

Whereas nursing homes are intimate communities where acts of caring, kindness, and respect are the norm;

Whereas, when the positive bond that naturally develops between patients and their caregivers is established, patients experience not only better physical care and healing, but also enrichment of the mind, heart, and spirit and an affirmation of their value; and

Whereas National Nursing Home Week recognizes the people who provide care to the Nation's most vulnerable population: Now, therefore, be it

Resolved, That the Senate—

(1) designates the week beginning May 9, 2010, as “National Nursing Home Week”;

(2) recognizes that a majority of people in the United States, because of social needs, disability, trauma, or illness, will require long-term care services at some point in their lives;

(3) honors nursing home residents and the people who care for them each day, including family members, volunteers, and dedicated long-term care professionals, for their contributions to their communities and the United States; and

(4) encourages the people of the United States to observe National Nursing Home Week with appropriate ceremonies and activities.

AMENDMENTS SUBMITTED AND PROPOSED

SA 3910. Mr. PRYOR submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end “too big to fail”, to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table.

SA 3911. Mr. CASEY submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3912. Mr. WHITEHOUSE (for Ms. CANTWELL) proposed an amendment to the bill H.R. 3619, to authorize appropriations for the Coast Guard for fiscal year 2010, and for other purposes.

SA 3913. Mr. WHITEHOUSE (for Mr. GREGG) proposed an amendment to the resolution S. Res. 480, condemning the continued detention of Burmese democracy leader Daw Aung San Suu Kyi and calling on the military regime in Burma to permit a credible and fair election process and the transition to civilian, democratic rule.

SA 3914. Mr. CHAMBLISS submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end “too big to fail”, to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table.

SA 3915. Mr. CHAMBLISS submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3916. Mr. CHAMBLISS submitted an amendment intended to be proposed to

amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3917. Mr. CHAMBLISS submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3918. Ms. SNOWE (for herself and Ms. LANDRIEU) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3919. Mr. CONRAD (for himself, Mr. CRAPO, Mr. BARRASSO, Mr. KERRY, Mr. BROWN of Massachusetts, Ms. SNOWE, Ms. LANDRIEU, Mr. DORGAN, Mr. ROBERTS, Mr. ENZI, Mrs. MCCASKILL, Ms. COLLINS, Ms. CANTWELL, and Mrs. MURRAY) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3920. Mr. HARKIN (for himself, Mr. GRASSLEY, Mr. NELSON of Nebraska, Mr. JOHANNES, and Mr. LEAHY) submitted an amendment intended to be proposed by him to the bill S. 3217, supra; which was ordered to lie on the table.

SA 3921. Mr. BROWNBACK submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 3910. Mr. PRYOR submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end “too big to fail”, to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1013, line 18, strike “and” and all that follows through line 20 and insert the following:

“(ii) a description of any internal review of rating procedures and methodologies conducted by the nationally recognized statistical rating organization; and

“(iii) an evaluation of how well the nationally recognized statistical rating organization adheres to the rating procedures and methodologies of the nationally recognized statistical rating organization;

“(iv) a narrative response agreeing or disagreeing with the results of the most recent annual examination of the nationally recognized statistical rating organization carried out by the Commission under subsection (p)(3); and

“(v) a certification that the report is accurate and complete.

On page 1016, line 18, strike “and” and all that follows through line 23 and insert the following:

“(viii) the policies of the nationally recognized statistical rating organization governing the post-employment activities of former staff of the nationally recognized statistical rating organization; and

“(ix) whether the nationally recognized statistical rating organization fully complies with the public disclosure requirements under this section regarding rating procedures and methodologies.

SA 3911. Mr. CASEY submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end “too big to fail”, to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 40, between lines 12 and 13, insert the following:

(5) DISCLOSURE OF REASONS FOR DETERMINATION.—

(A) STATEMENT.—Following an affirmative determination by the Council with respect to any nonbank financial company that is registered pursuant to the Investment Company Act of 1940, the primary financial regulatory agency may request the Council to provide a detailed statement of—

(i) reasons for the determination by the Council that material financial distress at that particular company would pose a threat to the financial stability of the United States; and

(ii) why prudential regulation by the primary financial regulatory agency would be inadequate to prevent such a threat.

(B) REQUESTS FOR RECONSIDERATION.—If the primary financial regulatory agency disagrees with the detailed statement of reasons provided under subparagraph (A), the agency may request the Council to reconsider its determination, or may propose its own prudential standards to address the concerns identified in the statement of reasons in lieu of prudential standards imposed by the Board of Governors, which prudential standards the Council shall accept, unless it determines, by a vote of not fewer than 2/3 of the members then serving, including an affirmative vote by the Chairperson, that such prudential standards would be inadequate to prevent such a threat.

On page 40, line 23, insert after “company,” the following: “including all procedures under subsection (e)(5).”

SA 3912. Mr. WHITEHOUSE (for Ms. CANTWELL) proposed an amendment to the bill H.R. 3619, to authorize appropriations for the Coast Guard for fiscal year 2010, and for other purposes; as follows:

Strike out all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Coast Guard Authorization Act for Fiscal Years 2010 and 2011”.

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

Sec. 1. Short title.

Sec. 2. Table of contents.

TITLE I—AUTHORIZATIONS

Sec. 101. Authorization of appropriations.

Sec. 102. Authorized levels of military strength and training.

TITLE II—ADMINISTRATION

- Sec. 201. Authority to distribute funds through grants, cooperative agreements, and contracts to maritime authorities and organizations.
- Sec. 202. Assistance to foreign governments and maritime authorities.
- Sec. 203. Cooperative agreements for industrial activities.
- Sec. 204. Defining Coast Guard vessels and aircraft.

TITLE III—ORGANIZATION

- Sec. 301. Vice commandant; vice admirals.
- Sec. 302. Number and distribution of commissioned officers on the active duty promotion list.

TITLE IV—PERSONNEL

- Sec. 401. Leave retention authority.
- Sec. 402. Legal assistance for Coast Guard reservists.
- Sec. 403. Reimbursement for certain medical related expenses.
- Sec. 404. Reserve commissioned warrant officer to lieutenant program.
- Sec. 405. Enhanced status quo officer promotion system.
- Sec. 406. Appointment of civilian Coast Guard judges.
- Sec. 407. Coast Guard participation in the Armed Forces Retirement Home system.
- Sec. 408. Crew wages on passenger vessels.
- Sec. 409. Protection and fair treatment of seafarers.

TITLE V—ACQUISITION REFORM

- Sec. 501. Chief Acquisition Officer.
- Sec. 502. Acquisitions.

“CHAPTER 15—ACQUISITIONS

“SUBCHAPTER 1—GENERAL PROVISIONS

- “Sec.
- “561. Acquisition directorate
- “562. Senior acquisition leadership team
- “563. Improvements in Coast Guard acquisition management
- “564. Recognition of Coast Guard personnel for excellence in acquisition
- “565. Prohibition on use of lead systems integrators
- “566. Required contract terms
- “567. Department of Defense consultation
- “568. Undefined contractual actions

“SUBCHAPTER 2—IMPROVED ACQUISITION PROCESS AND PROCEDURES

- “Sec.
- “571. Identification of major system acquisitions
- “572. Acquisition
- “573. Preliminary development and demonstration
- “574. Acquisition, production, deployment, and support
- “575. Acquisition program baseline breach

“SUBCHAPTER 3—DEFINITIONS

- “Sec.
- “581. Definitions”

- Sec. 503. Report and guidance on excess pass-through charges.

TITLE VI—SHIPPING AND NAVIGATION

- Sec. 601. Technical amendments to chapter 313 of title 46, United States Code.
- Sec. 602. Clarification of rulemaking authority.
- Sec. 603. Icebreakers.
- Sec. 604. Phaseout of vessels supporting oil and gas development.

TITLE VII—VESSEL CONVEYANCE

- Sec. 701. Short title.

- Sec. 702. Conveyance of Coast Guard vessels for public purposes.

TITLE VIII—OIL POLLUTION PREVENTION

- Sec. 801. Rulemakings.
- Sec. 802. Oil transfers from vessels.
- Sec. 803. Improvements to reduce human error and near miss incidents.
- Sec. 804. Olympic coast national marine sanctuary.
- Sec. 805. Prevention of small oil spills.
- Sec. 806. Improved coordination with tribal governments.
- Sec. 807. Report on availability of technology to detect the loss of oil.
- Sec. 808. Use of oil spill liability trust fund.
- Sec. 809. International efforts on enforcement.
- Sec. 810. Higher volume port area regulatory definition change.
- Sec. 811. Tug escorts for laden oil tankers.
- Sec. 812. Extension of financial responsibility.
- Sec. 813. Oil spill liability trust fund investment amount.
- Sec. 814. Liability for use of single-hull vessels.

TITLE IX—MISCELLANEOUS PROVISIONS

- Sec. 901. Vessel determination.
- Sec. 902. Conveyance of the Presque Isle Light Station Fresnel Lens to Presque Isle Township, Michigan.
- Sec. 903. Land conveyance, Coast Guard property in Marquette County, Michigan, to the city of Marquette, Michigan.
- Sec. 904. Offshore supply vessels.
- Sec. 905. Assessment of certain aids to navigation and traffic flow.
- Sec. 906. Alternative licensing program for operators of uninspected passenger vessels on Lake Texoma in Texas and Oklahoma.

TITLE X—BUDGETARY EFFECTS

- Sec. 1001. Budgetary effects.

TITLE I—AUTHORIZATIONS

SEC. 101. AUTHORIZATION OF APPROPRIATIONS.

Funds are authorized to be appropriated for necessary expenses of the Coast Guard for each of fiscal years 2010 and 2011 as follows:

(1) For the operation and maintenance of the Coast Guard, \$6,556,188,000, of which \$24,500,000 is authorized to be derived from the Oil Spill Liability Trust Fund to carry out the purposes of section 1012(a)(5) of the Oil Pollution Act of 1990.

(2) For the acquisition, construction, renovation, and improvement of aids to navigation, shore and offshore facilities, vessels, and aircraft, including equipment related thereto, \$1,383,980,000, of which \$20,000,000 shall be derived from the Oil Spill Liability Trust Fund to carry out the purposes of section 1012(a)(5) of the Oil Pollution Act of 1990, to remain available until expended; such funds appropriated for personnel compensation and benefits and related costs of acquisition, construction, and improvements shall be available for procurement of services necessary to carry out the Integrated Deepwater Systems program.

(3) For retired pay (including the payment of obligations otherwise chargeable to lapsed appropriations for this purpose), payments under the Retired Serviceman's Family Protection and Survivor Benefit Plans, and payments for medical care of retired personnel and their dependents under chapter 55 of title 10, United States Code, \$1,361,245,000.

(4) For environmental compliance and restoration functions under chapter 19 of title 14, United States Code, \$13,198,000.

(5) For research, development, test, and evaluation programs related to maritime technology, \$19,745,000.

(6) For operation and maintenance of the Coast Guard reserve program, \$133,632,000.

SEC. 102. AUTHORIZED LEVELS OF MILITARY STRENGTH AND TRAINING.

(a) ACTIVE DUTY STRENGTH.—The Coast Guard is authorized an end-of-year strength of active duty personnel of 49,954 as of September 30, 2010, and 52,452 as of September 30, 2011.

(b) MILITARY TRAINING STUDENT LOADS.—The Coast Guard is authorized average military training student loads as follows:

(1) For recruit and special training, 2,500 student years for fiscal year 2010, and 2,625 student years for fiscal year 2011.

(2) For flight training, 170 student years for fiscal year 2010 and 179 student years for fiscal year 2011.

(3) For professional training in military and civilian institutions, 350 student years for fiscal year 2010 and 368 student years for fiscal year 2011.

(4) For officer acquisition, 1,300 student years for fiscal year 2010 and 1,365 student years for fiscal year 2011.

TITLE II—ADMINISTRATION

SEC. 201. AUTHORITY TO DISTRIBUTE FUNDS THROUGH GRANTS, COOPERATIVE AGREEMENTS, AND CONTRACTS TO MARITIME AUTHORITIES AND ORGANIZATIONS.

Section 149 of title 14, United States Code, is amended by adding at the end the following:

“(c) GRANTS TO INTERNATIONAL MARITIME ORGANIZATIONS.—The Commandant may, after consultation with the Secretary of State, make grants to, or enter into cooperative agreements, contracts, or other agreements with, international maritime organizations for the purpose of acquiring information or data about merchant vessel inspections, security, safety and environmental requirements, classification, and port state or flag state law enforcement or oversight.”

SEC. 202. ASSISTANCE TO FOREIGN GOVERNMENTS AND MARITIME AUTHORITIES.

Section 149 of title 14, United States Code, as amended by section 201, is further amended by adding at the end the following:

“(d) AUTHORIZED ACTIVITIES.—

“(1) The Commandant may transfer or expend funds from any appropriation available to the Coast Guard for—

“(A) the activities of traveling contact teams, including any transportation expense, translation services expense, or administrative expense that is related to such activities;

“(B) the activities of maritime authority liaison teams of foreign governments making reciprocal visits to Coast Guard units, including any transportation expense, translation services expense, or administrative expense that is related to such activities;

“(C) seminars and conferences involving members of maritime authorities of foreign governments;

“(D) distribution of publications pertinent to engagement with maritime authorities of foreign governments; and

“(E) personnel expenses for Coast Guard civilian and military personnel to the extent that those expenses relate to participation in an activity described in subparagraph (C) or (D).

“(2) An activity may not be conducted under this subsection with a foreign country unless the Secretary of State approves the conduct of such activity in that foreign country.”

SEC. 203. COOPERATIVE AGREEMENTS FOR INDUSTRIAL ACTIVITIES.

Section 151 of title 14, United States Code, is amended—

(1) by inserting “(a) IN GENERAL.—” before “All orders”; and

(2) by adding at the end the following:

“(b) ORDERS AND AGREEMENTS FOR INDUSTRIAL ACTIVITIES.—Under this section, the Coast Guard industrial activities may accept orders and enter into reimbursable agreements with establishments, agencies, and departments of the Department of Defense and the Department of Homeland Security.”.

SEC. 204. DEFINING COAST GUARD VESSELS AND AIRCRAFT.

(a) IN GENERAL.—Chapter 17 of title 14, United States Code, is amended by inserting after section 638 the following new section:

“§ 638a. Coast Guard vessels and aircraft defined

“For the purposes of sections 637 and 638 of this title, the term Coast Guard vessels and aircraft means—

“(1) any vessel or aircraft owned, leased, transferred to, or operated by the Coast Guard and under the command of a Coast Guard member; or

“(2) any other vessel or aircraft under the tactical control of the Coast Guard on which one or more members of the Coast Guard are assigned and conducting Coast Guard missions.”.

(b) CLERICAL AMENDMENT.—The table of contents for chapter 17 of such title is amended by inserting after the item relating to section 638 the following:

“638a. Coast Guard vessels and aircraft defined.”.

TITLE III—ORGANIZATION

SEC. 301. VICE COMMANDANT; VICE ADMIRALS.

(a) VICE COMMANDANT.—

(1) Section 41 of title 14, United States Code, is amended by striking “an admiral,” and inserting “admirals.”.

(2) The fourth sentence of section 47 of title 14, United States Code, is amended by striking “vice admiral” and inserting “admiral”.

(b) VICE ADMIRALS.—Section 50 of such title is amended to read as follows:

“§ 50. Vice admirals

“(a)(1) The President may designate no more than 4 positions of importance and responsibility that shall be held by officers who—

“(A) while so serving, shall have the grade of vice admiral, with the pay and allowances of that grade; and

“(B) shall perform such duties as the Commandant may prescribe.

“(2) The President may appoint, by and with the advice and consent of the Senate, and reappoint, by and with the advice and consent of the Senate, to any such position an officer of the Coast Guard who is serving on active duty above the grade of captain. The Commandant shall make recommendations for such appointments.

“(b)(1) The appointment and the grade of vice admiral shall be effective on the date the officer assumes that duty and, except as provided in paragraph (2) of this subsection or in section 51(d) of this title, shall terminate on the date the officer is detached from that duty.

“(2) An officer who is appointed to a position designated under subsection (a) shall continue to hold the grade of vice admiral—

“(A) while under orders transferring the officer to another position designated under subsection (a), beginning on the date the officer is detached from that duty and terminating on the date before the day the officer assumes the subsequent duty, but not for more than 60 days;

“(B) while hospitalized, beginning on the day of the hospitalization and ending on the day the officer is discharged from the hospital, but not for more than 180 days; and

“(C) while awaiting retirement, beginning on the date the officer is detached from duty

and ending on the day before the officer's retirement, but not for more than 60 days.

“(c)(1) An appointment of an officer under subsection (a) does not vacate the permanent grade held by the officer.

“(2) An officer serving in a grade above rear admiral who holds the permanent grade of rear admiral (lower half) shall be considered for promotion to the permanent grade of rear admiral as if the officer was serving in the officer's permanent grade.

“(d) Whenever a vacancy occurs in a position designated under subsection (a), the Commandant shall inform the President of the qualifications needed by an officer serving in that position or office to carry out effectively the duties and responsibilities of that position or office.”.

(c) REPEAL.—Section 50a of such title is repealed.

(d) CONFORMING AMENDMENTS.—Section 51 of such title is amended—

(1) by striking subsections (a), (b), and (c) and inserting the following:

“(a) An officer, other than the Commandant, who, while serving in the grade of admiral or vice admiral, is retired for physical disability shall be placed on the retired list with the highest grade in which that officer served.

“(b) An officer, other than the Commandant, who is retired while serving in the grade of admiral or vice admiral, or who, after serving at least 2½ years in the grade of admiral or vice admiral, is retired while serving in a lower grade, may in the discretion of the President, be retired with the highest grade in which that officer served.

“(c) An officer, other than the Commandant, who, after serving less than 2½ years in the grade of admiral or vice admiral, is retired while serving in a lower grade, shall be retired in his permanent grade.”; and

(2) by striking “Area Commander, or Chief of Staff” in subsection (d)(2) and inserting “or Vice Admiral”.

(e) CONTINUITY OF GRADE.—Section 52 of title 14, United States Code, is amended by inserting “or admiral” after “vice admiral” the first place it appears.

(f) CONTINUATION ON ACTIVE DUTY.—The second sentence of section 290(a) of title 14, United States Code, is amended to read as follows: “Officers, other than the Commandant, serving for the time being or who have served in the grade of vice admiral or admiral are not subject to consideration for continuation under this subsection, and as to all other provisions of this section shall be considered as having been continued at the grade of rear admiral.”.

(g) CLERICAL AMENDMENTS.—

(1) The section caption for section 47 of such title is amended to read as follows:

“§ 47. Vice commandant; appointment”.

(2) The section caption for section 52 of title 14, United States Code, is amended to read as follows:

“§ 52. Vice admirals and admiral, continuity of grade”.

(3) The table of contents for chapter 3 of such title is amended—

(A) by striking the item relating to section 47 and inserting the following:

“47. Vice Commandant; appointment.”;

(B) by striking the item relating to section 50a;

(C) by striking the item relating to section 50 and inserting the following:

“50. Vice admirals.”; and

(D) by striking the item relating to section 52 and inserting the following:

“52. Vice admirals and admiral, continuity of grade.”.

(h) TECHNICAL CORRECTION.—Section 47 of such title is further amended by striking “subsection” in the fifth sentence and inserting “section”.

(i) TREATMENT OF INCUMBENTS; TRANSITION.—

(1) Notwithstanding any other provision of law, the officer who, on the date of enactment of this Act, is serving as Vice Commandant—

(A) shall continue to serve as Vice Commandant;

(B) shall have the grade of admiral with pay and allowances of that grade; and

(C) shall not be required to be reappointed by reason of the enactment of that Act.

(2) Notwithstanding any other provision of law, an officer who, on the date of enactment of this Act, is serving as Chief of Staff, Commander, Atlantic Area, or Commander, Pacific Area—

(A) shall continue to have the grade of vice admiral with pay and allowance of that grade until such time that the officer is relieved of his duties and appointed and confirmed to another position as a vice admiral or admiral; or

(B) for the purposes of transition, may continue at the grade of vice admiral with pay and allowance of that grade, for not more than 1 year after the date of enactment of this Act, to perform the duties of the officer's former position and any other such duties that the Commandant prescribes.

SEC. 302. NUMBER AND DISTRIBUTION OF COMMISSIONED OFFICERS ON THE ACTIVE DUTY PROMOTION LIST.

(a) IN GENERAL.—Section 42 of title 14, United States Code, is amended—

(1) by striking subsections (a), (b), and (c) and inserting the following:

“(a) The total number of Coast Guard commissioned officers on the active duty promotion list, excluding warrant officers, shall not exceed 7,200. This total number may be temporarily increased up to 2 percent for no more than the 60 days that follow the commissioning of a Coast Guard Academy class.

“(b) The total number of commissioned officers authorized by this section shall be distributed in grade not to exceed the following percentages:

“(1) 0.375 percent for rear admiral.

“(2) 0.375 percent for rear admiral (lower half).

“(3) 6.0 percent for captain.

“(4) 15.0 percent for commander.

“(5) 22.0 percent for lieutenant commander.

The Secretary shall prescribe the percentages applicable to the grades of lieutenant, lieutenant (junior grade), and ensign. The Secretary may, as the needs of the Coast Guard require, reduce any of the percentages set forth in paragraphs (1) through (5) and apply that total percentage reduction to any other lower grade or combination of lower grades.

“(c) The Secretary shall, at least once a year, compute the total number of commissioned officers authorized to serve in each grade by applying the grade distribution percentages of this section to the total number of commissioned officers listed on the current active duty promotion list. In making such calculations, any fraction shall be rounded to the nearest whole number. The number of commissioned officers on the active duty promotion list serving with other departments or agencies on a reimbursable basis or excluded under the provisions of section 324(d) of title 49, shall not be counted against the total number of commissioned officers authorized to serve in each grade.”;

(2) by striking subsection (e) and inserting the following:

“(e) The number of officers authorized to be serving on active duty in each grade of

the permanent commissioned teaching staff of the Coast Guard Academy and of the Reserve serving in connection with organizing, administering, recruiting, instructing, or training the reserve components shall be prescribed by the Secretary.”; and

(3) by striking the caption of such section and inserting the following:

“§42. Number and distribution of commissioned officers on the active duty promotion list”.

(b) CLERICAL AMENDMENT.—The table of contents for chapter 3 of such title is amended by striking the item relating to section 42 and inserting the following:

“42. Number and distribution of commissioned officers on the active duty promotion list”.

TITLE IV—PERSONNEL

SEC. 401. LEAVE RETENTION AUTHORITY.

Section 701(f)(2) of title 10, United States Code, is amended by inserting “or a declaration of a major disaster or emergency by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93-288, 42 U.S.C. 5121 et seq.)” after “operation”.

SEC. 402. LEGAL ASSISTANCE FOR COAST GUARD RESERVISTS.

Section 1044(a)(4) of title 10, United States Code, is amended—

(1) by striking “(as determined by the Secretary of Defense),” and inserting “(as determined by the Secretary of Defense and the Secretary of the department in which the Coast Guard is operating, with respect to the Coast Guard when it is not operating as a service of the Navy),”; and

(2) by striking “prescribed by the Secretary of Defense,” and inserting “prescribed by Secretary of Defense and the Secretary of the department in which the Coast Guard is operating, with respect to the Coast Guard when it is not operating as a service of the Navy,”.

SEC. 403. REIMBURSEMENT FOR CERTAIN MEDICAL-RELATED TRAVEL EXPENSES.

Section 1074i(a) of title 10, United States Code, is amended—

(1) by striking “IN GENERAL.—In” and inserting “IN GENERAL.—(1) In”; and

(2) by adding at the end the following: “(2) In any case in which a covered beneficiary resides on an INCONUS island that lacks public access roads to the mainland and is referred by a primary care physician to a specialty care provider on the mainland who provides services less than 100 miles from the location in which the beneficiary resides, the Secretary shall reimburse the reasonable travel expenses of the covered beneficiary, and, when accompaniment by an adult is necessary, for a parent or guardian of the covered beneficiary or another member of the covered beneficiary’s family who is at least 21 years of age.”.

SEC. 404. RESERVE COMMISSIONED WARRANT OFFICER TO LIEUTENANT PROGRAM.

Section 214(a) of title 14, United States Code, is amended to read as follows:

“(a) The President may appoint temporary commissioned officers—

“(1) in the Regular Coast Guard in a grade, not above lieutenant, appropriate to their qualifications, experience, and length of service, as the needs of the Coast Guard may require, from among the commissioned warrant officers, warrant officers, and enlisted members of the Coast Guard, and from licensed officers of the United States merchant marine; and

“(2) in the Coast Guard Reserve in a grade, not above lieutenant, appropriate to their qualifications, experience, and length of service, as the needs of the Coast Guard may

require, from among the commissioned warrant officers of the Coast Guard Reserve.”.

SEC. 405. ENHANCED STATUS QUO OFFICER PROMOTION SYSTEM.

(a) Section 253(a) of title 14, United States Code, is amended—

(1) by inserting “and” after “considered,”; and

(2) by striking “consideration, and the number of officers the board may recommend for promotion” and inserting “consideration”.

(b) Section 258 of such title is amended—

(1) by inserting “(a)” before “The Secretary”; and

(2) by adding at the end the following:

“(b) In addition to the information provided pursuant to subsection (a), the Secretary may furnish the selection board—

“(1) specific direction relating to the needs of the service for officers having particular skills, including direction relating to the need for a minimum number of officers with particular skills within a specialty; and

“(2) such other guidance that the Secretary believes may be necessary to enable the board to properly perform its functions. Selections made based on the direction and guidance provided under this subsection shall not exceed the maximum percentage of officers who may be selected from below the announced promotion zone at any given selection board convened under section 251 of this title.”.

(c) Section 259(a) of such title is amended by striking “board” the second place it appears and inserting “board, giving due consideration to the needs of the service for officers with particular skills so noted in the specific direction furnished pursuant to section 258 of this title.”.

(d) Section 260(b) of such title is amended by inserting “to meet the needs of the service (as noted in the specific direction furnished the board under section 258 of this title)” after “qualified for promotion”.

SEC. 406. APPOINTMENT OF CIVILIAN COAST GUARD JUDGES.

Section 875 of the Homeland Security Act of 2002 (6 U.S.C. 455) is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b) the following:

“(c) APPOINTMENT OF JUDGES.—The Secretary may appoint civilian employees of the Department of Homeland Security as appellate military judges, available for assignment to the Coast Guard Court of Criminal Appeals as provided for in section 866(a) of title 10, United States Code.”.

SEC. 407. COAST GUARD PARTICIPATION IN THE ARMED FORCES RETIREMENT HOME SYSTEM.

(a) ELIGIBILITY UNDER THE ARMED FORCES RETIREMENT HOME ACT.—Section 1502 of the Armed Forces Retirement Home Act of 1991 (24 U.S.C. 401) is amended—

(1) by striking “does not include the Coast Guard when it is not operating as a service of the Navy.” in paragraph (4) and inserting “has the meaning given such term in section 101(4) of title 10.”;

(2) by striking “and” in paragraph (5)(C);

(3) by striking “Affairs.” in paragraph (5)(D) and inserting “Affairs; and”;

(4) by adding at the end of paragraph (5) the following:

“(E) the Assistant Commandant of the Coast Guard for Human Resources.”; and

(5) by adding at the end of paragraph (6) the following:

“(E) The Master Chief Petty Officer of the Coast Guard.”.

(b) DEDUCTIONS.—

(1) Section 2772 of title 10, United States Code, is amended—

(A) by striking “of the military department” in subsection (a);

(B) by striking “Armed Forces Retirement Home Board” in subsection (b) and inserting “Chief Operating Officer of the Armed Forces Retirement Home”; and

(C) by striking subsection (c).

(2) Section 1007(i) of title 37, United States Code, is amended—

(A) by striking “Armed Forces Retirement Home Board,” in paragraph (3) and inserting “Chief Operating Officer of the Armed Forces Retirement Home,”; and

(B) by striking “does not include the Coast Guard when it is not operating as a service of the Navy.” in paragraph (4) and inserting “has the meaning given such term in section 101(4) of title 10.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the first day of the first pay period beginning on or after January 1, 2010.

SEC. 408. CREW WAGES ON PASSENGER VESSELS.

(a) FOREIGN AND INTERCOASTAL VOYAGES.—

(1) CAP ON PENALTY WAGES.—Section 10313(g) of title 46, United States Code, is amended—

(A) by striking “When” and inserting “(1) Subject to paragraph (2), when”; and

(B) by adding at the end the following:

“(2) The total amount required to be paid under paragraph (1) with respect to all claims in a class action suit by seamen on a passenger vessel capable of carrying more than 500 passengers for wages under this section against a vessel master, owner, or operator or the employer of the seamen shall not exceed 10 times the unpaid wages that are the subject of the claims.

“(3) A class action suit for wages under this subsection must be commenced within 3 years after the later of—

“(A) the date of the end of the last voyage for which the wages are claimed; or

“(B) the receipt, by a seaman who is a claimant in the suit, of a payment of wages that are the subject of the suit that is made in the ordinary course of employment.”.

(2) DEPOSITS.—Section 10315 of such title is amended by adding at the end the following:

“(f) DEPOSITS IN SEAMAN ACCOUNT.—By written request signed by the seaman, a seaman employed on a passenger vessel capable of carrying more than 500 passengers may authorize the master, owner, or operator of the vessel, or the employer of the seaman, to make deposits of wages of the seaman into a checking, savings, investment, or retirement account, or other account to secure a payroll or debit card for the seaman if—

“(1) the wages designated by the seaman for such deposit are deposited in a United States or international financial institution designated by the seaman;

“(2) such deposits in the financial institution are fully guaranteed under commonly accepted international standards by the government of the country in which the financial institution is licensed;

“(3) a written wage statement or pay stub, including an accounting of any direct deposit, is delivered to the seaman no less often than monthly; and

“(4) while on board the vessel on which the seaman is employed, the seaman is able to arrange for withdrawal of all funds on deposit in the account in which the wages are deposited.”.

(b) COASTWISE VOYAGES.—

(1) CAP ON PENALTY WAGES.—Section 10504(c) of such title is amended—

(A) by striking “When” and inserting “(1) Subject to subsection (d), and except as provided in paragraph (2), when”; and

(B) by adding at the end the following:

“(2) The total amount required to be paid under paragraph (1) with respect to all

claims in a class action suit by seamen on a passenger vessel capable of carrying more than 500 passengers for wages under this section against a vessel master, owner, or operator or the employer of the seamen shall not exceed 10 times the unpaid wages that are the subject of the claims.

“(3) A class action suit for wages under this subsection must be commenced within 3 years after the later of—

“(A) the date of the end of the last voyage for which the wages are claimed; or

“(B) the receipt, by a seaman who is a claimant in the suit, of a payment of wages that are the subject of the suit that is made in the ordinary course of employment.”.

(2) DEPOSITS.—Section 10504 of such title is amended by adding at the end the following:

“(f) DEPOSITS IN SEAMAN ACCOUNT.—By written request signed by the seaman, a seaman employed on a passenger vessel capable of carrying more than 500 passengers may authorize the master, owner, or operator of the vessel, or the employer of the seaman, to make deposits of wages of the seaman into a checking, savings, investment, or retirement account, or other account to secure a payroll or debit card for the seaman if—

“(1) the wages designated by the seaman for such deposit are deposited in a United States or international financial institution designated by the seaman;

“(2) such deposits in the financial institution are fully guaranteed under commonly accepted international standards by the government of the country in which the financial institution is licensed;

“(3) a written wage statement or pay stub, including an accounting of any direct deposit, is delivered to the seaman no less often than monthly; and

“(4) while on board the vessel on which the seaman is employed, the seaman is able to arrange for withdrawal of all funds on deposit in the account in which the wages are deposited.”.

SEC. 409. PROTECTION AND FAIR TREATMENT OF SEAFARERS.

(a) IN GENERAL.—Chapter 111 of title 46, United States Code, is amended by adding at the end the following new section:

“§ 11113. Protection and fair treatment of seafarers

“(a) PURPOSE.—The purpose of this section is to ensure the protection and fair treatment of seafarers.

“(b) FUND.—

“(1) ESTABLISHMENT.—There is established in the Treasury a special fund known as the ‘Support of Seafarers Fund’.

“(2) USE OF AMOUNTS IN FUND.—The amounts covered into the Fund shall be available to the Secretary, without further appropriation and without fiscal year limitation, to—

“(A) pay necessary support, pursuant to subsection (c)(1)(A) of this section; and

“(B) reimburse a shipowner for necessary support, pursuant to subsection (c)(1)(B) of this section.

“(3) AMOUNTS CREDITED TO FUND.—Notwithstanding any other provision of law, the Fund may receive—

“(A) any moneys ordered to be paid to the Fund in the form of community service pursuant to section 3563(b) of title 18;

“(B) amounts reimbursed or recovered pursuant to subsection (d) of this section;

“(C) amounts appropriated to the Fund pursuant to subsection (g) of this section; and

“(D) appropriations available to the Secretary for transfer.

“(4) PREREQUISITE FOR COMMUNITY SERVICE CREDITS.—The Fund may receive credits pursuant to paragraph (3)(A) of this subsection only when the unobligated balance of the Fund is less than \$5,000,000.

“(5) REPORT REQUIRED.—

“(A) Except as provided in subparagraph (B) of this paragraph, the Secretary shall not obligate any amount in the Fund in a given fiscal year unless the Secretary has submitted to Congress, concurrent with the President’s budget submission for that fiscal year, a report that describes—

“(i) the amounts credited to the Fund, pursuant to paragraph (3) of this subsection, for the preceding fiscal year;

“(ii) a detailed description of the activities for which amounts were charged; and

“(iii) the projected level of expenditures from the Fund for the coming fiscal year, based on—

“(I) on-going activities; and

“(II) new cases, derived from historic data.

“(B) The limitation in subparagraph (A) of this paragraph shall not apply to obligations during the first fiscal year during which amounts are credited to the Fund.

“(6) FUND MANAGER.—The Secretary shall designate a Fund manager, who shall—

“(A) ensure the visibility and accountability of transactions utilizing the Fund;

“(B) prepare the report required by paragraph (5); and

“(C) monitor the unobligated balance of the Fund and provide notice to the Secretary and the Attorney General whenever the unobligated balance of the Fund is less than \$5,000,000.

“(c) IN GENERAL.—

“(1) AUTHORITY.—The Secretary is authorized—

“(A) to pay, in whole or in part, without further appropriation and without fiscal year limitation, from amounts in the Fund, necessary support of—

“(i) any seafarer who enters, remains, or has been paroled into the United States and is involved in an investigation, reporting, documentation, or adjudication of any matter that is related to the administration or enforcement of any treaty, law, or regulation by the Coast Guard; and

“(ii) any seafarer whom the Secretary finds to have been abandoned in the United States; and

“(B) to reimburse, in whole or in part, without further appropriation and without fiscal year limitation, from amounts in the Fund, a shipowner, who has filed a bond or surety satisfactory pursuant to subparagraph (A) and provided necessary support of a seafarer who has been paroled into the United States to facilitate an investigation, reporting, documentation, or adjudication of any matter that is related to the administration or enforcement of any treaty, law, or regulation by the Coast Guard, for costs of necessary support, when the Secretary deems reimbursement necessary to avoid serious injustice.

“(2) LIMITATION.—Nothing in this section shall be construed—

“(A) to create a right, benefit, or entitlement to necessary support; or

“(B) to compel the Secretary to pay, or reimburse the cost of, necessary support.

“(d) REIMBURSEMENTS; RECOVERY.—

“(1) IN GENERAL.—Any shipowner shall reimburse the Fund an amount equal to the total amount paid from the Fund for necessary support of the seafarer, plus a surcharge of 25 percent of such total amount if—

“(A)(i) the shipowner, during the course of an investigation, reporting, documentation, or adjudication of any matter that the Coast Guard referred to a United States Attorney or the Attorney General, fails to provide necessary support of a seafarer who has been paroled into the United States to facilitate the investigation, reporting, documentation, or adjudication; and

“(ii) a criminal penalty is subsequently imposed against the shipowner; or

“(B) the shipowner, under any circumstance, abandons a seafarer in the United States, as decided by the Secretary.

“(2) ENFORCEMENT.—If a shipowner fails to reimburse the Fund as required under paragraph (1) of this subsection, the Secretary may—

“(A) proceed in rem against any vessel of the shipowner in the Federal district court for the district in which such vessel is found; and

“(B) withhold or revoke the clearance, required by section 60105 of this title, of any vessel of the shipowner wherever such vessel is found.

“(3) Whenever clearance is withheld or revoked pursuant to paragraph (2)(B) of this subsection, clearance may be granted if the shipowner reimburses the Fund the amount required under paragraph (1) of this subsection.

“(e) SURETY; ENFORCEMENT OF TREATIES, LAWS, AND REGULATIONS.—

“(1) BOND AND SURETY AUTHORITY.—The Secretary is authorized to require a bond or surety satisfactory as an alternative to withholding or revoking clearance required under section 60105 of this title if, in the opinion of the Secretary, such bond or surety satisfactory is necessary to facilitate an investigation, reporting, documentation, or adjudication of any matter that is related to the administration or enforcement of any treaty, law, or regulation by the Coast Guard if the surety corporation providing the bond is authorized by the Secretary of the Treasury under section 9305 of title 31 to provide surety bonds under section 9304 of that title.

“(2) APPLICATION.—The authority to require a bond or a surety satisfactory or to request the withholding or revocation of the clearance required under section 60105 of this title applies to any investigation, reporting, documentation, or adjudication of any matter that is related to the administration or enforcement of any treaty, law, or regulation by the Coast Guard.

“(f) DEFINITIONS.—In this section:

“(1) ABANDONS; ABANDONED.—The term ‘abandons’ or ‘abandoned’ means a shipowner’s unilateral severance of ties with a seafarer or the shipowner’s failure to provide necessary support of a seafarer.

“(2) BOND OR SURETY SATISFACTORY.—The term ‘bond or surety satisfactory’ means a negotiated instrument, the terms of which may, at the discretion of the Secretary, include provisions that require the shipowner to—

“(A) provide necessary support of a seafarer who has or may have information pertinent to an investigation, reporting, documentation, or adjudication of any matter that is related to the administration or enforcement of any treaty, law, or regulation by the Secretary;

“(B) facilitate an investigation, reporting, documentation, or adjudication of any matter that is related to the administration or enforcement of any treaty, law, or regulation by the Secretary;

“(C) stipulate to certain incontrovertible facts, including, but not limited to, the ownership or operation of the vessel, or the authenticity of documents and things from the vessel;

“(D) facilitate service of correspondence and legal papers;

“(E) enter an appearance in United States district court;

“(F) comply with directions regarding payment of funds;

“(G) name an agent in the United States for service of process;

“(H) make stipulations as to the authenticity of certain documents in United States district court;

“(I) provide assurances that no discriminatory or retaliatory measures will be taken against a seafarer involved in an investigation, reporting, documentation, or adjudication of any matter that is related to the administration or enforcement of any treaty, law, or regulation by the Secretary;

“(J) provide financial security in the form of cash, bond, or other means acceptable to the Secretary; and

“(K) provide for any other appropriate measures as the Secretary considers necessary to ensure the Government is not prejudiced by granting the clearance required by section 60105 of title 46.

“(3) FUND.—The term ‘Fund’ means the Support of Seafarers Fund, established pursuant to this section.

“(4) NECESSARY SUPPORT.—The term ‘necessary support’ means normal wages, lodging, subsistence, clothing, medical care (including hospitalization), repatriation, and any other expense the Secretary deems appropriate.

“(5) SEAFARER.—The term ‘seafarer’ means an alien crewman who is employed or engaged in any capacity on board a vessel subject to the jurisdiction of the United States.

“(6) SHIPOWNER.—The term ‘shipowner’ means the individual or entity that owns, has an ownership interest in, or operates a vessel subject to the jurisdiction of the United States.

“(7) VESSEL SUBJECT TO THE JURISDICTION OF THE UNITED STATES.—The term ‘vessel subject to the jurisdiction of the United States’ has the same meaning it has in section 70502(c) of this title, except that it excludes a vessel owned or bareboat chartered and operated by the United States, by a State or political subdivision thereof, or by a foreign nation, except when that vessel is engaged in commerce.

“(g) REGULATIONS.—The Secretary may prescribe regulations to implement this section.

“(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Fund \$1,500,000 for each of fiscal years 2010, 2011, and 2012.”

(b) CLERICAL AMENDMENT.—The chapter analysis for chapter 111 of title 46, United States Code, is amended by adding at the end the following new item:

“11113. Protection and fair treatment of seafarers”.

TITLE V—ACQUISITION REFORM

SEC. 501. CHIEF ACQUISITION OFFICER.

(a) IN GENERAL.—Chapter 3 of title 14, United States Code, is amended by adding at the end the following:

“§ 55. Chief Acquisition Officer

“(a) IN GENERAL.—There shall be in the Coast Guard a Chief Acquisition Officer selected by the Commandant who shall be a Rear Admiral or civilian from the Senior Executive Service (career reserved). The Chief Acquisition Officer shall serve at the Assistant Commandant level and have acquisition management as that individual’s primary duty.

“(b) QUALIFICATIONS.—The Chief Acquisition Officer shall be an acquisition professional with a Level III certification and must have at least 10 years experience in an acquisition position, of which at least 4 years were spent as—

- “(1) the program executive officer;
- “(2) the program manager of a Level 1 or Level 2 acquisition project or program;
- “(3) the deputy program manager of a Level 1 or Level 2 acquisition; or
- “(4) a combination of such positions.

“(c) FUNCTIONS OF THE CHIEF ACQUISITION OFFICER.—The functions of the Chief Acquisition Officer include—

“(1) monitoring the performance of programs and projects on the basis of applicable performance measurements and advising the Commandant, through the chain of command, regarding the appropriate business strategy to achieve the missions of the Coast Guard;

“(2) maximizing the use of full and open competition at the prime contract and sub-contract levels in the acquisition of property, capabilities, and services by the Coast Guard by establishing policies, procedures, and practices that ensure that the Coast Guard receives a sufficient number of competitive proposals from responsible sources to fulfill the Government’s requirements, including performance and delivery schedules, at the lowest cost or best value considering the nature of the property or service procured;

“(3) making acquisition decisions in concurrence with the technical authority, or technical authorities, as appropriate, of the Coast Guard, as designated by the Commandant, consistent with all other applicable laws and decisions establishing procedures within the Coast Guard;

“(4) ensuring the use of detailed performance specifications in instances in which performance based contracting is used;

“(5) managing the direction of acquisition policy for the Coast Guard, including implementation of the unique acquisition policies, regulations, and standards of the Coast Guard;

“(6) developing and maintaining an acquisition career management program in the Coast Guard to ensure that there is an adequate acquisition workforce;

“(7) assessing the requirements established for Coast Guard personnel regarding knowledge and skill in acquisition resources and management and the adequacy of such requirements for facilitating the achievement of the performance goals established for acquisition management;

“(8) developing strategies and specific plans for hiring, training, and professional development; and

“(9) reporting to the Commandant, through the chain of command, on the progress made in improving acquisition management capability.”

(b) CLERICAL AMENDMENT.—The table of contents for chapter 3 of title 14, United States Code, is amended by adding at the end the following:

“55. Chief Acquisition Officer”.

(c) SELECTION DEADLINE.—As soon as practicable after the date of enactment of this Act, but no later than October 1, 2011, the Commandant of the Coast Guard shall select a Chief Acquisition Officer under section 55 of title 14, United States Code.

SEC. 502. ACQUISITIONS.

(a) IN GENERAL.—Part I of title 14, United States Code, is amended by inserting after chapter 13 the following:

“CHAPTER 15. ACQUISITIONS

“SUBCHAPTER 1—GENERAL PROVISIONS

“Sec.

“561. Acquisition directorate

“562. Senior acquisition leadership team

“563. Improvements in Coast Guard acquisition management

“564. Recognition of Coast Guard personnel for excellence in acquisition

“565. Prohibition on use of lead systems integrators

“566. Required contract terms

“567. Department of Defense consultation

“568. Undefined contractual actions

“SUBCHAPTER 2—IMPROVED ACQUISITION PROCESS AND PROCEDURES

“Sec.

“571. Identification of major system acquisitions

“572. Acquisition

“573. Preliminary development and demonstration

“574. Acquisition, production, deployment, and support

“575. Acquisition program baseline breach

“SUBCHAPTER 3—DEFINITIONS

“Sec.

“581. Definitions

“SUBCHAPTER 1—GENERAL PROVISIONS

“§ 561. Acquisition directorate

“(a) ESTABLISHMENT.—The Commandant of the Coast Guard shall establish an acquisition directorate to provide guidance and oversight for the implementation and management of all Coast Guard acquisition processes, programs, and projects.

“(b) MISSION.—The mission of the acquisition directorate is—

“(1) to acquire and deliver assets and systems that increase operational readiness, enhance mission performance, and create a safe working environment; and

“(2) to assist in the development of a workforce that is trained and qualified to further the Coast Guard’s missions and deliver the best value products and services to the Nation.

“§ 562. Senior acquisition leadership team

“(a) ESTABLISHMENT.—The Commandant shall establish a senior acquisition leadership team within the Coast Guard comprised of—

“(1) the Vice Commandant;

“(2) the Deputy and Assistant Commandants;

“(3) appropriate senior staff members of each Coast Guard directorate;

“(4) appropriate senior staff members for each assigned field activity or command; and

“(5) any other Coast Guard officer or employee designated by the Commandant.

“(b) FUNCTION.—The senior acquisition leadership team shall—

“(1) meet at the call of the Commandant at such places and such times as the Commandant may require;

“(2) provide advice and information on operational and performance requirements of the Coast Guard;

“(3) identify gaps and vulnerabilities in the operational readiness of the Coast Guard;

“(4) make recommendations to the Commandant and the Chief Acquisition Officer to remedy the identified gaps and vulnerabilities in the operational readiness of the Coast Guard; and

“(5) contribute to the development of a professional, experienced acquisition workforce by providing acquisition-experience tours of duty and educational development for officers and employees of the Coast Guard.

“§ 563. Improvements in Coast Guard acquisition management

“(a) PROJECT AND PROGRAM MANAGERS.—

“(1) PROJECT OR PROGRAM MANAGER DEFINED.—In this section, the term ‘project or program manager’ means an individual designated—

“(A) to develop, produce, and deploy a new asset to meet identified operational requirements; and

“(B) to manage cost, schedule, and performance of the acquisition or project or program.

“(2) LEVEL 1 PROJECTS.—An individual may not be assigned as the project or program manager for a Level 1 acquisition unless the individual holds a Level III acquisition certification as a program manager.

“(3) LEVEL 2 PROJECTS.—An individual may not be assigned as the project or program

manager for a Level 2 acquisition unless the individual holds a Level II acquisition certification as a program manager.

“(b) GUIDANCE ON TENURE AND ACCOUNTABILITY OF PROGRAM AND PROJECT MANAGERS.—Not later than one year after the date of enactment of the Coast Guard Authorization Act for Fiscal years 2010 and 2011, the Commandant shall issue guidance to address the qualifications, resources, responsibilities, tenure, and accountability of program and project managers for the management of acquisition programs and projects. The guidance shall address, at a minimum—

“(1) the qualifications required for project or program managers, including the number of years of acquisition experience and the professional training levels to be required of those appointed to project or program management positions; and

“(2) authorities available to project or program managers, including, to the extent appropriate, the authority to object to the addition of new program requirements that would be inconsistent with the parameters established for an acquisition program.

“(c) ACQUISITION WORKFORCE.—

“(1) IN GENERAL.—The Commandant shall designate a sufficient number of positions to be in the Coast Guard's acquisition workforce to perform acquisition-related functions at Coast Guard headquarters and field activities.

“(2) REQUIRED POSITIONS.—The Commandant shall ensure that members of the acquisition workforce have expertise, education, and training in at least 1 of the following acquisition career fields:

“(A) Acquisition logistics.

“(B) Auditing.

“(C) Business, cost estimating, and financial management.

“(D) Contracting.

“(E) Facilities engineering.

“(F) Industrial or contract property management.

“(G) Information technology.

“(H) Manufacturing, production, and quality assurance.

“(I) Program management.

“(J) Purchasing.

“(K) Science and technology.

“(L) Systems planning, research, development, and engineering.

“(M) Test and evaluation.

“(3) ACQUISITION WORKFORCE EXPEDITED HIRING AUTHORITY.—

“(A) IN GENERAL.—For purposes of sections 3304, 5333, and 5753 of title 5, the Commandant may—

“(i) designate any category of acquisition positions within the Coast Guard as shortage category positions; and

“(ii) use the authorities in such sections to recruit and appoint highly qualified person directly to positions so designated.

“(B) LIMITATION.—The Commandant may not appoint a person to a position of employment under this paragraph after September 30, 2012.

“(d) MANAGEMENT INFORMATION SYSTEM.—

“(1) IN GENERAL.—The Commandant shall establish a management information system capability to improve acquisition workforce management and reporting.

“(2) INFORMATION MAINTAINED.—Information maintained with such capability shall include the following standardized information on individuals assigned to positions in the workforce:

“(A) Qualifications, assignment history, and tenure of those individuals assigned to positions in the acquisition workforce or holding acquisition-related certifications.

“(B) Promotion rates for officers and members of the Coast Guard in the acquisition workforce.

“(e) CAREER PATHS.—To establish acquisition management as a core competency of the Coast Guard, the Commandant shall—

“(1) ensure that career paths for officers, members, and employees of the Coast Guard who wish to pursue careers in acquisition are identified in terms of the education, training, experience, and assignments necessary for career progression of those officers, members, and employees to the most senior positions in the acquisition workforce; and

“(2) publish information on such career paths.

“§ 564. Recognition of Coast Guard personnel for excellence in acquisition

“(a) IN GENERAL.—Not later than 180 days after the date of enactment of the Coast Guard Authorization Act for Fiscal Years 2010 and 2011, the Commandant shall commence implementation of a program to recognize excellent performance by individuals and teams comprised of officers, members, and employees of the Coast Guard that contributed to the long-term success of a Coast Guard acquisition project or program.

“(b) ELEMENTS.—The program shall include—

“(1) specific award categories, criteria, and eligibility and manners of recognition;

“(2) procedures for the nomination by personnel of the Coast Guard of individuals and teams comprised of officers, members, and employees of the Coast Guard for recognition under the program; and

“(3) procedures for the evaluation of nominations for recognition under the program by one or more panels of individuals from the Government, academia, and the private sector who have such expertise and are appointed in such manner as the Commandant shall establish for the purposes of this program.

“(c) AWARD OF CASH BONUSES.—As part of the program required by subsection (a), the Commandant, subject to the availability of appropriations, may award to any civilian employee recognized pursuant to the program a cash bonus to the extent that the performance of such individual so recognized warrants the award of such bonus.

“§ 565. Prohibition on use of lead systems integrators

“(a) IN GENERAL.—

“(1) USE OF LEAD SYSTEMS INTEGRATOR.—Except as provided in subsection (b), the Commandant may not use a private sector entity as a lead systems integrator for an acquisition contract awarded or delivery order or task order issued after the date of enactment of the Coast Guard Authorization Act for Fiscal Years 2010 and 2011.

“(2) FULL AND OPEN COMPETITION.—The Commandant and any lead systems integrator engaged by the Coast Guard, pursuant to the exceptions described in subsection (b), shall use full and open competition for any acquisition contract awarded after the date of enactment of that Act, unless otherwise excepted in accordance with the Competition in Contracting Act of 1984 (41 U.S.C. 251 note), the amendments made by that Act, and the Federal Acquisition Regulations.

“(3) NO EFFECT ON SMALL BUSINESS ACT.—Nothing in this subsection shall be construed to supersede or otherwise affect the authorities provided by and under the Small Business Act (15 U.S.C. 631 et seq.).

“(b) EXCEPTIONS.—

“(1) NATIONAL DISTRESS AND RESPONSE SYSTEM MODERNIZATION PROGRAM; NATIONAL SECURITY CUTTERS 2 AND 3.—Notwithstanding subsection (a), the Commandant may use a private sector entity as a lead systems integrator for the Coast Guard to complete the National Distress and Response System Modernization Program, the C4ISR projects directly related to the Integrated Deepwater

Program, and National Security Cutters 2 and 3 if the Secretary of Homeland Security certifies that—

“(A) the acquisition is in accordance with the Competition in Contracting Act of 1984 (41 U.S.C. 251 note), the amendments made by that Act, and the Federal Acquisition Regulations; and

“(B) the acquisition and the use of a private sector entity as a lead systems integrator for the acquisition is in the best interest of the Federal Government.

“(2) TERMINATION DATE FOR EXCEPTIONS.—Except for the modification of delivery or task orders pursuant to Parts 4 and 42 of the Federal Acquisition Regulations, the Commandant may not use a private sector entity as a lead systems integrator after the earlier of—

“(A) September 30, 2012; or

“(B) the date on which the Commandant certifies in writing to the appropriate congressional committees that the Coast Guard has available and can retain sufficient contracting personnel and expertise within the Coast Guard, through an arrangement with other Federal agencies, or through contracts or other arrangements with private sector entities, to perform the functions and responsibilities of the lead system integrator in an efficient and cost-effective manner.

“§ 566. Required contract terms

“(a) IN GENERAL.—The Commandant shall ensure that a contract awarded or a delivery order or task order issued for an acquisition of a capability or an asset with an expected service life of 10 years and with a total acquisition cost that is equal to or exceeds \$10,000,000 awarded or issued by the Coast Guard after the date of enactment of the Coast Guard Authorization Act for Fiscal Years 2010 and 2011—

“(1) provides that all certifications for an end-state capability or asset under such contract, delivery order, or task order, respectively, will be conducted by the Commandant or an independent third party, and that self-certification by a contractor or subcontractor is not allowed;

“(2) requires that the Commandant shall maintain the authority to establish, approve, and maintain technical requirements;

“(3) requires that any measurement of contractor and subcontractor performance be based on the status of all work performed, including the extent to which the work performed met all performance, cost, and schedule requirements;

“(4) specifies that, for the acquisition or upgrade of air, surface, or shore capabilities and assets for which compliance with TEMPEST certification is a requirement, the standard for determining such compliance will be the air, surface, or shore standard then used by the Department of the Navy for that type of capability or asset; and

“(5) for any contract awarded to acquire an Offshore Patrol Cutter, includes provisions specifying the service life, fatigue life, and days underway in general Atlantic and North Pacific Sea conditions, maximum range, and maximum speed the cutter will be built to achieve.

“(b) PROHIBITED CONTRACT PROVISIONS.—The Commandant shall ensure that any contract awarded or delivery order or task order issued by the Coast Guard after the date of enactment of the Coast Guard Authorization Act for Fiscal Years 2010 and 2011 does not include any provision allowing for equitable adjustment that is not consistent with the Federal Acquisition Regulations.

“(c) INTEGRATED PRODUCT TEAMS.—Integrated product teams, and all teams that oversee integrated product teams, shall be chaired by officers, members, or employees of the Coast Guard.

“(d) DEEPWATER TECHNICAL AUTHORITIES.—The Commandant shall maintain or designate the technical authorities to establish, approve, and maintain technical requirements. Any such designation shall be made in writing and may not be delegated to the authority of the Chief Acquisition Officer established by section 55 of this title.

“§ 567. Department of Defense consultation

“(a) IN GENERAL.—The Commandant shall make arrangements as appropriate with the Secretary of Defense for support in contracting and management of Coast Guard acquisition programs. The Commandant shall also seek opportunities to make use of Department of Defense contracts, and contracts of other appropriate agencies, to obtain the best possible price for assets acquired for the Coast Guard.

“(b) INTER-SERVICE TECHNICAL ASSISTANCE.—The Commandant shall seek to enter into a memorandum of understanding or a memorandum of agreement with the Secretary of the Navy to obtain the assistance of the Office of the Assistant Secretary of the Navy for Research, Development, and Acquisition, including the Navy Systems Command, with the oversight of Coast Guard major acquisition programs. The memorandum of understanding or memorandum of agreement shall, at a minimum, provide for—

“(1) the exchange of technical assistance and support that the Assistant Commandants for Acquisition, Human Resources, Engineering, and Information technology may identify;

“(2) the use, as appropriate, of Navy technical expertise; and

“(3) the exchange of personnel between the Coast Guard and the Office of the Assistant Secretary of the Navy for Research, Development, and Acquisition, including Naval Systems Commands, to facilitate the development of organic capabilities in the Coast Guard.

“(c) TECHNICAL REQUIREMENT APPROVAL PROCEDURES.—The Chief Acquisition Officer shall adopt, to the extent practicable, procedures modeled after those used by the Navy Senior Acquisition Official to approve all technical requirements.

“§ 568. Undefined contractual actions

“(a) IN GENERAL.—The Coast Guard may not enter into an undefined contractual action unless such action is directly approved by the Head of Contracting Activity of the Coast Guard.

“(b) REQUESTS FOR UNDEFINED CONTRACTUAL ACTIONS.—Any request to the Head of Contracting Activity for approval of an undefined contractual action shall include a description of the anticipated effect on requirements of the Coast Guard if a delay is incurred for the purposes of determining contractual terms, specifications, and price before performance is begun under the contractual action.

“(c) REQUIREMENTS FOR UNDEFINED CONTRACTUAL ACTIONS.—

“(1) DEADLINE FOR AGREEMENT ON TERMS, SPECIFICATIONS, AND PRICE.—A contracting officer of the Coast Guard may not enter into an undefined contractual action unless the contractual action provides for agreement upon contractual terms, specification, and price by the earlier of—

“(A) the end of the 180-day period beginning on the date on which the contractor submits a qualifying proposal to definitize the contractual terms, specifications, and price; or

“(B) the date on which the amount of funds obligated under the contractual action is equal to more than 50 percent of the negotiated overall ceiling price for the contractual action.

“(2) LIMITATION ON OBLIGATIONS.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the contracting officer for an undefined contractual action may not obligate under such contractual action an amount that exceeds 50 percent of the negotiated overall ceiling price until the contractual terms, specifications, and price are definitized for such contractual action.

“(B) EXCEPTION.—Notwithstanding subparagraph (A), if a contractor submits a qualifying proposal to definitize an undefined contractual action before an amount that exceeds 50 percent of the negotiated overall ceiling price is obligated on such action, the contracting officer for such action may not obligate with respect to such contractual action an amount that exceeds 75 percent of the negotiated overall ceiling price until the contractual terms, specifications, and price are definitized for such contractual action.

“(3) WAIVER.—The Commandant may waive the application of this subsection with respect to a contract if the Commandant determines that the waiver is necessary to support—

“(A) a contingency operation (as that term is defined in section 101(a)(13) of title 10);

“(B) operations to prevent or respond to a transportation security incident (as defined in section 70101(6) of title 46);

“(C) an operation in response to an emergency that poses an unacceptable threat to human health or safety or to the marine environment; or

“(D) an operation in response to a natural disaster or major disaster or emergency designated by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

“(4) LIMITATION ON APPLICATION.—This subsection does not apply to an undefined contractual action for the purchase of initial spares.

“(d) INCLUSION OF NONURGENT REQUIREMENTS.—Requirements for spare parts and support equipment that are not needed on an urgent basis may not be included in an undefined contractual action by the Coast Guard for spare parts and support equipment that are needed on an urgent basis unless the Commandant approves such inclusion as being—

“(1) good business practice; and

“(2) in the best interests of the United States.

“(e) MODIFICATION OF SCOPE.—The scope of an undefined contractual action under which performance has begun may not be modified unless the Commandant approves such modification as being—

“(1) good business practice; and

“(2) in the best interests of the United States.

“(f) ALLOWABLE PROFIT.—The Commandant shall ensure that the profit allowed on an undefined contractual action for which the final price is negotiated after a substantial portion of the performance required is completed reflects—

“(1) the possible reduced cost risk of the contractor with respect to costs incurred during performance of the contract before the final price is negotiated; and

“(2) the reduced cost risk of the contractor with respect to costs incurred during performance of the remaining portion of the contract.

“(g) DEFINITIONS.—In this section:

“(1) UNDEFINED CONTRACTUAL ACTION.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), the term ‘undefined contractual action’ means a new procurement action entered into by the Coast Guard for which the contractual terms, specifications, or price are not agreed upon before performance is begun under the action.

“(B) EXCLUSION.—The term ‘undefined contractual action’ does not include contractual actions with respect to—

“(i) foreign military sales;

“(ii) purchases in an amount not in excess of the amount of the simplified acquisition threshold; or

“(iii) special access programs.

“(2) QUALIFYING PROPOSAL.—The term ‘qualifying proposal’ means a proposal that contains sufficient information to enable complete and meaningful audits of the information contained in the proposal as determined by the contracting officer.

“SUBCHAPTER 2—IMPROVED ACQUISITION PROCESS AND PROCEDURES

“§ 571. Identification of major system acquisitions

“(a) IN GENERAL.—

“(1) SUPPORT MECHANISMS.—The Commandant shall develop and implement mechanisms to support the establishment of mature and stable operational requirements for acquisitions under this subchapter.

“(2) MISSION ANALYSIS; AFFORDABILITY ASSESSMENT.—The Commandant may not initiate a Level 1 or Level 2 acquisition project or program until the Commandant—

“(A) completes a mission analysis that—

“(i) identifies any gaps in capability; and

“(ii) develops a clear mission need; and

“(B) prepares a preliminary affordability assessment for the project or program.

“(b) ELEMENTS.—

“(1) REQUIREMENTS.—The mechanisms required by subsection (a) shall ensure the implementation of a formal process for the development of a mission-needs statement, concept-of-operations document, capability development plan, and resource proposal for the initial project or program funding, and shall ensure the project or program is included in the Coast Guard Capital Investment Plan.

“(2) ASSESSMENT OF TRADE-OFFS.—In conducting an affordability assessment under subsection (a)(2)(B), the Commandant shall develop and implement mechanisms to ensure that trade-offs among cost, schedule, and performance are considered in the establishment of preliminary operational requirements for development and production of new assets and capabilities for Level 1 and Level 2 acquisitions projects and programs.

“(c) HUMAN RESOURCE CAPITAL PLANNING.—The Commandant shall develop staffing predictions, define human capital performance initiatives, and identify preliminary training needs for any such project or program.

“(d) DHS ACQUISITION APPROVAL.—A Level 1 or Level 2 acquisition project or program may not be implemented unless it is approved by the Department of Homeland Security Acquisition Review Board or the Joint Review Board.

“§ 572. Acquisition

“(a) IN GENERAL.—The Commandant may not establish a Level 1 or Level 2 acquisition project or program approved under section 571(d) until the Commandant—

“(1) clearly defines the operational requirements for the project or program;

“(2) establishes the feasibility of alternatives;

“(3) develops an acquisition project or program baseline;

“(4) produces a life-cycle cost estimate; and

“(5) assesses the relative merits of alternatives to determine a preferred solution in accordance with the requirements of this section.

“(b) ANALYSIS OF ALTERNATIVES.—

“(1) IN GENERAL.—The Commandant shall conduct an analysis of alternatives for the asset or capability to be acquired in an analyze and select phase of the acquisition process.

“(2) REQUIREMENTS.—The analysis of alternatives shall be conducted by a federally funded research and development center, a qualified entity of the Department of Defense, or a similar independent third party entity that has appropriate acquisition expertise and has no substantial financial interest in any part of the acquisition project or program that is the subject of the analysis. At a minimum, the analysis of alternatives shall include—

“(A) an assessment of the technical maturity, and technical and other risks;

“(B) an examination of capability, interoperability, and other disadvantages;

“(C) an evaluation of whether different combinations or quantities of specific assets or capabilities could meet the Coast Guard’s overall performance needs;

“(D) a discussion of key assumptions and variables, and sensitivity to change in such assumptions and variables;

“(E) when an alternative is an existing asset or prototype, an evaluation of relevant safety and performance records and costs;

“(F) a calculation of life-cycle costs including—

“(i) an examination of likely research and development costs and the levels of uncertainty associated with such estimated costs;

“(ii) an examination of likely production and deployment costs and levels of uncertainty associated with such estimated costs;

“(iii) an examination of likely operating and support costs and the levels of uncertainty associated with such estimated costs;

“(iv) if they are likely to be significant, an examination of likely disposal costs and the levels of uncertainty associated with such estimated costs; and

“(v) such additional measures as the Commandant or the Secretary of Homeland Security determines to be necessary for appropriate evaluation of the asset; and

“(G) the business case for each viable alternative.

“(C) TEST AND EVALUATION MASTER PLAN.—

“(1) IN GENERAL.—For any Level 1 or Level 2 acquisition project or program the Chief Acquisition Officer shall approve a test and evaluation master plan specific to the acquisition project or program for the capability, asset, or subsystems of the capability or asset and intended to minimize technical, cost, and schedule risk as early as practicable in the development of the project or program.

“(2) TEST AND EVALUATION STRATEGY.—The master plan shall—

“(A) set forth an integrated test and evaluation strategy that will verify that capability-level or asset-level and subsystem-level design and development, including performance and supportability, have been sufficiently proven before the capability, asset, or subsystem of the capability or asset is approved for production; and

“(B) require that adequate developmental tests and evaluations and operational tests and evaluations established under subparagraph (A) are performed to inform production decisions.

“(3) OTHER COMPONENTS OF THE MASTER PLAN.—At a minimum, the master plan shall identify—

“(A) the key performance parameters to be resolved through the integrated test and evaluation strategy;

“(B) critical operational issues to be assessed in addition to the key performance parameters;

“(C) specific development test and evaluation phases and the scope of each phase;

“(D) modeling and simulation activities to be performed, if any, and the scope of such activities;

“(E) early operational assessments to be performed, if any, and the scope of such assessments;

“(F) operational test and evaluation phases;

“(G) an estimate of the resources, including funds, that will be required for all test, evaluation, assessment, modeling, and simulation activities; and

“(H) the Government entity or independent entity that will perform the test, evaluation, assessment, modeling, and simulation activities.

“(4) UPDATE.—The Chief Acquisition Officer shall approve an updated master plan whenever there is a revision to project or program test and evaluation strategy, scope, or phasing.

“(5) LIMITATION.—The Coast Guard may not—

“(A) proceed beyond that phase of the acquisition process that entails approving the supporting acquisition of a capability or asset before the master plan is approved by the Chief Acquisition Officer; or

“(B) award any production contract for a capability, asset, or subsystem for which a master plan is required under this subsection before the master plan is approved by the Chief Acquisition Officer.

“(d) LIFE-CYCLE COST ESTIMATES.—

“(1) IN GENERAL.—The Commandant shall implement mechanisms to ensure the development and regular updating of life-cycle cost estimates for each Level 1 or Level 2 acquisition to ensure that these estimates are considered in decisions to develop or produce new or enhanced capabilities and assets.

“(2) TYPES OF ESTIMATES.—In addition to life-cycle cost estimates that may be developed by acquisition program offices, the Commandant shall require that an independent life-cycle cost estimate be developed for each Level 1 or Level 2 acquisition project or program.

“(3) REQUIRED UPDATES.—For each Level 1 or Level 2 acquisition project or program the Commandant shall require that life-cycle cost estimates shall be updated before each milestone decision is concluded and the project or program enters a new acquisition phase.

“(e) DHS ACQUISITION APPROVAL.—A project or program may not enter the obtain phase under section 573 unless the Department of Homeland Security Acquisition Review Board or the Joint Review Board (or other entity to which such responsibility is delegated by the Secretary of Homeland Security) has approved the analysis of alternatives for the project. The Joint Review Board may also approve the low rates initial production quantity for the project or program if such an initial production quantity is planned by the acquisition project or program and deemed appropriate by the Joint Review Board.

“§ 573. Preliminary development and demonstration

“(a) IN GENERAL.—The Commandant shall ensure that developmental test and evaluation, operational test and evaluation, life cycle cost estimates, and the development and demonstration requirements are met to confirm that the projects or programs meet the requirements described in the mission-needs statement and the operational-requirements document and the following development and demonstration objectives:

“(1) To demonstrate that the most promising design, manufacturing, and production solution is based upon a stable, producible, and cost-effective product design.

“(2) To ensure that the product capabilities meet contract specifications, acceptable operational performance requirements, and system security requirements.

“(3) To ensure that the product design is mature enough to commit to full production and deployment.

“(b) TESTS AND EVALUATIONS.—

“(1) IN GENERAL.—The Commandant shall ensure that the Coast Guard conducts developmental tests and evaluations and operational tests and evaluations of a capability or asset and the subsystems of the capability or asset for which a master plan has been prepared under section 572(c)(1).

“(2) USE OF THIRD PARTIES.—The Commandant shall ensure that the Coast Guard uses independent third parties with expertise in testing and evaluating the capabilities or assets and the subsystems of the capabilities or assets being acquired to conduct developmental tests and evaluations and operational tests and evaluations whenever the Coast Guard lacks the capability to conduct the tests and evaluations required by a master plan.

“(3) COMMUNICATION OF SAFETY CONCERNS.—The Commandant shall require that safety concerns identified during developmental or operational tests and evaluations or through independent or Government-conducted design assessments of capabilities or assets and subsystems of capabilities or assets to be acquired by the Coast Guard shall be communicated as soon as practicable, but not later than 30 days after the completion of the test or assessment event or activity that identified the safety concern, to the program manager for the capability or asset and the subsystems concerned and to the Chief Acquisition Officer.

“(4) ASSET ALREADY IN LOW, INITIAL, OR FULL-RATE PRODUCTION.—If operational test and evaluation on a capability or asset already in low, initial, or full-rate production identifies a safety concern with the capability or asset or any subsystems of the capability or asset not previously identified during developmental or operational test and evaluation, the Commandant shall—

“(A) notify the program manager and the Chief Acquisition Officer of the safety concern as soon as practicable, but not later than 30 days after the completion of the test and evaluation event or activity that identified the safety concern; and

“(B) notify the Chief Acquisition Officer and include in such notification—

“(i) an explanation of the actions that will be taken to correct or mitigate the safety concern in all capabilities or assets and subsystems of the capabilities or assets yet to be produced, and the date by which those actions will be taken;

“(ii) an explanation of the actions that will be taken to correct or mitigate the safety concern in previously produced capabilities or assets and subsystems of the capabilities or assets, and the date by which those actions will be taken; and

“(iii) an assessment of the adequacy of current funding to correct or mitigate the safety concern in capabilities or assets and subsystems of the capabilities or assets and in previously produced capabilities or assets and subsystems.

“(c) TECHNICAL CERTIFICATION.—

“(1) IN GENERAL.—The Commandant shall ensure that any Level 1 or Level 2 acquisition project or program is certified by the technical authority of the Coast Guard after review by an independent third party with capabilities in the mission area, asset, or particular asset component.

“(2) TEMPEST TESTING.—The Commandant shall—

“(A) cause all electronics on all aircraft, surface, and shore assets that require TEMPEST certification and that are delivered after the date of enactment of the Coast Guard Authorization Act for Fiscal Years 2010 and 2011 to be tested in accordance with

master plan standards and communications security standards by an independent third party that is authorized by the Federal Government to perform such testing; and

“(B) certify that the assets meet all applicable TEMPEST requirements.

“(3) **VESSEL CLASSIFICATION.**—The Commandant shall cause each cutter, other than the National Security Cutter, acquired by the Coast Guard and delivered after the date of enactment of the Coast Guard Authorization Act for Fiscal Years 2010 and 2011 is to be classed by the American Bureau of Shipping before final acceptance.

“(d) **ACQUISITION DECISION.**—The Commandant may not proceed to full scale production, deployment, and support of a Level 1 or Level 2 acquisition project or program unless the Department of Homeland Security Acquisition Review Board has verified that the delivered asset or system meets the project or program performance and cost goals.

“§ 574. Acquisition, production, deployment, and support

“(a) **IN GENERAL.**—The Commandant shall—

“(1) ensure there is a stable and efficient production and support capability to develop an asset or system;

“(2) conduct follow on testing to confirm and monitor performance and correct deficiencies; and

“(3) conduct acceptance tests and trails upon the delivery of each asset or system to ensure the delivered asset or system achieves full operational capability.

“(b) **ELEMENTS.**—The Commandant shall—

“(1) execute the productions contracts;

“(2) ensure the delivered products meet operational cost and schedules requirements established in the acquisition program baseline;

“(3) validate manpower and training requirements to meet system needs to operate, maintain, support, and instruct the system; and

“(4) prepare a project or program transition plan to enter into programmatic sustainment, operations, and support.

“§ 575. Acquisition program baseline breach

“(a) **IN GENERAL.**—The Commandant shall submit a report to the appropriate congressional committees as soon as possible, but not later than 30 days, after the Chief Acquisition Officer of the Coast Guard becomes aware of the breach of an acquisition program baseline for any Level 1 or Level 2 acquisition program, by—

“(1) a likely cost overrun greater than 15 percent of the acquisition program baseline for that individual capability or asset or a class of capabilities or assets;

“(2) a likely delay of more than 180 days in the delivery schedule for any individual capability or asset or class of capabilities or assets; or

“(3) an anticipated failure for any individual capability or asset or class of capabilities or assets to satisfy any key performance threshold or parameter under the acquisition program baseline.

“(b) **CONTENT.**—The report submitted under subsection (a) shall include—

“(1) a detailed description of the breach and an explanation of its cause;

“(2) the projected impact to performance, cost, and schedule;

“(3) an updated acquisition program baseline and the complete history of changes to the original acquisition program baseline;

“(4) the updated acquisition schedule and the complete history of changes to the original schedule;

“(5) a full life-cycle cost analysis for the capability or asset or class of capabilities or assets;

“(6) a remediation plan identifying corrective actions and any resulting issues or risks; and

“(7) a description of how progress in the remediation plan will be measured and monitored.

“(c) **SUBSTANTIAL VARIANCES IN COSTS OR SCHEDULE.**—If a likely cost overrun is greater than 25 percent or a likely delay is greater than 12 months from the costs and schedule described in the acquisition program baseline for any Level 1 or Level 2 acquisition project or program of the Coast Guard, the Commandant shall include in the report a written certification, with a supporting explanation, that—

“(1) the capability or asset or capability or asset class to be acquired under the project or program is essential to the accomplishment of Coast Guard missions;

“(2) there are no alternatives to such capability or asset or capability or asset class which will provide equal or greater capability in both a more cost-effective and timely manner;

“(3) the new acquisition schedule and estimates for total acquisition cost are reasonable; and

“(4) the management structure for the acquisition program is adequate to manage and control performance, cost, and schedule.

“SUBCHAPTER 3—DEFINITIONS

“§ 581. Definitions

“In this chapter:

“(1) **APPROPRIATE CONGRESSIONAL COMMITTEES.**—The term ‘appropriate congressional committees’ means the House of Representatives Committee on Transportation and Infrastructure and the Senate Committee on Commerce, Science, and Transportation.

“(2) **CHIEF ACQUISITION OFFICER.**—The term ‘Chief Acquisition Officer’ means the officer appointed under section 55 of this title.

“(3) **COMMANDANT.**—The term ‘Commandant’ means the Commandant of the Coast Guard.

“(4) **JOINT REVIEW BOARD.**—The term ‘Joint Review Board’ means the Department of Homeland Security’s Investment Review Board, Joint Requirements Council, or other entity within the Department designated by the Secretary as the Joint Review Board for purposes of this chapter.

“(5) **LEVEL 1 ACQUISITION.**—The term ‘Level 1 acquisition’ means—

“(A) an acquisition by the Coast Guard—

“(i) the estimated life-cycle costs of which exceed \$1,000,000,000; or

“(ii) the estimated total acquisition costs of which exceed \$300,000,000; or

“(B) any acquisition that the Chief Acquisition Officer of the Coast Guard determines to have a special interest—

“(i) due to—

“(I) the experimental or technically immature nature of the asset;

“(II) the technological complexity of the asset;

“(III) the commitment of resources; or

“(IV) the nature of the capability or set of capabilities to be achieved; or

“(ii) because such acquisition is a joint acquisition.

“(6) **LEVEL 2 ACQUISITION.**—The term ‘Level 2 acquisition’ means an acquisition by the Coast Guard—

“(A) the estimated life-cycle costs of which are equal to or less than \$1,000,000,000, but greater than \$300,000,000; or

“(B) the estimated total acquisition costs of which are equal to or less than \$300,000,000, but greater than \$100,000,000.

“(7) **LIFE-CYCLE COST.**—The term ‘life-cycle cost’ means all costs for development, procurement, construction, and operations and support for a particular capability or asset, without regard to funding source or management control.

“(8) **SAFETY CONCERN.**—The term ‘safety concern’ means any hazard associated with a capability or asset or a subsystem of a capability or asset that is likely to cause serious bodily injury or death to a typical Coast Guard user in testing, maintaining, repairing, or operating the capability, asset, or subsystem or any hazard associated with the capability, asset, or subsystem that is likely to cause major damage to the capability, asset, or subsystem during the course of its normal operation by a typical Coast Guard user.”

(b) **CONFORMING AMENDMENT.**—The part analysis for part I of title 14, United States Code, is amended by inserting after the item relating to chapter 13 the following:

“15. Acquisitions561”.

SEC. 503. REPORT AND GUIDANCE ON EXCESS PASS-THROUGH CHARGES.

(a) **COMPTROLLER GENERAL REPORT.**—

(1) **IN GENERAL.**—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall issue a report on pass-through charges on contracts, subcontracts, delivery orders, and task orders that were executed by a lead systems integrator under contract to the Coast Guard during the 3 full calendar years preceding the date of enactment of this Act.

(2) **MATTERS COVERED.**—The report under this subsection—

(A) shall assess the extent to which the Coast Guard paid excessive pass-through charges to contractors or subcontractors that provided little or no value to the performance of a contract or the production of a procured asset; and

(B) shall assess the extent to which the Coast Guard has been particularly vulnerable to excessive pass-through charges on any specific category of contracts or by any specific category of contractors.

(b) **GUIDANCE REQUIRED.**—

(1) **IN GENERAL.**—Not later than 180 days after the date of enactment of this Act, the Commandant shall prescribe guidance to ensure that pass-through charges on contracts, subcontracts, delivery orders, and task orders that are executed with a private entity acting as a lead systems integrator by or on behalf of the Coast Guard are not excessive in relation to the cost of work performed by the relevant contractor or subcontractor. The guidance shall, at a minimum—

(A) set forth clear standards for determining when no, or negligible, value has been added to a contract by a contractor or subcontractor;

(B) set forth procedures for preventing the payment by the Government of excessive pass-through charges; and

(C) identify any exceptions determined by the Commandant to be in the best interest of the Government.

(2) **SCOPE OF GUIDANCE.**—The guidance prescribed under this subsection—

(A) shall not apply to any firm, fixed-price contract or subcontract, delivery order, or task order that is—

(i) awarded on the basis of adequate price competition, as determined by the Commandant; or

(ii) for the acquisition of a commercial item, as defined in section 4(12) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(12)); and

(B) may include such additional exceptions as the Commandant determines to be necessary in the interest of the United States.

(c) **EXCESSIVE PASS-THROUGH CHARGE DEFINED.**—In this section the term “excessive pass-through charge”, with respect to a contractor or subcontractor that adds no, or negligible, value to a contract or subcontract, means a charge to the Government by the contractor or subcontractor that is

for overhead or profit on work performed by a lower-tier contractor or subcontractor, other than reasonable charges for the direct costs of managing lower-tier contractors and subcontracts and overhead and profit based on such direct costs.

(d) APPLICATION OF GUIDANCE.—The guidance prescribed under this section shall apply to contracts awarded to a private entity acting as a lead systems integrator by or on behalf of the Coast Guard on or after the date that is 360 days after the date of enactment of this Act.

TITLE VI—SHIPPING AND NAVIGATION

SEC. 601. TECHNICAL AMENDMENTS TO CHAPTER 313 OF TITLE 46, UNITED STATES CODE.

(a) IN GENERAL.—Chapter 313 of title 46, United States Code, is amended—

(1) by striking “of Transportation” in sections 31302, 31306, 31321, 31330, and 31343 each place it appears;

(2) by striking “and” after the semicolon in section 31301(5)(F);

(3) by striking “office,” in section 31301(6) and inserting “office; and”; and

(4) by adding at the end of section 31301 the following:

“(7) ‘Secretary’ means the Secretary of the Department of Homeland Security, unless otherwise noted.”.

(b) SECRETARY AS MORTGAGEE.—Section 31308 of such title is amended by striking “When the Secretary of Commerce or Transportation is a mortgagee under this chapter, the Secretary” and inserting “The Secretary of Commerce or Transportation, as a mortgagee under this chapter.”.

(c) SECRETARY OF TRANSPORTATION.—Section 31329(d) of such title is amended by striking “Secretary.” and inserting “Secretary of Transportation.”.

(d) MORTGAGEE.—

(1) Section 31330(a)(1) of such title, as amended by subsection (a)(1) of this section, is amended—

(A) by inserting “or” after the semicolon in subparagraph (B);

(B) by striking “Secretary; or” in subparagraph (C) and inserting “Secretary.”; and

(C) by striking subparagraph (D).

(2) Section 31330(a)(2) is amended—

(A) by inserting “or” after the semicolon in subparagraph (B);

(B) by striking “faith; or” in subparagraph (C) and inserting “faith.”; and

(C) by striking subparagraph (D).

SEC. 602. CLARIFICATION OF RULEMAKING AUTHORITY.

(a) IN GENERAL.—Chapter 701 of title 46, United States Code, is amended by adding at the end the following:

“§ 70122. Regulations

“Unless otherwise provided, the Secretary may issue regulations necessary to implement this chapter.”.

(b) CLERICAL AMENDMENT.—The table of contents for chapter 701 of such title is amended by adding at the end the following new item:

“70122. Regulations”.

SEC. 603. ICEBREAKERS.

(a) ANALYSES.—Not later than 90 days after the date of enactment of this Act or the date of completion of the ongoing High Latitude Study to assess polar ice-breaking mission requirements, whichever occurs later, the Commandant of the Coast Guard shall require a nongovernmental, independent third party (other than the National Academy of Sciences) which has extensive experience in the analysis of military procurements to—

(1) conduct a comparative cost-benefit analysis, taking into account future Coast Guard budget projections (which assume Coast Guard budget growth of no more than

inflation) and other recapitalization needs, of—

(A) rebuilding, renovating, or improving the existing fleet of polar icebreakers for operation by the Coast Guard,

(B) constructing new polar icebreakers for operation by the Coast Guard,

(C) construction of new polar icebreakers by the National Science Foundation for operation by the Foundation,

(D) rebuilding, renovating, or improving the existing fleet of polar icebreakers by the National Science Foundation for operation by the Foundation, and

(E) any combination of the activities described in subparagraph (A), (B), (C), or (D) to carry out the missions of the Coast Guard and the National Science Foundation;

(2) conduct an analysis of the impact on mission capacity and the ability of the United States to maintain a presence in the polar regions through the year 2020 if recapitalization of the polar icebreaker fleet, either by constructing new polar icebreakers or rebuilding, renovating, or improving the existing fleet of polar icebreakers, is not fully funded; and

(3) conduct a comprehensive analysis of the impact on all Coast Guard activities, including operations, maintenance, procurements, and end strength, of the acquisition of polar icebreakers described in paragraph (1) by the Coast Guard or the National Science Foundation assuming that total Coast Guard funding will not increase more than the annual rate of inflation.

(b) REPORTS TO CONGRESS.—

(1) Not later than one year and 90 days after the date of enactment of this Act or the date of completion of the ongoing High Latitude Study to assess polar ice-breaking mission requirements, whichever occurs later, the Commandant of the Coast Guard shall submit a report containing the results of the study, together with recommendations the Commandant deems appropriate under section 93(a)(24) of title 14, United States Code, to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.

(2) Not later than 1 year after the date of enactment of this Act, the Commandant shall submit reports containing the results of the analyses required under paragraphs (1) and (2) of subsection (a), together with recommendations the Commandant deems appropriate under section 93(a)(24) of title 14, United States Code, to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.

SEC. 604. PHASEOUT OF VESSELS SUPPORTING OIL AND GAS DEVELOPMENT.

Section 705 of the Security and Accountability for Every Port Act of 2006 (Public Law 109-347; 120 Stat. 1945) is amended to read as follows:

“SEC. 705. PHASEOUT OF VESSELS SUPPORTING OIL AND GAS DEVELOPMENT.

“(a) IN GENERAL.—Notwithstanding section 1211(d) of title 46, United States Code, a foreign-flag vessel may be chartered by, or on behalf of, a lessee to be employed for the setting, relocation, or recovery of anchors or other mooring equipment of a mobile offshore drilling unit that is located over the Outer Continental Shelf (as defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a)) for operations in support of exploration, or flow-testing and stimulation of wells, for offshore mineral or energy resources in the Beaufort Sea or the Chukchi Sea adjacent to Alaska—

“(1) until December 31, 2012, if the Secretary of Transportation determines, after

publishing notice in the Federal Register, that insufficient vessels documented under section 1211(d) of title 46, United States Code, are reasonably available and suitable for these support operations and all such reasonably available and suitable vessels are employed in support of such operations; and

“(2) for an additional 2-year period beginning January 1, 2013, if the Secretary of Transportation determines—

“(A) that, as of December 31, 2012, the lessee has entered into a binding agreement to employ a suitable vessel or vessels to be documented under such section 1211(d) in sufficient numbers and with sufficient suitability to replace any foreign-flag vessel or vessels operating under this section; and

“(B) after publishing notice in the Federal Register, that insufficient vessels documented under such section 1211(d) are reasonably available and suitable for these support operations and all such reasonably available and suitable vessels are employed in support of such operations.

“(b) LESSEE DEFINED.—In this section, the term ‘lessee’ means the holder of a lease (defined in section 2(c) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(c)), who has entered into a binding agreement to employ a suitable vessel documented or to be documented under section 1211(d) of title 46, United States Code.

“(c) RULE OF CONSTRUCTION.—Nothing in subsection (a) shall be construed to authorize employment in the coastwise trade of a vessel that does not meet the requirements set forth in section 12112 of title 46, United States Code.”.

TITLE VII—VESSEL CONVEYANCE

SEC. 701. SHORT TITLE.

This title may be cited as the “Vessel Conveyance Act”.

SEC. 702. CONVEYANCE OF COAST GUARD VESSELS FOR PUBLIC PURPOSES.

(a) IN GENERAL.—Whenever the transfer of ownership of a Coast Guard vessel to an eligible entity for use for educational, cultural, historical, charitable, recreational, or other public purposes is authorized by law, the Coast Guard shall transfer the vessel to the General Services Administration for conveyance to the eligible entity.

(b) CONDITIONS OF CONVEYANCE.—The General Services Administration may not convey a vessel to an eligible entity as authorized by law unless the eligible entity agrees—

(1) to provide the documentation needed by the General Services Administration to process a request for aircraft or vessels under section 102.37.225 of title 41, Code of Federal Regulations;

(2) to comply with the special terms, conditions, and restrictions imposed on aircraft and vessels under section 102-37.460 of such title;

(3) to make the vessel available to the United States Government if it is needed for use by the Commandant of the Coast Guard in time of war or a national emergency; and

(4) to hold the United States Government harmless for any claims arising from exposure to hazardous materials, including asbestos and polychlorinated biphenyls, after conveyance of the vessel, except for claims arising from use of the vessel by the United States Government under paragraph (3).

(c) ELIGIBLE ENTITY DEFINED.—In this section, the term “eligible entity” means a State or local government, nonprofit corporation, educational agency, community development organization, or other entity that agrees to comply with the conditions established under this section.

TITLE VIII—OIL POLLUTION PREVENTION

SEC. 801. RULEMAKINGS.

(a) STATUS REPORT.—

(1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Secretary shall provide a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on the status of all Coast Guard rulemakings required (but for which no final rule has been issued as of the date of enactment of this Act) under section 311 of the Federal Water Pollution Control Act (33 U.S.C. 1321).

(2) INFORMATION REQUIRED.—The Secretary shall include in the report required in paragraph (1)—

(A) a detailed explanation with respect to each such rulemaking as to—

- (i) what steps have been completed;
- (ii) what areas remain to be addressed; and
- (iii) the cause of any delays; and

(B) the date by which a final rule may reasonably be expected to be issued.

(b) FINAL RULES.—The Secretary shall issue a final rule in each pending rulemaking described in subsection (a) as soon as practicable, but in no event later than 18 months after the date of enactment of this Act.

(c) TOWING VESSELS.—No later than 1 year after the date of enactment of this Act, the Secretary shall issue a notice of proposed rulemaking regarding inspection requirements for towing vessels required under section 3306(j) of title 46, United States Code. The Secretary shall issue a final rule pursuant to that rulemaking no later than 2 years after the date of enactment of this Act.

SEC. 802. OIL TRANSFERS FROM VESSELS.

(a) REGULATIONS.—Within 1 year after the date of enactment of this Act, the Secretary shall promulgate regulations to reduce the risks of oil spills in operations involving the transfer of oil from or to a tank vessel. The regulations—

(1) shall focus on operations that have the highest risks of discharge, including operations at night and in inclement weather;

(2) shall consider—

(A) requirements for the use of equipment, such as putting booms in place for transfers, safety, and environmental impacts;

(B) operational procedures such as manning standards, communications protocols, and restrictions on operations in high-risk areas; or

(C) both such requirements and operational procedures; and

(3) shall take into account the safety of personnel and effectiveness of available procedures and equipment for preventing or mitigating transfer spills.

(b) APPLICATION WITH STATE LAWS.—The regulations promulgated under subsection (a) do not preclude the enforcement of any State law or regulation the requirements of which are at least as stringent as requirements under the regulations (as determined by the Secretary) that—

(1) applies in State waters;

(2) does not conflict with, or interfere with the enforcement of, requirements and operational procedures under the regulations; and

(3) has been enacted or promulgated before the date of enactment of this Act.

SEC. 803. IMPROVEMENTS TO REDUCE HUMAN ERROR AND NEAR MISS INCIDENTS.

(a) REPORT.—Within 1 year after the date of enactment of this Act, the Secretary shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House Committee on Transportation and Infrastructure that, using available data—

(1) identifies the types of human errors that, combined, account for over 50 percent of all oil spills involving vessels that have been caused by human error in the past 10 years;

(2) identifies the most frequent types of near-miss oil spill incidents involving vessels such as collisions, allisions, groundings, and loss of propulsion in the past 10 years;

(3) describes the extent to which there are gaps in the data with respect to the information required under paragraphs (1) and (2) and explains the reason for those gaps; and

(4) includes recommendations by the Secretary to address the identified types of errors and incidents to address any such gaps in the data.

(b) MEASURES.—Based on the findings contained in the report required by subsection (a), the Secretary shall take appropriate action, both domestically and at the International Maritime Organization, to reduce the risk of oil spills caused by human error.

(c) CONFIDENTIALITY OF VOLUNTARILY SUBMITTED INFORMATION.—The identity of a person making a voluntary disclosure under this section, and any information obtained from any such voluntary disclosure, shall be treated as confidential.

(d) DISCOVERY OF VOLUNTARILY SUBMITTED INFORMATION.—

(1) IN GENERAL.—Except as provided in this subsection, a party in a judicial proceeding may not use discovery to obtain information or data collected or received by the Secretary for use in the report required in subsection (a).

(2) EXCEPTION.—

(A) Notwithstanding paragraph (1), a court may allow discovery by a party in a judicial proceeding of information or data described in paragraph (1) if, after an in camera review of the information or data, the court decides that there is a compelling reason to allow the discovery.

(B) When a court allows discovery in a judicial proceeding as permitted under this paragraph, the court shall issue a protective order—

(i) to limit the use of the information or data to the judicial proceeding; and

(ii) to prohibit dissemination of the information or data to any person who does not need access to the information or data for the proceeding.

(C) A court may allow information or data it has decided is discoverable under this paragraph to be admitted into evidence in a judicial proceeding only if the court places the information or data under seal to prevent the use of the information or data for a purpose other than for the proceeding.

(3) APPLICATION.—Paragraph (1) shall not apply to—

(A) any disclosure made with actual knowledge that the disclosure was false, inaccurate, or misleading; or

(B) any disclosure made with reckless disregard as to the truth or falsity of that disclosure.

SEC. 804. OLYMPIC COAST NATIONAL MARINE SANCTUARY.

(a) OLYMPIC COAST NATIONAL MARINE SANCTUARY AREA TO BE AVOIDED.—The Secretary of the Department in which the Coast Guard is operating and the Under Secretary of Commerce for Oceans and Atmosphere shall revise the area to be avoided off the coast of the State of Washington so that restrictions apply to all vessels required to prepare a response plan pursuant to section 311(j) of the Federal Water Pollution Control Act (33 U.S.C. 1321(j)) (other than fishing or research vessels while engaged in fishing or research within the area to be avoided).

SEC. 805. PREVENTION OF SMALL OIL SPILLS.

The Under Secretary of Commerce for Oceans and Atmosphere, in consultation with the Secretary of the Department in which the Coast Guard is operating and other appropriate agencies, shall establish an oil spill prevention and education pro-

gram for small vessels. The program shall provide for assessment, outreach, and training and voluntary compliance activities to prevent and improve the effective response to oil spills from vessels and facilities not required to prepare a vessel response plan under the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), including recreational vessels, commercial fishing vessels, marinas, and aquaculture facilities. The Under Secretary may provide grants to sea grant colleges and institutes designated under section 207 of the National Sea Grant College Program Act (33 U.S.C. 1126) and to State agencies, tribal governments, and other appropriate entities to carry out—

(1) regional assessments to quantify the source, incidence and volume of small oil spills, focusing initially on regions in the country where, in the past 10 years, the incidence of such spills is estimated to be the highest;

(2) voluntary, incentive-based clean marina programs that encourage marina operators, recreational boaters, and small commercial vessel operators to engage in environmentally sound operating and maintenance procedures and best management practices to prevent or reduce pollution from oil spills and other sources;

(3) cooperative oil spill prevention education programs that promote public understanding of the impacts of spilled oil and provide useful information and techniques to minimize pollution, including methods to remove oil and reduce oil contamination of bilge water, prevent accidental spills during maintenance and refueling and properly cleanup and dispose of oil and hazardous substances; and

(4) support for programs, including outreach and education to address derelict vessels and the threat of such vessels sinking and discharging oil and other hazardous substances, including outreach and education to involve efforts to the owners of such vessels.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Under Secretary of Commerce for Oceans and Atmosphere to carry out this section, \$10,000,000 for each of fiscal years 2010 through 2014.

SEC. 806. IMPROVED COORDINATION WITH TRIBAL GOVERNMENTS.

(a) IN GENERAL.—Within 6 months after the date of enactment of this Act, the Secretary of the Department in which the Coast Guard is operating shall complete the development of a tribal consultation policy, which recognizes and protects to the maximum extent practicable tribal treaty rights and trust assets in order to improve the Coast Guard's consultation and coordination with the tribal governments of federally recognized Indian tribes with respect to oil spill prevention, preparedness, response and natural resource damage assessment.

(b) INCLUSION OF TRIBAL GOVERNMENT.—The Secretary of the Department in which the Coast Guard is operating shall ensure that, as soon as practicable after identifying an oil spill that is likely to have a significant impact on natural or cultural resources owned or directly utilized by a federally recognized Indian tribe, the Coast Guard will—

(1) ensure that representatives of the tribal government of the affected tribes are included as part of the incident command system established by the Coast Guard to respond to the spill;

(2) share information about the oil spill with the tribal government of the affected tribe; and

(3) to the extent practicable, involve tribal governments in deciding how to respond to the spill.

(c) COOPERATIVE ARRANGEMENTS.—The Coast Guard may enter into memoranda of

agreement and associated protocols with Indian tribal governments in order to establish cooperative arrangements for oil pollution prevention, preparedness, and response. Such memoranda may be entered into prior to the development of the tribal consultation and coordination policy to provide Indian tribes grant and contract assistance. Such memoranda of agreement and associated protocols with Indian tribal governments may include—

(1) arrangements for the assistance of the tribal government to participate in the development of the National Contingency Plan and local Area Contingency Plans to the extent they affect tribal lands, cultural and natural resources;

(2) arrangements for the assistance of the tribal government to develop the capacity to implement the National Contingency Plan and local Area Contingency Plans to the extent they affect tribal lands, cultural and natural resources;

(3) provisions on coordination in the event of a spill, including agreements that representatives of the tribal government will be included as part of the regional response team co-chaired by the Coast Guard and the Environmental Protection Agency to establish policies for responding to oil spills;

(4) arrangements for the Coast Guard to provide training of tribal incident commanders and spill responders for oil spill preparedness and response;

(5) demonstration projects to assist tribal governments in building the capacity to protect tribal treaty rights and trust assets from oil spills; and

(6) such additional measures the Coast Guard determines to be necessary for oil pollution prevention, preparedness, and response.

(d) **FUNDING FOR TRIBAL PARTICIPATION.**—Subject to the availability of appropriations, the Commandant of the Coast Guard shall provide assistance to participating tribal governments in order to facilitate the implementation of cooperative arrangements under subsection (c) and ensure the participation of tribal governments in such arrangements. There are authorized to be appropriated to the Commandant \$500,000 for each of fiscal years 2010 through 2014 to be used to carry out this section.

SEC. 807. REPORT ON AVAILABILITY OF TECHNOLOGY TO DETECT THE LOSS OF OIL.

Within 1 year after the date of enactment of this Act, the Secretary of the Department in which the Coast Guard is operating shall submit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce on the availability, feasibility, and potential cost of technology to detect the loss of oil carried as cargo or as fuel on tank and non-tank vessels greater than 400 gross tons.

SEC. 808. USE OF OIL SPILL LIABILITY TRUST FUND.

(a) **IN GENERAL.**—Section 1012(a)(5) of the Oil Pollution Act of 1990 (33 U.S.C. 2712(a)(5)) is amended—

(1) by redesignating subparagraphs (B) and (C) as subparagraphs (C) and (D), respectively; and

(2) by inserting after subparagraph (A) the following:

“(B) not more than \$15,000,000 in each fiscal year shall be available to the Under Secretary of Commerce for Oceans and Atmosphere for expenses incurred by, and activities related to, response and damage assessment capabilities of the National Oceanic and Atmospheric Administration.”;

(b) **AUDITS; ANNUAL REPORTS.**—Section 1012 of the Oil Pollution Act of 1990 (33 U.S.C. 2712) is amended—

(1) by striking subsection (g) and inserting the following:

“(g) **AUDITS.**—

“(1) **IN GENERAL.**—The Comptroller General of the United States shall conduct an audit, including a detailed accounting of each disbursement from the Fund in excess of \$500,000 that is—

“(A) disbursed by the National Pollution Fund Center; and

“(B) administered and managed by the receiving Federal agencies, including final payments made to agencies and contractors and, to the extent possible, subcontractors.

“(2) **FREQUENCY.**—The audits shall be conducted—

“(A) at least once every 3 years after the date of enactment of the Coast Guard Authorization Act for Fiscal Years 2010 and 2011 until 2016; and

“(B) at least once every 5 years after the last audit conducted under subparagraph (A).

“(3) **SUBMISSION OF RESULTS.**—The Comptroller shall submit the results of each audit conducted under paragraph (1) to—

“(A) the Senate Committee on Commerce, Science, and Transportation; and

“(B) the House of Representatives Committee on Transportation and Infrastructure; and

“(C) the Secretary or Administrator of each agency referred to in paragraph (1)(B).”; and

(2) by adding at the end thereof the following:

“(h) **REPORTS.**—

“(1) **IN GENERAL.**—Within one year after the date of enactment of the Coast Guard Authorization Act for Fiscal Years 2010 and 2011, and annually thereafter, the President, through the Secretary of the Department in which the Coast Guard is operating, shall—

“(A) provide a report on disbursements for the preceding fiscal year from the Fund, regardless of whether those disbursements were subject to annual appropriations, to—

“(i) the Senate Committee on Commerce, Science, and Transportation; and

“(ii) the House of Representatives Committee on Transportation and Infrastructure; and

“(B) make the report available to the public on the National Pollution Funds Center Internet website.

“(2) **CONTENTS.**—The report shall include—

“(A) a list of each disbursement of \$250,000 or more from the Fund during the preceding fiscal year; and

“(B) a description of how each such use of the Fund meets the requirements of subsection (a).

“(3) **AGENCY RECORDKEEPING.**—Each Federal agency that receives amounts from the Fund shall maintain records describing the purposes for which such funds were obligated or expended in such detail as the Secretary may require for purposes of the report required under paragraph (1).

“(i) **AUTHORIZATIONS.**—There are authorized to be appropriated such sums as may be necessary to carry out subsections (g) and (h).”;

SEC. 809. INTERNATIONAL EFFORTS ON ENFORCEMENT.

The Secretary, in consultation with the heads of other appropriate Federal agencies, shall ensure that the Coast Guard pursues stronger enforcement in the International Maritime Organization of agreements related to oil discharges, including joint enforcement operations, training, and stronger compliance mechanisms.

SEC. 810. HIGHER VOLUME PORT AREA REGULATORY DEFINITION CHANGE.

(a) **IN GENERAL.**—Within 1 year after the date of enactment of this Act, the Commandant shall initiate a rulemaking pro-

ceeding to modify the definition of the term “higher volume port area” in section 155.1020 of the Coast Guard regulations (33 C.F.R. 155.1020) by striking “Port Angeles, WA” in paragraph (13) of that section and inserting “Cape Flattery, WA”.

(b) **EMERGENCY RESPONSE PLAN REVIEWS.**—Within 5 years after the date of enactment of this Act, the Coast Guard shall complete its review of any changes to emergency response plans under the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) resulting from the modification of the higher volume port area definition required by subsection (a).

SEC. 811. TUG ESCORTS FOR LADEN OIL TANKERS.

(a) **COMPARABILITY ANALYSIS.**—

(1) **IN GENERAL.**—Within 1 year after the date of enactment of this Act, the Commandant, in consultation with the Secretary of State, shall enter into negotiations with the Government of Canada to update the comparability analysis which serves as the basis for the Cooperative Vessel Traffic Service agreement between the United States and Canada for the management of maritime traffic in Puget Sound, the Strait of Georgia, Haro Strait, Rosario Strait, and the Strait of Juan de Fuca. The updated analysis shall, at a minimum, consider—

(A) requirements for laden tank vessels to be escorted by tug boats;

(B) vessel emergency response towing capability at the entrance to the Strait of Juan de Fuca; and

(C) spill response capability throughout the shared water, including oil spill response planning requirements for vessels bound for one nation transiting in innocent passage through the waters of the other nation.

(2) **CONSULTATION REQUIREMENT.**—In conducting the analysis required under this subsection, the Commandant shall consult with the State of Washington and affected tribal governments.

(3) **RECOMMENDATIONS.**—Within 18 months after the date of enactment of this Act, the Commandant shall submit recommendations based on the analysis required under this subsection to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure. The recommendations shall consider a full range of options for the management of maritime traffic, including Federal legislation, promulgation of Federal rules, and the establishment of cooperative agreements for shared funding of spill prevention and response systems.

(b) **DUAL ESCORT VESSELS FOR DOUBLE HULLED TANKERS IN PRINCE WILLIAM SOUND, ALASKA.**—

(1) **IN GENERAL.**—Section 4116(c) of the Oil Pollution Act of 1990 (46 U.S.C. 3703 note) is amended—

(A) by striking “Not later than 6 months after the date of the enactment of this Act, the” and inserting “(1) **IN GENERAL.**—The”; and

(B) by adding at the end the following:

“(2) **PRINCE WILLIAM SOUND, ALASKA.**—

“(A) **IN GENERAL.**—The requirement in paragraph (1) relating to single hulled tankers in Prince William Sound, Alaska, described in that paragraph being escorted by at least 2 towing vessels or other vessels considered to be appropriate by the Secretary (including regulations promulgated in accordance with section 3703(a)(3) of title 46, United States Code, as set forth in part 168 of title 33, Code of Federal Regulations (as in effect on March 1, 2009) implementing this subsection with respect to those tankers) shall apply to double hulled tankers over 5,000 gross tons transporting oil in bulk in Prince William Sound, Alaska.

“(B) IMPLEMENTATION OF REQUIREMENTS.—The Secretary of the Federal agency with jurisdiction over the Coast Guard shall carry out subparagraph (A) by order without notice and hearing pursuant to section 553 of title 5 of the United States Code.”.

(2) EFFECTIVE DATE.—The amendments made by subsection (b) take effect on the date that is 90 days after the date of enactment of this Act.

(c) PRESERVATION OF STATE AUTHORITY.—Nothing in this Act or in any other provision of Federal law related to the regulation of maritime transportation of oil shall affect, or be construed or interpreted as preempting, the laws or regulations of any State or political subdivision thereof in effect on the date of enactment of this Act which require the escort by one or more tugs of laden oil tankers in the areas other than Prince William Sound which are specified in section 4116(c) of the Oil Pollution Act of 1990 (46 U.S.C. 3703 note).

SEC. 812. EXTENSION OF FINANCIAL RESPONSIBILITY.

Section 1016(a) of the Oil Pollution Act of 1990 (33 U.S.C. 2716(a)) is amended—

(1) by striking “or” after the semicolon in paragraph (1);

(2) by inserting “or” after the semicolon in paragraph (2); and

(3) by inserting after paragraph (2) the following:

“(3) any tank vessel over 100 gross tons (except a non-self-propelled vessel that does not carry oil as cargo) using any place subject to the jurisdiction of the United States;”.

SEC. 813. OIL SPILL LIABILITY TRUST FUND INVESTMENT AMOUNT.

Within 30 days after the date of enactment of this Act, the Secretary of the Treasury shall increase the amount invested in income producing securities under section 5006(b) of the Oil Pollution Act of 1990 (33 U.S.C. 2736(b)) by \$12,851,340.

SEC. 814. LIABILITY FOR USE OF SINGLE-HULL VESSELS.

Section 101(32)(A) of the Oil Pollution Act of 1990 (33 U.S.C. 2701(32)(A)) is amended by inserting “In the case of a vessel, the term ‘responsible party’ also includes the owner of oil being transported in a tank vessel with a single hull after December 31, 2010 (other than a vessel described in section 3703a(b)(3) of title 46, United States Code).” after “vessel.”.

TITLE IX—MISCELLANEOUS PROVISIONS

SEC. 901. VESSEL DETERMINATION.

(a) VESSELS DEEMED TO BE NEW VESSELS.—The vessel with United States official number 981472 and the vessel with United States official number 988333 shall each be deemed to be a new vessel effective upon the date of delivery after January 1, 2008, from a privately-owned United States shipyard if no encumbrances are on record with the United States Coast Guard at the time of the issuance of the new vessel certificate of documentation for such vessel.

(b) SAFETY INSPECTION.—Each vessel shall be subject to the vessel safety and inspection requirements of title 46, United States Code, applicable to any such vessel as of the day before the date of enactment of this Act.

SEC. 902. CONVEYANCE OF THE PRESQUE ISLE LIGHT STATION FRESNEL LENS TO PRESQUE ISLE TOWNSHIP, MICHIGAN.

(a) CONVEYANCE OF LENS AUTHORIZED.—

(1) TRANSFER OF POSSESSION.—Notwithstanding any other provision of law, the Commandant of the Coast Guard may transfer to Presque Isle Township, a township in Presque Isle County in the State of Michigan (in this section referred to as the “Township”), possession of the Historic Fresnel Lens (in this section referred to as the

“Lens”) from the Presque Isle Light Station Lighthouse, Michigan (in this section referred to as the “Lighthouse”).

(2) CONDITION.—As a condition of the transfer of possession authorized by paragraph (1), the Township shall, not later than one year after the date of transfer, install the Lens in the Lighthouse for the purpose of operating the Lens and Lighthouse as a Class I private aid to navigation pursuant to section 85 of title 14, United States Code, and the applicable regulations under that section.

(3) CONVEYANCE OF LENS.—Upon the certification of the Commandant that the Township has installed the Lens in the Lighthouse and is able to operate the Lens and Lighthouse as a private aid to navigation as required by paragraph (2), the Commandant shall convey to the Township all right, title, and interest of the United States in and to the Lens.

(4) CESSATION OF UNITED STATES OPERATIONS OF AIDS TO NAVIGATION AT LIGHTHOUSE.—Upon the making of the certification described in paragraph (3), all active Federal aids to navigation located at the Lighthouse shall cease to be operated and maintained by the United States.

(b) REVERSION.—

(1) REVERSION FOR FAILURE OF AID TO NAVIGATION.—If the Township does not comply with the condition set forth in subsection (a)(2) within the time specified in that subsection, the Township shall, except as provided in paragraph (2), return the Lens to the Commandant at no cost to the United States and under such conditions as the Commandant may require.

(2) EXCEPTION FOR HISTORICAL PRESERVATION.—Notwithstanding the lack of compliance of the Township as described in paragraph (1), the Township may retain possession of the Lens for installation as an artifact in, at, or near the Lighthouse upon the approval of the Commandant. The Lens shall be retained by the Township under this paragraph under such conditions for the preservation and conservation of the Lens as the Commandant shall specify for purposes of this paragraph. Installation of the Lens under this paragraph shall occur, if at all, not later than two years after the date of the transfer of the Lens to the Township under subsection (a)(1).

(3) REVERSION FOR FAILURE OF HISTORICAL PRESERVATION.—If retention of the Lens by the Township is authorized under paragraph (2) and the Township does not install the Lens in accordance with that paragraph within the time specified in that paragraph, the Township shall return the lens to the Coast Guard at no cost to the United States and under such conditions as the Commandant may require.

(c) CONVEYANCE OF ADDITIONAL PERSONAL PROPERTY.—

(1) TRANSFER AND CONVEYANCE OF PERSONAL PROPERTY.—Notwithstanding any other provision of law, the Commandant may transfer to the Township any additional personal property of the United States related to the Lens that the Commandant considers appropriate for conveyance under this section. If the Commandant conveys the Lens to the Township under subsection (a)(3), the Commandant may convey to the Township any personal property previously transferred to the Township under this subsection.

(2) REVERSION.—If the Lens is returned to the Coast Guard pursuant to subsection (b), the Township shall return to the Coast Guard all personal property transferred or conveyed to the Township under this subsection except to the extent otherwise approved by the Commandant.

(d) CONVEYANCE WITHOUT CONSIDERATION.—The conveyance of the Lens and any personal

property under this section shall be without consideration.

(e) DELIVERY OF PROPERTY.—The Commandant shall deliver property conveyed under this section—

(1) at the place where such property is located on the date of the conveyance;

(2) in condition on the date of conveyance; and

(3) without cost to the United States.

(f) MAINTENANCE OF PROPERTY.—As a condition of the conveyance of any property to the Township under this section, the Commandant shall enter into an agreement with the Township under which the Township agrees—

(1) to operate the Lens as a Class I private aid to navigation under section 85 of title 14, United States Code, and application regulations under that section; and

(2) to hold the United States harmless for any claim arising with respect to personal property conveyed under this section.

(g) LIMITATION ON FUTURE CONVEYANCE.—The instruments providing for the conveyance of property under this section shall—

(1) require that any further conveyance of an interest in such property may not be made without the advance approval of the Commandant; and

(2) provide that, if the Commandant determines that an interest in such property was conveyed without such approval—

(A) all right, title, and interest in such property shall revert to the United States, and the United States shall have the right to immediate possession of such property; and

(B) the recipient of such property shall pay the United States for costs incurred by the United States in recovering such property.

(h) ADDITIONAL TERMS AND CONDITIONS.—The Commandant may require such additional terms and conditions in connection with the conveyances authorized by this section as the Commandant considers appropriate to protect the interests of the United States.

SEC. 903. LAND CONVEYANCE, COAST GUARD PROPERTY IN MARQUETTE COUNTY, MICHIGAN, TO THE CITY OF MARQUETTE, MICHIGAN.

(a) CONVEYANCE AUTHORIZED.—The Commandant of the Coast Guard may convey, without consideration, to the City of Marquette, Michigan (in this section referred to as the “City”), all right, title, and interest of the United States in and to a parcel of real property, together with any improvements thereon, located in Marquette County, Michigan, that is under the administrative control of the Coast Guard, consists of approximately 5.5 acres, and is commonly identified as Coast Guard Station Marquette and Lighthouse Point.

(b) RETENTION OF CERTAIN EASEMENTS.—In conveying the property under subsection (a), the Commandant of the Coast Guard may retain such easements over the property as the Commandant considers appropriate for access to aids to navigation.

(c) LIMITATIONS.—The property to be conveyed by subsection (a) may not be conveyed under that subsection until—

(1) the Coast Guard has relocated Coast Guard Station Marquette to a newly constructed station;

(2) any environmental remediation required under Federal law with respect to the property has been completed; and

(3) the Commandant of the Coast Guard determines that retention of the property by the United States is not required to carry out Coast Guard missions or functions.

(d) CONDITIONS OF TRANSFER.—All conditions placed within the deed of title of the property to be conveyed under subsection (a) shall be construed as covenants running with the land.

(e) INAPPLICABILITY OF SCREENING OR OTHER REQUIREMENTS.—The conveyance of property authorized by subsection (a) shall be made without regard to the following:

(1) Section 2696 of title 10, United States Code.

(2) Chapter 5 of title 40, United States Code.

(3) Any other provision of law relating to the screening, evaluation, or administration of excess or surplus Federal property prior to conveyance by the Administrator of General Services.

(f) EXPIRATION OF AUTHORITY.—The authority in subsection (a) shall expire on the date that is five years after the date of the enactment of this Act.

(g) DESCRIPTION OF PROPERTY.—The exact acreage and legal description of the property to be conveyed under subsection (a) shall be determined by a survey satisfactory to the Commandant of the Coast Guard. The cost of the survey shall be borne by the United States.

(h) ADDITIONAL TERMS AND CONDITIONS.—The Commandant of the Coast Guard may require such additional terms and conditions in connection with the conveyance authorized by subsection (a) as the Commandant considers appropriate to protect the interests of the United States.

SEC. 904. OFFSHORE SUPPLY VESSELS.

(a) REMOVAL OF TONNAGE LIMITS.—

(1) DEFINITION.—

(A) Section 2101(19) of title 46, United States Code, is amended by striking “of more than 15 gross tons but less than 500 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title”.

(B) EXEMPTION.—Section 5209(b)(1) of the Oceans Act of 1992 (Public Law 102-587; 46 U.S.C. 2101 note) is amended by striking “vessel,” and inserting “vessel of less than 500 gross tons as measured under section 14502 of title 46, United States Code, or an alternate tonnage measured under section 14302 of such title as prescribed by the Secretary under section 14104 of such title”.

(2) APPLICATION.—Section 3702(b) of title 46, United States Code, is amended by striking paragraph (1) and redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively.

(b) SCALE OF EMPLOYMENT: ABLE SEAMEN.—Section 7312(d) of title 46, United States Code, is amended to read as follows:

“(d) Individuals qualified as able seamen—offshore supply vessels under section 7310 of this title may constitute all of the able seamen required on board a vessel of less than 500 gross tons as measured under section 14502 of this title or an alternate tonnage as measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title engaged in support of exploration, exploitation, or production of offshore mineral or energy resources. Individuals qualified as able seamen—limited under section 7308 of this title may constitute all of the able seamen required on board a vessel of at least 500 gross tons as measured under section 14502 of this title or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title engaged in support of exploration, exploitation, or production of offshore mineral or energy resources.”.

(c) MINIMUM NUMBER OF LICENSED INDIVIDUALS.—Section 8301(b) of title 46, United States Code, is amended to read as follows:

“(b)(1) An offshore supply vessel of less than 500 gross tons as measured under section 14502 of this title or 6,000 gross tons as measured under section 14302 of this title on

a voyage of less than 600 miles shall have a licensed mate. If the vessel is on a voyage of at least 600 miles, however, the vessel shall have 2 licensed mates.

“(2) An offshore supply vessel shall have at least one mate. Additional mates on an offshore supply vessel of at least 6,000 gross tons as measured under section 14302 of this title shall be prescribed in accordance with hours of service requirements (including recording and record keeping of that service) prescribed by the Secretary.

“(3) An offshore supply vessel of more than 200 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title, may not be operated without a licensed engineer.”.

(d) WATCHES.—Section 8104(g) of title 46, United States Code, is amended—

(1) by inserting “(1)” after “(g)”;

(2) by adding at the end the following:

“(2) Paragraph (1) applies to an offshore supply vessel of at least 6,000 gross tons as measured under section 14302 of this title if the individuals engaged on the vessel are in compliance with hours of service requirements (including recording and record-keeping of that service) as prescribed by the Secretary.”.

(e) OIL FUEL TANK PROTECTION.—

(1) APPLICATION.—An offshore supply vessel of at least 6,000 gross tons as measured under section 14302 of this title that is constructed under a contract entered into after the date of enactment of this Act, or that is delivered after August 1, 2010, with an aggregate capacity of 600 cubic meters or more of oil fuel, shall comply with the requirements of Regulation 12A under Annex I to the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973, entitled *Oil Fuel Tank Protection*, regardless of whether such vessel is engaged in the coastwise trade or on an international voyage.

(2) DEFINITION.—In this subsection the term “oil fuel” means any oil used as fuel in connection with the propulsion and auxiliary machinery of the vessel in which such oil is carried.

(f) REGULATIONS.—

(1) IN GENERAL.—Not later than January 1, 2012, the Secretary of the department in which the Coast Guard is operating shall promulgate regulations to implement the amendments and authorities enacted by this section for offshore supply vessels of at least 6,000 gross tons as measured under section 14302 of title 46, United States Code, and to ensure the safe carriage of oil, hazardous substances, and individuals in addition to the crew on such vessels. The final rule issued pursuant to such rulemaking may supersede the interim final rule promulgated under paragraph (2) of this subsection. In promulgating regulations under this subsection, the Secretary shall take into consideration the characteristics of offshore supply vessels, their methods of operation, and their service in support of exploration, exploitation, or production of offshore mineral or energy resources.

(2) INTERIM FINAL RULE AUTHORITY.—As soon as is practicable and without regard to the provisions of chapters 5 and 6 of title 5, United States Code, the Secretary shall issue an interim final rule as a temporary regulation implementing this section (including the amendments made by this section) for offshore supply vessels of at least 6,000 gross tons as measured under section 14302 of title 46, United States Code, and to ensure the safe carriage of oil, hazardous substances, and individuals in addition to the crew on such vessels.

(3) INTERIM PERIOD.—After the effective date of this Act, prior to the effective date of

the regulations prescribed by paragraph (2) of this subsection, and without regard to the provisions of chapters 5 and 6 of title 5, United States Code, and the offshore supply vessel tonnage limits of applicable regulations and policy guidance promulgated prior to the date of enactment of this Act, the Secretary may—

(A) issue a certificate of inspection under section 3309 of title 46, United States Code, to an offshore supply vessel of at least 6,000 gross tons as measured under section 14302 of this title if the Secretary determines that such vessel's arrangements and equipment meet the current Coast Guard requirements for certification as a cargo and miscellaneous vessel; and

(B) authorize a master, mate or engineer who possesses an ocean or near coastal license under part 10 of subchapter B of title 46, Code of Federal Regulations, (or any successor regulation) which qualifies the licensed officer for service on offshore supply vessels of more than 3,000 gross tons, as measured under section 14302 of title 46, United States Code, to operate offshore supply vessels of 6,000 gross tons or greater, as measured under such section.

SEC. 905. ASSESSMENT OF CERTAIN AIDS TO NAVIGATION AND TRAFFIC FLOW.

(a) INFORMATION ON USAGE.—Within 60 days after the date of enactment of this Act, the Commandant of the Coast Guard shall—

(1) determine the types and numbers of vessels typically transiting or utilizing that portion of the Atlantic Intracoastal Waterway beginning at a point that is due East of the outlet of the Cutler Drain Canal C-100 in Dade County, Florida, and ending at the Dade County line, during a period of 30 days; and

(2) provide the information on usage compiled under this subsection to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.

(b) ASSESSMENT OF CERTAIN AIDS TO NAVIGATION.—Within 90 days after the date of enactment of this Act, the Commandant of the Coast Guard shall—

(1) review and assess the buoys, markers, and other aids to navigation in and along that portion of the Atlantic Intracoastal Waterway specified in subsection (a), to determine the adequacy and sufficiency of such aids, and the need to replace such aids, install additional aids, or both; and

(2) submit a report on the assessment required by this section to the committees.

(c) SUBMISSION OF PLAN.—Within 180 days after the date of enactment of this Act, the Commandant shall submit a plan to the committees to address the needs identified under subsection (b).

SEC. 906. ALTERNATIVE LICENSING PROGRAM FOR OPERATORS OF UNINSPECTED PASSENGER VESSELS ON LAKE TEXOMA IN TEXAS AND OKLAHOMA.

(a) IN GENERAL.—Upon the request of the Governor of the State of Texas or the Governor of the State of Oklahoma, the Secretary of the department in which the Coast Guard is operating shall enter into an agreement with the Governor of the State whereby the State shall license operators of uninspected passenger vessels operating on Lake Texoma in Texas and Oklahoma in lieu of the Secretary issuing the license pursuant to section 8903 of title 46, United States Code, and the regulations issued thereunder, but only if the State plan for licensing the operators of uninspected passenger vessels—

(1) meets the equivalent standards of safety and protection of the environment as those contained in subtitle II of title 46, United States Code, and regulations issued thereunder;

(2) includes—
(A) standards for chemical testing for such operators;

(B) physical standards for such operators;
(C) professional service and training requirements for such operators; and

(D) criminal history background check for such operators;

(3) provides for the suspension and revocation of State licenses;

(4) makes an individual, who is ineligible for a license issued under title 46, United States Code, ineligible for a State license; and

(5) provides for a report that includes—

(A) the number of applications that, for the preceding year, the State rejected due to failure to—

(i) meet chemical testing standards;
(ii) meet physical standards;
(iii) meet professional service and training requirements; and

(iv) pass criminal history background check for such operators;

(B) the number of licenses that, for the preceding year, the State issued;

(C) the number of license investigations that, for the preceding year, the State conducted;

(D) the number of licenses that, for the preceding year, the State suspended or revoked, and the cause for such suspensions or revocations; and

(E) the number of injuries, deaths, collisions, and loss or damage associated with uninspected passenger vessels operations that, for the preceding year, the State investigated.

(b) ADMINISTRATION.—

(1) The Governor of the State may delegate the execution and enforcement of the State plan, including the authority to license and the duty to report information pursuant to subsection (a), to any subordinate State officer. The Governor shall provide, to the Secretary, written notice of any delegation.

(2) The Governor (or the Governor's designee) shall provide written notice of any amendment to the State plan no less than 45 days prior to the effective date of such amendment.

(3) At the request of the Secretary, the Governor of the State (or the Governor's designee) shall grant, on a biennial basis, the Secretary access to State records and State personnel for the purpose of auditing State execution and enforcement of the State plan.

(c) APPLICATION.—

(1) The requirements of section 8903 of title 46, United States Code, and the regulations issued thereunder shall not apply to any person operating under the authority of a State license issued pursuant to an agreement under this section.

(2) The State shall not compel a person, operating under the authority of a license issued either by another State, pursuant to a valid agreement under this section, or by the Secretary, pursuant to section 8903 of title 46, United States Code, to—

(A) hold a license issued by the State, pursuant to an agreement under this section; or

(B) pay any fee, associated with licensing, because the person does not hold a license issued by the State, pursuant to an agreement under this section.

Nothing in this paragraph shall limit the authority of the State to impose requirements or fees for privileges, other than licensing, that are associated with the operation of uninspected passenger vessels on Lake Texoma.

(3) For the purpose of enforcement, if an individual is issued a license—

(A) by a State, pursuant to an agreement entered into under to this section, or

(B) by the Secretary, pursuant to section 8903 of title 46, United States Code,

then the individual shall be entitled to lawfully operate an uninspected passenger vessel on Lake Texoma in Texas and Oklahoma without further requirement to hold an additional operator's license.

(d) TERMINATION.—

(1) If—

(A) the Secretary finds that the State plan for the licensing the operators of uninspected passenger vessels—

(i) does not meet the equivalent standards of safety and protection of the environment as those contained in subtitle II of title 46, United States Code, and regulations issued thereunder,

(ii) does not include—

(I) standards for chemical testing for such operators,

(II) physical standards for such operators,

(III) professional service and training requirements for such operators, or

(IV) background and criminal investigations for such operators,

(iii) does not provide for the suspension and revocation of State licenses, or

(iv) does not make an individual, who is ineligible for a license issued under title 46, United States Code, ineligible for a State license, or

(B) the Governor (or the Governor's designee) fails to report pursuant to subsection (b),

the Secretary shall terminate the agreement authorized by this section, if the Secretary provides written notice to the Governor of the State 60 days in advance of termination. The findings of fact and conclusions of the Secretary, if based on a preponderance of the evidence, shall be conclusive.

(2) The Governor of the State may terminate the agreement authorized by this section, if the Governor provides written notice to the Secretary 60 days in advance of the termination date.

(e) EXISTING AUTHORITY.—Nothing in this section shall affect or diminish the authority or jurisdiction of any Federal or State officer to investigate, or require reporting of, marine casualties.

(f) UNINSPECTED PASSENGER VESSEL DEFINED.—In this section the term “uninspected passenger vessel” has the meaning that term has in section 2101(42)(B) of title 46, United States Code.

TITLE X—BUDGETARY EFFECTS

SEC. 1001. BUDGETARY EFFECTS.

The budgetary effects of this Act, for the purpose of complying with the Statutory Pay-As-You-Go Act of 2010, shall be determined by reference to the latest statement titled “Budgetary Effects of PAYGO Legislation” for this Act, submitted for printing in the Congressional Record by the Chairman of the Senate Budget Committee, provided that such statement has been submitted prior to the vote on passage.

SA 3913. Mr. WHITEHOUSE (for Mr. GREGG) proposed an amendment to the resolution S. Res. 480, condemning the continued detention of Burmese democracy leader Daw Aung San Suu Kyi and calling on the military regime in Burma to permit a credible and fair election process and the transition to civilian, democratic rule; as follows:

On page 2, beginning on line 7, strike “the National League for Democracy and other opposition groups,” and insert “all political groups and individuals dedicated to democratic ideals.”

On page 3, beginning on line 9, strike “(including the People's Republic of China, the Association of Southeast Asian Nations, and the United Nations Security Council)” and insert “, as appropriate, in order”.

On page 3, line 17, strike “the National League for Democracy and”.

SA 3914. Mr. CHAMBLISS submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end “too big to fail”, to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 539, strike line 14 and all that follows through page 541, line 24, and insert the following:

“(33) MAJOR SWAP PARTICIPANT.—

“(A) IN GENERAL.—The term ‘major swap participant’ means any person who is not a swap dealer, and—

“(i)(I) maintains a substantial net position in swaps for any of the major swap categories as determined by the Commission, excluding—

“(aa) positions held for hedging or mitigating commercial risk, including operating risk and balance sheet risk, of such person or its affiliates; and

“(bb) positions maintained by any employee benefit plan (or any contract held by such a plan) as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002) for the primary purpose of hedging or mitigating any risk directly associated with the operation of the plan; and

“(II) whose outstanding swaps create substantial net counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets; or

“(ii)(I) is a financial entity, other than an entity predominantly engaged in providing customer financing for the purchase of an affiliate's merchandise or manufactured goods, that is highly leveraged relative to the amount of capital it holds;

“(II) maintains a substantial net position in outstanding swaps in any major swap category as determined by the Commission; and

“(III) whose outstanding swaps create substantial net counterparty exposure that could have serious adverse effects on the financial stability of the United States banking system or financial markets.

“(B) DEFINITION OF SUBSTANTIAL NET POSITION.—For purposes of subparagraph (A), the Commission shall define by rule or regulation the term ‘substantial net position’ to mean a position after application of legally enforceable netting or collateral arrangements that meets a threshold the Commission determines to be prudent for the effective monitoring, management, and oversight of entities that are systemically important or can significantly impact the financial system of the United States.

“(C) SCOPE OF DESIGNATION.—For purposes of subparagraph (A), a person may be designated as a major swap participant for 1 or more categories of swaps without being classified as a major swap participant for all classes of swaps.

“(D) CAPITAL.—In setting capital requirements for a person that is designated as a major swap participant for a single type or single class or category of swaps or activities, the prudential regulator and the Commission shall take into account the risks associated with other types of swaps or classes of swaps or categories of swaps engaged in by

virtue of the status of the person as a major swap participant.”;

SA 3915. Mr. CHAMBLISS submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end “too big to fail”, to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 555, strike line 16 and all that follows through page 557, line 2, and insert the following:

“(49) SWAP DEALER.—

“(A) IN GENERAL.—The term ‘swap dealer’ means any person who—

“(i) holds itself out as a dealer in swaps;

“(ii) makes a market in swaps;

“(iii) regularly engages in the purchase and sale of swaps to customers as its ordinary course of business; and

“(iv) engages in any activity causing the person to be commonly known in the trade as a dealer or market maker in swaps.

“(B) INCLUSION.—A person may be designated as a swap dealer for a single type or single class or category of swap or activities and considered not to be a swap dealer for other types, classes, or categories of swaps or activities.

“(C) CAPITAL.—In setting capital requirements for a person that is designated as a swap dealer for a single type or single class or category of swap or activities, the prudential regulator and the Commission shall take into account the risks associated with other types of swaps or classes of swaps or categories of swaps engaged in by virtue of the status of the person as a swap dealer.

“(D) EXCEPTION.—The term ‘swap dealer’ does not include a person that buys or sells swaps for such person’s own account, either individually or in a fiduciary capacity, or on behalf of any affiliates of such person, unless it does so as a market maker and as a part of a regular business.

SA 3916. Mr. CHAMBLISS submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end “too big to fail”, to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

Beginning on page 566, strike line 8 and all that follows through page 584, line 7, and insert the following:

(3) MANDATORY CLEARING OF SWAPS.—Section 2 of the Commodity Exchange Act (7 U.S.C. 2) is amended by inserting after subsection (g) (as redesignated by paragraph (1)(B)) the following:

“(h) CLEARING REQUIREMENT.—

“(1) OPEN ACCESS.—The rules of a registered derivatives clearing organization shall—

“(A) prescribe that all swaps with the same terms and conditions are economically

equivalent and may be offset with each other within the derivatives clearing organization; and

“(B) provide for nondiscriminatory clearing of a swap executed bilaterally or on or through the rules of an unaffiliated designated contract market or swap execution facility, subject to the requirements of section 5(b).

“(2) SWAPS SUBJECT TO MANDATORY CLEARING REQUIREMENT.—

“(A) IN GENERAL.—In accordance with subparagraph (B), the Commission shall, jointly with the Securities and Exchange Commission and the Federal Reserve Board of Governors, adopt rules to establish criteria for determining that a swap or group, category, type, or class of swap is required to be cleared.

“(B) FACTORS.—In carrying out subparagraph (A), the following factors shall be considered:

“(i) Whether 1 or more derivatives clearing organizations or clearing agencies accepts the swap or group, category, type, or class of swap for clearing.

“(ii) Whether the swap or group, category, type, or class of swap is traded pursuant to standard documentation and terms.

“(iii) The liquidity of the swap or group, category, type, or class of swap and its underlying commodity, security, security of a reference entity, or group or index thereof.

“(iv) The ability to value the swap or group, category, type, or class of swap and its underlying commodity, security, security of a reference entity, or group or index thereof consistent with an accepted pricing methodology, including the availability of intraday prices.

“(v) The size of the market for the swap or group, category, type, or class of swap and the available capacity, operational expertise, and resources of the derivatives clearing organization or clearing agency that accepts it for clearing.

“(vi) Whether a clearing mandate would mitigate risk to the financial system or whether it would unduly concentrate risk in a clearing participant, derivatives clearing organization, or clearing agency in a manner that could threaten the solvency of that clearing participant, the derivatives clearing organization, or the clearing agency.

“(vii) Such other factors as the Commission, the Securities and Exchange Commission, and the Federal Reserve Board of Governors jointly may determine are relevant.

“(C) SWAPS SUBJECT TO CLEARING REQUIREMENT.—The Commission—

“(i) shall review each swap, or any group, category, type, or class of swap that is currently listed for clearing and those which a derivatives clearing organization notifies the Commission that the derivatives clearing organization plans to list for clearing after the date of enactment of this subsection;

“(ii) except as provided in paragraph (3), may require, pursuant to the rules adopted under subparagraph (A) and through notice-and-comment rulemaking, that a particular swap, group, category, type, or class of swap must be cleared; and

“(iii) shall rely on economic analysis provided by economists of the Commission in making any determination under clause (ii).

“(D) EFFECT.—

“(i) IN GENERAL.—Nothing in this paragraph affects the ability of a derivatives clearing organization to list for permissive clearing any swap, or group, category, type, or class of swaps.

“(ii) PROHIBITION.—The Commission shall not compel a derivatives clearing organization to list a swap, group, category, type, or class of swap for clearing if the derivatives clearing organization determines that the swap, group, category, type, or class of swap

would adversely impact its business operations, or impair the financial integrity of the derivatives clearing organization.

“(iii) REQUIRED EXEMPTION.—The Commission shall exempt a swap from the requirements of subparagraph (C), if no derivatives clearing organization registered under this Act or no derivatives clearing organization that is exempt from registration under section 5b(j) of this Act will accept the swap for clearing.

“(E) PREVENTION OF EVASION.—The Commission may prescribe rules, or issue interpretations of such rules, as necessary to prevent evasions of any requirement to clear under subparagraph (C). In issuing such rules or interpretations, the Commission shall consider—

“(i) the extent to which the terms of the swap, group, category, type, or class of swap are similar to the terms of other swaps, groups, categories, types, or classes of swap that are required to be cleared by swap participants under subparagraph (C); and

“(ii) whether there is an economic purpose for any differences in the terms of the swap or group, category, type, or class of swap that are required to be cleared by swap participants under subparagraph (C).

“(F) ELIMINATION OF REQUIREMENT TO CLEAR.—The Commission may, pursuant to the rules adopted under subparagraph (A) and through notice-and-comment rulemaking, rescind a requirement imposed under subparagraph (C) with respect to a swap, group, category, type, or class of swap.

“(G) PETITION FOR RULEMAKING.—Any person may file a petition, pursuant to the rules of practice of the Commission, requesting that the Commission use its authority under subparagraph (C) to require clearing of a particular swap, group, category, type, or class of swap or to use its authority under subparagraph (F) to rescind a requirement for swap participants to clear a particular swap, group, category, type, or class of swap.

“(H) FOREIGN EXCHANGE FORWARDS, SWAPS, AND OPTIONS.—Foreign exchange forwards, swaps, and options shall not be subject to a clearing requirement under subparagraph (C) unless the Department of the Treasury and the Board of Governors determine that such a requirement is appropriate after considering whether there exists an effective settlement system for such foreign exchange forwards, swaps, and options and any other factors that the Department of the Treasury and the Board of Governors deem to be relevant.

“(3) END USER CLEARING EXEMPTION.—

“(A) DEFINITIONS.—In this paragraph:

“(i) COMMERCIAL END USER.—The term ‘commercial end user’ means any person who, as its primary business activity owns, operates, uses, produces, processes, develops, leases, manufactures, distributes, merchandises, provides or markets goods, services, physical assets, or commodities (which shall include but not be limited to coal, natural gas, electricity, biofuels, crude oil, gasoline, propane, distillates, and other hydrocarbons) either individually or in a fiduciary capacity.

“(ii) FINANCIAL ENTITY END USER.—

“(I) IN GENERAL.—The term ‘financial entity end user’ means any person predominantly engaged in activities that are financial in nature, as determined by the Commission.

“(II) EXCLUSIONS.—The term ‘financial entity end user’ does not include—

“(aa) any person who is a swap dealer, security-based swap dealer, major swap participant, major security-based swap participant;

“(bb) an investment fund that would be an investment company (as defined in section 3 of the Investment Company Act of 1940 (15

U.S.C. 80a-3)) but for paragraph (1) or (7) of section 3(c) of that Act (15 U.S.C. 80a-3(c)); and is not a partnership or other entity or any subsidiary that is primarily invested in physical assets (which shall include but not be limited to commercial real estate) directly or through interests in partnerships or limited liability companies that own such assets;

“(cc) entities defined in section 1303(20) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4502(20));

“(dd) a commodity pool; or

“(ee) a commercial end user.

“(B) END USER CLEARING EXEMPTION.—

“(i) IN GENERAL.—Subject to clause (ii), in the event that a swap is subject to the mandatory clearing requirement under paragraph (2), and 1 of the counterparties to the swap is a commercial end user or a financial entity end user, that counterparty—

“(I)(aa) may elect not to clear the swap, as required under paragraph (2); or

“(bb) may elect, prior to entering into the swap transaction, to require clearing of the swap; and

“(II) if the end user makes an election under subclause (I)(bb), shall have the sole right to select the derivatives clearing organization at which the swap will be cleared.

“(ii) LIMITATION.—A commercial end user or a financial entity end user may only make an election under clause (i) if the end user is using the swap to hedge commercial risk, including operating risk and balance sheet risk.

“(C) TREATMENT OF AFFILIATES.—

“(i) IN GENERAL.—An affiliate of a commercial end user (including affiliate entities predominated engaged in providing financing for the purchase of merchandise or manufactured goods of the commercial end user) or a financial entity end user may make an election under subparagraph (B)(i) only if the affiliate uses the swap to hedge or mitigate the commercial risk, including operating risk and balance sheet risk, of the commercial end user or the financial entity end user or other affiliate of the commercial end user or financial entity end user.

“(ii) PROHIBITION RELATING TO CERTAIN AFFILIATES.—An affiliate of a commercial end user or a financial entity end user shall not use the exemption under subparagraph (B) if the affiliate is—

“(I) a swap dealer;

“(II) a security-based swap dealer;

“(III) a major swap participant;

“(IV) a major security-based swap participant;

“(V) an investment fund that would be an investment company (as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3)) but for paragraph (1) or (7) of section 3(c) of that Act (15 U.S.C. 80a-3(c)); and is not a partnership or other entity or any subsidiary that is primarily invested in physical assets (which shall include but not be limited to commercial real estate) directly or through interests in partnerships or limited liability companies that own such assets; or

“(VI) a commodity pool.

“(D) ABUSE OF EXEMPTION.—The Commission may prescribe such rules or issue interpretations of the rules as the Commission determines to be necessary to prevent abuse of the exemption described in subparagraph (B). The Commission may also request information from those entities claiming the clearing exemption as necessary to prevent abuse of the exemption described in subparagraph (B).

“(4) REQUIRED REPORTING.—Each swap that is not cleared by any derivatives clearing organization shall be reported either to a registered swap repository described in section

21 or, if there is no repository that would accept the swap, to the Commission pursuant to section 4r.

“(5) TRANSITION RULES.—

“(A) REPORTING TRANSITION RULES.—The Commission shall provide for the reporting of data, as follows:

“(i) SWAPS ENTERED INTO BEFORE DATE OF ENACTMENT OF THIS SUBSECTION.—Swaps entered into before the date of the enactment of this subsection shall be reported to a registered swap repository or the Commission not later than 180 days after the effective date of this subsection.

“(ii) SWAPS ENTERED INTO ON OR AFTER DATE OF ENACTMENT OF THIS SUBSECTION.—Swaps entered into on or after such date of enactment shall be reported to a registered swap repository or the Commission not later than such time period as the Commission prescribe.

“(B) CLEARING TRANSITION RULES.—Swaps entered into before the effective date of any requirement under paragraph (2)(C) are exempt from the clearing requirements of this subsection.

“(6) REPORTING OBLIGATIONS.—

“(A) SWAPS IN WHICH ONLY 1 COUNTERPARTY IS A SWAP DEALER OR MAJOR SWAP PARTICIPANT.—With respect to a swap in which only 1 counterparty is a swap dealer or major swap participant, the swap dealer or major swap participant shall report the swap as required under paragraphs (4) and (5).

“(B) SWAPS IN WHICH 1 COUNTERPARTY IS A SWAP DEALER AND THE OTHER A MAJOR SWAP PARTICIPANT.—With respect to a swap in which 1 counterparty is a swap dealer and the other a major swap participant, the swap dealer shall report the swap as required under paragraphs (4) and (5).

“(C) OTHER SWAPS.—With respect to any other swap not described in subparagraph (A) or (B), the counterparties to the swap shall select a counterparty to report the swap as required under paragraphs (4) and (5).”

SA 3917. Mr. CHAMBLISS submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end “too big to fail”, to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 580, line 1, insert after “commercial end user” the following: “or a lending institution cooperatively owned by and primarily serving agricultural producers, agricultural cooperatives, or rural electric cooperatives”.

SA 3918. Ms. SNOWE (for herself and Ms. LANDRIEU) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end “too big to fail”, to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1272, line 2, strike “services who” and insert “services, but only to the extent that such person”.

On page 1272, line 22, strike “(C)” and insert “(C)(i)”.

On page 1273, strike line 19 and insert the following:

“(C) LIMITATIONS.—

“(i) IN GENERAL.—Notwithstanding sub—

On page 1273, line 20, after “subparagraph (B)” insert “, and except as provided in clause (ii)”.

On page 1274, between lines 2 and 3, insert the following:

“(ii) EXCEPTION.—Subparagraph (A) and clause (i) of this subparagraph do not apply to any merchant, retailer, or seller of nonfinancial goods or services, to the extent that such person is subject to any enumerated consumer law or any law for which authorities are transferred under subtitle F or H.”

On page 1274, strike line 3 and all that follows through “may” on line 4 and insert the following:

“(D) RULES.—

“(i) AUTHORITY OF OTHER AGENCIES.—No provision of this title shall”.

On page 1274, between lines 13 and 14, insert the following:

“(ii) SMALL BUSINESSES.—A merchant, retailer, or seller of nonfinancial goods or services that would otherwise be subject to the authority of the Bureau solely by virtue of the application of subparagraph (B)(iii) shall be deemed not to be engaged significantly in offering or providing consumer financial products or services under subparagraph (C)(i), if such person—

“(I) only extends credit for the sale of nonfinancial goods or services, as described in subparagraph (A)(i);

“(II) retains such credit on its own accounts (except to sell or convey such debt that is delinquent or otherwise in default); and

“(III) meets the relevant industry size threshold to be a small business concern, based on annual receipts, pursuant to section 3 of the Small Business Act (15 U.S.C. 632) and the implementing rules thereunder.

“(iii) INITIAL YEAR.—A merchant, retailer, or seller of nonfinancial goods or services shall be deemed to meet the relevant industry size threshold described in clause (ii)(III) during the first year of operations of that business concern if, during that year, the receipts of that business concern reasonably are expected to meet that size threshold.

“(E) EXCEPTION FROM STATE ENFORCEMENT.—To the extent that the Bureau may not exercise authority under this subsection with respect to a merchant, retailer, or seller of nonfinancial goods or services, no action by a State attorney general or State regulator with respect to a claim made under this title may be brought under subsection 1042(a), with respect to an activity described in any of clauses (i) through (iii) of subparagraph (A) by such merchant, retailer, or seller of nonfinancial goods or services.”.

SA 3919. Mr. CONRAD (for himself, Mr. CRAPO, Mr. BARRASSO, Mr. KERRY, Mr. BROWN of Massachusetts, Ms. SNOWE, Ms. LANDRIEU, Mr. DORGAN, Mr. ROBERTS, Mr. ENZI, Mrs. MCCASKILL, Ms. COLLINS, Ms. CANTWELL, and Mrs. MURRAY) submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end

“too big to fail,” to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 466, line 13, strike “bank” and all that follows through “association” on line 15 and insert the following: “bank having total assets of more than \$10,000,000,000, in the same manner and to the same extent as if the insured State bank were a national banking association. For purposes of determining total assets under this subsection, the Corporation shall rely on the same regulations and interim methodologies specified in section 312(e) of the Restoring American Financial Stability Act of 2010”.

SA 3920. Mr. HARKIN (for himself, Mr. GRASSLEY, Mr. NELSON of Nebraska, Mr. JOHANNES, and Mr. LEAHY) submitted an amendment intended to be proposed by him to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end “too big to fail”, to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

At the end of title V, add the following:

Subtitle C—Fixed Annuities and Insurance Products Classification

SEC. 551. SHORT TITLE.

This subtitle may be cited as the “Fixed Indexed Annuities and Insurance Products Classification Act of 2010”.

SEC. 552. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress makes the following findings:

(1) Primary jurisdiction for regulating life insurance and annuities is vested with the States and Territories of the United States and the District of Columbia.

(2) Indexed insurance and annuity products offered by insurance companies are subject to a wide array of laws and regulations enforced by States and applicable jurisdictions, including nonforfeiture requirements that provide for minimum guaranteed values, thereby protecting consumers against market related losses.

(3) Adoption of Rule 151A by the Securities and Exchange Commission, entitled “Indexed Annuities and Certain Other Insurance Products”, 74 Fed. Reg. 3138 (January 16, 2009), interferes with State insurance regulation, harms the insurance industry, reduces competition, restricts consumer choice, creates unnecessary and excessive regulatory burdens, and diverts Commission resources, all of which outweighs any perceived benefits.

(b) PURPOSE.—The purpose of this subtitle is to nullify rule 151A and clarify the scope of the exemption for annuities and insurance contracts from Federal regulation under the Securities Act of 1933.

SEC. 553. SCOPE OF EXEMPTION FROM FEDERAL SECURITIES REGULATION.

Section 3(a)(8) of the Securities Act of 1933 (15 U.S.C. 77c(a)(8)) is amended by inserting before the semicolon the following: “, and any insurance or endowment policy or annuity contract or optional annuity contract—

“(A) the value of which does not vary according to the performance of a separate account; and

“(B) which satisfies standard nonforfeiture laws or similar requirements of the applica-

ble State, Territory, or District of Columbia at time of issue, or in the absence of applicable standard nonforfeiture laws or requirements, satisfies the Model Standard Nonforfeiture Law for Life Insurance or Model Standard Nonforfeiture Law for Individual Deferred Annuities, or any successor model law, as published by the National Association of Insurance Commissioners”.

SEC. 554. NULLIFICATION OF CERTAIN FEDERAL SECURITIES REGULATIONS.

Rule 151A promulgated by the Securities and Exchange Commission and entitled “Indexed Annuities and Certain Other Insurance Contracts”, 74 Fed. Reg. 3138 (January 16, 2009), shall have no force or effect.

SA 3921. Mr. BROWNBACK submitted an amendment intended to be proposed to amendment SA 3739 proposed by Mr. REID (for Mr. DODD (for himself and Mrs. LINCOLN)) to the bill S. 3217, to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end “too big to fail”, to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes; which was ordered to lie on the table; as follows:

On page 1267, line 18, insert before the semicolon “, as such amount is indexed for inflation”.

On page 1267, line 20, insert before the period “, as such amount is indexed for inflation”.

On page beginning on line 24, strike “, to support its examination activities under subsection (c), and”.

On page 1268, strike line 24 and all that follows through page 1269, line 19 and insert the following:

(c) ENFORCEMENT.—

On page 1270, line 13, strike “(e)” and insert “(d)”.

On page 1345, beginning on line 1, strike “, 1025, and 1026” and insert “and 1025”.

NOTICE OF INTENT TO OBJECT TO PROCEEDING ON MAY 5, 2010

Mr. COBURN. Mr. President, pursuant to the provisions of section 512 of Public Law 110–81, I intend to object to proceeding to the nomination of Walter Isaacson, of Louisiana, to be Chairman of the Broadcasting Board of Governors, dated May 5, 2010, for the following reasons:

I have had longstanding concerns regarding transparency and effectiveness of our taxpayer-funded international broadcasting agencies under the purview of the Broadcasting Board of Governors. In particular, I am troubled by the operations and management of Voice of America (VOA) given issues raised by the media, Inspector General, and former employees of VOA. Therefore, I have requested to meet with all the prospective nominees to discuss these issues. The Broadcasting Board of Governors performs a vital role regarding oversight and management of our international broadcasting. As the nation faces threats from the Middle East and in fact throughout the world, transparent and effective international broadcasting agencies are critical to

ensuring our international broadcasts are in fact fulfilling America’s interests in securing peace for ourselves and our allies.

Mr. COBURN. Mr. President, pursuant to the provisions of section 512 of Public Law 110–81, I intend to object to proceeding to the nomination of Victor Ashe of Tennessee, to be member of the Broadcasting Board of Governors, dated May 5, 2010, for the reasons denoted above.

Mr. COBURN. Mr. President, pursuant to the provisions of section 512 of Public Law 110–81, I intend to object to proceeding to the nomination of Michael Lynton of California, to be member of the Broadcasting Board of Governors, dated May 5, 2010, for the reasons denoted above.

Mr. COBURN. Mr. President, pursuant to the provisions of section 512 of Public Law 110–81, I object to proceeding to the nomination of Susan McCue of Virginia, to be member of casting Board of Governors, dated May 5, 2010, for the reasons denoted above.

Mr. COBURN. Mr. President, pursuant to the provisions of section 512 of Public Law 110–81, I intend to object to proceeding to the nomination of Dennis Mulhaupt of California, to be member of the Broadcasting Board of Governors, dated May 5, 2010, for the reasons denoted above.

Mr. COBURN. Mr. President, pursuant to the provisions of section 512 of Public Law 110–81, I intend to object to proceeding to the nomination of S. Enders Wimbush of Virginia, to be member of the Broadcasting Board of Governors, dated May 5, 2010, for the reasons denoted above.

NOTICE: PUBLIC FINANCIAL DISCLOSURE REPORTS

The filing date for the 2009 Public Financial Disclosure reports is Monday, May 17, 2010. Senators, political fund designees and staff members whose salaries exceed 120% of the GS–15 pay scale must file reports.

Public Financial Disclosure reports should be submitted to the Senate Office of Public Records, 232 Hart Building, Washington, D.C. 20510.

The Public Records office will be open from 9 a.m. to 6 p.m. on the filing date to accept these filings. For further information, please contact the Public Records office at (202) 224–0322.

THE CALENDAR

The ACTING PRESIDENT pro tempore. The majority leader.

Mr. REID. Mr. President, I ask unanimous consent that it be in order for the Senate to proceed en bloc to consideration of the following calendar items: Calendar No. 261, S. Res. 297; Calendar No. 262, S. Res. 275; Calendar No. 287, S. 1053; Calendar No. 291, S. 1405; Calendar No. 295, H.R. 689; Calendar No. 297, H.R. 1121; Calendar No. 300, H.R. 1442; Calendar No. 305, H.R. 2802.