

Calendar No. 466

105th Congress }
2d Session }

SENATE

{ REPORT
{ 105-246

COAST GUARD AUTHORIZATION ACT FOR
FISCAL YEARS 1998 AND 1999

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

on

S. 1259



JULY 10, 1998—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED FIFTH CONGRESS

SECOND SESSION

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COAST GUARD REAUTHORIZATION ACT FOR FISCAL YEARS 1998 AND 1999

JULY 10, 1998.—Ordered to be printed

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

REPORT

[To accompany S. 1259]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1259) “A Bill to authorize appropriations for fiscal years 1998 and 1999 for the United States Coast Guard, and for other purposes”, having considered the same, reports favorably thereon with amendments and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

S. 1259, the Coast Guard Authorization Act for Fiscal Years 1998 and 1999, authorizes appropriations for the U.S. Coast Guard for fiscal year (FY) 1998 and FY 1999, covering six appropriations accounts: (1) operation and maintenance expenses; (2) acquisition, construction, and improvement of facilities and equipment (AC&I); (3) research, development, testing, and evaluation (RDT&E); (4) retired pay; (5) alteration or removal of bridges; and (6) environmental compliance and restoration. The bill also authorizes end-of-year military strength and training loads, strengthens requirements for post-incident alcohol testing, establishes sanctions for obstructing law enforcement related to vessel boardings and aircraft landings, and makes other changes to existing law.

BACKGROUND AND NEEDS

The Coast Guard is the principal Federal maritime safety and law enforcement agency. Coast Guard activities include vessel safety inspection, the rescue of life and property at sea, fisheries law

enforcement, marine environmental protection, and the interdiction of drug traffickers and alien migrants. In addition, the agency carries out port security functions, cooperates closely with the other armed forces in military readiness activities, and has primary responsibility for the coastal defense of the United States. During times of war and national emergency, the Coast Guard becomes an arm of the U.S. Navy.

The Coast Guard Authorization Act of 1996 (Public Law 104-324) authorized appropriations and levels of military strength and training for the Coast Guard for FY 1996 and FY 1997. S. 1259 would authorize appropriations and levels of military strength and training for the Coast Guard in the two succeeding fiscal years and make other changes to existing law to address issues related to the Coast Guard.

FY 1998 AND 1999 ADMINISTRATION BUDGET REQUEST

For FY 1998, the Administration requested a budget of approximately \$4.0 billion for the Coast Guard, an increase of \$146 million or 4 percent over FY 1997 funding levels. The Administration also requested a budget of approximately \$4.1 billion for FY 1999, an approximately 6 percent increase from the amount available in FY 1997. In addition, it requested an end-of-year strength of 36,469 active duty military personnel in FY 1998, and an end-of-year strength of 35,538 active duty military personnel in FY 1999. Coast Guard budget accounts that are authorized in S. 1259 are summarized below.

Operating expenses

More than two-thirds of the total Coast Guard budget supports the operating expenses account, which funds activities to protect public safety and the marine environment, enforce laws and treaties, maintain aids to navigation, and preserve defense readiness. The Administration requested \$2.74 billion for this account in FY 1998, an increase of \$122 million from the FY 1997 appropriated level. For FY 1999, the Administration requested \$2.77 billion. In each fiscal year, the request assumes that \$25 million would be transferred from the Oil Spill Liability Trust Fund to the operating expenses account and that approximately \$300 million would be available from the Department of Defense (DOD) for defense-related activities.

Acquisition, construction, and improvements

AC&I funds are used to pay for major capital improvements, including vessel and aircraft acquisition and rehabilitation, information management, and construction programs at selected facilities. Major AC&I projects include replacement of seagoing and coastal buoy tenders, motor lifeboats, and coastal patrol boats; improvement of fleet logistics systems; the icebreaker program; surface search radar replacement; aircraft collision avoidance upgrades; and communications and computer software systems. The Administration requested \$379 million for AC&I in FY 1998, an increase of \$4.2 million over the appropriated level for FY 1997. In FY 1999, the Administration requested \$408 million. In each fiscal year, the request assumes that \$20 million would be transferred from the Oil

Spill Liability Trust Fund to the AC&I account. The FY 1999 request assumes that an additional \$35 million will be available in commercial navigation user fee receipts, bringing proposed AC&I expenditures to a total of \$443 million.

Research, development, test, and evaluation

Funds from this account are used to develop hardware, procedures, and systems that directly contribute to increasing the productivity of Coast Guard operating and regulatory programs. The Administration requested \$19 million for this account in FY 1998, a decrease of \$200,000 from the appropriated level for FY 1997. The Administration requested \$18.3 million for this account in FY 1999. In each fiscal year, the request assumes that \$3.5 million would be transferred from the Oil Spill Liability Trust Fund to this account.

Retired pay

Funds from this account are used for retired pay, annuities, and medical care for retired military personnel and former Lighthouse Service members, their dependents, and their survivors under chapter 55 of title 10, United States Code. The Administration requested \$645.7 million in FY 1998, an increase of \$28.9 million over the appropriated level for FY 1997. For FY 1999, the Administration requested \$684 million for retired pay.

Alteration of bridges

Under the Truman-Hobbs Act, the Federal government shares with the states the cost of altering publicly-owned highway and railroad bridges that obstruct the free movement of marine traffic. Since FY 1995, the Administration has requested no funding for highway bridge modifications, initiating a policy under which the Coast Guard no longer would seek direct funding for such bridges. Instead, the Administration proposes that the federal share be financed from the discretionary bridge program funds of the Federal Highway Administration, under the continuing program direction of the Coast Guard. The 1996 Coast Guard authorization law (P.L. 104-324) provided the Administration with discretionary authority to implement this proposal. In addition, \$17 million was included in the FY 1998 appropriations bill for the Coast Guard account. Now, the Administration has indicated interest in expanding the Federal Highway Administration's discretionary funding authority to include Truman-Hobbs railroad bridges. The Administration did not request Coast Guard funding for Truman-Hobbs Act projects in FY 1998 and FY 1999.

Environmental compliance and restoration

This account provides resources to bring current and former Coast Guard facilities into conformance with national environmental standards. The Administration requested \$21 million for both FY 1998 and FY 1999, a decrease of \$1 million from the appropriated level for FY 1997.

AUTHORIZATION REQUESTS

The authorization bill transmitted by the Administration proposes various changes to existing law to address issues and problems identified by the Coast Guard. These requests include legislation to remove the cap on warrant officer severance pay; allow the use of appropriated funds for the rental or lease of commercial vehicles to transport next-of-kin of eligible retired Coast Guard personnel to military funerals at national cemeteries; provide reimbursement to the City of Novato, California, for the cost of revising the Hamilton Reuse Planning Authority's closed base reuse plan; eliminate the Coast Guard Supply Fund reimbursement requirement; permit the funding of certain awards programs; protect personal information collected in marine casualty investigations from mandatory release; eliminate a biennial research and development reporting requirement; and extend the territorial sea for the purposes of certain Federal laws.

LEGISLATIVE HISTORY

On March 18, 1997, the Committee held a hearing on the Administration's budget request for FY 1998 and on draft legislation to authorize Coast Guard programs and activities for FY 1998 and FY 1999. In addition to reviewing the Administration's budget priorities for the Coast Guard, the hearing addressed drug interdiction, alcohol and drug testing after serious marine incidents, fisheries law enforcement, marine pollution prevention, Coast Guard personnel issues, funding mechanisms for bridge alterations, and recreational boating safety.

S. 1259 was introduced on October 6, 1997, by Senator Snowe, with Senators Hollings and Breaux as cosponsors. On October 8, 1997, the bill was considered by the Committee in an open executive session. Senator McCain offered an amendment intended to enhance the effectiveness of drug interdiction and other law enforcement efforts of Federal law enforcement agencies like the Coast Guard. Specifically, the McCain amendment would establish criminal sanctions for an airplane pilot to knowingly disobey an order to land from a Coast Guard or other law enforcement officer or for a vessel captain to knowingly disobey an order to stop or slow down to facilitate boarding by the Coast Guard or other authorized Federal law enforcement agency. The amendment would also establish criminal sanctions for non-forcible obstruction of a vessel boarding and for knowingly providing false information about a vessel and its cargo to a Federal law enforcement officer during a boarding of that vessel. The McCain amendment was adopted by voice vote, and the Committee, without objection, ordered S. 1259 reported with amendments.

SUMMARY OF MAJOR PROVISIONS

Authorization levels

S. 1259 as reported authorizes appropriations for the Coast Guard accounts covered in the bill that total \$3.83 billion in FY 1998 and \$3.86 billion in FY 1999. The authorization levels in the bill are generally consistent with the Administration's proposed au-

thorization bill. However, the numbers do not reflect the FY 1999 budget request that was transmitted after the Committee approved S. 1259 as reported. The reported bill also authorizes FY 1998 and FY 1999 end-of-year active duty military strength and annual training levels at Administration-requested levels.

Personnel management

The reported bill provides the Secretary of Transportation (Secretary) with the discretionary authority to waive severance pay requirements for officers separated with an other than honorable discharge, and it removes the statutory cap on severance pay for regular Coast Guard warrant officers.

Alcohol testing

The bill as reported requires the Coast Guard to ensure that alcohol testing of appropriate persons involved in a serious marine incident is conducted promptly after such an incident occurs. The bill also increases the maximum civil penalties for failure to comply with Coast Guard alcohol and drug testing requirements and for the first violation of Federal rules prohibiting the operation of a vessel while intoxicated.

Penalty for violation of international safety convention

The reported bill prohibits a vessel which has been detained by the Secretary for violation of an international safety convention to which the United States is a party from carrying cargo sponsored by the United States government. This prohibition expires one year after the date of the vessel's detention or upon the Secretary granting an appeal of the detention upon which the prohibition is based.

Extension of territorial sea for certain laws

The reported bill extends the territorial sea definitions in the Ports and Waterways Safety Act and subtitle II of title 46, United States Code, from 3 to 12 nautical miles from the U.S. baselines. The extensions conform these laws with Presidential Proclamation 5928 of December 27, 1988, which was issued by President Reagan and which extended the U.S. territorial sea from 3 to 12 nautical miles.

Sanctions for failure to land or bring to

The reported bill establishes criminal sanctions for failure by a person in charge of an aircraft to obey an order to land issued by an authorized Federal drug law enforcement officer and for failure by a person in charge of a vessel to obey an order issued by an authorized Federal law enforcement officer to "bring to" that vessel (i.e., to enable law enforcement to board the vessel). The amendment also establishes criminal sanctions for obstruction of a vessel boarding and for providing false information about a vessel and its cargo to a Federal law enforcement officer during a boarding of that vessel.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget

Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 13, 1997.

Hon. JOHN MCCAIN,
*Chairman, Committee on Commerce, Science, and Transportation,
U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1259, the Coast Guard Authorization Act for Fiscal Years 1998 and 1999.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Deborah Reis (for federal costs), Kristen Layman (for the state and local impact), and Jean Wooster (for the impact on the private sector).

Sincerely,

JAMES L. BLUM
(For June E. O'Neill, Director).

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 1529—Coast Guard Authorization Act for Fiscal Years 1998 and 1999

Summary: S. 1529 would authorize appropriations for discretionary programs of the U.S. Coast Guard (USCG) for fiscal years 1998 and 1999. For both years, the bill would authorize about \$3.2 billion, including about \$2.7 billion for operating expenses, \$379 million for acquisition and other capital projects, \$19 million for research activities, \$26 million for bridge alterations, and \$21 million for environmental compliance. Of the amounts authorized for each year, \$48.5 million would be derived from the Oil Spill Liability Trust Fund (OSLTF).

S. 1259 contains no new intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995 (UMRA) and would impose no significant costs on state, local, or tribal governments.

Two provisions of the bill could increase federal revenues from civil penalties; therefore, pay-as-you-go procedures would apply. The budgetary effect of these provisions, however, would be negligible.

Estimated cost to the Federal Government: Assuming appropriation of the entire amounts authorized for discretionary programs, funding for both 1998 and 1999 would be \$24 million (less than 1 percent) more than has been enacted for 1998. The estimated budgetary effects of the legislation are summarized in the following table.

	By fiscal year, in millions of dollars—					
	1997	1998	1999	2000	2001	2002
SPENDING SUBJECT TO APPROPRIATION						
USCG Spending Under Current Law:						
Estimated Authorization Level ¹	3,052	3,161	29	0	0	0

	By fiscal year, in millions of dollars—					
	1997	1998	1999	2000	2001	2002
Estimated Outlays	2,807	3,092	893	464	136	63
Proposed Changes:						
Estimated Authorization Level	0	24	3,156	0	0	0
Estimated Outlays	0	20	2,251	444	344	81
USCG Spending Under S. 1259:						
Estimated Authorization Level	3,052	3,185	3,185	0	0	0
Estimated Outlays	2,807	3,112	3,144	908	480	144

¹The 1997 and 1998 figures are the amounts appropriated for programs authorized by this bill. The \$29 million shown for 1999 is the amount already authorized by the Oil Pollution Act of 1990 for appropriations from the OSLTF.

The costs of this legislation fall within budget functions 300 (natural resources and environment) and 400 (transportation). Amounts provided in the bill for Coast Guard retirement have not been included in the above table because such pay is an entitlement under current law, requiring no annual authorization of appropriations.

Basis of estimate: For purposes of this estimate, CBO assumes that S. 1259 will be enacted during the first few months of calendar 1998, and that the full amounts authorized for USCG programs will be appropriated for each fiscal year.

The additional authorization of \$24 million for 1998 shown in the table represents the difference between the total stated in the bill for discretionary accounts and the amount already appropriated for such accounts to date. For 1999, the additional authorization level of \$3,156 million is as stated in the bill. That amount does not include \$28.5 million of the \$48.5 million to be derived from the OSLTF. (This amount, which consists of \$25 million for Coast Guard operations and \$3.5 million for research, is excluded because it is already authorized under existing law.) Outlays for all years are estimated on the basis of historical spending patterns for Coast Guard programs.

Section 201 of S. 1259 would increase future costs of Coast Guard operations and other discretionary programs, assuming appropriation of the necessary amounts, by removing the \$15,000 cap on severance payments for warrant officers. In total, CBO estimates the cost of this provision to be less than \$200,000 per year.

Several provisions of Title IV would direct the Coast Guard to convey without reimbursement certain real property to various units of local government or nonprofit organizations. Because none of these sites are likely to be sold under current Administration plans, their donation would have no effect on the federal budget.

Other provisions of S. 1259 are not expected to have any significant impact on the federal budget.

Pay-as-you-go considerations: Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. Two provisions of S. 1259 could affect receipts by increasing civil penalties, but CBO estimates that the amount of any new revenues would not be significant.

Estimated impact on State, local, and tribal governments: S. 1259 contains no intergovernmental mandates as defined in UMRA; however, several provisions would affect state and local governments. CBO estimates that, on the whole, the bill's provi-

sions, including those discussed above, would benefit state and local governments.

The bill's amendments to the federal Vessel Identification System could result in more vessel owners seeking state numbering and titling of their boats. These amendments would make state-titled vessels more likely to receive preferred mortgages. As a result, vessel owners who previously would have sought federal documentation would be more likely to seek state titles. CBO estimates that the impact of these changes on state budgets would be negligible. Furthermore, states generally charge fees for vessel services that cover the costs of administering this voluntary program.

Any additional costs associated with the property conveyances authorized in this bill would be incurred voluntarily by states.

Estimated impact on the private sector: S. 1259 would extend from 3 miles to 12 miles the territorial sea of the United States for purposes of enforcing the Ports and Waterways Safety Act and portions of Title 46 of the United States Code (Shipping). Thus, S. 1259 would extend the geographical coverage of existing private-sector mandates, regarding marine safety, on owners of operators of vessels visiting U.S. ports. Based on information provided by the Coast Guard, CBO estimates that this bill should impose no additional costs on the private sector because the same number of ships would be affected as under current law.

Previous CBO estimate: On July 31, 1997, CBO prepared a cost estimate for H.R. 2204, the Coast Guard Authorization Act of 1997, as ordered reported by the House Committee on Transportation and Infrastructure on July 23, 1997. The estimate for H.R. 2204 reflected that bill's higher authorization levels for both fiscal years 1998 and 1999.

Estimate prepared by: Federal Costs: Deborah Reis; Impact on State, Local, and Tribal Governments: Kristen Layman; and Impact on the Private Sector: Jean Wooster.

Estimate approved by: Paul N. Van de Water, Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

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

NUMBER OF PERSONS COVERED

S. 1259 as reported by the Committee authorizes appropriations to continue existing Coast Guard programs and makes a number of changes to current law. The bill would have little, if any, regulatory impact, but a few of the bill's sections could impact some individuals and businesses, and the effects of these sections can be clarified as follows:

Section 302 of the reported bill prohibits the transport of cargo sponsored by the U.S. government on a vessel that has been detained by the Secretary for violation of an international safety convention to which the United States is a party. This section could reduce business opportunities for vessel owners and crew that might be available currently, but the reduction in business would

occur only as a result of a violation of important safety standards designed to protect human life, property, and the environment. The provision will not create additional regulation. Rather, it will help to strengthen compliance with international safety regulations already recognized and enforced by the United States.

Section 305 extends the territorial sea definition in the Ports and Waterways Safety Act and subtitle II of title 46, United States Code, from 3 nautical miles to 12 as measured from the baselines of the United States. This change expands the area of application of these laws that provide for safe maritime transportation and protection of the environment. The laws currently apply to vessels when they enter the area within 3 nautical miles of the U.S. coast. Since nearly all marine transport vessels operating from 3 to 12 nautical miles offshore also enter the current 3-mile territorial sea, they are already subject to the requirements of the laws amended by the reported bill. Section 305 does not, therefore, impose new requirements on the maritime industry.

Section 409 establishes criminal sanctions for failure by a person in charge of an aircraft to obey an order to land issued by an authorized Federal law enforcement officer and for failure by a person in charge of a vessel to obey an order issued by an authorized Federal law enforcement officer to “bring to” that vessel. While this section could impact some aircraft and vessel owners and operators, it is intended only to improve enforcement of existing Federal laws and to affect only those aircraft and vessels suspected of engaging in unlawful activity or, in the case of vessels, those required under other Federal laws and regulations to comply with boarding orders from authorized Federal law enforcement officers. Furthermore, the section is not intended in any way to compromise existing protections against illegal searches by Federal law enforcement agencies.

ECONOMIC IMPACT

As noted above, sections 302 and 409 of the reported bill could have an economic impact on some individuals and businesses, but these impacts would result from penalties imposed for violations of existing Federal regulations and laws or from lawful attempts by authorized Federal law enforcement agencies to enforce existing Federal regulations and laws, particularly those related to illegal drug importation and money laundering. These sections do not impose new regulatory requirements on individuals and businesses.

PRIVACY

Section 303 of the reported bill enhances personal privacy protections by clarifying that the Coast Guard is not required to release to the public personal information such as home telephone numbers, home addresses, and social security numbers collected in the course of a marine casualty investigation.

Section 409 should not have a significant impact on the personal privacy of persons in charge of aircraft or vessels because the section does not compromise the existing protections against illegal searches that provide a check against inappropriately intrusive behavior by Federal law enforcement authorities. The authority to order aircraft to land is intended to be used only if a Federal law

enforcement agency has a reason to suspect that the person in charge of an aircraft is involved in illegal drug activity or money laundering. Under section 89 of title 14, United States Code, the Coast Guard is currently authorized to board and examine any vessel subject to the jurisdiction of the United States, and section 409 is intended to improve enforcement of this existing authority.

PAPERWORK

S. 1259 as reported should not significantly increase paperwork requirements for individuals and businesses.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section states the short title of the bill as the “Coast Guard Authorization Act for Fiscal Years 1998 and 1999”.

Section 2. Table of sections

This section provides a table of the sections in the legislation.

TITLE I—AUTHORIZATIONS

Section 101. Authorization of appropriations

This section of the reported bill would authorize Coast Guard appropriations for FY 1998 and FY 1999. The following chart summarizes the FY 1998 and the FY 1999 authorization levels proposed in subsections (a) and (b), respectively:

PROPOSED LEVELS FOR PROGRAMS AUTHORIZED IN S. 1259 AS REPORTED

[By fiscal years, in millions of dollars]

Programs	FY 1998	FY 1999
Operating Expenses	2,740	2,740
AC&I	379	379
R&D	19	19
Retired Pay	645.7	675.6
Alteration of Bridges	26	26
Environmental Compliance	21	21
Total	3,830.7	3,860.6

Section 102. Authorized levels of military strength and training

This section of the reported bill provides authorization for levels of military personnel strength and training for FY 1998 and FY 1999. Subsection (a) authorizes a Coast Guard end-of-fiscal-year strength for active duty military personnel of 37,660 as of September 30, 1998. Subsection (b) authorizes average military training student loads in FY 1998 of 1,368 student years for recruit and special training; 98 student years for flight training; 283 student years for professional training in military and civilian institutions; and 797 student years for officer acquisition.

Subsection (c) authorizes a Coast Guard end-of-fiscal-year strength for active duty military personnel of such numbers as may be necessary as of September 30, 1999. Subsection (d) authorizes average military training student loads in FY 1999 of such student

years as may be necessary for each category. The authorized strength levels in this section do not include members of the Coast Guard Ready Reserve called to active duty for special or emergency augmentation of regular Coast Guard forces for periods of 180 days or less.

TITLE II—COAST GUARD MANAGEMENT

Section 201. Severance pay

Subsection (a) of this section of the reported bill amends section 286a(d) of title 14, U.S. Code, to eliminate the \$15,000 cap on severance pay for regular Coast Guard warrant officers. This provision will eliminate an inequity in current law under which severance pay for Coast Guard warrant officers, unlike severance pay for all other military personnel, is subject to a statutory dollar limit.

When the Coast Guard severance pay cap was originally enacted, it was similar to the \$15,000 cap in place at the time for DOD warrant officer separation pay (the DOD equivalent of severance pay). In 1980, however, the DOD cap was increased to \$30,000 (P.L. 96-513), and then it was completely eliminated by section 501 of the FY 1991 Department of Defense Authorization Act (P.L. 101-510). Currently, no statutory dollar limits apply to the separation pay of any members of the DOD services, nor are there any statutory caps on the severance pay available to other regular Coast Guard officers, Coast Guard Reserve officers, or Coast Guard enlisted personnel. Subsection (a) extends the same treatment to severance pay for Coast Guard warrant officers. On average, four Coast Guard warrant officers are separated with severance pay annually.

Subsections (b) and (c) provide the Secretary with the discretionary authority to deny severance pay to a warrant officer or an officer, respectively, who is separated from Coast Guard service with an other than honorable discharge, if the Secretary determines that the circumstances under which the warrant officer or officer was discharged do not warrant severance pay. This authority is comparable to that available to the DOD services.

Section 202. Authority to implement and fund certain awards programs

This section of the reported bill amends section 93 of title 14, U.S. Code, to authorize Coast Guard use of appropriations or other available funds to provide for the honorary recognition of individuals and organizations that significantly contribute to Coast Guard programs, missions, or operations. Specifically, this section authorizes the use of such funds to purchase award items such as trophies and plaques and to pay for reasonable ceremony and presentation expenses.

The Coast Guard has traditionally maintained programs that formally recognize the significant contributions of citizens, non-profit organizations, businesses, and state and local governments to the missions and operations of the Coast Guard. These programs include the William M. Benkert Award to recognize excellence in marine environmental protection and the Charles P. Murphy Award to recognize contributions to national and international marine safety protection. The Comptroller General has ruled, however,

that appropriated funds may not be used for this purpose without specific statutory authorization. The U.S. Department of Agriculture, the Department of the Interior, and the National Aeronautics and Space Administration, among others, have statutory authorizations which allow the use of available funds and appropriations to provide awards to private individuals and organizations.

This section provides similar authority for the Coast Guard. The Committee recognizes the value of honoring the contributions of private citizens, organizations, businesses, and state and local governments to the many important operations of the Coast Guard, and the value of encouraging similar contributions in the future. The Committee expects, however, that the Coast Guard will conduct these programs in a prudent and fiscally responsible manner.

Section 203. Use of appropriated funds for commercial vehicles at military funerals

This section of the reported bill amends section 93 of title 14, U.S. Code, to authorize use of appropriated funds for renting or leasing commercial vehicles to provide transportation for family members attending military funerals of eligible retired Coast Guard personnel at national cemeteries. The Coast Guard does not maintain a motor pool that can provide transportation to next of kin for these occasions, and under current law, the Coast Guard does not have the authority to use appropriated funds to rent or lease vehicles for these functions. Providing transportation for the family members of deceased Coast Guard personnel eligible for burial in national cemeteries is an appropriate way to honor the contributions and sacrifices of the deceased service members. The Coast Guard estimates that the annual costs associated with these rentals would be less than \$1000.

Section 204. Authority to reimburse Novato, California, reuse commission

This section authorizes up to \$25,000 for the reimbursement of the City of Novato, California, for expenses incurred by the city in revising the Hamilton Reuse Planning Authority's base reuse plan. The city had to revise the reuse plan after the Coast Guard changed its request for housing at the former Hamilton Air Force Base, and these revisions resulted in additional costs for the city. The Committee strongly encourages the Coast Guard to take steps to ensure its timely participation in the military base realignment and closure process and to avoid similar costs in the future.

Section 205. Eliminate supply fund reimbursement requirement

This section of the reported bill amends section 650(a) of title 14, U.S. Code, to eliminate the requirement that the Coast Guard supply fund (Supply Fund) be reimbursed when commodities such as dining facility food items, fuel, and certain spare parts and uniform items are transferred to other Coast Guard accounts.

The Coast Guard maintains a number of commodities as capitalized assets within its Supply Fund account. Under current law, these commodities cannot be transferred from the Supply Fund unless the fund is reimbursed for their value. Processing these reim-

bursement transactions requires a significant investment of time and resources even though this reimbursement is not necessary to ensure that commodity transfers are properly accounted for. The Coast Guard has determined that although food items account for only 7 percent of the Supply Fund inventory value, 89 percent of their Supply Fund accounting efforts are devoted to the maintenance of inventory for the Coast Guard dining facilities.

Section 205 allows food items and other commodities that are currently maintained as part of the Supply Fund to be transferred from the Supply Fund account without the need for reimbursement and the associated transactions. This provision is intended to help improve the efficiency of the Coast Guard's accounting procedures without adversely affecting accounting safeguards. Monthly operating statements which track each step of a transaction will continue to be required. The accounting change in this section is supported by the Department of the Treasury.

Section 206. Disposal of certain material to Coast Guard Auxiliary

This section of the reported bill amends section 641 of title 14, U.S. Code, to authorize the Commandant of the Coast Guard to transfer directly personal property of the Coast Guard to the Coast Guard Auxiliary (Auxiliary). Such a transfer may be made, with or without charge, upon a determination that: (1) after consultation with the Administrator of General Services, such property is excess to the needs of the Coast Guard but is suitable for use by the Auxiliary in performing Coast Guard functions, powers, duties, missions, or operations; and (2) this excess property will be used solely by the Auxiliary for these purposes. This section also stipulates that no appropriated funds may be used to operate, maintain, repair, alter, or replace any property transferred under this section except as permitted by section 830 of title 14, U.S. Code.

The Auxiliary is a 36,000 member volunteer organization that provides the Coast Guard with low-cost assistance in its boating safety mission. Authorizing legislation for the Auxiliary dates back to World War II, when the Auxiliary conducted anti-submarine patrols and served as a predecessor to the current Coast Guard Reserve (Coast Guard Auxiliary and Reserve Act of 1941, 55 Stat. 9). Auxiliary members place themselves and their privately-owned vessels and aircraft at risk while conducting Coast Guard missions.

The assistance provided by the Auxiliary to the Coast Guard (and the States) is often limited by the lack of availability of vessels and other equipment. Section 641 of title 14, U.S. Code, authorizes incorporated units of the Auxiliary to receive obsolete or other unneeded material of the Coast Guard. Under current law, however, such excess material is available to the Auxiliary only after it has first been reported to the General Services Administration and made available to all other Federal agencies, State and local governmental agencies, and private non-profit organizations.

TITLE III—MARINE SAFETY AND ENVIRONMENTAL
PROTECTION*Section 301. Alcohol testing*

Subsection (a) of this section of the reported bill amends section 7702 of title 46, U.S. Code, to require the Secretary to establish procedures to ensure that alcohol testing of the appropriate crew members of a vessel involved in a serious marine incident is conducted within two hours after the incident is stabilized. Under current law, the Secretary has discretion in determining when to require drug and alcohol tests for the holder of a license, certificate of registry, or merchant mariner's document. In addition to establishing a two-hour time limit for alcohol testing after a serious marine incident, this subsection amends section 7702 to make mandatory preemployment (with respect to drugs only), periodic, random, reasonable cause, and post-accident testing of such individuals.

The changes in subsection (a) are intended to ensure that alcohol testing is conducted promptly after a serious marine incident occurs. Under current Coast Guard regulations, the marine employer must have crew members who perform safety-sensitive functions on a vessel involved in a serious marine incident tested for alcohol and drug use promptly after the incident occurs. But compliance with this requirement is inadequate. On September 27, 1996, the Liberian-registered oil tanker, *Julie N*, struck a bridge in Portland, Maine, spilling 170,000 gallons of oil into the Fore River near Casco Bay. Several days after the accident occurred, it was revealed that the pilot of the vessel was not tested for alcohol, thereby preventing accident investigators from determining whether alcohol use played a role in the oil spill. The National Transportation Safety Board has stated that there are approximately 27 other cases since the *Exxon Valdez* oil spill in 1989 in which mandatory post-accident alcohol and drug testing was not properly completed after serious maritime accidents.

Subsection (a) focuses on alcohol testing because the window of opportunity to conduct these tests is short compared to the window for drug testing. According to the Coast Guard, alcohol tests must be completed within eight hours of an accident in order to provide reliable results. Federal rules for accidents involving most of the other transportation modes require alcohol tests to be conducted within two hours of the accident unless safety concerns preclude the conduct of these tests. Subsection (a) applies a comparable standard, requiring the Coast Guard to ensure that alcohol tests have been completed no later than two hours after a serious marine incident has occurred or been stabilized to prevent further threats to public safety or the environment.

The Coast Guard is a federal law enforcement agency and the lead marine incident response agency, and its responsibilities encompass the monitoring and enforcement of prompt compliance with federal testing rules. The Coast Guard can meet the requirement in subsection (a) by either verifying that the marine employer has conducted the tests or by conducting the tests itself.

The Committee does not believe that this requirement imposes a significant burden on the Coast Guard. By the time a serious marine incident is stabilized, many Coast Guard personnel are in-

volved in the accident response on scene or on shore, and staff can be detailed without detracting from the accident response to verify that the marine employer conducts the tests within the two-hour time limit. In addition, the equipment necessary to conduct an alcohol test is relatively inexpensive and portable, and many Coast Guard units already have such equipment. As an alternative, if neither the marine employer nor the Coast Guard can conduct the tests within the time limit, arrangements could be made with local law enforcement agencies to conduct the tests.

The changes made by this subsection of the reported bill do not alter in any way the responsibility of a marine employer to ensure that all employees in safety sensitive positions are properly and expeditiously tested for alcohol use. In fact, subsection (b) amends section 2115 of title 46, U.S. Code, to increase from \$1,000 to \$5,000 the maximum civil penalty for failure to comply with Coast Guard alcohol and drug testing requirements. This increase should provide a stronger disincentive to violations of testing procedures.

Subsection (c) of the reported bill amends section 2302(c)(1) of title 46, U.S. Code, by increasing the maximum civil penalty from \$1,000 to \$5,000 for a first violation of Coast Guard rules prohibiting the operation of a vessel while under the influence of alcohol or drugs. The increase is intended to provide a stronger disincentive to the operation of a vessel while intoxicated. Each year, hundreds of citizens die as a result of accidents involving vessels whose operators were intoxicated, and the number of such accidents has increased in recent years. While increased penalties should help to reduce the number of vessel accidents involving drugs or alcohol, the Committee recognizes that more must be done to address this problem and urges the Coast Guard to devote serious attention to reducing substantially the number of such accidents in the future.

Section 302. Penalty for violation of international safety convention

This section of the reported bill amends section 2302 of title 46, U.S. Code, to prohibit a vessel from transporting cargo sponsored by the Federal government if the vessel has been detained by the Coast Guard for violation of an international safety convention to which the United States is a party, and the Secretary has published notice of the detention. Such a vessel is prohibited from transporting government-sponsored cargoes for one year after the date of the detention, unless the Secretary grants an appeal of the detention. In addition, the head of a Federal agency is permitted to grant an exemption from the prohibition if the owner of the affected vessel provides compelling evidence that the vessel is currently in compliance with applicable international safety conventions to which the United States is a party. The transport prohibition applies to cargo for which a Federal agency has contracted for shipping by water or for which a Federal agency has provided financing which results in the shipping of the cargo by water. The Coast Guard currently maintains a Port State Control website on the Internet that lists all of the foreign-flag vessels to which this section applies.

According to Coast Guard statistics, 69 of the 476 vessels detained in 1996 carried U.S. Government preference cargoes between 1992 and 1997. Also, 22 owners or operators that had mul-

tiple vessels detained in 1996 also transported government cargoes between 1992 and 1997. The Committee believes that it is inappropriate for a vessel to receive financial benefits from carrying Federally-sponsored cargoes when that vessel is not in compliance with applicable international safety rules recognized by the United States. Allowing such vessels to transport Federally-sponsored cargo undermines compliance with important safety standards and is unfair to vessel owners and operators who adhere to these standards.

Section 303. Protect marine casualty investigations from mandatory release

This section of the reported bill amends section 6305(b) of title 46, U.S. Code, to clarify that the Coast Guard is not required to release to the public personal information such as home telephone numbers, home addresses, and social security numbers gathered in the course of a marine casualty investigation.

Current law states that reports of marine casualty investigations shall be made available to the public, but it provides an exception from mandatory public release for any information in a report related to national security. The statute's explicit reference to only national security has generated confusion as to whether the law excludes the protection of other kinds of information, particularly personal information not normally required to be released under laws such as the Freedom of Information Act (FOIA). Certain personal information is exempted from mandatory disclosure under FOIA and other laws in order to protect individuals from unwarranted invasions of their personal privacy, to encourage the full cooperation of witnesses, and to protect witnesses from retaliation by parties at fault. These same interests apply in the investigation of a marine casualty, but the existing language of section 6305(b) may be interpreted to preclude the Coast Guard from withholding certain personal information from public release in these cases.

Section 303 of the reported bill addresses this problem by deleting the singular national security exemption in the current law and replacing it with language stating that the Coast Guard is not required to release information otherwise protected under section 552(b) of FOIA (5 U.S.C. 552(b)) or other Federal laws. Thus, section 303 has the effect of fully applying the FOIA rules for determining which information is appropriate for public release. Section 552(b) exempts national security information as well as certain personal information from public disclosure. The personal information exemption under FOIA is not automatic, however. It can be used only when the interest in protecting personal privacy outweighs any benefit that would result from the release of the information.

Section 304. Eliminate biennial research and development report

This section of the reported bill eliminates the requirement under section 7001 of the Oil Pollution Act of 1990 (33 U.S.C. 2761) that the chairman of the Interagency Coordinating Committee on Oil Pollution Research (Interagency Committee) issue a report every two years on the Committee's activities during the preceding two-year period and on activities planned for the upcoming two-year period.

The Interagency Committee consists of representatives of 13 Federal agencies, and it is chaired by the Coast Guard. The purposes of the Interagency Committee are to prepare a comprehensive and coordinated Federal oil pollution research and development plan and to promote cooperation in oil pollution research and development among Federal agencies, industry, research institutions, the States, and other nations. In recent years, however, funding for the Interagency Committee's activities has been very limited, and there is relatively little information to report. Thus, the mandatory preparation of the report is unnecessary.

Section 305. Extension of territorial sea for certain laws

This section of the reported bill amends the Ports and Waterways Safety Act (PWSA, 33 U.S.C. 1222 et. seq.) and subtitle II of title 46, United States Code, by extending the U.S. territorial sea for the purposes of these laws from 3 to 12 nautical miles from U.S. coastal baselines. The U.S. territorial sea is a maritime zone extending beyond the land territory and internal waters of the United States over which the United States exercises sovereignty and jurisdiction. International law recognizes a 12 nautical mile territorial sea for sovereign nations. Under Presidential Proclamation 5928 of December 27, 1988, President Reagan extended the U.S. territorial sea from 3 to 12 nautical miles to advance national security and other foreign relations interests of the United States.

Section 305 makes the application of these domestic maritime laws consistent with international law and Presidential Proclamation 5928. Subsection (a) amends section 102 of the PWSA by adding a new definition of the term "navigable waters of the United States." The term is defined to include all waters of the U.S. territorial sea as described in Presidential Proclamation 5928. As a result of this amendment, provisions of the PWSA would be enforceable from the baselines of the U.S. out to 12 nautical miles. Under the PWSA, the Coast Guard establishes vessel operating requirements for all U.S. and foreign vessels, including vessel traffic systems. The PWSA also authorizes the Coast Guard to direct the movement and anchorage of vessels, establish safety zones, and investigate vessel casualties. In addition, the PWSA enables the Coast Guard to prohibit the operation in U.S. waters of substandard vessels, including those with a history of accidents, pollution incidents, or serious repair problems, as well as those vessels that discharge oil or hazardous materials or that are improperly manned.

Under the current language in the PWSA, the Coast Guard has been limited in its ability to fully protect public safety, the marine environment, and maritime transportation. For example, in November 1996, there were two instances in which vessels collided with navigational light stations at distances of 8.6 nautical miles and 7 nautical miles from the shore, and the Coast Guard was unable to establish safety zones around the perimeter of the accident sites. Rather, the Coast Guard could only issue a notice of warning to mariners. Had the same collisions occurred within three nautical miles, the Coast Guard would have been able to establish safety zones in order to control and protect vessel traffic in the area. The change made by subsection (a) of the reported bill extends the

Coast Guard's authority to enforce important maritime safety and marine environmental protection requirements from the current 3 nautical miles to 12 nautical miles. It will not, however, affect a vessel's right of innocent passage through the U.S. territorial sea or transit passage through U.S. navigable waters that are part of an international strait.

Subsection (b) amends subtitle II of title 46, U.S. Code, to apply a 12 nautical mile territorial sea to the vessel safety and shipping laws contained therein. Subtitle II includes the majority of U.S. maritime safety and seaman protection laws. These laws are administered by the Coast Guard and include inspection and regulation of vessels; civil penalties and criminal sanctions for the negligent operation of vessels in U.S. waters; load lines and measurements of vessels; investigation of marine casualties; merchant seaman protection and relief; merchant seaman licenses and certificates; the manning of commercial vessels; and recreational boating safety programs. The extension of the U.S. territorial sea from 3 to 12 nautical miles for purposes of subtitle II would improve the Coast Guard's ability to ensure the safe operation of vessels in U.S. waters and enhance the Coast Guard's ability to fully implement its Port State enforcement program. Under this program, the Coast Guard regulates the operation of potentially unsafe foreign flag vessels seeking to enter U.S. ports.

Specifically, paragraph (b)(1) inserts a new definition of "navigable waters of the United States" in the general definitions section of subtitle II (46 U.S.C. 2101). As defined, the term will include all waters of the 12-mile territorial sea of the United States.

Paragraph (b)(2) amends section 2301 of title 46, U.S. Code, by clarifying that "waters subject to the jurisdiction of the United States" include all waters of the 12-mile territorial sea of the United States. This amendment clarifies the authority of the Coast Guard to control and assess penalties against foreign vessels operating negligently in U.S. waters.

Paragraph (b)(3) amends section 4102(e) of title 46, U.S. Code, to ensure that the Coast Guard regulations for manned uninspected vessels, including the number and type of emergency locating equipment required, will continue to apply beyond three miles from the baseline of the United States, an area which is no longer considered high seas.

Paragraph (b)(4) amends section 4301(a) of title 46, U.S. Code, by including within a new definition of "waters subject to the jurisdiction of the United States" all waters of the 12-mile territorial sea. The amendment enhances the authority of the Coast Guard to regulate recreational vessel safety in U.S. waters.

Paragraph (b)(5) amends section 4502(a)(7) of title 46, U.S. Code, by striking "on vessels that operate on the high seas" and inserting "beyond 3 nautical miles from the baselines from which the territorial sea of the United States is measured". The amendment enables the Coast Guard to continue to require emergency position indicating radio beacons on vessels that operate beyond three nautical miles from the baseline from which the territorial sea is measured.

Paragraph (b)(6) amends section 4506(b) of title 46, U.S. Code, by inserting new language to clarify that commercial fishing vessels

are exempt from Coast Guard regulations under this chapter only if they are operating in U.S. internal waters or within 3 nautical miles from the baselines of the United States, but are not exempt if they are operating between 3 and 12 nautical miles.

Paragraph (b)(7) amends section 8502(a)(3) of title 46, U.S. Code, by clarifying that the requirement for Federal pilots on coastwise seagoing vessels continues to apply to vessels operating within three nautical miles from the baselines of the United States.

Paragraph (b)(8) amends section 8503(a)(2) of title 46, U.S. Code, to clarify that the Coast Guard may continue to require a Federal pilot on a self-propelled vessel when a pilot is not required by State law if the vessel is engaged in foreign commerce and is operating within three nautical miles from the baselines from which the U.S. territorial sea is measured.

Section 306. Law enforcement authority for special agents of the Coast Guard Investigative Service

This section of the reported bill amends section 95 of title 14, U.S. Code, to expand and clarify the law enforcement authorities of special agents of the Coast Guard Investigative Service (CGIS). Under current law, CGIS special agents may carry firearms. Section 306 adds the authority to execute and serve warrants and to make arrests without a warrant if a Federal offense is committed in the agent's presence or if the agent has probable cause to believe that a person has committed or is committing a felony under Federal law. In addition, this section states that these law enforcement authorities can be exercised only in the enforcement of laws for which the Coast Guard has law enforcement authority or in exigent circumstances. Finally, this section of the reported bill authorizes the Commandant of the Coast Guard to designate the CGIS special agents who will have enhanced law enforcement authority under the section.

The CGIS is the Coast Guard's investigative organization, conducting investigations related to military justice, procurement fraud, environmental crimes, and other criminal matters relevant to Coast Guard duties. Under current Department of Justice regulations (28 C.F.R. Part 60), military special agents of the CGIS are identified as agents authorized to apply for and execute search warrants through local U.S. Attorneys. Section 306 clarifies that civilian special agents are authorized to apply for and execute warrants as well.

Since 1990, CGIS civilian special agents have been designated as Deputy U.S. Marshals, a designation which gives them the authority to make arrests related to CGIS investigations. But this special deputation authority must be renewed annually through a time-consuming application process involving the Department of Justice's Criminal Division, the U.S. Marshals Service, and the Coast Guard. The fact that deputation authority has been granted to civilian CGIS special agents consistently since 1990 provides clear evidence of the appropriateness and utility of giving these agents the authority to make arrests. The statutory changes made by this section of the reported bill obviate the need to repeat the lengthy and costly annual renewal process through the Justice Department and the U.S. Marshals Service.

This section will improve the effectiveness and efficiency of the CGIS in carrying out the missions of the Coast Guard and the U.S. Attorney General. It will also provide CGIS special agents with law enforcement authority comparable to that which is available to the agents of the DOD Defense Criminal Investigative Service.

TITLE IV.—MISCELLANEOUS

Section 401. Vessel identification system amendments

This section amends several provisions in title 46, U.S. Code, to help ensure the effective operation of the Federal Vessel Identification System (VIS). Now under development by the Coast Guard, the VIS will establish a new database capable of providing law enforcement officials and other authorized users ready access to registration, documentation, ownership, and other kinds of information for a huge number of vessels across the United States.

The VIS will operate in a manner similar to the Vehicle Identification Number (VIN) system for automobiles. Today, a boat owner could keep a \$25,000 boat on a \$2,500 trailer, and if both the boat and trailer were stolen, law enforcement authorities could track a future sale of the trailer, even if it occurred in another state, by using the VIN system. However, due to the lack of an effective interstate vessel tracking system, the boat could simply be transported to another state, re-registered, and then sold to an unknowing buyer. Access to key vessel information through the VIS will provide the Coast Guard and other law enforcement agencies with an improved ability to deter fraud and other crime. Moreover, marine consumers and lenders will receive an increased level of protection in complex transactions, one result of which should be enhanced access to vessel financing.

Under a pilot program, a Coast Guard contractor has designed the VIS pursuant to the Coast Guard's specifications and has tested the system. According to the Coast Guard, the initial tests indicate that the system appears to be sound. The Coast Guard is currently conducting its own testing as well, and in the summer of 1998, the Coast Guard expects the first two pilot states, Wisconsin and Ohio, to enter the operational test and evaluation stage. Virginia, the third pilot state, is expected to begin using the VIS shortly thereafter.

Section 401 makes a number of changes in law necessary for full and effective implementation of the VIS. Under current law, a vessel titled in a State is ineligible for Federal documentation. In practice, however, some vessels may receive state titles while Federal documentation is pending. As a result, a vessel owner or lender unaware of the state title may later find out that the vessel is ineligible for Federal documentation and, consequently, that a mortgage filed with the Coast Guard could be neither perfected nor preferred, possibly resulting in a complete loss of collateral for the lender. Paragraph (1) of section 401 addresses this problem by amending section 12102(a) of title 46, U.S. Code, to delete the language prohibiting the Federal documentation of a vessel titled in a State.

Consistency of documentation is an important feature of the VIS. Therefore, while a vessel titled in a State should be eligible to obtain Federal documentation, it is not advantageous to permit the

vessel to maintain dual registrations. Unfortunately, the current law does not explicitly prohibit dual registrations. To remedy this problem, paragraph (2) of this section of the reported bill amends section 12301 of title 46, U.S. Code, to clarify that a Federally documented vessel cannot also be titled in a State and to require that a State title be surrendered in accordance with regulations issued by the Secretary when a vessel receives Federal documentation. The provision also stipulates that the Secretary may not approve the surrender of a State title covered by a preferred mortgage unless the mortgagee consents. As a result of this change, the VIS would provide for more effective tracking of vessel information. Moreover, instances of vessel title fraud, such as circumvention of an outstanding security interest perfected on a State title, would be more difficult to successfully execute because the surrender of a State title would be permitted only if the secured party named on the title provides consent.

Paragraph (3) of section 401 amends section 31322(b) of title 46, U.S. Code, to provide that preferred mortgages for vessels titled in a State may have any rate of interest to which the parties agree. Under current law, preferred mortgages for Federally documented vessels may have any interest rate to which the parties to the mortgage agree. The change made by this paragraph extends the same treatment of interest rates to vessels that are titled in a State and that qualify for a preferred mortgage under section 31322(d) of title 46, U.S. Code. Paragraph (4) of this section of the reported bill makes technical and conforming changes to existing section 31322(d)(1).

Section 401(5) amends section 31322(d)(3) of title 46, U.S. Code, to clarify that a preferred mortgage attaches to a vessel and remains preferred even if the vessel is no longer titled in the State in which the mortgage became a preferred mortgage. The language of the existing statute states that the preferred mortgage remains preferred even if the vessel is no longer titled in the State in which the mortgage was “made”. This linkage to the State in which the mortgage was “made” rather than preferred is technically problematic because vessel owners often “make” or secure mortgages in States different from the ones in which they live and in which their vessels are titled. As corrected by the amendment in paragraph (5), section 31322(d)(3) more clearly provides for the continuity of preferred mortgage status and thus helps to ensure consistency and equity in marine financing arrangements.

Paragraphs (7), (8), and (9) of section 401 amend section 31325 of title 46, U.S. Code, to enable a lender to enforce a preferred mortgage lien on a State-titled vessel in a civil action *in rem*. Section 31322(d) currently specifies the conditions under which a mortgage for a State-titled vessel is deemed a preferred mortgage with priority status. However, section 31325 of existing law does not extend the foreclosure rights to the holders of preferred mortgages for State-titled vessels that are available to such holders for vessels documented under Federal law. The changes in paragraphs (7), (8), and (9) would give lenders the same foreclosure options for preferred mortgages covering State-titled vessels and vessels documented under Federal law. These foreclosure options are expected to be exercised primarily in unusual cases when self-help reposses-

sion remedies under State law are not feasible. The changes to section 31325 should encourage lenders to make financing for recreational vessels more readily available.

Section 402. Conveyance of Communication Station Boston Marshfield Receiver Site, Massachusetts

This section of the reported bill authorizes the Secretary to convey the Coast Guard Communication Station Boston Marshfield Receiver Site in Massachusetts to the Town of Marshfield, Massachusetts. The section specifies, however, that the Secretary may not convey the land on which the station's communications tower and the microwave building facility are situated.

Section 403. Conveyance of Nahant Parcel, Essex County, Massachusetts

This section of the reported bill authorizes the Coast Guard to convey a closed Coast Guard recreation facility in Nahant, Massachusetts, to the Town of Nahant. The land on which the facility was built had originally been town property and was conveyed to the Coast Guard. Now that the Coast Guard facility on this property has closed, the town would like to restore its use for community recreational purposes.

Section 404. Conveyance of Eagle Harbor Light Station

This section of the reported bill directs the General Services Administration (GSA) to convey the Eagle Harbor Light Station in Michigan to the Keweenaw County Historical Society. Prior to transfer to the GSA, this light station had been a Coast Guard property. Conveyance of the property is subject to several conditions: (1) the property will be maintained in a manner that ensures its present or future use as a Coast Guard aid to navigation; (2) it will be maintained in a manner consistent with the provisions of the National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.); and (3) it will be used for public benefit as a non-profit center for the interpretation and preservation of maritime history.

Section 405. Conveyance of Coast Guard Station Ocracoke, North Carolina

This section of the reported bill authorizes the Coast Guard to convey the closed Coast Guard station at Ocracoke, North Carolina, to the ferry division of the North Carolina Department of Transportation (NCDOT). The conveyance of this property would be subject to the conditions that: (1) the Coast Guard may reserve easements on the property for the continued use of the boat launching ramp, the access road to the boat launching ramp, and the pier space; and (2) the ferry division of NCDOT maintain the property at its own expense in a manner necessary for the use of any of the aforementioned easements. This section is similar to S. 1262, a bill introduced by Senator Faircloth on October 7, 1997.

Section 406. Conveyance of Coast Guard Property to Jacksonville University in Jacksonville, Florida

This section of the reported bill authorizes the Secretary to convey the property comprising the Long Branch Rear Range Light in

Jacksonville, Florida, to Jacksonville University. The conveyance of this property would be subject to any terms and conditions that the Coast Guard deems appropriate and to the condition that the property reverts to the United States if it ceases to be used by Jacksonville University.

Section 407. Coast Guard City, USA

This section of the reported bill recognizes the community of Grand Haven, Michigan, as “Coast Guard City, USA”. The close relationship between Grand Haven and the Coast Guard dates back to 1932. Today, the people of Grand Haven continue to honor the Coast Guard with an annual Grand Haven Coast Guard Festival and a memorial service for the Coast Guard men and women who have died while performing Coast Guard missions.

Section 408. Vessel documentation clarification

This section of the reported bill amends section 12102(a)(4) of title 46, U.S. Code, and section 2(a) of the Shipping Act of 1916 (46 U.S.C. App. 802(a)) to clarify that the chief executive officer, by whatever title, of a corporation owning a U.S. documented vessel must be a citizen of the United States.

Under existing law, one condition for a vessel owned by a corporation to be eligible for U.S. documentation is that the “president or other chief executive officer” of the corporation is a U.S. citizen. The Coast Guard has interpreted the conjunction “or” in this condition to mean “and”. As a result, the Coast Guard currently requires both the president and the chief executive officer of a corporation to be U.S. citizens. This section clarifies that the U.S. citizenship requirement applies singularly to the chief executive officer regardless of title, not to both the chief executive officer and the president where those titles pertain to separate positions in a corporation. This statutory change does not in any way affect the other citizenship requirements applicable under current law to a corporation’s board of directors or the controlling interest of a corporation.

Section 409. Sanctions for failure to land or to bring to; sanctions for obstruction of boarding and providing false information

Subsection (a) of this section adds a new section 2237 to chapter 109 of title 18, U.S. Code, which makes it unlawful for a pilot, operator, or person in charge of an aircraft which has crossed the U.S. border, or which is operating outside the United States but is subject to U.S. jurisdiction, to knowingly disobey an order to land issued by an authorized Federal law enforcement officer who is enforcing Federal drug or money laundering laws. This subsection also directs the Federal Aviation Administration (FAA), in consultation with the U.S. Customs Service and the U.S. Attorney General, to prescribe regulations defining the means by and circumstances under which it would be appropriate to order an aircraft to land. These regulations must ensure that any such order is clearly communicated in accordance with international standards and must include guidelines for determining when an officer may issue an order to land based on observed conduct, prior information, or other circumstances.

Subsection (b) states that it shall be unlawful for the master, operator, or person in charge of a U.S. vessel or a vessel subject to U.S. jurisdiction to knowingly disobey an order issued by the Coast Guard or other authorized Federal law enforcement agency to “bring to” that vessel (i.e., stop the vessel or slow it down to facilitate boarding). This subsection also makes it unlawful for anyone on board such a vessel to fail to comply with an order issued by an authorized Federal law enforcement officer related to a boarding, to impede or obstruct a boarding or arrest, or to knowingly provide false information to a boarding officer about the vessel’s destination, origin, ownership, registration, nationality, cargo, or crew.

Subsection (c) clarifies that this new section 2237 does not limit in any way the preexisting authority of a Federal law enforcement officer to order an aircraft to land or a vessel to bring to. Subsection (d) allows a foreign nation to consent or waive objection to U.S. enforcement actions authorized in this section by radio, telephone, or similar oral or electronic means. Subsection (e) defines terms used in this section such as “vessel subject to the jurisdiction of the United States”, “aircraft subject to the jurisdiction of the United States”, and “bring to”.

Subsection (f) establishes criminal penalties for the intentional violation of provisions in this new section. Such penalties provide for imprisonment for not more than 3 years and a fine. Subsection (g) states that an aircraft or vessel used in violation of this new section may be seized and forfeited and is also liable *in rem* for any fine or civil penalty imposed under this section.

Section 408 was included in the bill during Committee consideration as an amendment by Senator McCain. It is intended to correct shortcomings in existing law that can complicate or undermine Federal law enforcement activities. Section 89 of title 14, U.S. Code, provides broad authority to the Coast Guard to board and examine vessels subject to the jurisdiction of the United States “for the prevention, detection, and suppression of violations of laws of the United States”. However, current law lacks the enforcement provisions necessary to fully and effectively implement this authority. For instance, a civil penalty can be imposed for failure to bring a vessel to a stop upon the command of a customs officer (19 U.S.C. 1581(d)), but the penalty only applies to vessels in places where the U.S. Customs Service is authorized to stop and board. A criminal and civil penalty can be imposed in conjunction with a failure to stop a vessel when hailed by a Federal law enforcement authority within 250 miles of the U.S. territorial sea (19 U.S.C. 1590(g)(8)), but only if contraband is later found on the vessel. Under section 637 of title 14, U.S. Code, the Coast Guard may fire into a vessel that fails to stop after receiving a warning, but an action of this severity is generally reserved for the most extreme circumstances. As in the case of vessels, Federal law enforcement agencies also lack effective authority to compel suspicious aircraft entering the country or operating outside the United States (but otherwise subject to U.S. jurisdiction) to land.

This section of the reported bill addresses these deficiencies by establishing a clear statutory prohibition, buttressed by criminal sanctions, against the knowing failure to obey a Federal law en-

forcement officer's order to land an aircraft or bring a vessel to. The authority to order an aircraft to land in subsection (a) is explicitly related to the enforcement of Federal drug and money laundering laws. The Committee intends that aircraft landings will be ordered under this section only if an authorized Federal law enforcement officer has reason to believe that the pilot, operator, or person in charge of the aircraft may be involved in the violation of these laws, and the FAA regulations to implement new section 2237 should reflect this intent.

With regard to vessels, there are other areas of current law in which law enforcement authorities can be strengthened. Forcible obstruction of a Federal law enforcement officer is a crime under sections 111 and 113 of title 18, U.S. Code, but there is no general authority which establishes penalties, either criminal or civil, for non-forcible acts of obstruction during a Coast Guard boarding. In response, new section 2237 provides for criminal sanctions and vessel forfeiture for these acts as a deterrent to behavior which can undermine the effectiveness and orderly conduct of lawful boarding operations.

This section also addresses the serious problems that can result if the Coast Guard or other Federal law enforcement agency conducting a vessel boarding is given false information during the boarding about the vessel and its crew, cargo, and destination. For instance, false information about a vessel's nationality or destination can delay the determination as to whether the United States has jurisdiction over the vessel or hinder attempts to obtain consent from a foreign country for the United States to exercise jurisdiction. Such obstructive tactics can give smugglers the opportunity to destroy evidence or jettison contraband. Factual information concerning a vessel's destination, origin, ownership, cargo, or crew facilitates the ability of the boarding team to determine whether the vessel may be engaged in smuggling activities. This information is also important for the successful prosecution of smuggling cases. The establishment of criminal penalties for the provision of false information during boarding may help to deter this kind of obstruction.

CHANGES IN EXISTING LAW

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

TITLE 14.—COAST GUARD

PART I.—REGULAR COAST GUARD

CHAPTER 5.—FUNCTIONS AND POWERS

§ 93. **Commandant; general powers**

For the purpose of executing the duties and functions of the Coast Guard the Commandant may:

(a) maintain water, land, and air patrols, and ice-breaking facilities;

(b) establish and prescribe the purpose of, change the location of, consolidate, discontinue, re-establish, maintain, operate, and repair Coast Guard shore establishments;

(c) assign vessels, aircraft, vehicles, aids to navigation, equipment, appliances, and supplies to Coast Guard districts and shore establishments, and transfer any of the foregoing from one district or shore establishment to another;

(d) conduct experiments, investigate, or cause to be investigated, plans, devices, and inventions relating to the performance of any Coast Guard function and cooperate and coordinate such activities with other government agencies and with private agencies;

(e) conduct any investigations or studies that may be of assistance to the Coast Guard in the performance of any of its powers, duties, or functions;

(f) collect, publish, and distribute information concerning Coast Guard operations;

(g) conduct or make available to personnel of the Coast Guard such specialized training and courses of instruction, including correspondence courses, as may be necessary or desirable for the good of the service;

(h) design or cause to be designed, cause to be constructed, accept as gift, or otherwise acquire patrol boats and other small craft, equip, operate, maintain, supply, and repair such patrol boats, other small craft, aircraft, and vehicles, and subject to applicable regulations under the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.) dispose of them;

(i) acquire, accept as gift, maintain, repair, and discontinue aids to navigation, appliances, equipment, and supplies;

(j) equip, operate, maintain, supply, and repair Coast Guard districts and shore establishments;

(k) [Repealed]

(l) establish, equip, operate, and maintain shops, depots, and yards for the manufacture and construction of aids to navigation, equipment, apparatus, vessels, vehicles, and aircraft not normally or economically obtainable from private contractors, and for the maintenance and repair of any property used by the Coast Guard;

(m) accept and utilize, in times of emergency in order to save life or protect property, such voluntary services as may be offered to the Coast Guard;

(n) rent or lease, under such terms and conditions as are deemed advisable, for a period not exceeding five years, such real property under the control of the Coast Guard as may not be required for immediate use by the Coast Guard, the monies received from any such rental or lease, less amount of expenses incurred (exclusive of governmental personal services), to be deposited in the Treasury;

(o) grant, under such terms and conditions as are deemed advisable, permits, licenses, easements, and rights-of-way over, across, in, and upon lands under the control of the Coast

Guard when in the public interest and without substantially injuring the interests of the United States in the property thereby affected;

(p) establish, install, abandon, re-establish, re-route, operate, maintain, repair, purchase, or lease such telephone and telegraph lines and cables, together with all facilities, apparatus, equipment, structures, appurtenances, accessories, and supplies used or useful in connection with the installation, operation, maintenance, or repair of such lines and cables, including telephones in residences leased or owned by the Government of the United States when appropriate to assure efficient response to extraordinary operational contingencies of a limited duration, and acquire such real property, rights-of-way, easements, or attachment privileges as may be required for the installation, operation, and maintenance of such lines, cables, and equipment;

(q) establish, install, abandon, re-establish, change the location of, operate, maintain, and repair radio transmitting and receiving stations;

(r) provide medical and dental care for personnel entitled thereto by law or regulation, including care in private facilities;

(s) accept, under terms and conditions the Commandant establishes, the service of an individual ordered to perform community service under the order of a Federal, State, or municipal court;

(t) notwithstanding any other law, enter into cooperative agreements with States, local governments, non-governmental organizations, and individuals, to accept and utilize voluntary services for the maintenance and improvement of natural and historic resources on, or to benefit natural and historic research on, Coast Guard facilities, subject to the requirement that—

(1) the cooperative agreements shall each provide for the parties to contribute funds or services on a matching basis to defray the costs of such programs, projects, and activities under the agreement; and

(2) a person providing voluntary services under this subsection shall not be considered a Federal employee except for purposes of chapter 81 of title 5, United States Code, with respect to compensation for work-related injuries, and chapter 171 of title 28, United States Code, with respect to tort claims;

(u) enter into cooperative agreements with other Government agencies and the National Academy of Sciences; **[and]**

(v) require that any member of the Coast Guard or Coast Guard Reserve (including a cadet or an applicant for appointment or enlistment to any of the foregoing and any member of a uniformed service who is assigned to the Coast Guard) request that all information contained in the National Driver Register pertaining to the individual, as described in section 30304(a) of title 49, be made available to the Commandant under section 30305(a) of title 49, may receive that information, and upon receipt, shall make the information available to the **[individual.]** *individual;*

- (w) provide for the honorary recognition of individuals and organizations that significantly contribute to Coast Guard programs, missions, or operations, including but not limited to state and local governments and commercial and nonprofit organizations, and pay for, using any appropriations or funds available to the Coast Guard, plaques, medals, trophies, badges, and similar items to acknowledge such contribution (including reasonable expenses of ceremony and presentation); and
- (x) rent or lease, under such terms and conditions as are deemed advisable, commercial vehicles to transport the next of kin of eligible retired Coast Guard military personnel to attend funeral services of the service member at a national cemetery.

【§ 95. Civilian agents authorized to carry firearms

【Under regulations prescribed by the Secretary with the approval of the Attorney General, civilian special agents of the Coast Guard may carry firearms or other appropriate weapons while assigned to official investigative or law enforcement duties.】

§ 95. Special agents of the Coast Guard Investigative Service law enforcement authority

(a)(1) A special agent of the Coast Guard Investigative Service designated under subsection (b) has the following authority:

(A) To carry firearms.

(B) To execute and serve any warrant or other process issued under the authority of the United States.

(C) To make arrests without warrant for—

(i) any offense against the United States committed in the agent's presence; or

(ii) any felony cognizable under the laws of the United States if the agent has probable cause to believe that the person to be arrested has committed or is committing the felony.

(2) The authorities provided in paragraph (1) shall be exercised only in the enforcement of statutes for which the Coast Guard has law enforcement authority, or in exigent circumstances.

(b) The Commandant may designate to have the authority provided under subsection (a) any special agent of the Coast Guard Investigative Service whose duties include conducting, supervising, or coordinating investigation of criminal activity in programs and operations of the United States Coast Guard.

(c) The authority provided under subsection (a) shall be exercised in accordance with guidelines prescribed by the Commandant and approved by the Attorney General and any other applicable guidelines prescribed by the Secretary of transportation or the Attorney General.

CHAPTER 11.—PERSONNEL

OFFICERS

D. DISCHARGES; RETIREMENTS; REVOCATION OF COMMISSIONS

§ 286a. Regular warrant officers: severance pay

(a) The severance pay of a regular warrant officer of the Coast Guard who is separated under section 580(a)(4)(A) of title 10 is computed by multiplying his years of active service that could be credited to him under section 511 of the Career Compensation Act of 1949, as amended, but not more than 12, by twice the monthly basic pay to which he is entitled at the time of separation.

(b) The severance pay of a regular warrant officer of the Coast Guard who is separated under section 1166 of title 10 is computed by multiplying his years of active service that could be credited to him under section 511 of the Career Compensation Act of 1949, as amended, but not more than 12, by the monthly basic pay to which he is entitled at the time of ~~separation.~~ *separation, unless the officer is separated with an other than honorable discharge and the Secretary of the Service in which the Coast Guard is operating determines that the conditions under which the officer is discharged or separated do not warrant payment of severance pay.*

(c) For the purposes of this section, a part of the year that is six months or more is counted as a whole year, and a part of a year that is less than six months is disregarded.

(d) The acceptance of severance pay under this section does not deprive a person of any retirement benefits from the United States. However, there shall be deducted from each of his retirement payments so much thereof as is based on the service for which he has received severance pay under this section, until the total deductions equal the amount of such severance pay. ~~However, no person is entitled to severance pay under this section in an amount that is more than \$ 15,000.~~

E. SEPARATION FOR CAUSE

§ 327. Officers considered for removal; retirement or discharge; severance benefits

(a) At any time during proceedings under section 322 or 323 of this title, and before the removal of an officer, the Secretary may grant a request—

(1) for voluntary retirement, if the officer is otherwise qualified therefor; or

(2) for honorable discharge with severance benefits under subsection (b) in those cases arising under clause (1) of section 321 of this title; or

(3) for discharge with severance benefits under subsection (b) in those cases arising under clause (2) of section 321 of this title.

(b) Each officer removed from active duty under section 326 of this title shall—

(1) if on the date of removal the officer is eligible for voluntary retirement under any law, be retired in the grade for which he would be eligible if retired at his request; or

(2) if on that date the officer is ineligible for voluntary retirement under any law, be honorably discharged in the grade then held with severance pay computed by multiplying his years of active commissioned service, but not more than twelve, by one month's basic pay of that grade, in those cases arising under clause (1) of section 321 of this title; or

(3) if on that date the officer is ineligible for voluntary retirement under any law, be discharged in the grade then held with severance pay computed by multiplying his years of active commissioned service, but not more than twelve, by one month's basic pay of that grade, in those cases arising under clause (2) of section 321 of this [title.] *title, unless the Secretary determines that the conditions under which the officer is discharged or separated do not warrant payment of severance pay.*

CHAPTER 17.—ADMINISTRATION

§ 641. Disposal of certain material

(a) The Commandant subject to applicable regulations under the Federal Property and Administrative Services Act of 1949 may dispose of, with or without charge, [to the Coast Guard Auxiliary, including any incorporated unit thereof,] to the scout service of the Boy Scouts of America, and to any public body or private organization not organized for profit having an interest therein for historical or other special reasons, such obsolete or other material as may not be needed for the Coast Guard.

(b) The Commandant may, under regulations prescribed by the Secretary, sell apparatus or equipment manufactured by or in use in the Coast Guard, which is not readily procurable in the open market. The money received from such sale shall be deposited in the Treasury to the credit of the current appropriation from which purchase of similar apparatus or equipment is authorized.

(c)(1) The Commandant may—

(A) provide for the sale of recyclable materials that the Coast Guard holds;

(B) provide for the operation of recycling programs at Coast Guard installations; and

(C) designate Coast Guard installations that have qualified recycling programs for the purposes of subsection (d)(2).

(2) Recyclable materials shall be sold in accordance with section 203 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 484), except that the Commandant may conduct sales of materials for which the proceeds of sale will not exceed \$5,000 under regulations prescribed by the Commandant.

(d)(1) Proceeds from the sale of recyclable materials at a Coast Guard installation shall be credited to funds available for operations and maintenance at that installation in amounts sufficient to cover operations, maintenance, recycling equipment, and overhead costs for processing recyclable materials at the installation.

(2) If, after funds are credited, a balance remains available to a Coast Guard installation and the installation has a qualified recycling program, not more than 50 percent of that balance may be used at the installation for projects for pollution abatement, energy conservation, and occupational safety and health activities. The cost of the project may not be greater than 50 percent of the amount permissible for a minor construction project.

(3) The remaining balance available to a Coast Guard installation may be transferred to the Coast Guard Morale, Welfare, and Recreation Program.

(e) If the balance available to the Coast Guard installation under this section at the end of a fiscal year is in excess of \$200,000, the amount of that excess shall be deposited in the general fund of the Treasury as offsetting receipts of the Department in which the Coast Guard is operating and ascribed to Coast Guard activities.

(f)(1) Notwithstanding any other law, the Commandant may directly transfer ownership of personal property of the Coast Guard to the Coast Guard Auxiliary (including any incorporated unit thereof), with or without charge, if the Commandant determines—

(A) after consultation with the Administrator of General Services, that the personal property is excess to the needs of the Coast Guard but is suitable for use by the Auxiliary in performing Coast Guard functions, powers, duties, roles, missions, or operations as authorized by law pursuant to section 822 of this title; and

(B) that such excess property will be used solely by the Auxiliary for such purposes.

(2) Upon transfer of personal property under paragraph (1), no appropriated funds shall be available for the operation, maintenance, repair, alteration, or replacement of such property, except as permitted by section 830 of this title.

§ 650. Coast Guard Supply Fund

(a) A Coast Guard Supply Fund is authorized. The Secretary may prescribe regulations for designating the classification of materials to be stocked. In these regulations, whenever the fund is extended to include items not previously stocked, or spare parts obtained as part of a procurement under a different account of major items such as vessels or aircraft, whether or not such parts were previously stocked, the Secretary may authorize an increase in the existing capital of the fund by the value of such usable materials transferred thereto from Coast Guard inventories carried in other accounts. Except for the materials so transferred, the fund shall be charged with the cost of materials purchased or otherwise acquired. **【The fund shall be credited with the value of materials consumed, issued for use, sold, or otherwise disposed of, such values to be determined on a basis that will approximately cover the cost thereof.】** *In these regulations, whenever the fund is reduced to delete items stocked, the Secretary may reduce the existing capital of the fund by the value of the materials transferred to other Coast Guard accounts. Except for the materials so transferred, the fund shall be credited with the value of materials consumed, issued for use, sold,*

or otherwise disposed of, such values to be determined on a basis that will approximately cover the cost thereof.

(b) Obligations may, without regard to fiscal year limitations, be incurred against anticipated reimbursement to the Coast Guard Supply Fund in such amount and for such period, as the Secretary, with approval of the Director of the Office of Management and Budget, may determine to be necessary to maintain stock levels consistently with planned operations for the next year.

TITLE 18.—CRIMES AND CRIMINAL PROCEDURE

CHAPTER 109.—SEARCHES AND SEIZURES

§ 2237. Sanctions for failure to land or to bring to; sanctions for obstruction of boarding and providing false information

(a)(1) *It shall be unlawful for the pilot, operator, or person in charge of an aircraft which has crossed the border of the United States, or an aircraft subject to the jurisdiction of the United States operating outside the United States, to knowingly fail to obey an order to land by an authorized Federal law enforcement officer who is enforcing the laws of the United States relating to controlled substances, as that term is defined in section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)), or relating to money laundering (sections 1956–57 of this title).*

(2) *The Administrator of the Federal Aviation Administration, in consultation with the Commissioner of Customs and the Attorney General, shall prescribe regulations governing the means by, and circumstances under which a Federal law enforcement officer may communicate an order to land to a pilot, operator, or person in charge of an aircraft. Such regulations shall ensure that any such order is clearly communicated in accordance with applicable international standards. Further, such regulations shall establish guidelines based on observed conduct, prior information, or other circumstances for determining when an officer may use the authority granted under paragraph (1).*

(b)(1) *It shall be unlawful for the master, operator, or person in charge of a vessel of the United States or a vessel subject to the jurisdiction of the United States, to knowingly fail to obey an order to bring to that vessel on being ordered to do so by an authorized Federal law enforcement officer.*

(2) *It shall be unlawful for any person on board a vessel of the United States or a vessel subject to the jurisdiction of the United States to—*

(A) *fail to comply with an order of an authorized Federal law enforcement officer in connection with the boarding of the vessel;*

(B) *impede or obstruct a boarding or arrest or other law enforcement action authorized by any Federal law; or*

(C) *provide information to a Federal law enforcement officer during a boarding of a vessel regarding the vessel's destination, origin, ownership, registration, nationality, cargo, or crew, which that person knows is false.*

(c) *This section does not limit in any way the preexisting authority of a customs officer under section 581 of the Tariff Act of 1930 or any other provision of law enforced or administered by the Customs Service, or the preexisting authority of any Federal law enforcement officer under any law of the United States to order an aircraft to land or a vessel to bring to.*

(d) *A foreign nation may consent or waive objection to the enforcement of United States law by the United States under this section by radio, telephone, or similar oral or electronic means. Consent or waiver may be proven by certification of the Secretary of State or the Secretary's designee.*

(e) *For purposes of this section—*

(1) *A 'vessel of the United States' and a 'vessel subject to the jurisdiction of the United States' have the meaning set forth for these terms in the Maritime Drug Law Enforcement Act (46 App. U.S.C. 1903);*

(2) *an aircraft 'subject to the jurisdiction of the United States' includes—*

(A) *an aircraft located over the United States or the customs waters of the United States;*

(B) *an aircraft located in the airspace of a foreign nation, where that nation consents to the enforcement of United States law by the United States; and*

(C) *over the high seas, an aircraft without nationality, an aircraft of United States registry, or an aircraft registered in a foreign nation that has consented or waived objection to the enforcement of United States law by the United States;*

(3) *an aircraft 'without nationality' includes—*

(A) *an aircraft aboard which the pilot, operator, or person in charge makes a claim of registry, which claim is denied by the nation whose registry is claimed; and*

(B) *an aircraft aboard which the pilot, operator, or person in charge fails, upon request of an officer of the United States empowered to enforce applicable provisions of United States law, to make a claim of registry for that aircraft.*

(4) *the term 'bring to' means to cause a vessel to slow or come to a stop to facilitate a law enforcement boarding by adjusting the course and speed of the vessel to account for the weather conditions and sea state; and*

(5) *the term 'Federal law enforcement officer' has the meaning set forth in section 115 of this title.*

(f) *Any person who intentionally violates the provisions of this section shall be subject to—*

(1) *imprisonment for not more than 3 years; and*

(2) *a fine as provided in this title.*

(g) *An aircraft that is used in violation of this section may be seized and forfeited. A vessel that is used in violation of subsection (b)(1) or subsection (b)(2)(A) may be seized and forfeited. The laws relating to the seizure, summary and judicial forfeiture, and condemnation of property for violation of the customs laws, the disposition of such property or the proceeds from the sale thereof, the remission or mitigation of such forfeitures, and the compromise of claims, shall apply to seizures and forfeitures undertaken, or al-*

leged to have been undertaken, under any of the provisions of this section; except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this section by such officers, agents, or other persons as may be authorized or designated for that purpose. A vessel or aircraft that is used in violation of this section is also liable in rem for any fine or civil penalty imposed under this section.

TITLE 33.—NAVIGATION AND NAVIGABLE WATERS

CHAPTER 25.—PORTS AND WATERWAYS SAFETY PROGRAM

§ 1222. Definitions

As used in this Act, unless the context otherwise requires—

(1) “Marine environment” means the navigable waters of the United States and the land and resources therein and thereunder; the waters and fishery resources of any area over which the United States asserts exclusive fishery management authority; the seabed and subsoil of the Outer Continental Shelf of the United States, the resources thereof and the waters superadjacent thereto; and the recreational, economic, and scenic values of such waters and resources.

(2) “Secretary” means the Secretary of the department in which the Coast Guard is operating.

(3) “State” includes each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the United States Virgin Islands, the Trust Territories of the Pacific Islands, the Commonwealth of the Northern Marianas, and any other commonwealth, territory, or possession of the United States.

(4) “United States”, when used in geographical context, means all the States thereof.

(5) “*Navigable waters of the United States*” includes all waters of the territorial sea of the United States as described in Presidential Proclamation 5928 of December 27, 1988.

TITLE 33.—NAVIGATION AND NAVIGABLE WATERS

CHAPTER 40.—OIL POLLUTION

OIL POLLUTION RESEARCH AND DEVELOPMENT PROGRAM

§ 2761. Oil Pollution Research and Development Program

(a) INTERAGENCY COORDINATING COMMITTEE ON OIL POLLUTION RESEARCH.—

(1) ESTABLISHMENT.—There is established an Interagency Coordinating Committee on Oil Pollution Research (hereinafter in this section referred to as the “Interagency Committee”).

(2) PURPOSES.—The Interagency Committee shall coordinate a comprehensive program of oil pollution research, technology development, and demonstration among the Federal agencies, in cooperation and coordination with industry, universities, re-

search institutions, State governments, and other nations, as appropriate, and shall foster cost-effective research mechanisms, including the joint funding of research.

(3) MEMBERSHIP.—The Interagency Committee shall include representatives from the Department of Commerce (including the National Oceanic and Atmospheric Administration and the National Institute of Standards and Technology), the Department of Energy, the Department of the Interior (including the Minerals Management Service and the United States Fish and Wildlife Service), the Department of Transportation (including the United States Coast Guard, the Maritime Administration, and the Research and Special Projects Administration), the Department of Defense (including the Army Corps of Engineers and the Navy), the Environmental Protection Agency, the National Aeronautics and Space Administration, and the United States Fire Administration in the Federal Emergency Management Agency, as well as such other Federal agencies as the President may designate.

A representative of the Department of Transportation shall serve as Chairman.

(b) OIL POLLUTION RESEARCH AND TECHNOLOGY PLAN.—

(1) IMPLEMENTATION PLAN.—Within 180 days after the date of enactment of this Act, the Interagency Committee shall submit to Congress a plan for the implementation of the oil pollution research, development, and demonstration program established pursuant to subsection (c). The research plan shall—

(A) identify agency roles and responsibilities;

(B) assess the current status of knowledge on oil pollution prevention, response, and mitigation technologies and effects of oil pollution on the environment;

(C) identify significant oil pollution research gaps including an assessment of major technological deficiencies in responses to past oil discharges;

(D) establish research priorities and goals for oil pollution technology development related to prevention, response, mitigation, and environmental effects;

(E) estimate the resources needed to conduct the oil pollution research and development program established pursuant to subsection (c), and timetables for completing research tasks; and

(F) identify, in consultation with the States, regional oil pollution research needs and priorities for a coordinated, multidisciplinary program of research at the regional level.

(2) ADVICE AND GUIDANCE.—The Chairman, through the Department of Transportation, shall contract with the National Academy of Sciences to—

(A) provide advice and guidance in the preparation and development of the research plan; and

(B) assess the adequacy of the plan as submitted, and submit a report to Congress on the conclusions of such assessment.

The National Institute of Standards and Technology shall provide the Interagency Committee with advice and guidance on

issues relating to quality assurance and standards measurements relating to its activities under this section.

(c) OIL POLLUTION RESEARCH AND DEVELOPMENT PROGRAM.—

(1) ESTABLISHMENT.—The Interagency Committee shall coordinate the establishment, by the agencies represented on the Interagency Committee, of a program for conducting oil pollution research and development, as provided in this subsection.

(2) INNOVATIVE OIL POLLUTION TECHNOLOGY.—The program established under this subsection shall provide for research, development, and demonstration of new or improved technologies which are effective in preventing or mitigating oil discharges and which protect the environment, including—

(A) development of improved designs for vessels and facilities, and improved operational practices;

(B) research, development, and demonstration of improved technologies to measure the ullage of a vessel tank, prevent discharges from tank vents, prevent discharges during lightering and bunkering operations, contain discharges on the deck of a vessel, prevent discharges through the use of vacuums in tanks, and otherwise contain discharges of oil from vessels and facilities;

(C) research, development, and demonstration of new or improved systems of mechanical, chemical, biological, and other methods (including the use of dispersants, solvents, and bioremediation) for the recovery, removal, and disposal of oil, including evaluation of the environmental effects of the use of such systems;

(D) research and training, in consultation with the National Response Team, to improve industry's and Government's ability to quickly and effectively remove an oil discharge, including the long-term use, as appropriate, of the National Spill Control School in Corpus Christi, Texas, and the Center for Marine Training and Safety in Galveston, Texas;

(E) research to improve information systems for decision-making, including the use of data from coastal mapping, baseline data, and other data related to the environmental effects of oil discharges, and cleanup technologies;

(F) development of technologies and methods to protect public health and safety from oil discharges, including the population directly exposed to an oil discharge;

(G) development of technologies, methods, and standards for protecting removal personnel, including training, adequate supervision, protective equipment, maximum exposure limits, and decontamination procedures;

(H) research and development of methods to restore and rehabilitate natural resources damaged by oil discharges;

(I) research to evaluate the relative effectiveness and environmental impacts of bioremediation technologies; and

(J) the demonstration of a satellite-based, dependent surveillance vessel traffic system in Narragansett Bay to evaluate the utility of such system in reducing the risk of oil discharges from vessel collisions and groundings in confined waters.

(3) OIL POLLUTION TECHNOLOGY EVALUATION.—The program established under this subsection shall provide for oil pollution prevention and mitigation technology evaluation including—

(A) the evaluation and testing of technologies developed independently of the research and development program established under this subsection;

(B) the establishment, where appropriate, of standards and testing protocols traceable to national standards to measure the performance of oil pollution prevention or mitigation technologies; and

(C) the use, where appropriate, of controlled field testing to evaluate real-world application of oil discharge prevention or mitigation technologies.

(4) OIL POLLUTION EFFECTS RESEARCH.—

(A) The Committee shall establish a research program to monitor and evaluate the environmental effects of oil discharges. Such program shall include the following elements:

(i) The development of improved models and capabilities for predicting the environmental fate, transport, and effects of oil discharges.

(ii) The development of methods, including economic methods, to assess damages to natural resources resulting from oil discharges.

(iii) The identification of types of ecologically sensitive areas at particular risk to oil discharges and the preparation of scientific monitoring and evaluation plans, one for each of several types of ecological conditions, to be implemented in the event of major oil discharges in such areas.

(iv) The collection of environmental baseline data in ecologically sensitive areas at particular risk to oil discharges where such data are insufficient.

(B) The Department of Commerce in consultation with the Environmental Protection Agency shall monitor and scientifically evaluate the long-term environmental effects of oil discharges if—

(i) the amount of oil discharged exceeds 250,000 gallons;

(ii) the oil discharge has occurred on or after January 1, 1989; and

(iii) the Interagency Committee determines that a study of the long-term environmental effects of the discharge would be of significant scientific value, especially for preventing or responding to future oil discharges.

Areas for study may include the following sites where oil discharges have occurred: the New York/New Jersey Harbor area, where oil was discharged by an Exxon underwater pipeline, the T/B CIBRO SAVANNAH, and the M/V BT NAUTILUS; Narragansett Bay where oil was discharged by the WORLD PRODIGY; the Houston Ship Channel where oil was discharged by the RACHEL B; the Delaware River, where oil was discharged by the

PRESIDENTE RIVERA, and Huntington Beach, California, where oil was discharged by the AMERICAN TRADER.

(C) Research conducted under this paragraph by, or through, the United States Fish and Wildlife Service shall be directed and coordinated by the National Wetland Research Center.

(5) MARINE SIMULATION RESEARCH.—The program established under this subsection shall include research on the greater use and application of geographic and vessel response simulation models, including the development of additional data bases and updating of existing data bases using, among others, the resources of the National Maritime Research Center. It shall include research and vessel simulations for—

- (A) contingency plan evaluation and amendment;
- (B) removal and strike team training;
- (C) tank vessel personnel training; and
- (D) those geographic areas where there is a significant likelihood of a major oil discharge.

(6) DEMONSTRATION PROJECTS.—The United States Coast Guard, in conjunction with other such agencies in the Department of Transportation as the Secretary of Transportation may designate, shall conduct 4 port oil pollution minimization demonstration projects, one each with (A) the Port Authority of New York and New Jersey, (B) the Ports of Los Angeles and Long Beach, California, (C) the Port of New Orleans, Louisiana, and (D) ports on the Great Lakes, for the purpose of developing and demonstrating integrated port oil pollution prevention and cleanup systems which utilize the information and implement the improved practices and technologies developed from the research, development, and demonstration program established in this section. Such systems shall utilize improved technologies and management practices for reducing the risk of oil discharges, including, as appropriate, improved data access, computerized tracking of oil shipments, improved vessel tracking and navigation systems, advanced technology to monitor pipeline and tank conditions, improved oil spill response capability, improved capability to predict the flow and effects of oil discharges in both the inner and outer harbor areas for the purposes of making infrastructure decisions, and such other activities necessary to achieve the purposes of this section.

(7) SIMULATED ENVIRONMENTAL TESTING.—Agencies represented on the Interagency Committee shall ensure the long-term use and operation of the Oil and Hazardous Materials Simulated Environmental Test Tank (OHMSETT) Research Center in New Jersey for oil pollution technology testing and evaluations.

(8) REGIONAL RESEARCH PROGRAM.—

(A) Consistent with the research plan in subsection (b), the Interagency Committee shall coordinate a program of competitive grants to universities or other research institutions, or groups of universities or research institutions, for the purposes of conducting a coordinated research program related to the regional aspects of oil pollution, such as pre-

vention, removal, mitigation, and the effects of discharged oil on regional environments. For the purposes of this paragraph, a region means a Coast Guard district as set out in part 3 of title 33, Code of Federal Regulations (1989).

(B) The Interagency Committee shall coordinate the publication by the agencies represented on the Interagency Committee of a solicitation for grants under this subsection. The application shall be in such form and contain such information as may be required in the published solicitation. The applications shall be reviewed by the Interagency Committee, which shall make recommendations to the appropriate granting agency represented on the Interagency Committee for awarding the grant. The granting agency shall award the grants recommended by the Interagency Committee unless the agency decides not to award the grant due to budgetary or other compelling considerations and publishes its reasons for such a determination in the Federal Register. No grants may be made by any agency from any funds authorized for this paragraph unless such grant award has first been recommended by the Interagency Committee.

(C) Any university or other research institution, or group of universities or research institutions, may apply for a grant for the regional research program established by this paragraph. The applicant must be located in the region, or in a State a part of which is in the region, for which the project is proposed as part of the regional research program. With respect to a group application, the entity or entities which will carry out the substantial portion of the proposed research must be located in the region, or in a State a part of which is in the region, for which the project is proposed as part of the regional research program.

(D) The Interagency Committee shall make recommendations on grants in such a manner as to ensure an appropriate balance within a region among the various aspects of oil pollution research, including prevention, removal, mitigation, and the effects of discharged oil on regional environments. In addition, the Interagency Committee shall make recommendations for grants based on the following criteria:

(i) There is available to the applicant for carrying out this paragraph demonstrated research resources.

(ii) The applicant demonstrates the capability of making a significant contribution to regional research needs.

(iii) The projects which the applicant proposes to carry out under the grant are consistent with the research plan under subsection (b)(1)(F) and would further the objectives of the research and development program established in this section.

(E) Grants provided under this paragraph shall be for a period up to 3 years, subject to annual review by the granting agency, and provide not more than 80 percent of

the costs of the research activities carried out in connection with the grant.

(F) No funds made available to carry out this subsection may be used for the acquisition of real property (including buildings) or construction of any building.

(G) Nothing in this paragraph is intended to alter or abridge the authority under existing law of any Federal agency to make grants, or enter into contracts or cooperative agreements, using funds other than those authorized in this Act for the purposes of carrying out this paragraph.

(9) FUNDING.—For each of the fiscal years 1991, 1992, 1993, 1994, and 1995, \$6,000,000 of amounts in the Fund shall be available to carry out the regional research program in paragraph (8), such amounts to be available in equal amounts for the regional research program in each region; except that if the agencies represented on the Interagency Committee determine that regional research needs exist which cannot be addressed within such funding limits, such agencies may use their authority under paragraph (10) to make additional grants to meet such needs. For the purposes of this paragraph, the research program carried out by the Prince William Sound Oil Spill Recovery Institute established under section 5001, shall not be eligible to receive grants under this paragraph until the authorization for funding under section 5006(b) expires.

(10) GRANTS.—In carrying out the research and development program established under this subsection, the agencies represented on the Interagency Committee may enter into contracts and cooperative agreements and make grants to universities, research institutions, and other persons. Such contracts, cooperative agreements, and grants shall address research and technology priorities set forth in the oil pollution research plan under subsection (b).

(11) In carrying out research under this section, the Department of Transportation shall continue to utilize the resources of the Research and Special Programs Administration of the Department of Transportation, to the maximum extent practicable.

(d) INTERNATIONAL COOPERATION.—In accordance with the research plan submitted under subsection (b), the Interagency Committee shall coordinate and cooperate with other nations and foreign research entities in conducting oil pollution research, development, and demonstration activities, including controlled field tests of oil discharges.

[(e) BIENNIAL REPORTS.—The Chairman of the Interagency Committee shall submit to Congress every 2 years on October 30 a report on the activities carried out under this section in the preceding 2 fiscal years, and on activities proposed to be carried out under this section in the current 2 fiscal year period.]

[(f) (e) FUNDING.—Not to exceed \$22,000,000 of amounts in the Fund shall be available annually to carry out this section except for subsection (c)(8). Of such sums—

(1) funds authorized to be appropriated to carry out the activities under subsection (c)(4) shall not exceed \$5,000,000 for

fiscal year 1991 or \$3,500,000 for any subsequent fiscal year; and

(2) not less than \$3,000,000 shall be available for carrying out the activities in subsection (c)(6) for fiscal years 1992, 1993, 1994, and 1995.

All activities authorized in this section, including subsection (c)(8), are subject to appropriations.

TITLE 46.—SHIPPING

Subtitle II.—Vessels and Seamen

PART A.—GENERAL PROVISIONS

CHAPTER 21.—GENERAL

§ 2101. General definitions

In this subtitle—

(1) “associated equipment”—

(A) means—

(i) a system, accessory, component, or appurtenance of a recreational vessel; or

(ii) a marine safety article intended for use on board a recreational vessel; but

(B) does not include radio equipment.

(2) “barge” means a non-self-propelled vessel.

(3) “Boundary Line” means a line established under section 2(b) of the Act of February 19, 1895 (33 U.S.C. 151).

(3a) “citizen of the United States” means a national of the United States as defined in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)) or an individual citizen of the Trust Territory of the Pacific Islands who is exclusively domiciled in the Northern Mariana Islands within the meaning of section 1005(e) of the Covenant to establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (48 U.S.C. 1681 note).

(4) “Coast Guard” means the organization established and continued under section 1 of title 14.

(5) “commercial service” includes any type of trade or business involving the transportation of goods or individuals, except service performed by a combatant vessel.

(5a) “consideration” means an economic benefit, inducement, right, or profit including pecuniary payment accruing to an individual, person, or entity, but not including a voluntary sharing of the actual expenses of the voyage, by monetary contribution or donation of fuel, food, beverage, or other supplies.

(6) “consular officer” means an officer or employee of the United States Government designated under regulations to grant visas.

(7) “crude oil” means a liquid hydrocarbon mixture occurring naturally in the earth, whether or not treated to render it suitable for transportation, and includes crude oil from which certain distillate fractions may have been removed, and crude oil to which certain distillate fractions may have been added.

(8) “crude oil tanker” means a tanker engaged in the trade of carrying crude oil.

(8a) “dangerous drug” means a narcotic drug, a controlled substance, or a controlled substance analog (as defined in section 102 of the Comprehensive Drug Abuse and Control Act of 1970 (21 U.S.C. 802)).

(9) “discharge”, when referring to a substance discharged from a vessel, includes spilling, leaking, pumping, pouring, emitting, emptying, or dumping, however caused.

(10) “documented vessel” means a vessel for which a certificate of documentation has been issued under chapter 121 of this title.

(10a) “Exclusive Economic Zone” means the zone established by Presidential Proclamation Numbered 5030, dated March 10, 1983.

(11) “fish” means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life, except marine mammals and birds.

(11a) “fishing vessel” means a vessel that commercially engages in the catching, taking, or harvesting of fish or an activity that can reasonably be expected to result in the catching, taking, or harvesting of fish.

(11b) “fish processing vessel” means a vessel that commercially prepares fish or fish products other than by gutting, decapitating, gilling, skinning, shucking, icing, freezing, or brine chilling.

(11c) “fish tender vessel” means a vessel that commercially supplies, stores, refrigerates, or transports fish, fish products, or materials directly related to fishing or the preparation of fish to or from a fishing, fish processing, or fish tender vessel or a fish processing facility.

(12) “foreign vessel” means a vessel of foreign registry or operated under the authority of a country except the United States.

(13) “freight vessel” means a motor vessel of more than 15 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title that carries freight for hire, except an oceanographic research vessel or an offshore supply vessel.

(13a) “Great Lakes barge” means a non-self-propelled vessel of at least 3,500 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 operating on the Great Lakes.

(14) “hazardous material” means a liquid material or substance that is—

(A) flammable or combustible;

(B) designated a hazardous substance under section 311(b) of the Federal Water Pollution Control Act (33 U.S.C. 1321); or

(C) designated a hazardous material under section 5103(a) of title 49;

(14a) “major conversion” means a conversion of a vessel that—

- (A) substantially changes the dimensions or carrying capacity of the vessel;
- (B) changes the type of the vessel;
- (C) substantially prolongs the life of the vessel; or
- (D) otherwise so changes the vessel that it is essentially a new vessel, as decided by the Secretary.

(15) “marine environment” means—

- (A) the navigable waters of the United States and the land and resources in and under those waters;
- (B) the waters and fishery resources of an area over which the United States asserts exclusive fishery management authority;
- (C) the seabed and subsoil of the outer Continental Shelf of the United States, the resources of the Shelf, and the waters superjacent to the Shelf; and
- (D) the recreational, economic, and scenic values of the waters and resources referred to in subclauses (A)-(C) of this clause.

(15a) “mobile offshore drilling unit” means a vessel capable of engaging in drilling operations for the exploration or exploitation of subsea resources.

(16) “motor vessel” means a vessel propelled by machinery other than steam.

(17) “nautical school vessel” means a vessel operated by or in connection with a nautical school or an educational institution under section 13 of the Coast Guard Authorization Act of 1986.

(17a) “navigable waters of the United States” includes all waters of the territorial sea of the United States as described in Presidential Proclamation 5928 of December 27, 1988.

[(17a)] (17b) “numbered vessel” means a vessel for which a number has been issued under chapter 123 of this title.

(18) “oceanographic research vessel” means a vessel that the Secretary finds is being employed only in instruction in oceanography or limnology, or both, or only in oceanographic or limnological research, including those studies about the sea such as seismic, gravity meter, and magnetic exploration and other marine geophysical or geological surveys, atmospheric research, and biological research.

(19) “offshore supply vessel” means a motor vessel 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 that regularly carries goods, supplies, individuals in addition to the crew, or equipment in support of exploration, exploitation, or production of offshore mineral or energy resources.

(20) “oil” includes oil of any type or in any form, including petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes except dredged spoil.

(20a) “oil spill response vessel” means a vessel that is designated in its certificate of inspection as such a vessel, or that

is adapted to respond to a discharge of oil or a hazardous material.

(20b) “overall in length” means—

(A) for a foreign vessel or a vessel engaged on a foreign voyage, the greater of—

- (i) 96 percent of the length on a waterline at 85 percent of the least molded depth measured from the top of the keel (or on a vessel designed with a rake of keel, on a waterline parallel to the designed waterline); or
- (ii) the length from the fore side of the stem to the axis of the rudder stock on that waterline; and

(B) for any other vessel, the horizontal distance of the hull between the foremost part of the stem and the aftermost part of the stern, excluding fittings and attachments.

(21) “passenger”—

(A) means an individual carried on the vessel except—

- (i) the owner or an individual representative of the owner or, in the case of a vessel under charter, an individual charterer or individual representative of the charterer;
- (ii) the master; or
- (iii) a member of the crew engaged in the business of the vessel who has not contributed consideration for carriage and who is paid for on board services;

(B) on an offshore supply vessel, means an individual carried on the vessel except—

- (i) an individual included in clause (i), (ii), or (iii) of subparagraph (A) of this paragraph;
- (ii) an employee of the owner, or of a subcontractor to the owner, engaged in the business of the owner;
- (iii) an employee of the charterer, or of a subcontractor to the charterer, engaged in the business of the charterer; or
- (iv) an individual employed in a phase of exploration, exploitation, or production of offshore mineral or energy resources served by the vessel;

(C) on a fishing vessel, fish processing vessel, or fish tender vessel, means an individual carried on the vessel except—

- (i) an individual included in clause (i), (ii), or (iii) of subparagraph (A) of this paragraph;
- (ii) a managing operator;
- (iii) an employee of the owner, or of a subcontractor to the owner, engaged in the business of the owner;
- (iv) an employee of the charterer, or of a subcontractor to the charterer, engaged in the business of the charterer; or

(v) an observer or sea sampler on board the vessel pursuant to a requirement of State or Federal law; or

(D) on a sailing school vessel, means an individual carried on the vessel except—

- (i) an individual included in clause (i), (ii), or (iii) of subparagraph (A) of this paragraph;

(ii) an employee of the owner of the vessel engaged in the business of the owner, except when the vessel is operating under a demise charter;

(iii) an employee of the demise charterer of the vessel engaged in the business of the demise charterer; or

(iv) a sailing school instructor or sailing school student.

(21a) “passenger for hire” means a passenger for whom consideration is contributed as a condition of carriage on the vessel, whether directly or indirectly flowing to the owner, charterer, operator, agent, or any other person having an interest in the vessel.

(22) “passenger vessel” means a vessel of at least 100 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title—

(A) carrying more than 12 passengers, including at least one passenger for hire;

(B) that is chartered and carrying more than 12 passengers; or

(C) that is a submersible vessel carrying at least one passenger for hire.

(23) “product carrier” means a tanker engaged in the trade of carrying oil except crude oil.

(24) “public vessel” means a vessel that—

(A) is owned, or demise chartered, and operated by the United States Government or a government of a foreign country; and

(B) is not engaged in commercial service.

(25) “recreational vessel” means a vessel—

(A) being manufactured or operated primarily for pleasure; or

(B) leased, rented, or chartered to another for the latter’s pleasure.

(26) “recreational vessel manufacturer” means a person engaged in the manufacturing, construction, assembly, or importation of recreational vessels, components, or associated equipment.

(27) “sailing instruction” means teaching, research, and practical experience in operating vessels propelled primarily by sail and may include—

(A) any subject related to that operation and to the sea, including seamanship, navigation, oceanography, other nautical and marine sciences, and maritime history and literature; and

(B) only when in conjunction with a subject referred to in subclause (A) of this clause, instruction in mathematics and language arts skills to sailing school students having learning disabilities.

(28) “sailing school instructor” means an individual who is on board a sailing school vessel to provide sailing instruction, but does not include an operator or crewmember who is among those required to be on board the vessel to meet a requirement established under part F of this subtitle.

(29) “sailing school student” means an individual who is on board a sailing school vessel to receive sailing instruction.

(30) “sailing school vessel” means a vessel—

(A) that is 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) carrying more than 6 individuals who are sailing school instructors or sailing school students;

(C) principally equipped for propulsion by sail, even if the vessel has an auxiliary means of propulsion; and

(D) owned or demise chartered, and operated by an organization described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)(3)) and exempt from tax under section 501(a) of that Code, or by a State or political subdivision of a State, during times that the vessel is operated by the organization, State, or political subdivision only for sailing instruction.

(31) “scientific personnel” means individuals on board an oceanographic research vessel only to engage in scientific research, or to instruct or receive instruction in oceanography or limnology.

(32) “seagoing barge” means a non-self-propelled vessel of at least 100 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title making voyages beyond the Boundary Line.

(33) “seagoing motor vessel” means a motor vessel of at least 300 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 making voyages beyond the Boundary Line.

(34) “Secretary”, except in part H, means the head of the department in which the Coast Guard is operating.

(35) “small passenger vessel” means a vessel of less than 100 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title—

(A) carrying more than 6 passengers, including at least one passenger for hire;

(B) that is chartered with the crew provided or specified by the owner or the owner’s representative and carrying more than 6 passengers;

(C) that is chartered with no crew provided or specified by the owner or the owner’s representative and carrying more than 12 passengers; or

(D) that is a submersible vessel carrying at least one passenger for hire.

(36) “State” means a State of the United States, Guam, Puerto Rico, the Virgin Islands, American Samoa, the District of Columbia, the Northern Mariana Islands, and any other territory or possession of the United States.

(37) “steam vessel” means a vessel propelled in whole or in part by steam, except a recreational vessel of not more than 40 feet in length.

(37a) “submersible vessel” means a vessel that is capable of operating below the surface of the water.

(38) “tanker” means a self-propelled tank vessel constructed or adapted primarily to carry oil or hazardous material in bulk in the cargo spaces.

(39) “tank vessel” means a vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue, and that—

(A) is a vessel of the United States;

(B) operates on the navigable waters of the United States; or

(C) transfers oil or hazardous material in a port or place subject to the jurisdiction of the United States.

(40) “towing vessel” means a commercial vessel engaged in or intending to engage in the service of pulling, pushing, or hauling along side, or any combination of pulling, pushing, or hauling along side.

(41) “undocumented” means not having and not required to have a document issued under chapter 121 of this title.

(42) “uninspected passenger vessel” means an uninspected vessel—

(A) of at least 100 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title—

(i) carrying not more than 12 passengers, including at least one passenger for hire; or

(ii) that is chartered with the crew provided or specified by the owner or the owner’s representative and carrying not more than 12 passengers; and

(B) of less than 100 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title—

(i) carrying not more than 6 passengers, including at least one passenger for hire; or

(ii) that is chartered with the crew provided or specified by the owner or the owner’s representative and carrying not more than 6 passengers.

(43) “uninspected vessel” means a vessel not subject to inspection under section 3301 of this title that is not a recreational vessel.

(44) “United States”, when used in a geographic sense, means the States of the United States, Guam, Puerto Rico, the Virgin Islands, American Samoa, the District of Columbia, the Northern Mariana Islands, and any other territory or possession of the United States.

(45) “vessel” has the same meaning given that term in section 3 of title 1.

(46) “vessel of the United States” means a vessel documented or numbered under the laws of the United States or titled under the law of a State.

(47) “vessel of war” means a vessel—

(A) belonging to the armed forces of a country;

(B) bearing the external marks distinguishing vessels of war of that country;

(C) under the command of an officer commissioned by the government of that country and whose name appears in the appropriate service list or its equivalent; and

(D) staffed by a crew under regular armed forces discipline.

§ 2115. Civil penalty to enforce alcohol and dangerous drug testing

Any person who fails to implement or conduct, or who otherwise fails to comply with the requirements prescribed by the Secretary for, chemical testing for dangerous drugs or for evidence of alcohol use, as prescribed under this subtitle or a regulation prescribed by the Secretary to carry out the provisions of this subtitle, is liable to the United States Government for a civil penalty of not more than ~~[\$1,000]~~ \$5,000 for each violation. Each day of a continuing violation shall constitute a separate violation.

CHAPTER 23.—OPERATION OF VESSELS GENERALLY

§ 2301. Application

Except as provided in section 2306 of this title, this chapter applies to a vessel operated on waters subject to the jurisdiction of the United States (*including the territorial sea of the United States as described in Presidential Proclamation 5928 of December 27, 1988*) and, for a vessel owned in the United States, on the high seas.

§ 2302. Penalties for negligent operations

(a) A person operating a vessel in a negligent manner that endangers the life, limb, or property of a person is liable to the United States Government for a civil penalty of not more than \$1,000.

(b) A person operating a vessel in a grossly negligent manner that endangers the life, limb, or property of a person commits a class A misdemeanor.

(c) An individual who is under the influence of alcohol, or a dangerous drug in violation of a law of the United States when operating a vessel, as determined under standards prescribed by the Secretary by regulation—

(1) is liable to the United States Government for a civil penalty of not more than ~~[\$1,000 for a first violation and not more than \$5,000 for a subsequent violation; or]~~ \$5,000; or

(2) commits a class A misdemeanor.

(d) For a penalty imposed under this section, the vessel also is liable *in rem* unless the vessel is—

(1) owned by a State or a political subdivision of a State;

(2) operated principally for governmental purposes; and

(3) identified clearly as a vessel of that State or subdivision.

(e)(1) A vessel may not be used to transport cargoes sponsored by the United States Government if the vessel has been detained by the Secretary for violation of an international safety convention to which the United States is a party, and the Secretary has published notice of that detention.

(2) The prohibition in paragraph (1) expires for a vessel 1 year after the date of the detention on which the prohibition is based or upon the Secretary granting an appeal of the detention on which the prohibition is based.

(3) The head of a Federal Agency may grant an exemption from the prohibition in paragraph (1) on a case by case basis if the owner of the vessel to be used for transport of the cargo sponsored by the United States Government can provide compelling evidence that the vessel is currently in compliance with applicable international safety conventions to which the United States is a party.

(4) As used in this subsection, the term "cargo sponsored by the United States Government" means cargo for which a Federal agency contracts directly for shipping by water or for which (or the freight of which) a Federal agency provides financing, including financing by grant, loan, or loan guarantee, resulting in shipment of the cargo by water.

PART B.—INSPECTION AND REGULATION OF VESSELS

CHAPTER 41.—UNINSPECTED VESSELS GENERALLY

§ 4102. Safety equipment

(a) Each uninspected vessel propelled by machinery shall be provided with the number, type, and size of fire extinguishers, capable of promptly and effectively extinguishing burning liquid fuel, that may be prescribed by regulation. The fire extinguishers shall be kept in condition for immediate and effective use and so placed as to be readily accessible.

(b) Each uninspected vessel propelled by machinery shall carry at least one readily accessible life preserver or other lifesaving device, of the type prescribed by regulation, for each individual on board.

(c) Each uninspected vessel shall have the carburetors of each engine of the vessel (except an outboard motor) using gasoline as fuel, equipped with an efficient flame arrestor, backfire trap, or other similar device prescribed by regulation.

(d) Each uninspected vessel using a volatile liquid as fuel shall be provided with the means prescribed by regulation for properly and efficiently ventilating the bilges of the engine and fuel tank compartments, so as to remove any explosive or flammable gases.

(e) Each manned uninspected vessel operating **on the high seas** beyond 3 nautical miles from the baselines from which the territorial sea of the United States is measured or beyond three nautical miles from the coastline of the Great Lakes shall be equipped with the number and type of alerting and locating equipment, including emergency position indicating radio beacons, prescribed by the Secretary.

(f)(1) The Secretary, in consultation with the Towing Safety Advisory Committee and taking into consideration the characteristics, methods of operation, and nature of service of towing vessels, may require the installation, maintenance, and use of a fire suppression system or other measures to provide adequate assurance that fires on board towing vessels can be suppressed under reasonably foreseeable circumstances.

(2) The Secretary shall require under paragraph (1) the use of a fire suppression system or other measures to provide adequate assurance that a fire on board a towing vessel that is towing a non-self-propelled tank vessel can be suppressed under reasonably foreseeable circumstances.

CHAPTER 43.—RECREATIONAL VESSELS

§ 4301. Application

(a) This chapter applies to a recreational vessel and associated equipment carried in the vessel on waters subject to the jurisdiction of the United States (*including the territorial sea of the United States as described in Presidential Proclamation 5928 of December 27, 1988*) and, for a vessel owned in the United States, on the high seas.

(b) Except when expressly otherwise provided, this chapter does not apply to a foreign vessel temporarily operating on waters subject to the jurisdiction of the United States.

(c) Until there is a final judicial decision that they are navigable waters of the United States, the following waters lying entirely in New Hampshire are declared not to be waters subject to the jurisdiction of the United States within the meaning of this section: Lake Winnisquam, Lake Winnepesaukee, parts of the Merrimack River, and their tributary and connecting waters.

CHAPTER 45.—UNINSPECTED COMMERCIAL FISHING INDUSTRY VESSELS

§ 4502. Safety standards

(a) The Secretary shall prescribe regulations which require that each vessel to which this chapter applies shall be equipped with—

(1) readily accessible fire extinguishers capable of promptly and effectively extinguishing a flammable or combustible liquid fuel fire;

(2) at least one readily accessible life preserver or other life-saving device for each individual on board;

(3) an efficient flame arrestor, backfire trap, or other similar device on the carburetors of each inboard engine which uses gasoline as fuel;

(4) the means to properly and efficiently ventilate enclosed spaces, including engine and fuel tank compartments, so as to remove explosive or flammable gases;

(5) visual distress signals;

(6) a buoyant apparatus, if the vessel is of a type required by regulations prescribed by the Secretary to be equipped with that apparatus;

(7) alerting and locating equipment, including emergency position indicating radio beacons, [on vessels that operate on the high seas] *beyond 3 nautical miles from the baselines from which the territorial sea of the United States is measured* or beyond 3 nautical miles from the coastline of the Great Lakes; and

(8) a placard as required by regulations prescribed under section 10603(b) of this title.

(b)(1) In addition to the requirements of subsection (a) of this section, the Secretary shall prescribe regulations requiring the installation, maintenance, and use of the equipment in paragraph (2) of this subsection for documented vessels to which this chapter applies that—

(A) operate beyond the Boundary Line;

(B) operate with more than 16 individuals on board; or

(C) in the case of a fish tender vessel, engage in the Aleutian trade.

(2) The equipment to be required is as follows:

(A) alerting and locating equipment, including emergency position indicating radio beacons;

(B) lifeboats or liferafts sufficient to accommodate all individuals on board;

(C) at least one readily accessible immersion suit for each individual on board that vessel when operating on the waters described in section 3102 of this title;

(D) radio communications equipment sufficient to effectively communicate with land-based search and rescue facilities;

(E) navigation equipment, including compasses, radar reflectors, nautical charts, and anchors;

(F) first aid equipment, including medicine chests; and

(G) other equipment required to minimize the risk of injury to the crew during vessel operations, if the Secretary determines that a risk of serious injury exists that can be eliminated or mitigated by that equipment.

(c)(1) In addition to the requirements described in subsections (a) and (b) of this section, the Secretary may prescribe regulations establishing the standards in paragraph (2) of this subsection for vessels to which this chapter applies that—

(A)(i) were built after December 31, 1988, or undergo a major conversion completed after that date; and

(ii) operate with more than 16 individuals on board; or

(B) in the case of a fish tender vessel, engage in the Aleutian trade.

(2) The standards shall be minimum safety standards, including standards relating to—

(A) navigation equipment, including radars and fathometers;

(B) lifesaving equipment, immersion suits, signaling devices, bilge pumps, bilge alarms, life rails, and grab rails;

(C) fire protection and firefighting equipment, including fire alarms and portable and semiportable fire extinguishing equipment;

(D) use and installation of insulation material;

(E) storage methods for flammable or combustible material; and

(F) fuel, ventilation, and electrical systems.

(d)(1) The Secretary shall prescribe regulations for the operating stability of a vessel to which this chapter applies—

(A) that was built after December 31, 1989; or

(B) the physical characteristics of which are substantially altered after December 31, 1989, in a manner that affects the vessel's operating stability.

(2) The Secretary may accept, as evidence of compliance with this subsection, a certification of compliance issued by the person providing insurance for the vessel or by another qualified person approved by the Secretary.

(e) In prescribing regulations under this chapter, the Secretary—

(1) shall consider the specialized nature and economics of the operations and the character, design, and construction of the vessel; and

(2) may not require the alteration of a vessel or associated equipment that was constructed or manufactured before the effective date of the regulation.

(f) To ensure compliance with the requirements of this chapter, at least once every 2 years the Secretary shall examine—

(1) a fish processing vessel; and

(2) a fish tender vessel engaged in the Aleutian trade.

§ 4506. Exemptions

(a) The Secretary may exempt a vessel from any part of this chapter if, under regulations prescribed by the Secretary (including regulations on special operating conditions), the Secretary finds that—

(1) good cause exists for granting an exemption; and

[(2) the safety of the vessel and those on board will not be adversely affected.]

(2) *is operating—*

(A) *in internal waters of the United States; or*

(B) *within 3 nautical miles from the baselines from which the territorial sea of the United States is measured.*"

(b) A vessel to which this chapter applies is exempt from section 4502(b)(2)(B) of this title if it—

(1) is less than 36 feet in length; and

(2) is not operating on the high seas.

PART D.—MARINE CASUALTIES

CHAPTER 63.—INVESTIGATING MARINE CASUALTIES

§ 6305. Reports of investigations

(a) The Secretary shall prescribe regulations about the form and manner of reports of investigations conducted under this part.

(b) Reports of investigations conducted under this part shall be made available to the [public, except to the extent that they contain information related to the national security.] *public. This subsection does not require the release of information described by section 552(b) of title 5 or protected from disclosure by another law of the United States.*

PART E.—MERCHANT SEAMEN LICENSES, CERTIFICATES, AND
DOCUMENTS

CHAPTER 77.—SUSPENSION AND REVOCATION

§ 7702. **Administrative procedure**

(a) Sections 551–559 of title 5 apply to each hearing under this chapter about suspending or revoking a license, certificate of registry, or merchant mariner’s document.

(b) The individual whose license, certificate of registry, or merchant mariner’s document has been suspended or revoked under this chapter may appeal, within 30 days, the suspension or revocation to the Secretary.

(c) **[(1)]** The Secretary shall request a holder of a license, certificate of registry, or merchant mariner’s document to make available to the Secretary, under section 206(b)(4) of the National Driver Register Act of 1982 (23 U.S.C. 401 note), all information contained in the National Driver Register related to an offense described in section 205(a)(3) (A) or (B) of that Act committed by the individual.

[(2)] *(d)(1)* The Secretary shall require the testing of the holder of a license, certificate of registry, or merchant mariner’s document for use of alcohol and dangerous drugs in violation of law or Federal regulation. The testing **[may]** *shall* include preemployment (with respect to dangerous drugs only), periodic, random, reasonable cause, and post accident testing.

(2) The Secretary shall establish procedures to ensure that after a serious marine incident occurs, alcohol testing of crew members responsible for the operation or other safety-sensitive functions of the vessel or vessels involved in such incident is conducted no later than two hours after the incident is stabilized.

[(d)(1)] *(e)(1)* The Secretary may temporarily, for not more than 45 days, suspend and take possession of the license, certificate of registry, or merchant mariner’s document held by an individual if, when acting under the authority of that license, certificate, or document—

(A) that individual performs a safety sensitive function on a vessel, as determined by the Secretary; and

(B) there is probable cause to believe that the individual—

(i) has performed the safety sensitive function in violation of law or Federal regulation regarding use of alcohol or a dangerous drug;

(ii) has been convicted of an offense that would prevent the issuance or renewal of the license, certificate, or document; or

(iii) within the 3-year period preceding the initiation of a suspension proceeding, has been convicted of an offense described in section 205(a)(3) (A) or (B) of the National Driver Register Act of 1982.

(2) If a license, certificate, or document is temporarily suspended under this section, an expedited hearing under subsection (a) of this section shall be held within 30 days after the temporary suspension.

PART F.—MANNING OF VESSELS

CHAPTER 85.—PILOTS

§ 8502. Federal pilots required

(a) Except as provided in subsections (g) and (i) of this section, a coastwise seagoing vessel shall be under the direction and control of a pilot licensed under section 7101 of this title if the vessel is—

(1) not sailing on register;

(2) underway;

(3) [not on the high seas; and] *not beyond 3 nautical miles from the baselines from which the territorial sea of the United States is measured; and*

(4) (A) propelled by machinery and subject to inspection under part B of this subtitle; or

(B) subject to inspection under chapter 37 of this title.

(b) The fees charged for pilotage by pilots required under this section may not be more than the customary or legally established rates in the States in which the pilotage is performed.

(c) A State or political subdivision of a State may not impose on a pilot licensed under this subtitle an obligation to procure a State or other license, or adopt any other regulation that will impede the pilot in the performance of the pilot's duties under the laws of the United States.

(d) A State or political subdivision of a State may not levy pilot charges on a vessel lawfully piloted by a pilot required under this section.

(e) The owner, charterer, managing operator, agent, master, or individual in charge of a vessel operated in violation of this section or a regulation prescribed under this section is liable to the United States Government for a civil penalty of \$10,000. The vessel also is liable *in rem* for the penalty.

(f) An individual serving as a pilot without having a license required by this section or a regulation prescribed under this section is liable to the Government for a civil penalty of \$10,000.

(g)(1) The Secretary shall designate by regulation the areas of the approaches to and waters of Prince William Sound, Alaska, if any, on which a vessel subject to this section is not required to be under the direction and control of a pilot licensed under section 7101 of this title.

(2) In any area of Prince William Sound, Alaska, where a vessel subject to this section is required to be under the direction and control of a pilot licensed under section 7101 of this title, the pilot may not be a member of the crew of that vessel and shall be a pilot licensed by the State of Alaska who is operating under a Federal license, when the vessel is navigating waters between 60 Degree(s) 49' North latitude and the Port of Valdez, Alaska.

(h) The Secretary shall designate waters on which tankers over 1,600 gross tons subject to this section shall have on the bridge a master or mate licensed to direct and control the vessel under section 7101(c)(1) of this title who is separate and distinct from the pilot required under subsection (a) of this section.

(i)(1) Except as provided in paragraph (2), a dredge to which this section would otherwise apply is exempt from the requirements of this section.

(2) If the Secretary determines, after notice and comment, that the exemption under paragraph (1) creates a hazard to navigational safety in a specified area, the Secretary may require that a dredge exempted, by paragraph (1) which is operating in that area shall comply with this section.

§ 8503. Federal pilots authorized

(a) The Secretary may require a pilot licensed under section 7101 of this title on a self-propelled vessel when a pilot is not required by State law and the vessel is—

(1) engaged in foreign commerce; and

【(2) operating on the navigable waters of the United States.】

(2) *operating—*

(A) *in internal waters of the United States; or*

(B) *within 3 nautical miles from the baselines from which the territorial sea of the United States is measured.*

(b) A requirement prescribed under subsection (a) of this section is terminated when the State having jurisdiction over the area involved—

(1) establishes a requirement for a State licensed pilot; and

(2) notifies the Secretary of that fact.

(c) For the Saint Lawrence Seaway, the Secretary may not delegate the authority under this section to an agency except the Saint Lawrence Seaway Development Corporation.

(d) A person violating this section or a regulation prescribed under this section is liable to the United States Government for a civil penalty of not more than \$25,000. Each day of a continuing violation is a separate violation. The vessel also is liable *in rem* for the penalty.

(e) A person that knowingly violates this section or a regulation prescribed under this section commits a class D felony.

Subtitle II.—Vessels and Seamen

PART H.—IDENTIFICATION OF VESSELS

CHAPTER 121.—DOCUMENTATION OF VESSELS

§ 12102. Vessels eligible for documentation

(a) A vessel of at least 5 net tons that is not registered under the laws of a foreign country 【or is not titled in a State】 is eligible for documentation if the vessel is owned by—

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

(2) an association, trust, joint venture, or other entity—

(A) all of whose members are citizens of the United States; and

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

(3) a partnership whose general partners are citizens of the United States, and the controlling interest in the partnership is owned by citizens of the United States;

(4) a corporation established under the laws of the United States or of a State, whose **【president or other】** chief executive **【officer】** *officer, by whatever title*, and chairman of its board of directors are citizens of the United States and no more of its directors are noncitizens than a minority of the number necessary to constitute a quorum;

(5) the United States Government; or

(6) the government of a State.

(b) A vessel is eligible for documentation only if it has been measured under part J of this subtitle. However, the Secretary of Transportation may issue a temporary certificate of documentation for a vessel before it is measured.

(c)(1) A vessel owned by a corporation is not eligible for a fishery endorsement under section 12108 of this title unless the controlling interest (as measured by a majority of voting shares in that corporation) is owned by individuals who are citizens of the United States. However, if the corporation is owned in whole or in part by other United States corporations, the controlling interest in those corporations, in the aggregate, must be owned by individuals who are citizens of the United States.

(2) The Secretary shall apply the restrictions on controlling interest in section 2(b) of the Shipping Act, 1916 (46 App. U.S.C. 802(b)) when applying this subsection.

(d)(1) For the issuance of a certificate of documentation with only a registry endorsement, subsection (a)(2)(A) of this section does not apply to a beneficiary of a trust that is qualified under paragraph (2) of this subsection if the vessel is subject to a charter to a citizen of the United States.

(2) (A) Subject to subparagraph (B) of this paragraph, a trust is qualified under this paragraph with respect to a vessel only if—

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

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

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

(3) Paragraph (2) of this subsection shall not be considered to prohibit a person who is not a citizen of the United States from holding more than 25 percent of the beneficial interest in a trust.

(4) If a person chartering a vessel from a trust that is qualified under paragraph (2) of this subsection is a citizen of the United States under section 2 of the Shipping Act, 1916 (46 App. U.S.C. 802), then the vessel is deemed to be owned by a citizen of the United States for purposes of that section and related laws, except for subtitle B of title VI of the Merchant Marine Act, 1936.

CHAPTER 123.—NUMBERING UNDOCUMENTED VESSELS

§ 12301. Numbering vessels

(a) An undocumented vessel equipped with propulsion machinery of any kind shall have a number issued by the proper issuing authority in the State in which the vessel principally is operated.

(b) The Secretary shall require an undocumented barge more than 100 gross tons operating on the navigable waters of the United States to be numbered.

(c) *A documented vessel shall not be titled by a State or required to display numbers under this chapter, and any certificate of title issued by a State for a documented vessel shall be surrendered in accordance with regulations prescribed by the Secretary.*

(d) *The Secretary may approve the surrender under subsection (a) of a certificate of title covered by a preferred mortgage under section 31322(d) of this title only if the mortgagee consents.*

CHAPTER 313.—COMMERCIAL INSTRUMENTS AND MARITIME LIENS

§ 31322. Preferred mortgages

(a) A preferred mortgage is a mortgage, whenever made, that—

- (1) includes the whole of the vessel;
- (2) is filed in substantial compliance with section 31321 of this title; and
- (3) (A) covers a documented vessel; or
(B) covers a vessel for which an application for documentation is filed that is in substantial compliance with the requirements of chapter 121 of this chapter and the regulations prescribed under that chapter.

[(b) A preferred mortgage filed or recorded under this chapter may have any rate of interest that the parties to the mortgage agree to.]

(b) Any indebtedness secured by a preferred mortgage that is filed or recorded under this chapter, or that is subject to a mortgage, security agreement, or instruments granting a security interest that is deemed to be a preferred mortgage under subsection (d) of this section, may have any rate of interest to which the parties agree.

(c)(1) If a preferred mortgage includes more than one vessel or property that is not a vessel, the mortgage may provide for the separate discharge of each vessel and all property not a vessel by the payment of a part of the mortgage indebtedness.

(2) If a vessel covered by a preferred mortgage that includes more than one vessel or property that is not a vessel is to be sold on the order of a district court in a civil action *in rem*, and the mortgage does not provide for separate discharge as provided under paragraph (1) of this subsection—

(A) the mortgage constitutes a lien on that vessel in the full amount of the outstanding mortgage indebtedness; and

(B) an allocation of mortgage indebtedness for purposes of separate discharge may not be made among the vessel and other property covered by the mortgage.

(d)(1) A **【mortgage or instrument】** *mortgage, security agreement, or instrument* granting a security interest perfected under State law covering the whole of a vessel titled in a State is deemed to be a preferred mortgage if—

(A) the Secretary certifies that the State titling system complies with the Secretary's guidelines for a titling system under section 13106(b)(8) of this title; and

(B) information on the vessel covered by the **【mortgage or instrument】** *mortgage, security agreement, or instrument* is made available to the Secretary under chapter 125 of this title.

(2) This subsection applies to **【mortgages or instruments】** *mortgages, security agreements, or instruments* covering vessels titled in a State after—

(A) the Secretary's certification under paragraph (1)(A) of this subsection; and

(B) the State begins making information available to the Secretary under chapter 125 of this title.

【(3) A preferred mortgage under this subsection continues to be a preferred mortgage if the vessel is no longer titled in the State where the mortgage was made.】

(3) A preferred mortgage under this subsection continues to be a preferred mortgage even if the vessel is no longer titled in the State where the mortgage, security agreement, or instrument granting a security interest became a preferred mortgage under this subsection.

(e) If a vessel is already covered by a preferred mortgage when an application for titling or documentation is filed—

(1) the status of the preferred mortgage covering the vessel to be titled in the State is determined by the law of the jurisdiction where the vessel is currently titled or documented; and

(2) the status of the preferred mortgage covering the vessel to be documented under chapter 121 is determined by subsection (a) of this section.

§ 31325. Preferred mortgage liens and enforcement

(a) A preferred mortgage is a lien on the mortgaged vessel in the amount of the outstanding mortgage indebtedness secured by the vessel.

(b) On default of any term of the preferred mortgage, the mortgagee may—

(1) enforce the preferred mortgage lien in a civil action *in rem* for a documented vessel, a vessel to be documented under chapter 121 of this title, *a vessel titled in a State*, or a foreign vessel;

(2) enforce a claim for the outstanding indebtedness secured by the mortgaged vessel in—

(A) a civil action in personam in admiralty against the mortgagor, maker, comaker, or guarantor for the amount of the outstanding indebtedness or any deficiency in full payment of that indebtedness; and

- (B) a civil action against the mortgagor, maker, comaker, or guarantor for the amount of the outstanding indebtedness or any deficiency in full payment of that indebtedness; and
- (3) enforce the preferred mortgage lien or a claim for the outstanding indebtedness secured by the mortgaged vessel, or both, by exercising any other remedy (including an extrajudicial remedy) against a documented vessel, a vessel for which an application for documentation is filed under chapter 121 of this title, *a vessel titled in a State*, a foreign vessel, or a mortgagor, maker, comaker, or guarantor for the amount of the outstanding indebtedness or any deficiency in full payment of that indebtedness, if—
- (A) the remedy is allowed under applicable law; and
- (B) the exercise of the remedy will not result in a violation of section 9 or 37 of the Shipping Act, 1916 (46 App. U.S.C. 808, 835).
- (c) The district courts have original jurisdiction of a civil action brought under subsection (b)(1) or (2) of this section. However, for a documented vessel, a vessel to be documented under chapter 121 of this title, *a vessel titled in a State*, or a foreign vessel, this jurisdiction is exclusive of the courts of the States for a civil action brought under subsection (b)(1) of this section.
- (d)(1) Actual notice of a civil action brought under subsection (b)(1) of this section, or to enforce a maritime lien, must be given in the manner directed by the court to—
- (A) the master or individual in charge of the vessel;
- (B) any person that recorded under section 31343(a) or (d) of this title a notice of a claim of an undischarged lien on the vessel; and
- (C) a mortgagee of a mortgage filed or recorded under section 31321 of this title that is an undischarged mortgage on the vessel.
- (2) Notice under paragraph (1) of this subsection is not required if, after search satisfactory to the court, the person entitled to the notice has not been found in the United States.
- (3) Failure to give notice required by this subsection does not affect the jurisdiction of the court in which the civil action is brought. However, unless notice is not required under paragraph (2) of this subsection, the party required to give notice is liable to the person not notified for damages in the amount of that person's interest in the vessel terminated by the action brought under subsection (b)(1) of this section. A civil action may be brought to recover the amount of the terminated interest. The district courts have original jurisdiction of the action, regardless of the amount in controversy or the citizenship of the parties. If the plaintiff prevails, the court may award costs and attorney fees to the plaintiff.
- (e) In a civil action brought under subsection (b)(1) of this section—
- (1) the court may appoint a receiver and authorize the receiver to operate the mortgaged vessel and shall retain *in rem* jurisdiction over the vessel even if the receiver operates the vessel outside the district in which the court is located; and

(2) when directed by the court, a United States marshal may take possession of a mortgaged vessel even if the vessel is in the possession or under the control of a person claiming a possessory common law lien.

(f)(1) Before title to the documented vessel or vessel for which an application for documentation is filed under chapter 121 is transferred by an extrajudicial remedy, the person exercising the remedy shall give notice of the proposed transfer to the Secretary, to the mortgagee of any mortgage on the vessel filed in substantial compliance with section 31321 of this title before notice of the proposed transfer is given to the Secretary, and to any person that recorded a notice of a claim of an undischarged lien on the vessel under section 31343(a) or (d) of this title before notice of the proposed transfer is given to the Secretary.

(2) Failure to give notice as required by this subsection shall not affect the transfer of title to a vessel. However, the rights of any holder of a maritime lien or a preferred mortgage on the vessel shall not be affected by a transfer of title by an extrajudicial remedy exercised under this section, regardless of whether notice is required by this subsection or given.

(3) The Secretary shall prescribe regulations establishing the time and manner for providing notice under this subsection.

TITLE 46.—APPENDIX; SHIPPING

CHAPTER 23.—SHIPPING ACT, 1916

§ 802. Corporation, partnership, or association as citizen

(a) OWNERSHIP OF CONTROLLING INTEREST.—Within the meaning of this Act no corporation, partnership, or association shall be deemed a citizen of the United States unless the controlling interest therein is owned by citizens of the United States, and, in the case of a corporation, unless its [president or other] chief executive [officer] *officer, by whatever title*, and the chairman of its board of directors are citizens of the United States and unless no more of its directors than a minority of the number necessary to constitute a quorum are noncitizens and the corporation itself is organized under the laws of the United States or of a State, Territory, District, or possession thereof, but in the case of a corporation, association, or partnership operating any vessel in the coastwise trade the amount of interest required to be owned by citizens of the United States shall be 75 per centum.

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

upon or permitted to be exercised by any person who is not a citizen of the United States.

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

