPLICATIONS.—In order to receive a grant under the program, an applicant shall—

(A) submit an application to the Secretary, in such form and manner, at such time, and containing such information as the Secretary may require; and

(B) demonstrate to the satisfaction of the Secretary that—

(i) the project is financially viable;

(ii) the funds received will be spent efficiently and effectively; and

(iii) a market exists for the services of the proposed project as evidenced by contracts or written statements of intent from potential customers.

(3) NON-FEDERAL SHARE.—An applicant shall provide at least 20 percent of the project costs from non-Federal sources. In awarding grants under the program, the Secretary shall give a preference to those projects or components that present the most financially viable transportation services and require the lowest percentage Federal share of the costs.

TITLE 46. SHIPPING

SUBTITLE V. MERCHANT MARINE

PART D. PROMOTIONAL PROGRAMS

CHAPTER 556. SHORT SEA TRANSPORTATION

§ 55605. Short sea transportation defined

In this chapter, the term "short sea transportation" means the carriage [by vessel] *by a documented vessel* of cargo—

(1) that is—

(A) contained in intermodal cargo containers and loaded by crane on the vessel; or

(B) loaded on the vessel by means of wheeled technology; and

(2) that is—

(A) loaded at a port in the United States and unloaded either at another port in the United States or at a port in Canada located in the Great Lakes Saint Lawrence Seaway System; or

(B) loaded at a port in Canada located in the Great Lakes Saint Lawrence Seaway System and unloaded at a port in the United States.

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;

(4) for training purposes to the extent authorized by the Secretary of Transportation with the concurrence of the Secretary of 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**[**.**]***; or*

(6) for civil contingency operations and Maritime Administration promotional and media events under subsection (f).

(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 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 USCS § 3703a.— Vessels in the National Defense Reserve Fleet are exempt from the provisions of section 3703a of title 46, United States Code.

(f) CIVIL CONTINGENCY OPERATIONS AND PROMOTIONAL AND MEDIA EVENTS.—The Secretary of Transportation may allow, with the concurrence of the Secretary of Defense, the use of a vessel in the National Defense Reserve Fleet for civil contingency operations requested by another Federal agency, and for Maritime Administration promotional and media events that are related to demonstration projects and research and development supporting the Maritime Administration's mission, if the Secretary of Transportation determines the use of the vessel is in the best interest of the United States Government after—

(1) considering the availability of the National Defense Reserve Fleet and Ready Reserve Force resources;

(2) considering the impact on National Defense Reserve Fleet and Ready Reserve Force mission support to the defense and homeland security requirements of the United States Government;

(3) ensuring that the use of the vessel supports the mission of the Maritime Administration and does not significantly interfere with vessel maintenance, repair, safety, readiness, or resource availability;

(4) ensuring that safety precautions are taken, including indemnification of liability, when applicable;

(5) ensuring that any cost incurred by the use of the vessel is funded as a reimbursable transaction between Federal agencies, as applicable; and

(6) considering any other factors the Secretary of Transportation determines are appropriate.

FLOYD D. SPENCE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2001

SEC. 3502. NATIONAL DEFENSE RESERVE FLEET.

[16 U.S.C. 5405 note]

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[(f) REPORT.—No later than 1 year after the date of the enactment of this subsection, and every 6 months thereafter, the Secretary of Transportation, in coordination with the Secretary of the Navy, shall report to the Committee on Transportation and Infrastructure, the Committee on Resources, and the Committee on Armed Services of the House of Representatives, and to the Committee on Commerce, Science, and Transportation and the Committee on Armed Services of the Senate, on the progress made in implementing the vessel disposal plan developed under subsection (c). In particular, the report shall address the performance measures required to be established under subsection (c)(2)(C).**]**

(f) The Secretary of Transportation shall provide briefings, upon request, to the Committee on Commerce, Science, and Transportation and the Committee on Armed Services of the Senate and the Committee on Transportation and Infrastructure, the Committee on Resources, and the Committee on Armed Services of the House of Representatives on—

(1) the progress made to recycle vessels;

(2) any problems encountered in recycling vessels; and

(3) any other issues relating to vessel recycling and disposal.

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