

109TH CONGRESS
1ST SESSION

H. R. 1442

To complete the codification of title 46, United States Code, “Shipping”,
as positive law.

IN THE HOUSE OF REPRESENTATIVES

MARCH 17, 2005

Mr. SENSENBRENNER (for himself and Mr. CONYERS) introduced the
following bill; which was referred to the Committee on the Judiciary

A BILL

To complete the codification of title 46, United States Code,
“Shipping”, as positive law.

1 *Be it enacted by the Senate and House of Representatives of the United*
2 *States of America in Congress assembled,*

3 **SECTION 1. TABLE OF CONTENTS.**

4 The table of contents for this Act is as follows:

- Sec. 1. Table of contents.
- Sec. 2. Purpose; conformity with original intent.
- Sec. 3. Title analysis.
- Sec. 4. Subtitle I of title 46.
- Sec. 5. Subtitle II of title 46.
- Sec. 6. Subtitle III of title 46.
- Sec. 7. Subtitle IV of title 46.
- Sec. 8. Subtitle V of title 46.
- Sec. 9. Subtitle VI of title 46.
- Sec. 10. Subtitle VII of title 46.
- Sec. 11. Subtitle VIII of title 46.
- Sec. 12. Maritime Administration.
- Sec. 13. Amendments relating to Maritime Security Act of 2003.
- Sec. 14. Amendments to partially restated provisions.
- Sec. 15. Additional amendments to title 46.
- Sec. 16. Conforming amendments to other laws.
- Sec. 17. Transitional and savings provisions.
- Sec. 18. Repeals.

1 **SEC. 2. PURPOSE; CONFORMITY WITH ORIGINAL INTENT.**

2 (a) PURPOSE.—The purpose of this Act is to complete the codification
3 of title 46, United States Code, “Shipping”, as positive law, by reorganizing
4 and restating the laws currently in the appendix to title 46.

5 (b) CONFORMITY WITH ORIGINAL INTENT.—In the codification of laws
6 by this Act, the intent is to conform to the understood policy, intent, and
7 purpose of the Congress in the original enactments, with such amendments
8 and corrections as will remove ambiguities, contradictions, and other imper-
9 fections, in accordance with section 205(e)(1) of House Resolution No. 988,
10 93d Congress, as enacted into law by Public Law 93–554 (2 U.S.C.
11 285b(1)).

12 **SEC. 3. TITLE ANALYSIS.**

13 The title analysis of title 46, United States Code, is amended to read as
14 follows:

“Subtitle	Sec.
“I. GENERAL	101
“II. VESSELS AND SEAMEN	2101
“III. MARITIME LIABILITY	30101
“IV. REGULATION OF OCEAN SHIPPING	40101
“V. MERCHANT MARINE	50101
“VI. CLEARANCE, TONNAGE TAXES, AND DUTIES	60101
“VII. SECURITY AND DRUG ENFORCEMENT	70101
“VIII. MISCELLANEOUS	80101”.

15 **SEC. 4. SUBTITLE I OF TITLE 46.**

16 Title 46, United States Code, is amended by inserting after the title anal-
17 ysis the following:

18 **“Subtitle I—General**

“Chapter	Sec.
“1. Definitions	101
“3. Federal Maritime Commission	301
“5. Other General Provisions	501

19 **“CHAPTER 1—DEFINITIONS**

“Sec.
“101. Agency.
“102. Barge.
“103. Boundary Line.
“104. Citizen of the United States.
“105. Consular officer.
“106. Documented vessel.
“107. Exclusive economic zone.
“108. Fisheries.
“109. Foreign commerce or trade.
“110. Foreign vessel.
“111. Numbered vessel.
“112. State.
“113. Undocumented.
“114. United States.
“115. Vessel.
“116. Vessel of the United States.

20 **“§ 101. Agency**

21 “In this title, the term ‘agency’ means a department, agency, or instru-
22 mentality of the United States Government.

1 **“§ 102. Barge**

2 “In this title, the term ‘barge’ means a non-self-propelled vessel.

3 **“§ 103. Boundary Line**

4 “In this title, the term ‘Boundary Line’ means a line established under
5 section 2(b) of the Act of February 19, 1895 (33 U.S.C. 151).

6 **“§ 104. Citizen of the United States**

7 “In this title, the term ‘citizen of the United States’, when used in ref-
8 erence to a natural person, means an individual who is a national of the
9 United States as defined in section 101(a)(22) of the Immigration and Na-
10 tionality Act (8 U.S.C. 1101(a)(22)).

11 **“§ 105. Consular officer**

12 “In this title, the term ‘consular officer’ means an officer or employee of
13 the United States Government designated under regulations to issue visas.

14 **“§ 106. Documented vessel**

15 “In this title, the term ‘documented vessel’ means a vessel for which a
16 certificate of documentation has been issued under chapter 121 of this title.

17 **“§ 107. Exclusive economic zone**

18 “In this title, the term ‘exclusive economic zone’ means the zone estab-
19 lished by Presidential Proclamation 5030 of March 10, 1983 (16 U.S.C.
20 1453 note).

21 **“§ 108. Fisheries**

22 “In this title, the term ‘fisheries’ includes processing, storing, trans-
23 porting (except in foreign commerce), planting, cultivating, catching, taking,
24 or harvesting fish, shellfish, marine animals, pearls, shells, or marine vege-
25 tation in the navigable waters of the United States or in the exclusive eco-
26 nomic zone.

27 **“§ 109. Foreign commerce or trade**

28 “(a) IN GENERAL.—In this title, the terms ‘foreign commerce’ and ‘for-
29 eign trade’ mean commerce or trade between a place in the United States
30 and a place in a foreign country.

31 “(b) CAPITAL CONSTRUCTION FUNDS AND CONSTRUCTION-DIFFEREN-
32 TIAL SUBSIDIES.—In the context of capital construction funds under chap-
33 ter 535 of this title, and in the context of construction-differential subsidies
34 under title V of the Merchant Marine Act, 1936, the terms ‘foreign com-
35 merce’ and ‘foreign trade’ also include, in the case of liquid and dry bulk
36 cargo carrying services, trading between foreign ports in accordance with
37 normal commercial bulk shipping practices in a manner that will permit
38 United States documented bulk vessels to compete freely with foreign bulk
39 vessels in their operation or competition for charters, subject to regulations
40 prescribed by the Secretary of Transportation.

1 **“§ 110. Foreign vessel**

2 “In this title, the term ‘foreign vessel’ means a vessel of foreign registry
3 or operated under the authority of a foreign country.

4 **“§ 111. Numbered vessel**

5 “In this title, the term ‘numbered vessel’ means a vessel for which a num-
6 ber has been issued under chapter 123 of this title.

7 **“§ 112. State**

8 “In this title, the term ‘State’ means a State of the United States, the
9 District of Columbia, Guam, Puerto Rico, the Virgin Islands, American
10 Samoa, the Northern Mariana Islands, and any other territory or possession
11 of the United States.

12 **“§ 113. Undocumented**

13 “In this title, the term ‘undocumented’ means not having and not re-
14 quired to have a certificate of documentation issued under chapter 121 of
15 this title.

16 **“§ 114. United States**

17 “In this title, the term ‘United States’, when used in a geographic sense,
18 means the States of the United States, the District of Columbia, Guam,
19 Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana
20 Islands, and any other territory or possession of the United States.

21 **“§ 115. Vessel**

22 “In this title, the term ‘vessel’ has the meaning given that term in section
23 3 of title 1.

24 **“§ 116. Vessel of the United States**

25 “In this title, the term ‘vessel of the United States’ means a vessel docu-
26 mented under chapter 121 of this title, numbered under chapter 123 of this
27 title, or titled under the law of a State.

28 **“CHAPTER 3—FEDERAL MARITIME COMMISSION**

“Sec.

“301. General organization.

“302. Quorum.

“303. Record of meetings and votes.

“304. Delegation of authority.

“305. Regulations.

“306. Annual report.

“307. Expenditures.

29 **“§ 301. General organization**

30 “(a) ORGANIZATION.—The Federal Maritime Commission is an inde-
31 pendent establishment of the United States Government.

32 “(b) COMMISSIONERS.—

33 “(1) COMPOSITION.—The Commission is composed of 5 Commis-
34 sioners, appointed by the President by and with the advice and consent
35 of the Senate. Not more than 3 Commissioners may be appointed from
36 the same political party.

1 “(2) TERMS.—The term of each Commissioner is 5 years, with each
2 term beginning one year apart. An individual appointed to fill a va-
3 cancy is appointed only for the unexpired term of the individual being
4 succeeded. A vacancy shall be filled in the same manner as the original
5 appointment. When the term of a Commissioner ends, the Commis-
6 sioner may continue to serve until a successor is appointed and quali-
7 fied.

8 “(3) REMOVAL.—The President may remove a Commissioner for in-
9 efficiency, neglect of duty, or malfeasance in office.

10 “(e) CHAIRMAN.—

11 “(1) DESIGNATION.—The President shall designate one of the Com-
12 missioners as Chairman.

13 “(2) GENERAL AUTHORITY.—The Chairman is the chief executive
14 and administrative officer of the Commission. In carrying out the du-
15 ties and powers of the Commission (other than under paragraph (3)),
16 the Chairman is subject to the policies, regulatory decisions, findings,
17 and determinations of the Commission.

18 “(3) PARTICULAR DUTIES.—

19 “(A) IN GENERAL.—The Chairman shall—

20 “(i) appoint and supervise officers and employees of the
21 Commission;

22 “(ii) appoint the heads of major organizational units, but
23 only after consultation with the other Commissioners;

24 “(iii) distribute the business of the Commission among per-
25 sonnel and organizational units;

26 “(iv) supervise the expenditure of money for administrative
27 purposes; and

28 “(v) assign Commission personnel, including Commis-
29 sioners, to perform duties and powers delegated by the Com-
30 mission under section 304 of this title.

31 “(B) NONAPPLICATION.—Subparagraph (A) (other than clause
32 (v)) does not apply to personnel employed regularly and full-time
33 in the offices of Commissioners other than the Chairman.

34 “(4) DELEGATION.—The Chairman may designate officers and em-
35 ployees under the Chairman’s jurisdiction to perform duties and powers
36 of the Chairman, subject to the Chairman’s supervision and direction.

37 “(d) SEAL.—The Commission shall have a seal which shall be judicially
38 recognized.

39 **“§ 302. Quorum**

40 “A vacancy or vacancies in the membership of the Federal Maritime
41 Commission do not impair the power of the Commission to execute its func-

1 tions. The affirmative vote of a majority of the Commissioners serving on
2 the Commission is required to dispose of any matter before the Commission.

3 **“§ 303. Record of meetings and votes**

4 “The Federal Maritime Commission, through its secretary, shall keep a
5 record of its meetings and the votes taken on any action, order, contract,
6 or financial transaction of the Commission.

7 **“§ 304. Delegation of authority**

8 “(a) DELEGATION.—The Federal Maritime Commission, by published
9 order or regulation, may delegate to a division of the Commission, an indi-
10 vidual Commissioner, an employee board, or an officer or employee of the
11 Commission, any of its duties or powers, including those relating to hearing,
12 determining, ordering, certifying, reporting, or otherwise acting on any mat-
13 ter. This subsection does not affect section 556(b) of title 5.

14 “(b) REVIEW.—The Commission may review any action taken under a
15 delegation of authority under subsection (a). The review may be taken on
16 the Commission’s own initiative or on the petition of a party to or an inter-
17 venor in the action, within the time and in the manner prescribed by the
18 Commission. The vote of a majority of the Commission, less one member,
19 is sufficient to bring an action before the Commission for review.

20 “(c) DEEMED ACTION OF COMMISSION.—If the Commission declines re-
21 view, or if review is not sought, within the time prescribed under subsection
22 (b), the action taken under the delegation of authority is deemed to be the
23 action of the Commission.

24 **“§ 305. Regulations**

25 “The Federal Maritime Commission may prescribe regulations to carry
26 out its duties and powers.

27 **“§ 306. Annual report**

28 “(a) IN GENERAL.—Not later than April 1 of each year, the Federal
29 Maritime Commission shall submit a report to Congress. The report shall
30 include the results of its investigations, a summary of its transactions, the
31 purposes for which all of its expenditures were made, and any recommenda-
32 tions for legislation.

33 “(b) REPORT ON FOREIGN LAWS AND PRACTICES.—The Commission
34 shall include in its annual report to Congress—

35 “(1) a list of the 20 foreign countries that generated the largest vol-
36 ume of oceanborne liner cargo for the most recent calendar year in bi-
37 lateral trade with the United States;

38 “(2) an analysis of conditions described in section 42302(a) of this
39 title being investigated or found to exist in foreign countries;

40 “(3) any actions being taken by the Commission to offset those con-
41 ditions;

1 “(4) any recommendations for additional legislation to offset those
2 conditions; and

3 “(5) a list of petitions filed under section 42302(b) of this title that
4 the Commission rejected and the reasons for each rejection.

5 **“§ 307. Expenditures**

6 “The Federal Maritime Commission may make such expenditures as are
7 necessary in the performance of its functions from funds appropriated or
8 otherwise made available to it, which appropriations are authorized.

9 **“CHAPTER 5—OTHER GENERAL PROVISIONS**

“Sec.

“501. Waiver of navigation and vessel-inspection laws.

“502. Cargo exempt from forfeiture.

“503. Notice of seizure.

“504. Remission of fees and penalties.

“505. Penalty for violating regulation or order.

10 **“§ 501. Waiver of navigation and vessel-inspection laws**

11 “(a) ON REQUEST OF SECRETARY OF DEFENSE.—On request of the Sec-
12 retary of Defense, the head of an agency responsible for the administration
13 of the navigation or vessel-inspection laws shall waive compliance with those
14 laws to the extent the Secretary considers necessary in the interest of na-
15 tional defense.

16 “(b) BY HEAD OF AGENCY.—When the head of an agency responsible for
17 the administration of the navigation or vessel-inspection laws considers it
18 necessary in the interest of national defense, the individual may waive com-
19 pliance with those laws to the extent, in the manner, and on the terms the
20 individual prescribes.

21 “(c) TERMINATION OF AUTHORITY.—The authority granted by this sec-
22 tion shall terminate at such time as the Congress by concurrent resolution
23 or the President may designate.

24 **“§ 502. Cargo exempt from forfeiture**

25 “Cargo on a vessel is exempt from forfeiture under this title if—

26 “(1) the cargo is owned in good faith by a person not the owner,
27 master, or crewmember of the vessel; and

28 “(2) the customs duties on the cargo have been paid or secured for
29 payment as provided by law.

30 **“§ 503. Notice of seizure**

31 “When a forfeiture of a vessel or cargo accrues, the official of the United
32 States Government required to give notice of the seizure of the vessel or
33 cargo shall include in the notice, if they are known to that official, the name
34 and the place of residence of the owner or consignee at the time of the sei-
35 zure.

1 **“§ 504. Remission of fees and penalties**

2 “Any part of a fee, tax, or penalty paid or a forfeiture incurred under
3 a law or regulation relating to vessels or seamen may be remitted if—

4 “(1) application for the remission is made within one year after the
5 date of the payment or forfeiture; and

6 “(2) it is found that the fee, tax, penalty, or forfeiture was improv-
7 erly or excessively imposed.

8 **“§ 505. Penalty for violating regulation or order**

9 “A person convicted of knowingly and willfully violating a regulation or
10 order of the Federal Maritime Commission or the Secretary of Transpor-
11 tation under subtitle IV or V of this title, for which no penalty is expressly
12 provided, shall be fined not more than \$500. Each day of a continuing viola-
13 tion is a separate offense.”.

14 **SEC. 5. SUBTITLE II OF TITLE 46.**

15 Chapter 121 of title 46, United States Code, is amended to read as fol-
16 lows:

17 **“CHAPTER 121—DOCUMENTATION OF VESSELS**

“SUBCHAPTER I—GENERAL

“Sec.

- “12101. Definitions.
- “12102. Vessels requiring documentation.
- “12103. General eligibility requirements.
- “12104. Applications for documentation.
- “12105. Issuance of documentation.
- “12106. Surrender of title and number.
- “12107. Wrecked vessels.

“SUBCHAPTER II—ENDORSEMENTS AND SPECIAL DOCUMENTATION

- “12111. Registry endorsement.
- “12112. Coastwise endorsement.
- “12113. Fishery endorsement.
- “12114. Recreational endorsement.
- “12115. Temporary endorsement for vessels procured outside the United States.
- “12116. Limited endorsements for Guam, American Samoa, and Northern Mariana Islands.
- “12117. Oil spill response vessels.
- “12118. Owners engaged primarily in manufacturing or mineral industry.
- “12119. Owners engaged primarily in leasing or financing transactions.
- “12120. Liquefied gas tankers.
- “12121. Small passenger vessels and uninspected passenger vessels.

“SUBCHAPTER III—MISCELLANEOUS

- “12131. Command of documented vessels.
- “12132. Loss of coastwise trade privileges.
- “12133. Duty to carry certificate on vessel and allow examination.
- “12134. Evidentiary uses of documentation.
- “12135. Invalidation of certificates of documentation.
- “12136. Surrender of certificates of documentation.
- “12137. Recording of vessels built in the United States.
- “12138. List of documented vessels.
- “12139. Reports.

“SUBCHAPTER IV—PENALTIES

- “12151. Penalties.
- “12152. Denial or revocation of endorsement for non-payment of civil penalty.

“SUBCHAPTER I—GENERAL

“§ 12101. Definitions

“(a) **REBUILT IN THE UNITED STATES.**—In this chapter, a vessel is deemed to have been rebuilt in the United States only if the entire rebuilding, including the construction of any major component of the hull or superstructure, was done in the United States.

“(b) **RELATED TERMS IN OTHER LAWS.**—When the following terms are used in a law, regulation, document, ruling, or other official act referring to the documentation of a vessel, the following definitions apply:

“(1) **REGISTRY ENDORSEMENT.**—The terms ‘certificate of registry’, ‘register’, and ‘registry’ mean a certificate of documentation with a registry endorsement issued under this chapter.

“(2) **COASTWISE ENDORSEMENT.**—The terms ‘license’, ‘enrollment and license’, ‘license for the coastwise (or coasting) trade’, and ‘enrollment and license for the coastwise (or coasting) trade’ mean a certificate of documentation with a coastwise endorsement issued under this chapter.

“(3) **YACHT.**—The term ‘yacht’ means a recreational vessel even if not documented.

“§ 12102. Vessels requiring documentation

“(a) **IN GENERAL.**—Except as otherwise provided, a vessel may engage in a trade only if the vessel has been issued a certificate of documentation with an endorsement for that trade under this chapter.

“(b) **VESSELS LESS THAN 5 NET TONS.**—A vessel of less than 5 net tons may engage in a trade without being documented if the vessel otherwise satisfies the requirements to engage in the particular trade.

“(c) **BARGES.**—A barge qualified to engage in the coastwise trade may engage in the coastwise trade, without being documented, on rivers, harbors, lakes (except the Great Lakes), canals, and inland waters.

“§ 12103. General eligibility requirements

“(a) **IN GENERAL.**—Except as otherwise provided, a certificate of documentation for a vessel may be issued under this chapter only if the vessel is—

“(1) wholly owned by one or more individuals or entities described in subsection (b);

“(2) at least 5 net tons as measured under part J of this subtitle; and

“(3) not documented under the laws of a foreign country.

“(b) **ELIGIBLE OWNERS.**—For purposes of subsection (a)(1), the following are eligible owners:

“(1) An individual who is a citizen of the United States.

- 1 “(2) An association, trust, joint venture, or other entity if—
 2 “(A) each of its members is a citizen of the United States; and
 3 “(B) it is capable of holding title to a vessel under the laws of
 4 the United States or a State.
 5 “(3) A partnership if—
 6 “(A) each general partner is a citizen of the United States; and
 7 “(B) the controlling interest in the partnership is owned by citi-
 8 zens of the United States.
 9 “(4) A corporation if—
 10 “(A) it is incorporated under the laws of the United States or
 11 a State;
 12 “(B) its chief executive officer, by whatever title, and the chair-
 13 man of its board of directors are citizens of the United States; and
 14 “(C) no more of its directors are noncitizens than a minority
 15 of the number necessary to constitute a quorum.
 16 “(5) The United States Government.
 17 “(6) The government of a State.

18 “(c) TEMPORARY CERTIFICATES PRIOR TO MEASUREMENT.—Notwith-
 19 standing subsection (a)(2), the Secretary may issue a temporary certificate
 20 of documentation for a vessel before it is measured.

21 **“§ 12104. Applications for documentation**

22 “(a) IN GENERAL.—An application for a certificate of documentation or
 23 endorsement under this chapter must be filed by the owner of the vessel.
 24 The application must be filed in the manner, be in the form, and contain
 25 the information prescribed by the Secretary.

26 “(b) APPLICANT’S IDENTIFYING INFORMATION.—The Secretary shall re-
 27 quire the applicant to provide—

- 28 “(1) if the applicant is an individual, the individual’s social security
 29 number; or
 30 “(2) if the applicant is an entity—
 31 “(A) the entity’s taxpayer identification number; or
 32 “(B) if the entity does not have a taxpayer identification num-
 33 ber, the social security number of an individual who is a corporate
 34 officer, general partner, or individual trustee of the entity and who
 35 signs the application.

36 **“§ 12105. Issuance of documentation**

37 “(a) IN GENERAL.—Except as provided in section 12152 of this title, the
 38 Secretary, on receipt of a proper application, shall issue a certificate of doc-
 39 umentation or a temporary certificate of documentation for a vessel satis-
 40 fying the requirements of section 12103 of this title. The certificate shall

1 contain each endorsement under subchapter II of this chapter for which the
2 owner applies and the vessel is eligible.

3 “(b) TEMPORARY CERTIFICATES FOR RECREATIONAL VESSELS.—The
4 Secretary may delegate, subject to the supervision and control of the Sec-
5 retary and under terms prescribed by regulation, to private entities deter-
6 mined and certified by the Secretary to be qualified, the authority to issue
7 a temporary certificate of documentation for a recreational vessel eligible
8 under section 12103 of this title. A temporary certificate issued under this
9 subsection is valid for not more than 30 days.

10 “(c) INFORMATION TO BE INCLUDED IN CERTIFICATE.—A certificate of
11 documentation shall—

12 “(1) identify and describe the vessel;

13 “(2) identify the owner of the vessel; and

14 “(3) contain additional information prescribed by the Secretary.

15 “(d) PROCEDURES TO ENSURE INTEGRITY AND ACCURACY.—The Sec-
16 retary shall prescribe procedures to ensure the integrity of, and the accuracy
17 of information contained in, certificates of documentation.

18 **“§ 12106. Surrender of title and number**

19 “(a) IN GENERAL.—A documented vessel may not be titled by a State
20 or required to display numbers under chapter 123 of this title, and any cer-
21 tificate of title issued by a State for a documented vessel shall be surren-
22 dered as provided by regulations prescribed by the Secretary.

23 “(b) VESSELS COVERED BY PREFERRED MORTGAGE.—The Secretary
24 may approve the surrender under subsection (a) of a certificate of title for
25 a vessel covered by a preferred mortgage under section 31322(d) of this title
26 only if the mortgagee consents.

27 **“§ 12107. Wrecked vessels**

28 “(a) REQUIREMENTS.—A vessel is a wrecked vessel under this chapter if
29 it—

30 “(1) was wrecked on a coast of the United States or adjacent waters;

31 and

32 “(2) has undergone repairs in a shipyard in the United States equal
33 to at least 3 times the appraised salvage value of the vessel.

34 “(b) APPRAISALS.—The Secretary may appoint a board of three apprais-
35 ers to determine whether a vessel satisfies subsection (a)(2). The costs of
36 the appraisal shall be paid by the owner of the vessel.

37 “SUBCHAPTER II—ENDORSEMENTS AND SPECIAL
38 DOCUMENTATION

39 **“§ 12111. Registry endorsement**

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

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

4 “(c) CERTAIN VESSELS OWNED BY TRUSTS.—

5 “(1) NONAPPLICATION OF BENEFICIARY CITIZENSHIP REQUIRE-
6 MENT.—For the issuance of a certificate of documentation with only
7 a registry endorsement, the beneficiaries of a trust are not required to
8 be citizens of the United States if the trust qualifies under paragraph
9 (2) and the vessel is subject to a charter to a citizen of the United
10 States.

11 “(2) REQUIREMENTS FOR TRUST TO QUALIFY.—

12 “(A) IN GENERAL.—Subject to subparagraph (B), a trust quali-
13 fies under this paragraph with respect to a vessel only if—

14 “(i) each trustee is a citizen of the United States; and

15 “(ii) the application for documentation of the vessel in-
16 cludes the affidavit of each trustee stating that the trustee is
17 not aware of any reason involving a beneficiary of the trust
18 that is not a citizen of the United States, or involving any
19 other person that is not a citizen of the United States, as a
20 result of which the beneficiary or other person would hold
21 more than 25 percent of the aggregate power to influence or
22 limit the exercise of the authority of the trustee with respect
23 to matters involving any ownership or operation of the vessel
24 that may adversely affect the interests of the United States.

25 “(B) AUTHORITY OF NON-CITIZENS.—If any person that is not
26 a citizen of the United States has authority to direct or participate
27 in directing a trustee for a trust in matters involving any owner-
28 ship or operation of the vessel that may adversely affect the inter-
29 ests of the United States or in removing a trustee for a trust with-
30 out cause, either directly or indirectly through the control of an-
31 other person, the trust is not qualified under this paragraph un-
32 less the trust instrument provides that persons who are not citi-
33 zens of the United States may not hold more than 25 percent of
34 the aggregate authority to so direct or remove a trustee.

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

39 “(3) CITIZENSHIP OF PERSON CHARTERING VESSEL.—If a person
40 chartering a vessel from a trust that qualifies under paragraph (2) is
41 a citizen of the United States under section 50501 of this title, the ves-

1 sel is deemed to be owned by a citizen of the United States for pur-
2 poses of that section and related laws, except chapter 531 of this title.

3 **“§ 12112. Coastwise endorsement**

4 “(a) REQUIREMENTS.—A coastwise endorsement may be issued for a ves-
5 sel that—

6 “(1) satisfies the requirements of section 12103 of this title;

7 “(2)(A) was built in the United States; or

8 “(B) if not built in the United States—

9 “(i) was captured in war by citizens of the United States and
10 lawfully condemned as prize;

11 “(ii) was adjudged to be forfeited for a breach of the laws of
12 the United States; or

13 “(iii) qualifies as a wrecked vessel under section 12107 of this
14 title; and

15 “(3) otherwise qualifies under the laws of the United States to en-
16 gage in the coastwise trade.

17 “(b) AUTHORIZED ACTIVITY.—Subject to the laws of the United States
18 regulating the coastwise trade, a vessel for which a coastwise endorsement
19 is issued may engage in the coastwise trade.

20 **“§ 12113. Fishery endorsement**

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

23 “(1) satisfies the requirements of section 12103 of this title and, if
24 owned by an entity, the entity satisfies the ownership requirements in
25 subsection (c);

26 “(2) was built in the United States;

27 “(3) if rebuilt, was rebuilt in the United States;

28 “(4) was not forfeited to the United States Government after July
29 1, 2001, for a breach of the laws of the United States; and

30 “(5) otherwise qualifies under the laws of the United States to en-
31 gage in the fisheries.

32 “(b) AUTHORIZED ACTIVITY.—

33 “(1) IN GENERAL.—Subject to the laws of the United States regu-
34 lating the fisheries, a vessel for which a fishery endorsement is issued
35 may engage in the fisheries.

36 “(2) USE BY PROHIBITED PERSONS.—A fishery endorsement is in-
37 valid immediately if the vessel for which it is issued is used as a fishing
38 vessel while it is chartered or leased to an individual who is not a cit-
39 izen of the United States or to an entity that is not eligible to own
40 a vessel with a fishery endorsement.

41 “(c) OWNERSHIP REQUIREMENTS FOR ENTITIES.—

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

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

10 “(A) include the right to—

11 “(i) direct the business of the entity;

12 “(ii) limit the actions of or replace the chief executive officer,
13 a majority of the board of directors, any general partner,
14 or any person serving in a management capacity of the entity;
15 or

16 “(iii) direct the transfer, operation, or manning of a vessel
17 with a fishery endorsement; but

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

26 “(3) EXCEPTIONS.—This subsection does not apply to a vessel when
27 it is engaged in the fisheries in the exclusive economic zone under the
28 authority of the Western Pacific Fishery Management Council established
29 under section 302(a)(1)(H) of the Magnuson-Stevens Fishery
30 Conservation and Management Act (16 U.S.C. 1852(a)(1)(H)) or to a
31 purse seine vessel when it is engaged in tuna fishing in the Pacific
32 Ocean outside the exclusive economic zone or pursuant to the South
33 Pacific Regional Fisheries Treaty, provided that the owner of the vessel
34 continues to comply with the eligibility requirements for a fishery
35 endorsement under the Federal law that was in effect on October 1,
36 1998. A fishery endorsement issued pursuant to this paragraph is valid
37 for engaging only in the activities described in this paragraph.

38 “(d) REQUIREMENTS BASED ON LENGTH, TONNAGE, OR HORSE-
39 POWER.—

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

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

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

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

6 “(2) REQUIREMENTS.—A vessel subject to this subsection is not eli-
7 gible for a fishery endorsement unless—

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

11 “(ii) the vessel is not placed under foreign registry after October
12 21, 1998; and

13 “(iii) if the fishery endorsement is invalidated after October 21,
14 1998, application is made for a new fishery endorsement within
15 15 business days of the invalidation; or

16 “(B) the owner of the vessel demonstrates to the Secretary that
17 the regional fishery management council of jurisdiction established
18 under section 302(a)(1) of the Magnuson-Stevens Fishery Con-
19 servation and Management Act (16 U.S.C. 1852(a)(1)) has rec-
20 ommended after October 21, 1998, and the Secretary of Com-
21 merce has approved, conservation and management measures in
22 accordance with the American Fisheries Act (Public Law 105–
23 277, div. C, title II) (16 U.S.C. 1851 note) to allow the vessel to
24 be used in fisheries under the council’s authority.

25 “(e) VESSELS MEASURING 100 FEET OR GREATER.—

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

32 “(2) REGULATIONS.—Regulations to implement this subsection shall
33 conform to the extent practicable with the regulations establishing the
34 form of citizenship affidavit set forth in part 355 of title 46, Code of
35 Federal Regulations, as in effect on September 25, 1997, except that
36 the form of the statement shall be written in a manner to allow the
37 owner of the vessel to satisfy any annual renewal requirements for a
38 certificate of documentation for the vessel and to comply with this sub-
39 section and subsections (c) and (d), and shall not be required to be no-
40 tarized.

1 “(3) TRANSFER OF OWNERSHIP.—Transfers of ownership and con-
2 trol of vessels subject to subsection (c) or (d), which are 100 feet or
3 greater in registered length, shall be rigorously scrutinized for viola-
4 tions of those provisions, with particular attention given to—

5 “(A) leases, charters, mortgages, financing, and similar ar-
6 rangements;

7 “(B) the control of persons not eligible to own a vessel with a
8 fishery endorsement under subsection (c) or (d), over the manage-
9 ment, sales, financing, or other operations of an entity; and

10 “(C) contracts involving the purchase over extended periods of
11 time of all, or substantially all, of the living marine resources har-
12 vested by a fishing vessel.

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

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

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

28 “(i) REGULATIONS.—Regulations to implement subsections (c) and (d)
29 and sections 12151(e) and 31322(b) of this title shall prohibit impermissible
30 transfers of ownership or control, specify any transactions that require prior
31 approval of an implementing agency, identify transactions that do not re-
32 quire prior agency approval, and to the extent practicable, minimize disrup-
33 tions to the commercial fishing industry, to the traditional financing ar-
34 rangements of that industry, and to the opportunity to form fishery co-
35 operatives.

36 **“§ 12114. Recreational endorsement**

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

39 “(b) AUTHORIZED ACTIVITY.—A vessel operating under a recreational en-
40 dorsement may be operated only for pleasure.

1 “(e) APPLICATION OF CUSTOMS LAWS.—A vessel for which a recreational
 2 endorsement is issued may proceed between a port of the United States and
 3 a port of a foreign country without entering or clearing with the Secretary
 4 of Homeland Security. However, a recreational vessel is subject to the re-
 5 quirements for reporting arrivals under section 433 of the Tariff Act of
 6 1930 (19 U.S.C. 1433), and individuals on the vessel are subject to applica-
 7 ble customs regulations.

8 **“§ 12115. Temporary endorsement for vessels procured out-
 9 side the United States**

10 “(a) GENERAL AUTHORITY.—The Secretary and the Secretary of State,
 11 acting jointly, may provide for the issuance of a certificate of documentation
 12 with an appropriate endorsement for a vessel procured outside the United
 13 States and meeting the ownership requirements of section 12103 of this
 14 title.

15 “(b) AUTHORIZED ACTIVITY.—Subject to limitations the Secretary may
 16 prescribe, a vessel documented under this section may proceed to the United
 17 States and engage en route in foreign trade or trade with Guam, American
 18 Samoa, Wake, Midway, or Kingman Reef.

19 “(c) APPLICATION OF UNITED STATES JURISDICTION AND LAWS.—A
 20 vessel documented under this section is subject to the jurisdiction and laws
 21 of the United States. However, if the Secretary considers it to be in the
 22 public interest, the Secretary may suspend for a period of not more than
 23 6 months the application of a vessel inspection law carried out by the Sec-
 24 retary or regulations prescribed under that law.

25 “(d) SURRENDER OF CERTIFICATE.—On the vessel’s arrival in the United
 26 States, the certificate of documentation shall be surrendered as provided by
 27 regulations prescribed by the Secretary.

28 **“§ 12116. Limited endorsements for Guam, American Samoa,
 29 and Northern Mariana Islands**

30 “(a) ENDORSEMENTS.—A vessel satisfying the requirements of subsection
 31 (b) may be issued—

32 “(1) a coastwise endorsement to engage in the coastwise trade of
 33 fisheries products between places in Guam, American Samoa, and the
 34 Northern Mariana Islands; or

35 “(2) a fishery endorsement to engage in fishing in the territorial sea
 36 and fishery conservation zone adjacent to Guam, American Samoa, and
 37 the Northern Mariana Islands.

38 “(b) REQUIREMENTS.—An endorsement may be issued under subsection
 39 (a) for a vessel that—

40 “(1) satisfies the requirements of section 12103 of this title;

1 “(2) was not built in the United States, except that for an endorse-
 2 ment under subsection (a)(2), the vessel must not have been built or
 3 rebuilt in the United States;

4 “(3) is less than 200 gross tons as measured under section 14502
 5 of this title, or an alternate tonnage as measured under section 14302
 6 of this title as prescribed by the Secretary under section 14104 of this
 7 title; and

8 “(4) otherwise qualifies under the laws of the United States to en-
 9 gage in the coastwise trade or the fisheries, as the case may be.

10 **“§ 12117. Oil spill response vessels**

11 “(a) REQUIREMENTS.—A coastwise endorsement may be issued for a ves-
 12 sel that—

13 “(1) satisfies the requirements for a coastwise endorsement, except
 14 for the ownership requirement otherwise applicable without regard to
 15 this section;

16 “(2) is owned by a not-for-profit oil spill response cooperative or by
 17 members of such a cooperative that dedicate the vessel to use by the
 18 cooperative;

19 “(3) is at least 50 percent owned by individuals or entities described
 20 in section 12103(b) of this title; and

21 “(4) is to be used only for—

22 “(i) deploying equipment, supplies, and personnel to recover,
 23 contain, or transport oil discharged into the navigable waters of
 24 the United States or the exclusive economic zone; or

25 “(ii) training exercises to prepare to respond to such a dis-
 26 charge.

27 “(b) DEEMED OWNED BY CITIZENS.—A vessel satisfying subsection (a)
 28 is deemed to be owned only by citizens of the United States under sections
 29 12103, 12132, and 50501 of this title.

30 **“§ 12118. Owners engaged primarily in manufacturing or**
 31 **mineral industry**

32 “(a) DEFINITIONS.—In this section:

33 “(1) BOWATERS CORPORATION.—The term ‘Bowaters corporation’
 34 means a corporation that has filed a certificate under oath with the
 35 Secretary, in the form and at the times prescribed by the Secretary,
 36 establishing that—

37 “(A) the corporation is incorporated under the laws of the
 38 United States or a State;

39 “(B) a majority of the officers and directors of the corporation
 40 are individuals who are citizens of the United States;

1 “(C) at least 90 percent of the employees of the corporation are
2 residents of the United States;

3 “(D) the corporation is engaged primarily in a manufacturing
4 or mineral industry in the United States;

5 “(E) the total book value of the vessels owned by the corpora-
6 tion is not more than 10 percent of the total book value of the
7 assets of the corporation; and

8 “(F) the corporation buys or produces in the United States at
9 least 75 percent of the raw materials used or sold in its oper-
10 ations.

11 “(2) PARENT.—The term ‘parent’ means a corporation that has filed
12 a certificate under oath with the Secretary, in the form and at the
13 times prescribed by the Secretary, establishing that the corporation—

14 “(A) is incorporated under the laws of the United States or a
15 State; and

16 “(B) controls, directly or indirectly, at least 50 percent of the
17 voting stock of a Bowaters corporation.

18 “(3) SUBSIDIARY.—The term ‘subsidiary’ means a corporation that
19 has filed a certificate under oath with the Secretary, in the form and
20 at the times prescribed by the Secretary, establishing that the corpora-
21 tion—

22 “(A) is incorporated under the laws of the United States or a
23 State; and

24 “(B) has at least 50 percent of its voting stock controlled, di-
25 rectly or indirectly, by a Bowaters corporation or its parent.

26 “(b) DEEMED CITIZEN.—A Bowaters corporation is deemed to be a cit-
27 izen of the United States for purposes of chapters 121, 551, and 561 and
28 section 80104 of this title.

29 “(c) ISSUANCE OF DOCUMENTATION.—A certificate of documentation and
30 appropriate endorsement may be issued for a vessel that—

31 “(1) is owned by a Bowaters corporation;

32 “(2) was built in the United States; and

33 “(3)(A) is self-propelled and less than 500 gross tons as measured
34 under section 14502 of this title, or an alternate tonnage as measured
35 under section 14302 of this title as prescribed by the Secretary under
36 section 14104 of this title; or

37 “(B) is not self-propelled.

38 “(d) EFFECTS OF DOCUMENTATION.—

39 “(1) IN GENERAL.—Subject to paragraph (2)—

40 “(A) a vessel documented under this section may engage in the
41 coastwise trade; and

1 “(B) the vessel and its owner and master are entitled to the
 2 same benefits and are subject to the same requirements and pen-
 3 alties as if the vessel were otherwise documented or exempt from
 4 documentation under this chapter.

5 “(2) TRANSPORTATION OF PASSENGERS OR MERCHANDISE.—A ves-
 6 sel documented under this section may transport passengers or mer-
 7 chandise for hire in the coastwise trade only—

8 “(A) as a service for a parent or subsidiary of the corporation
 9 owning the vessel; or

10 “(B) when under a demise or bareboat charter, at prevailing
 11 rates for use not in the domestic noncontiguous trades, from the
 12 corporation owning the vessel to a carrier that—

13 “(i) is subject to jurisdiction under subchapter II of chap-
 14 ter 135 of title 49;

15 “(ii) otherwise qualifies as a citizen of the United States
 16 under section 50501 of this title; and

17 “(iii) is not owned or controlled, directly or indirectly, by
 18 the corporation owning the vessel.

19 “(e) VALIDITY OF CORPORATE CERTIFICATE.—A certificate filed by a
 20 corporation under this section remains valid only as long as the corporation
 21 continues to satisfy the conditions required of the corporation by this sec-
 22 tion. When a corporation no longer satisfies those conditions, the corpora-
 23 tion loses its status under this section and immediately shall surrender to
 24 the Secretary any documents issued to it based on that status.

25 “(f) PENALTIES.—

26 “(1) FALSIFYING MATERIAL FACT.—If a corporation knowingly fal-
 27 sifies a material fact in a certificate filed under subsection (a), the ves-
 28 sel (or its value) documented or operated under this section shall be
 29 forfeited.

30 “(2) TRANSPORTING MERCHANDISE.—If a vessel transports mer-
 31 chandise for hire in violation of this section, the merchandise shall be
 32 forfeited to the United States Government.

33 “(3) TRANSPORTING PASSENGERS.—If a vessel transports pas-
 34 sengers for hire in violation of this section, the vessel is liable for a
 35 penalty of \$200 for each passenger so transported.

36 “(4) REMISSION OR MITIGATION.—A penalty or forfeiture incurred
 37 under this subsection may be remitted or mitigated under section
 38 2107(b) of this title.

39 **“§ 12119. Owners engaged primarily in leasing or financing**
 40 **transactions**

41 “(a) DEFINITIONS.—In this section:

1 “(1) AFFILIATE.—The term ‘affiliate’ means, with respect to any
2 person, any other person that is—

3 “(i) directly or indirectly controlled by, under common control
4 with, or controlling that person; or

5 “(ii) named as being part of the same consolidated group in any
6 report or other document submitted to the United States Securi-
7 ties and Exchange Commission or the Internal Revenue Service.

8 “(2) CARGO.—The term ‘cargo’ does not include cargo to which title
9 is held for non-commercial reasons and primarily for the purpose of
10 evading the requirements of subsection (e)(3).

11 “(3) OIL.—The term ‘oil’ has the meaning given that term in section
12 2101(20) of this title.

13 “(4) PASSIVE INVESTMENT.—The term ‘passive investment’ means
14 an investment in which neither the investor nor any affiliate of the in-
15 vestor is involved in, or has the power to be involved in, the formu-
16 lation, determination, or direction of any activity or function concerning
17 the management, use, or operation of the asset that is the subject of
18 the investment.

19 “(5) QUALIFIED PROPRIETARY CARGO.—The term ‘qualified propri-
20 etary cargo’ means—

21 “(A) oil, petroleum products, petrochemicals, or liquefied nat-
22 ural gas cargo that is beneficially owned by the person that sub-
23 mits to the Secretary an application or annual certification under
24 subsection (e)(3), or by an affiliate of that person, immediately be-
25 fore, during, or immediately after the cargo is carried in coastwise
26 trade on a vessel owned by that person;

27 “(B) oil, petroleum products, petrochemicals, or liquefied nat-
28 ural gas cargo not beneficially owned by the person that submits
29 to the Secretary an application or an annual certification under
30 subsection (e)(3), or by an affiliate of that person, but which is
31 carried in coastwise trade by a vessel owned by that person and
32 which is part of an arrangement in which vessels owned by that
33 person and at least one other person are operated collectively as
34 one fleet, to the extent that an equal amount of oil, petroleum
35 products, petrochemicals, or liquefied natural gas cargo bene-
36 ficially owned by that person, or by an affiliate of that person, is
37 carried in coastwise trade on one or more other vessels, not owned
38 by that person, or by an affiliate of that person, if the other vessel
39 or vessels are also part of the same arrangement;

40 “(C) in the case of a towing vessel associated with a non-self-
41 propelled tank vessel where both vessels function as a single self-

1 propelled vessel, oil, petroleum products, petrochemicals, or lique-
 2 fied natural gas cargo that is beneficially owned by the person that
 3 owns both the towing vessel and the non-self-propelled tank vessel,
 4 or any United States affiliate of that person, immediately before,
 5 during, or immediately after the cargo is carried in coastwise trade
 6 on either of those vessels; or

7 “(D) any oil, petroleum products, petrochemicals, or liquefied
 8 natural gas cargo carried on any vessel that is either a self-pro-
 9 pelled tank vessel having a length of at least 210 meters or a tank
 10 vessel that is a liquefied natural gas carrier that—

11 “(i) was delivered by the builder of the vessel to the owner
 12 of the vessel after December 31, 1999; and

13 “(ii) was purchased by a person for the purpose, and with
 14 the reasonable expectation, of transporting on the vessel liq-
 15 uefied natural gas or unrefined petroleum beneficially owned
 16 by the owner of the vessel, or an affiliate of the owner, from
 17 Alaska to the continental United States.

18 “(6) UNITED STATES AFFILIATE.—The term ‘United States affiliate’
 19 means, with respect to any person, an affiliate the principal place of
 20 business of which is located in the United States.

21 “(b) REQUIREMENTS.—A coastwise endorsement may be issued for a ves-
 22 sel if—

23 “(1) the vessel satisfies the requirements for a coastwise endorse-
 24 ment, except for the ownership requirement otherwise applicable with-
 25 out regard to this section;

26 “(2) the person that owns the vessel (or, if the vessel is owned by
 27 a trust or similar arrangement, the beneficiary of the trust or similar
 28 arrangement) meets the requirements of subsection (c);

29 “(3) the vessel is under a demise charter to a person that certifies
 30 to the Secretary that the person is a citizen of the United States under
 31 section 50501 of this title for engaging in the coastwise trade; and

32 “(4) the demise charter is for a period of at least 3 years or a short-
 33 er period as may be prescribed by the Secretary.

34 “(c) OWNERSHIP CERTIFICATION.—

35 “(1) IN GENERAL.—A person meets the requirements of this sub-
 36 section if the person transmits to the Secretary each year the certifi-
 37 cation required by paragraph (2) or (3) with respect to a vessel.

38 “(2) INVESTMENT CERTIFICATION.—To meet the certification re-
 39 quirement of this paragraph, a person shall certify that it—

40 “(A) is a leasing company, bank, or financial institution;

1 “(B) owns, or holds the beneficial interest in, the vessel solely
2 as a passive investment;

3 “(C) does not operate any vessel for hire and is not an affiliate
4 of any person that operates any vessel for hire; and

5 “(D) is independent from, and not an affiliate of, any charterer
6 of the vessel or any other person that has the right, directly or
7 indirectly, to control or direct the movement or use of the vessel.

8 “(3) CERTAIN TANK VESSELS.—

9 “(A) IN GENERAL.—To meet the certification requirement of
10 this paragraph, a person shall certify that—

11 “(i) the aggregate book value of the vessels owned by the
12 person and United States affiliates of the person does not ex-
13 ceed 10 percent of the aggregate book value of all assets
14 owned by the person and its United States affiliates;

15 “(ii) not more than 10 percent of the aggregate revenues
16 of the person and its United States affiliates is derived from
17 the ownership, operation, or management of vessels;

18 “(iii) at least 70 percent of the aggregate tonnage of all
19 cargo carried by all vessels owned by the person and its
20 United States affiliates and documented with a coastwise en-
21 dorsement is qualified proprietary cargo;

22 “(iv) any cargo other than qualified proprietary cargo car-
23 ried by all vessels owned by the person and its United States
24 affiliates and documented with a coastwise endorsement con-
25 sists of oil, petroleum products, petrochemicals, or liquified
26 natural gas;

27 “(v) no vessel owned by the person or any of its United
28 States affiliates and documented with a coastwise endorse-
29 ment carries molten sulphur; and

30 “(vi) the person owned one or more vessels documented
31 under this section as of August 9, 2004.

32 “(B) APPLICATION ONLY TO CERTAIN VESSELS.—A person may
33 make a certification under this paragraph only with respect to—

34 “(i) a tank vessel having a tonnage of at least 6,000 gross
35 tons, as measured under section 14502 of this title (or an al-
36 ternative tonnage measured under section 14302 of this title
37 as prescribed by the Secretary under section 14104 of this
38 title); or

39 “(ii) a towing vessel associated with a non-self-propelled
40 tank vessel that meets the requirements of clause (i), where
41 both vessels function as a single self-propelled vessel.

1 “(d) FILING OF DEMISE CHARTER.—The demise charter and any amend-
 2 ments to the charter shall be filed with the certification required by sub-
 3 section (b)(3) or within 10 days after filing an amendment to the charter.
 4 The charter and amendments shall be made available to the public.

5 “(e) CONTINUATION OF ENDORSEMENT AFTER TERMINATION OF CHAR-
 6 TER.—When a charter required by subsection (b)(3) is terminated for de-
 7 fault by the charterer, the Secretary may continue the coastwise endorse-
 8 ment for not more than 6 months on terms and conditions the Secretary
 9 may prescribe.

10 “(f) DEEMED OWNED BY CITIZENS.—A vessel satisfying the require-
 11 ments of this section is deemed to be owned only by citizens of the United
 12 States under sections 12103 and 50501 of this title.

13 **“§ 12120. Liquefied gas tankers**

14 “Notwithstanding any agreement with the United States Government, the
 15 Secretary may issue a certificate of documentation with a coastwise endorse-
 16 ment for a vessel to transport liquefied natural gas or liquefied petroleum
 17 gas to Puerto Rico from other ports in the United States, if the vessel—

18 “(1) is a foreign built vessel that was built before October 19, 1996;

19 or

20 “(2) was documented under this chapter before that date, even if the
 21 vessel is placed under a foreign registry and subsequently redocu-
 22 mented under this chapter for operation under this section.

23 **“§ 12121. Small passenger vessels and uninspected pas-
 24 senger vessels**

25 “(a) DEFINITIONS.—In this section:

26 “(1) ELIGIBLE VESSEL.—The term ‘eligible vessel’ means a vessel
 27 that—

28 “(A) was not built in the United States and is at least 3 years
 29 old; or

30 “(B) if rebuilt, was rebuilt outside the United States at least
 31 3 years before the certificate requested under subsection (b) would
 32 take effect.

33 “(2) SMALL PASSENGER VESSEL; UNINSPECTED PASSENGER VESSEL;
 34 PASSENGER FOR HIRE.—The terms ‘small passenger vessel’,
 35 ‘uninspected passenger vessel’, and ‘passenger for hire’ have the mean-
 36 ing given those terms in section 2101 of this title.

37 “(b) ISSUANCE OF CERTIFICATE AND ENDORSEMENT.—Notwithstanding
 38 sections 12112, 12113, 55102, and 55103 of this title, the Secretary may
 39 issue a certificate of documentation with an appropriate endorsement for
 40 employment in the coastwise trade as a small passenger vessel or an
 41 uninspected passenger vessel in the case of an eligible vessel authorized to

1 carry no more than 12 passengers for hire if the Secretary of Transpor-
 2 tation, after notice and an opportunity for public comment, determines that
 3 the employment of the vessel in the coastwise trade will not adversely af-
 4 fect—

5 “(1) United States vessel builders; or

6 “(2) the coastwise trade business of any person that employs vessels
 7 built in the United States in that business.

8 “(c) REVOCATION.—

9 “(1) FOR FRAUD.—The Secretary shall revoke a certificate or en-
 10 dorsement issued under subsection (b) if the Secretary of Transpor-
 11 tation, after notice and an opportunity for a hearing, determines that
 12 the certificate or endorsement was obtained by fraud.

13 “(2) OTHER PROVISIONS NOT AFFECTED.—Paragraph (1) does not
 14 affect—

15 “(A) the criminal prohibition on fraud and false statements in
 16 section 1001 of title 18; or

17 “(B) any other authority of the Secretary to revoke a certificate
 18 or endorsement issued under subsection (b).

19 “SUBCHAPTER III—MISCELLANEOUS

20 **“§ 12131. Command of documented vessels**

21 “(a) IN GENERAL.—Except as provided in subsection (b), a documented
 22 vessel may be placed under the command only of a citizen of the United
 23 States.

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

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

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

28 **“§ 12132. Loss of coastwise trade privileges**

29 “(a) SOLD FOREIGN OR PLACED UNDER FOREIGN REGISTRY.—A vessel
 30 of more than 200 gross tons (as measured under chapter 143 of this title),
 31 eligible to engage in the coastwise trade, and later sold foreign in whole or
 32 in part or placed under foreign registry may not thereafter engage in the
 33 coastwise trade.

34 “(b) REBUILT OUTSIDE THE UNITED STATES.—A vessel eligible to en-
 35 gage in the coastwise trade and later rebuilt outside the United States may
 36 not thereafter engage in the coastwise trade.

37 **“§ 12133. Duty to carry certificate on vessel and allow exam-
 38 ination**

39 “(a) DUTY TO CARRY.—The certificate of documentation of a vessel shall
 40 be carried on the vessel unless the vessel is exempt by regulation from car-
 41 rying the certificate.

1 “(b) AVAILABILITY.—The owner or individual in charge of a vessel re-
 2 quired to carry its certificate of documentation shall make the certificate
 3 available for examination at the request of an officer enforcing the revenue
 4 laws or as otherwise required by law or regulation.

5 “(c) CRIMINAL PENALTY.—A person willfully violating subsection (b)
 6 shall be fined under title 18, imprisoned for not more than one year, or
 7 both.

8 **“§ 12134. Evidentiary uses of documentation**

9 “A certificate of documentation is—

10 “(1) conclusive evidence of nationality for international purposes, but
 11 not in a proceeding conducted under the laws of the United States;

12 “(2) conclusive evidence of qualification to engage in a specified
 13 trade; and

14 “(3) not conclusive evidence of ownership in a proceeding in which
 15 ownership is in issue.

16 **“§ 12135. Invalidation of certificates of documentation**

17 “A certificate of documentation or an endorsement on the certificate is
 18 invalid if the vessel for which it is issued—

19 “(1) no longer meets the requirements of this chapter and regula-
 20 tions prescribed under this chapter applicable to the certificate or en-
 21 dorsement; or

22 “(2) is placed under the command of an individual not a citizen of
 23 the United States in violation of section 12131 of this title.

24 **“§ 12136. Surrender of certificates of documentation**

25 “(a) SURRENDER.—An invalid certificate of documentation, or a certifi-
 26 cate with an invalid endorsement, shall be surrendered as provided by regu-
 27 lations prescribed by the Secretary.

28 “(b) CONDITIONS FOR SURRENDER.—

29 “(1) VESSELS OVER 1,000 TONS.—The Secretary may condition ap-
 30 proval of the surrender of the certificate of documentation for a vessel
 31 over 1,000 gross tons.

32 “(2) VESSELS COVERED BY MORTGAGE.—The Secretary may ap-
 33 prove the surrender of the certificate of documentation of a vessel cov-
 34 ered by a mortgage filed or recorded under section 31321 of this title
 35 only if the mortgagee consents.

36 “(3) NOTICE OF LIEN.—The Secretary may not refuse to approve
 37 the surrender of the certificate of documentation for a vessel solely on
 38 the basis that a notice of a claim of a lien on the vessel has been re-
 39 corded under section 31343(a) of this title.

40 “(c) CONTINUED APPLICATION OF CERTAIN LAWS.—

1 “(1) IN GENERAL.—Notwithstanding subsection (a), until the certifi-
2 cate of documentation is surrendered with the approval of the Sec-
3 retary, a documented vessel is deemed to continue to be documented
4 under this chapter for purposes of—

5 “(A) chapter 313 of this title for an instrument filed or re-
6 corded before the date of invalidation and an assignment after
7 that date;

8 “(B) sections 56101 and 56102(a)(2) and chapter 563 of this
9 title; and

10 “(C) any other law of the United States identified by the Sec-
11 retary by regulation as a law to which the Secretary applies this
12 subsection.

13 “(2) EXCEPTION.—This subsection does not apply when a vessel is
14 forfeited or sold by order of a district court of the United States.

15 **“§ 12137. Recording of vessels built in the United States**

16 “The Secretary may provide for recording and certifying information
17 about vessels built in the United States that the Secretary considers to be
18 in the public interest.

19 **“§ 12138. List of documented vessels**

20 “(a) IN GENERAL.—The Secretary shall publish periodically a list of all
21 documented vessels and information about those vessels that the Secretary
22 considers pertinent or useful. The list shall contain a notation clearly indi-
23 cating all vessels classed by the American Bureau of Shipping.

24 “(b) VESSELS FOR CABLE LAYING, MAINTENANCE, AND REPAIR.—

25 “(1) IN GENERAL.—The Secretary of Transportation shall develop,
26 maintain, and periodically update an inventory of vessels that are docu-
27 mented under this chapter, are at least 200 feet in length, and have
28 the capability to lay, maintain, or repair a submarine cable, without re-
29 gard to whether a particular vessel is classed as a cable ship or cable
30 vessel.

31 “(2) INFORMATION TO BE INCLUDED.—For each vessel listed in the
32 inventory, the Secretary of Transportation shall include in the inven-
33 tory—

34 “(A) the name, length, beam, depth, and other distinguishing
35 characteristics of the vessel;

36 “(B) the abilities and limitations of the vessel with respect to
37 laying, maintaining, and repairing a submarine cable; and

38 “(C) the name and address of the person to whom inquiries re-
39 garding the vessel may be made.

40 “(3) PUBLICATION.—The Secretary of Transportation shall publish
41 in the Federal Register an updated inventory every 6 months.

1 **“§ 12139. Reports**

2 “(a) IN GENERAL.—To ensure compliance with this chapter and laws
3 governing the qualifications of vessels to engage in the coastwise trade and
4 the fisheries, the Secretary may require owners, masters, and charterers of
5 documented vessels to submit reports in any reasonable form and manner
6 the Secretary may prescribe.

7 “(b) VESSELS REBUILT OUTSIDE UNITED STATES.—

8 “(1) IN GENERAL.—Under regulations prescribed by the Secretary,
9 if a vessel exceeding the tonnage specified in paragraph (2) and docu-
10 mented or last documented under the laws of the United States is re-
11 built outside the United States, the owner or master shall submit a re-
12 port of the rebuilding to the Secretary.

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

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

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

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

24 “SUBCHAPTER IV—PENALTIES

25 **“§ 12151. Penalties**

26 “(a) IN GENERAL.—A person that violates this chapter or a regulation
27 prescribed under this chapter is liable to the United States Government for
28 a civil penalty of not more than \$10,000. Each day of a continuing violation
29 is a separate violation.

30 “(b) SEIZURE AND FORFEITURE OF VESSELS.—A vessel and its equip-
31 ment are liable to seizure by and forfeiture to the Government if—

32 “(1) the owner of the vessel or the representative or agent of the
33 owner knowingly falsifies or conceals a material fact, or knowingly
34 makes a false statement or representation, about the documentation of
35 the vessel or in applying for documentation of the vessel;

36 “(2) a certificate of documentation is knowingly and fraudulently
37 used for the vessel;

38 “(3) the vessel is operated after its endorsement has been denied or
39 revoked under section 12152 of this title;

40 “(4) the vessel is employed in a trade without an appropriate en-
41 dorsement;

1 “(5) the vessel has only a recreational endorsement and is operated
2 other than for pleasure;

3 “(6) the vessel is a documented vessel and is placed under the com-
4 mand of a person not a citizen of the United States, except as author-
5 ized by section 12131(b) of this title; or

6 “(7) the vessel is rebuilt outside the United States and a report of
7 the rebuilding is not submitted as required by section 12139(b) of this
8 title.

9 “(c) ENGAGING IN FISHING AFTER FALSIFYING ELIGIBILITY.—In addi-
10 tion to other penalties under this section, the owner of a documented vessel
11 for which a fishery endorsement has been issued is liable to the Government
12 for a civil penalty of not more than \$100,000 for each day the vessel en-
13 gages in fishing (as defined in section 3 of the Magnuson-Stevens Fishery
14 Conservation and Management Act (16 U.S.C. 1802)) within the exclusive
15 economic zone, if the owner or the representative or agent of the owner
16 knowingly falsified or concealed a material fact, or knowingly made a false
17 statement or representation, about the eligibility of the vessel under section
18 12113(c) or (d) of this title in applying for or applying to renew the fishery
19 endorsement.

20 **“§ 12152. Denial or revocation of endorsement for non-pay-
21 ment of civil penalty**

22 “If the owner of a vessel fails to pay a civil penalty imposed by the Sec-
23 retary, the Secretary may deny the issuance or renewal of an endorsement,
24 or revoke the endorsement, on a certificate of documentation issued for the
25 vessel under this chapter.”.

26 **SEC. 6. SUBTITLE III OF TITLE 46.**

27 (a) SUBTITLE ANALYSIS.—The analysis of subtitle III of title 46, United
28 States Code, is amended to read as follows:

“Chapter	Sec.
“301. General Liability Provisions	30101
“303. Death on the High Seas	30301
“305. Exoneration and Limitation of Liability	30501
“307. Liability of Water Carriers	30701
“309. Suits in Admiralty Against the United States	30901
“311. Suits Involving Public Vessels	31101
“313. Commercial Instruments and Maritime Liens	31301”.

29 (b) REPEALS.—Title 46, United States Code, is amended by striking
30 chapter 301 and the lines appearing immediately before and immediately
31 after chapter 313 indicating that certain chapters are reserved.

32 (c) CHAPTERS 301–311.—Title 46, United States Code, is amended by
33 inserting after the analysis of subtitle III the following:

34 **“CHAPTER 301—GENERAL LIABILITY PROVISIONS**

“Sec.

“30101. Extension of jurisdiction to cases of damage or injury on land.

“30102. Liability to passengers.

“30103. Liability of master, mate, engineer, and pilot.

“30104. Personal injury to or death of seamen.

“30105. Restriction on recovery by non-citizens and non-resident aliens for incidents in waters of other countries.

“30106. Time limit on bringing action.

1 **“§ 30101. Extension of jurisdiction to cases of damage or in-**
 2 **jury on land**

3 “(a) IN GENERAL.—The admiralty and maritime jurisdiction of the
 4 United States extends to and includes cases of injury or damage, to person
 5 or property, caused by a vessel on navigable waters, even though the injury
 6 or damage is done or consummated on land.

7 “(b) PROCEDURE.—A civil action in a case under subsection (a) may be
 8 brought in rem or in personam according to the principles of law and the
 9 rules of practice applicable in cases where the injury or damage has been
 10 done and consummated on navigable waters.

11 “(c) ACTIONS AGAINST UNITED STATES.—

12 “(1) EXCLUSIVE REMEDY.—In a civil action against the United
 13 States for injury or damage done or consummated on land by a vessel
 14 on navigable waters, chapter 309 or 311 of this title, as appropriate,
 15 provides the exclusive remedy.

16 “(2) ADMINISTRATIVE CLAIM.—A civil action described in paragraph
 17 (1) may not be brought until the expiration of the 6-month period after
 18 the claim has been presented in writing to the agency owning or oper-
 19 ating the vessel causing the injury or damage.

20 **“§ 30102. Liability to passengers**

21 “(a) LIABILITY.—The owner and master of a vessel, and the vessel, are
 22 liable for personal injury to a passenger or damage to a passenger’s baggage
 23 caused by—

24 “(1) a neglect or failure to comply with part B or F of subtitle II
 25 of this title; or

26 “(2) a known defect in the steaming apparatus or hull of the vessel.

27 “(b) NOT SUBJECT TO LIMITATION.—A liability imposed under this sec-
 28 tion is not subject to limitation under chapter 305 of this title.

29 **“§ 30103. Liability of master, mate, engineer, and pilot**

30 “‘A person may bring a civil action against a master, mate, engineer, or
 31 pilot of a vessel, and recover damages, for personal injury or loss caused
 32 by the master’s, mate’s, engineer’s, or pilot’s—

33 “(1) negligence or willful misconduct; or

34 “(2) neglect or refusal to obey the laws governing the navigation of
 35 vessels.

36 **“§ 30104. Personal injury to or death of seamen**

37 “(a) CAUSE OF ACTION.—A seaman injured in the course of employment
 38 or, if the seaman dies from the injury, the personal representative of the

1 seaman may elect to bring a civil action at law, with the right of trial by
 2 jury, against the employer. Laws of the United States regulating recovery
 3 for personal injury to, or death of, a railway employee apply to an action
 4 under this section.

5 “(b) VENUE.—An action under this section shall be brought in the judi-
 6 cial district in which the employer resides or the employer’s principal office
 7 is located.

8 **“§ 30105. Restriction on recovery by non-citizens and non-**
 9 **resident aliens for incidents in waters of other**
 10 **countries**

11 “(a) DEFINITION.—In this section, the term ‘continental shelf’ has the
 12 meaning given that term in article I of the 1958 Convention on the Conti-
 13 nental Shelf.

14 “(b) RESTRICTION.—Except as provided in subsection (c), a civil action
 15 for maintenance and cure or for damages for personal injury or death may
 16 not be brought under a maritime law of the United States if—

17 “(1) the individual suffering the injury or death was not a citizen
 18 or permanent resident alien of the United States at the time of the in-
 19 cident giving rise to the action;

20 “(2) the incident occurred in the territorial waters or waters over-
 21 laying the continental shelf of a country other than the United States;
 22 and

23 “(3) the individual suffering the injury or death was employed at the
 24 time of the incident by a person engaged in the exploration, develop-
 25 ment, or production of offshore mineral or energy resources, including
 26 drilling, mapping, surveying, diving, pipelaying, maintaining, repairing,
 27 constructing, or transporting supplies, equipment, or personnel, but not
 28 including transporting those resources by a vessel constructed or adapt-
 29 ed primarily to carry oil in bulk in the cargo spaces.

30 “(c) NONAPPLICATION.—Subsection (b) does not apply if the individual
 31 bringing the action establishes that a remedy is not available under the laws
 32 of—

33 “(1) the country asserting jurisdiction over the area in which the in-
 34 cident occurred; or

35 “(2) the country in which the individual suffering the injury or death
 36 maintained citizenship or residency at the time of the incident.

37 **“§ 30106. Time limit on bringing action**

38 “Except as otherwise provided by law, a civil action for damages for per-
 39 sonal injury or death arising out of a maritime tort must be brought within
 40 3 years after the cause of action arose.

1 **“CHAPTER 303—DEATH ON THE HIGH SEAS**

“Sec.

“30301. Short title.

“30302. Cause of action.

“30303. Amount and apportionment of recovery.

“30304. Contributory negligence.

“30305. Death of plaintiff in pending action.

“30306. Foreign cause of action.

“30307. Commercial aviation accidents.

“30308. Nonapplication.

2 **“§ 30301. Short title**

3 “This chapter may be cited as the ‘Death on the High Seas Act’.

4 **“§ 30302. Cause of action**

5 “When the death of an individual is caused by wrongful act, neglect, or
6 default occurring on the high seas beyond a marine league from the shore
7 of the United States, the personal representative of the decedent may bring
8 a civil action in admiralty against the person or vessel responsible. The ac-
9 tion shall be for the exclusive benefit of the decedent’s spouse, parent, child,
10 or dependent relative.

11 **“§ 30303. Amount and apportionment of recovery**

12 “The recovery in an action under this chapter shall be a fair compensa-
13 tion for the pecuniary loss sustained by the individuals for whose benefit
14 the action is brought. The court shall apportion the recovery among those
15 individuals in proportion to the loss each has sustained.

16 **“§ 30304. Contributory negligence**

17 “In an action under this chapter, contributory negligence of the decedent
18 is not a bar to recovery. The court shall consider the degree of negligence
19 of the decedent and reduce the recovery accordingly.

20 **“§ 30305. Death of plaintiff in pending action**

21 “If a civil action in admiralty is pending in a court of the United States
22 to recover for personal injury caused by wrongful act, neglect, or default
23 described in section 30302 of this title, and the individual dies during the
24 action as a result of the wrongful act, neglect, or default, the personal rep-
25 resentative of the decedent may be substituted as the plaintiff and the ac-
26 tion may proceed under this chapter for the recovery authorized by this
27 chapter.

28 **“§ 30306. Foreign cause of action**

29 “When a cause of action exists under the law of a foreign country for
30 death by wrongful act, neglect, or default on the high seas, a civil action
31 in admiralty may be brought in a court of the United States based on the
32 foreign cause of action, without abatement for the amount for which recov-
33 ery is authorized.

“§ 30307. Commercial aviation accidents

“(a) DEFINITION.—In this section, the term ‘nonpecuniary damages’ means damages for loss of care, comfort, and companionship.

“(b) BEYOND 12 NAUTICAL MILES.—In an action under this chapter, if the death resulted from a commercial aviation accident occurring on the high seas beyond 12 nautical miles from the shore of the United States, additional compensation is recoverable for nonpecuniary damages for wrongful death, but punitive damages are not recoverable.

“(c) WITHIN 12 NAUTICAL MILES.—This chapter does not apply if the death resulted from a commercial aviation accident occurring on the high seas 12 nautical miles or less from the shore of the United States.

“§ 30308. Nonapplication

“(a) STATE LAW.—This chapter does not affect the law of a State regulating the right to recover for death.

“(b) INTERNAL WATERS.—This chapter does not apply to the Great Lakes, waters within the territorial limits of a State, or navigable waters in the Panama Canal.

**“CHAPTER 305—EXONERATION AND LIMITATION OF
LIABILITY**

“Sec.

“30501. Definition.

“30502. Application.

“30503. Declaration of nature and value of goods.

“30504. Loss by fire.

“30505. General limit of liability.

“30506. Limit of liability for personal injury or death.

“30507. Apportionment of losses.

“30508. Provisions requiring notice of claim or limiting time for bringing action.

“30509. Provisions limiting liability for personal injury or death.

“30510. Vicarious liability for medical malpractice.

“30511. Action by owner for limitation.

“30512. Liability as master, officer, or seaman not affected.

“§ 30501. Definition

“In this chapter, the term ‘owner’ includes a charterer that mans, supplies, and navigates a vessel at the charterer’s own expense or by the charterer’s own procurement.

“§ 30502. Application

“Except as otherwise provided, this chapter (except section 30503) applies to seagoing vessels and vessels used on lakes or rivers or in inland navigation, including canal boats, barges, and lighters.

“§ 30503. Declaration of nature and value of goods

“(a) IN GENERAL.—If a shipper of an item named in subsection (b), contained in a parcel, package, or trunk, loads the item as freight or baggage on a vessel, without at the time of loading giving to the person receiving the item a written notice of the true character and value of the item and having that information entered on the bill of lading, the owner and master

1 of the vessel are not liable as carriers. The owner and master are not liable
2 beyond the value entered on the bill of lading.

3 “(b) ITEMS.—The items referred to in subsection (a) are precious metals,
4 gold or silver plated articles, precious stones, jewelry, trinkets, watches,
5 clocks, glass, china, coins, bills, securities, printings, engravings, pictures,
6 stamps, maps, papers, silks, furs, lace, and similar items of high value and
7 small size.

8 **“§ 30504. Loss by fire**

9 “The owner of a vessel is not liable for loss or damage to merchandise
10 on the vessel caused by a fire on the vessel unless the fire resulted from
11 the design or neglect of the owner.

12 **“§ 30505. General limit of liability**

13 “(a) IN GENERAL.—Except as provided in section 30506 of this title, the
14 liability of the owner of a vessel for any claim arising from any cause, on
15 account of that ownership, without the privity or knowledge of the owner
16 shall not exceed the value of the vessel and pending freight. If the vessel
17 has more than one owner, the proportionate share of the liability of any one
18 owner shall not exceed that owner’s proportionate interest in the vessel and
19 pending freight.

20 “(b) NONAPPLICATION.—This section does not apply to a claim for
21 wages.

22 **“§ 30506. Limit of liability for personal injury or death**

23 “(a) APPLICATION.—This section applies only to seagoing vessels, but
24 does not apply to pleasure yachts, tugs, towboats, towing vessels, tank ves-
25 sels, fishing vessels, fish tender vessels, canal boats, scows, car floats,
26 barges, lighters, or nondescript vessels.

27 “(b) MINIMUM LIABILITY.—If the amount of the vessel owner’s liability
28 determined under section 30505 of this title is such that the portion avail-
29 able to pay claims for personal injury or death is less than \$420 times the
30 tonnage of the vessel, that portion shall be increased to \$420 times the ton-
31 nage of the vessel. That portion may be used only to pay claims for personal
32 injury or death.

33 “(c) CALCULATION OF TONNAGE.—Under subsection (b), the tonnage of
34 a self-propelled vessel is the gross tonnage without deduction for engine
35 room, and the tonnage of a sailing vessel is the tonnage for documentation.
36 However, space for the use of seamen is excluded.

37 “(d) CLAIMS ARISING ON DISTINCT OCCASIONS.—Separate limits of li-
38 ability apply to claims for personal injury or death arising on distinct occa-
39 sions.

1 “(e) PRIVACY OR KNOWLEDGE.—In a claim for personal injury or death,
2 the privity or knowledge of the master or managing agent, at or before the
3 beginning of each voyage, is imputed to the owner.

4 **“§ 30507. Apportionment of losses**

5 “If the amount determined under sections 30505 and 30506 of this title
6 is insufficient to pay all claimants, the claimants shall be paid in proportion
7 to their respective losses.

8 **“§ 30508. Provisions requiring notice of claim or limiting
9 time for bringing action**

10 “(a) APPLICATION.—This section applies only to seagoing vessels, but
11 does not apply to pleasure yachts, tugs, towboats, towing vessels, tank ves-
12 sels, fishing vessels, fish tender vessels, canal boats, scows, car floats,
13 barges, lighters, or nondescript vessels.

14 “(b) MINIMUM TIME LIMITS.—The owner, master, manager, or agent of
15 a vessel transporting passengers or property between ports in the United
16 States, or between a port in the United States and a port in a foreign coun-
17 try, may not limit by regulation, contract, or otherwise the period for—

18 “(1) giving notice of, or filing a claim for, personal injury or death
19 to less than 6 months after the date of the injury or death; or

20 “(2) bringing a civil action for personal injury or death to less than
21 one year after the date of the injury or death.

22 “(c) EFFECT OF FAILURE TO GIVE NOTICE.—When notice of a claim for
23 personal injury or death is required by a contract, the failure to give the
24 notice is not a bar to recovery if—

25 “(1) the court finds that the owner, master, or agent of the vessel
26 had knowledge of the injury or death and the owner has not been prej-
27 udiced by the failure;

28 “(2) the court finds there was a satisfactory reason why the notice
29 could not have been given; or

30 “(3) the owner of the vessel fails to object to the failure to give the
31 notice.

32 “(d) TOLLING OF PERIOD TO GIVE NOTICE.—If a claimant is a minor
33 or mental incompetent, or if a claim is for wrongful death, any period pro-
34 vided by a contract for giving notice of the claim is tolled until the earlier
35 of—

36 “(1) the date a legal representative is appointed for the minor, in-
37 competent, or decedent’s estate; or

38 “(2) 3 years after the injury or death.

39 **“§ 30509. Provisions limiting liability for personal injury or
40 death**

41 “(a) PROHIBITION.—

1 “(1) IN GENERAL.—The owner, master, manager, or agent of a ves-
 2 sel transporting passengers between ports in the United States, or be-
 3 tween a port in the United States and a port in a foreign country, may
 4 not include in a regulation or contract a provision limiting—

5 “(A) the liability of the owner, master, or agent for personal in-
 6 jury or death caused by the negligence or fault of the owner or
 7 the owner’s employees or agents; or

8 “(B) the right of a claimant for personal injury or death to a
 9 trial.

10 “(2) VOIDNESS.—A provision described in paragraph (1) is void.

11 “(b) EMOTIONAL DISTRESS, MENTAL SUFFERING, AND PSYCHOLOGICAL
 12 INJURY.—

13 “(1) IN GENERAL.—Subsection (a) does not prohibit a provision in
 14 a contract or in ticket conditions of carriage with a passenger that re-
 15 lieves an owner, master, manager, agent, operator, or crewmember of
 16 a vessel from liability for infliction of emotional distress, mental suf-
 17 fering, or psychological injury so long as the provision does not limit
 18 such liability when the emotional distress, mental suffering, or psycho-
 19 logical injury is—

20 “(A) the result of physical injury to the claimant caused by the
 21 negligence or fault of a crewmember or the owner, master, man-
 22 ager, agent, or operator;

23 “(B) the result of the claimant having been at actual risk of
 24 physical injury, and the risk was caused by the negligence or fault
 25 of a crewmember or the owner, master, manager, agent, or oper-
 26 ator; or

27 “(C) intentionally inflicted by a crewmember or the owner, mas-
 28 ter, manager, agent, or operator.

29 “(2) SEXUAL OFFENSES.—This subsection does not limit the liability
 30 of a crewmember or the owner, master, manager, agent, or operator
 31 of a vessel in a case involving sexual harassment, sexual assault, or
 32 rape.

33 **“§ 30510. Vicarious liability for medical malpractice**

34 “In a civil action by any person in which the owner or operator of a vessel
 35 or employer of a crewmember is claimed to have vicarious liability for med-
 36 ical malpractice with regard to a crewmember occurring at a shoreside facil-
 37 ity, and to the extent the damages resulted from the conduct of any shore-
 38 side doctor, hospital, medical facility, or other health care provider, the
 39 owner, operator, or employer is entitled to rely on any statutory limitations
 40 of liability applicable to the doctor, hospital, medical facility, or other health

1 care provider in the State of the United States in which the shoreside med-
2 ical care was provided.

3 **“§ 30511. Action by owner for limitation**

4 “(a) IN GENERAL.—The owner of a vessel may bring a civil action in a
5 district court of the United States for limitation of liability under this chap-
6 ter. The action must be brought within 6 months after a claimant gives the
7 owner written notice of a claim.

8 “(b) CREATION OF FUND.—When the action is brought, the owner
9 shall—

10 “(1) deposit with the court, for the benefit of claimants—

11 “(A) an amount equal to the value of the owner’s interest in
12 the vessel and pending freight, or approved security; and

13 “(B) an amount, or approved security, that the court may fix
14 from time to time as necessary to carry out this chapter; or

15 “(2) transfer to a trustee appointed by the court, for the benefit of
16 claimants—

17 “(A) the owner’s interest in the vessel and pending freight; and

18 “(B) an amount, or approved security, that the court may fix
19 from time to time as necessary to carry out this chapter.

20 “(c) CESSATION OF OTHER ACTIONS.—When an action has been brought
21 under this section and the owner has complied with subsection (b), all
22 claims and proceedings against the owner related to the matter in question
23 shall cease.

24 **“§ 30512. Liability as master, officer, or seaman not affected**

25 “This chapter does not affect the liability of an individual as a master,
26 officer, or seaman, even though the individual is also an owner of the vessel.

27 **“CHAPTER 307—LIABILITY OF WATER CARRIERS**

“Sec.

“30701. Definition.

“30702. Application.

“30703. Bills of lading.

“30704. Loading, stowage, custody, care, and delivery.

“30705. Seaworthiness.

“30706. Defenses.

“30707. Civil penalty.

28 **“§ 30701. Definition**

29 “In this chapter, the term ‘carrier’ means the owner, manager, charterer,
30 agent, or master of a vessel.

31 **“§ 30702. Application**

32 “(a) IN GENERAL.—Except as otherwise provided, this chapter applies to
33 a carrier engaged in the carriage of goods to or from any port in the United
34 States.

35 “(b) RELATION TO COGSA.—The relationship between this chapter and
36 the Carriage of Goods By Sea Act shall be the same as the relationship that

1 existed between the Act of February 13, 1893 (ch. 105, 27 Stat. 445) (com-
2 monly known as the Harter Act) and the Carriage of Goods By Sea Act,
3 prior to the repeal of the Harter Act.

4 “(e) LIVE ANIMALS.—Sections 30703 and 30704 of this title do not
5 apply to the carriage of live animals.

6 **“§ 30703. Bills of lading**

7 “(a) ISSUANCE.—A carrier shall issue to a shipper a bill of lading or
8 shipping document.

9 “(b) CONTENTS.—The bill of lading or shipping document shall include
10 a statement of—

11 “(1) the marks necessary to identify the goods;

12 “(2) the number of packages, or the quantity or weight, and whether
13 it is carrier’s or shipper’s weight; and

14 “(3) the apparent condition of the goods.

15 “(c) PRIMA FACIE EVIDENCE OF RECEIPT.—A bill of lading or shipping
16 document issued under this section is prima facie evidence of receipt of the
17 goods described.

18 **“§ 30704. Loading, stowage, custody, care, and delivery**

19 “A carrier may not insert in a bill of lading or shipping document a pro-
20 vision relieving the carrier from liability for loss or damage arising from im-
21 proper loading, stowage, custody, care, or delivery. Any such provision is
22 void.

23 **“§ 30705. Seaworthiness**

24 “(a) PROHIBITION.—A carrier may not insert in a bill of lading or ship-
25 ping document a provision lessening or avoiding its obligation to exercise
26 due diligence to—

27 “(1) make the vessel seaworthy; and

28 “(2) properly man, equip, and supply the vessel.

29 “(b) VOIDNESS.—A provision described in subsection (a) is void.

30 **“§ 30706. Defenses**

31 “(a) DUE DILIGENCE.—If a carrier has exercised due diligence to make
32 the vessel in all respects seaworthy and to properly man, equip, and supply
33 the vessel, the carrier and the vessel are not liable for loss or damage aris-
34 ing from an error in the navigation or management of the vessel.

35 “(b) OTHER DEFENSES.—A carrier and the vessel are not liable for loss
36 or damage arising from—

37 “(1) dangers of the sea or other navigable waters;

38 “(2) acts of God;

39 “(3) public enemies;

40 “(4) seizure under legal process;

41 “(5) inherent defect, quality, or vice of the goods;

- 1 “(6) insufficiency of package;
 2 “(7) act or omission of the shipper or owner of the goods or their
 3 agent; or
 4 “(8) saving or attempting to save life or property at sea, including
 5 a deviation in rendering such a service.

6 **“§ 30707. Civil penalty**

7 “(a) IN GENERAL.—A carrier that violates this chapter is liable for a civil
 8 penalty of not more than \$2,000.

9 “(b) LIEN.—The amount of the penalty and costs for the violation con-
 10 stitute a lien on the vessel engaged in the carriage. A civil action in rem
 11 to enforce the lien may be brought in the district court of the United States
 12 for any district in which the vessel is found.

13 “(c) DISPOSITION OF PENALTY.—Half of the penalty shall be paid to the
 14 person injured by the violation and half to the United States Government.

15 **“CHAPTER 309—SUITS IN ADMIRALTY AGAINST THE**
 16 **UNITED STATES**

“Sec.

- “30901. Short title.
 “30902. Definition.
 “30903. Waiver of immunity.
 “30904. Exclusive remedy.
 “30905. Period for bringing action.
 “30906. Venue.
 “30907. Security.
 “30908. Procedure for hearing and determination.
 “30909. Exoneration and limitation.
 “30910. Costs and interest.
 “30911. Arbitration, compromise, or settlement.
 “30912. Payment of judgment or settlement.
 “30913. Exemption from arrest or seizure.
 “30914. Release of privately owned vessel after seizure.
 “30915. Seizures and other proceedings in foreign jurisdictions.
 “30916. Recovery by the United States for salvage services.
 “30917. Disposition of amounts recovered by the United States.
 “30918. Reports.

17 **“§ 30901. Short title**

18 “‘This chapter may be cited as the ‘Suits in Admiralty Act’.

19 **“§ 30902. Definition**

20 “‘In this chapter, the term ‘federally-owned corporation’ means a corpora-
 21 tion in which the United States owns all the outstanding capital stock.

22 **“§ 30903. Waiver of immunity**

23 “(a) IN GENERAL.—In a case in which, if a vessel were privately owned
 24 or operated, or if cargo were privately owned or possessed, or if a private
 25 person or property were involved, a civil action in admiralty could be main-
 26 tained, a civil action in personam may be brought against the United States
 27 or a federally-owned corporation. In a civil action in admiralty brought by
 28 the United States or a federally-owned corporation, an admiralty claim in

1 personam may be filed or a setoff claimed against the United States or cor-
2 poration.

3 “(b) NON-JURY.—A claim against the United States or a federally-owned
4 corporation under this section shall be tried without a jury.

5 **“§ 30904. Exclusive remedy**

6 “If a remedy is provided by this chapter, it shall be exclusive of any other
7 action arising out of the same subject matter against the officer, employee,
8 or agent of the United States or the federally-owned corporation whose act
9 or omission gave rise to the claim.

10 **“§ 30905. Period for bringing action**

11 “A civil action under this chapter must be brought within 2 years after
12 the cause of action arose.

13 **“§ 30906. Venue**

14 “(a) IN GENERAL.—A civil action under this chapter shall be brought in
15 the district court of the United States for the district in which—

16 “(1) any plaintiff resides or has its principal place of business; or

17 “(2) the vessel or cargo is found.

18 “(b) TRANSFER.—On a motion by a party, the court may transfer the
19 action to any other district court of the United States.

20 **“§ 30907. Security**

21 “Neither the United States nor a federally-owned corporation may be re-
22 quired to give a bond or admiralty stipulation in a civil action under this
23 chapter.

24 **“§ 30908. Procedure for hearing and determination**

25 “(a) IN GENERAL.—A civil action under this chapter shall proceed and
26 be heard and determined according to the principles of law and the rules
27 of practice applicable in like cases between private parties.

28 “(b) IN REM.—

29 “(1) REQUIREMENTS.—The action may proceed according to the
30 principles of an action in rem if—

31 “(A) the plaintiff elects in the complaint; and

32 “(B) it appears that an action in rem could have been main-
33 tained had the vessel or cargo been privately owned and possessed.

34 “(2) EFFECT ON RELIEF IN PERSONAM.—An election under para-
35 graph (1) does not prevent the plaintiff from seeking relief in personam
36 in the same action.

37 **“§ 30909. Exoneration and limitation**

38 “The United States is entitled to the exemptions from and limitations of
39 liability provided by law to an owner, charterer, operator, or agent of a ves-
40 sel.

1 **“§ 30910. Costs and interest**

2 “(a) IN GENERAL.—A judgment against the United States or a federally-
3 owned corporation under this chapter may include costs and interest at the
4 rate of 4 percent per year until satisfied. Interest shall run as ordered by
5 the court, except that interest is not allowable for the period before the ac-
6 tion is filed.

7 “(b) CONTRACT PROVIDING FOR INTEREST.—Notwithstanding subsection
8 (a), if the claim is based on a contract providing for interest, interest may
9 be awarded at the rate and for the period provided in the contract.

10 **“§ 30911. Arbitration, compromise, or settlement**

11 “The Secretary of a department of the United States Government, or the
12 board of trustees of a federally-owned corporation, may arbitrate, com-
13 promise, or settle a claim authorized by this chapter.

14 **“§ 30912. Payment of judgment or settlement**

15 “(a) IN GENERAL.—The proper accounting officer of the United States
16 shall pay a final judgment, arbitration award, or settlement under this chap-
17 ter on presentation of an authenticated copy.

18 “(b) SOURCE OF PAYMENT.—Payment shall be made from an appropria-
19 tion or fund available specifically for the purpose. If no appropriation or
20 fund is specifically available, there is hereby appropriated, out of money in
21 the Treasury not otherwise appropriated, an amount sufficient to pay the
22 judgment, award, or settlement.

23 **“§ 30913. Exemption from arrest or seizure**

24 “The following are not subject to arrest or seizure by judicial process in
25 the United States:

26 “(1) A vessel owned by, possessed by, or operated by or for the
27 United States or a federally-owned corporation.

28 “(2) Cargo owned or possessed by the United States or a federally-
29 owned corporation.

30 **“§ 30914. Release of privately owned vessel after seizure**

31 “If a privately owned vessel not in the possession of the United States
32 or a federally-owned corporation is arrested or attached in a civil action
33 arising or alleged to have arisen from prior ownership, possession, or oper-
34 ation by the United States or corporation, the vessel shall be released with-
35 out bond or stipulation on a statement by the United States, through the
36 Attorney General or other authorized law officer, that the United States is
37 interested in the action, desires release of the vessel, and assumes liability
38 for the satisfaction of any judgment obtained by the plaintiff. After the ves-
39 sel is released, the action shall proceed against the United States in accord-
40 ance with this chapter.

1 **“§ 30915. Seizures and other proceedings in foreign jurisdic-**
2 **tions**

3 “(a) IN GENERAL.—If a vessel or cargo described in section 30913 or
4 30914 of this title is arrested, attached, or otherwise seized by judicial pro-
5 cess in a foreign country, or if an action is brought in a court of a foreign
6 country against the master of such a vessel for a claim arising from the
7 ownership, possession, or operation of the vessel, or the ownership, posses-
8 sion, or carriage of such cargo, the Secretary of State, on request of the
9 Attorney General or another officer authorized by the Attorney General,
10 may direct the United States consul residing at or nearest the place at
11 which the action was brought—

12 “(1) to claim the vessel or cargo as immune from arrest, attachment,
13 or other seizure, and to execute an agreement, stipulation, bond, or un-
14 dertaking, for the United States or federally-owned corporation, for the
15 release of the vessel or cargo and the prosecution of any appeal; or

16 “(2) if an action has been brought against the master of such a ves-
17 sel, to enter the appearance of the United States or corporation and
18 to pledge the credit of the United States or corporation to the payment
19 of any judgment and costs in the action.

20 “(b) ARRANGING BOND OR STIPULATION.—The Attorney General may—

21 “(1) arrange with a bank, surety company, or other person, whether
22 in the United States or a foreign country, to execute a bond or stipula-
23 tion; and

24 “(2) pledge the credit of the United States to secure the bond or
25 stipulation.

26 “(c) PAYMENT OF JUDGMENT.—The appropriate accounting officer of the
27 United States or corporation may pay a judgment in an action described
28 in subsection (a) on presentation of a copy of the judgment if certified by
29 the clerk of the court and authenticated by—

30 “(1) the certificate and seal of the United States consul claiming the
31 vessel or cargo, or by the consul’s successor; and

32 “(2) the certificate of the Secretary as to the official capacity of the
33 consul.

34 “(d) RIGHT TO CLAIM IMMUNITY NOT AFFECTED.—This section does
35 not affect the right of the United States to claim immunity of a vessel or
36 cargo from foreign jurisdiction.

37 **“§ 30916. Recovery by the United States for salvage services**

38 “(a) CIVIL ACTION.—The United States, and the crew of a merchant ves-
39 sel owned or operated by the United States, or a federally-owned corpora-
40 tion, may bring a civil action to recover for salvage services provided by the
41 vessel and crew.

1 “(b) DEPOSIT OF AMOUNTS RECOVERED.—Any amount recovered under
 2 this section by the United States for its own benefit, and not for the benefit
 3 of the crew, shall be deposited in the Treasury to the credit of the depart-
 4 ment of the United States Government, or the corporation, having control
 5 of the possession or operation of the vessel.

6 **“§ 30917. Disposition of amounts recovered by the United**
 7 **States**

8 “Amounts recovered in a civil action brought by the United States on a
 9 claim arising from the ownership, possession, or operation of a merchant
 10 vessel, or the ownership, possession, or carriage of cargo, shall be deposited
 11 in the Treasury to the credit of the department of the United States Gov-
 12 ernment, or the federally-owned corporation, having control of the vessel or
 13 cargo, for reimbursement of the appropriation, insurance fund, or other
 14 fund from which the compensation for which the judgment was recovered
 15 was or will be paid.

16 **“§ 30918. Reports**

17 “The Secretary of each department of the United States Government,
 18 and the board of trustees of each federally-owned corporation, shall report
 19 to Congress at each session thereof all arbitration awards and settlements
 20 agreed to under this chapter since the previous session, for which the time
 21 to appeal has expired or been waived.

22 **“CHAPTER 311—SUITS INVOLVING PUBLIC VESSELS**

“Sec.

“31101. Short title.

“31102. Waiver of immunity.

“31103. Applicable procedure.

“31104. Venue.

“31105. Security when counterclaim filed.

“31106. Exoneration and limitation.

“31107. Interest.

“31108. Arbitration, compromise, or settlement.

“31109. Payment of judgment or settlement.

“31110. Subpoenas to officers or members of crew.

“31111. Claims by nationals of foreign countries.

“31112. Lien not recognized or created.

“31113. Reports.

23 **“§ 31101. Short title**

24 “This chapter may be cited as the ‘Public Vessels Act’.

25 **“§ 31102. Waiver of immunity**

26 “(a) IN GENERAL.—A civil action in personam in admiralty may be
 27 brought, or an impleader filed, against the United States for—

28 “(1) damages caused by a public vessel of the United States; or

29 “(2) compensation for towage and salvage services, including con-
 30 tract salvage, rendered to a public vessel of the United States.

31 “(b) COUNTERCLAIM OR SETOFF.—If the United States brings a civil ac-
 32 tion in admiralty for damages caused by a privately owned vessel, the owner

1 of the vessel, or the successor in interest, may file a counterclaim in per-
2 sonam, or claim a setoff, against the United States for damages arising out
3 of the same subject matter.

4 **“§ 31103. Applicable procedure**

5 “A civil action under this chapter is subject to the provisions of chapter
6 309 of this title except to the extent inconsistent with this chapter.

7 **“§ 31104. Venue**

8 “(a) IN GENERAL.—A civil action under this chapter shall be brought in
9 the district court of the United States for the district in which the vessel
10 or cargo is found within the United States.

11 “(b) VESSEL OR CARGO OUTSIDE TERRITORIAL WATERS.—If the vessel
12 or cargo is outside the territorial waters of the United States—

13 “(1) the action shall be brought in the district court of the United
14 States for any district in which any plaintiff resides or has an office
15 for the transaction of business; or

16 “(2) if no plaintiff resides or has an office for the transaction of
17 business in the United States, the action may be brought in the district
18 court of the United States for any district.

19 **“§ 31105. Security when counterclaim filed**

20 “If a counterclaim is filed for a cause of action for which the original
21 action is filed under this chapter, the respondent to the counterclaim shall
22 give security in the usual amount and form to respond to the counterclaim,
23 unless the court for cause shown orders otherwise. The proceedings in the
24 original action shall be stayed until the security is given.

25 **“§ 31106. Exoneration and limitation**

26 “The United States is entitled to the exemptions from and limitations of
27 liability provided by law to an owner, charterer, operator, or agent of a ves-
28 sel.

29 **“§ 31107. Interest**

30 “A judgment in a civil action under this chapter may not include interest
31 for the period before the judgment is issued unless the claim is based on
32 a contract providing for interest.

33 **“§ 31108. Arbitration, compromise, or settlement**

34 “The Attorney General may arbitrate, compromise, or settle a claim au-
35 thorized by this chapter if the claim actually has been filed.

36 **“§ 31109. Payment of judgment or settlement**

37 “The proper accounting officer of the United States shall pay a final
38 judgment, arbitration award, or settlement under this chapter on presen-
39 tation of an authenticated copy. Payment shall be made from any money
40 in the Treasury appropriated for the purpose.

1 **“§ 31110. Subpoenas to officers or members of crew**

2 “An officer or member of the crew of a public vessel may not be subpoenaed in a civil action under this chapter without the consent of—

3 (1) the Secretary of the department or the head of the independent
4 establishment having control of the vessel at the time the cause of action
5 arose; or
6

7 (2) the master or commanding officer of the vessel at the time the
8 subpoena is issued.

9 **“§ 31111. Claims by nationals of foreign countries**

10 “A national of a foreign country may not maintain a civil action under
11 this chapter unless it appears to the satisfaction of the court in which the
12 action is brought that the government of that country, in similar circumstances,
13 allows nationals of the United States to sue in its courts.

14 **“§ 31112. Lien not recognized or created**

15 “This chapter shall not be construed as recognizing the existence of or
16 as creating a lien against a public vessel of the United States.

17 **“§ 31113. Reports**

18 “The Attorney General shall report to Congress at each session thereof
19 all claims settled under this chapter.”.

20 **SEC. 7. SUBTITLE IV OF TITLE 46.**

21 Title 46, United States Code, is amended by inserting after subtitle III
22 the following:

23 **“Subtitle IV—Regulation of Ocean Shipping**

24 “PART A—OCEAN SHIPPING

“Chapter	Sec.
“401. General	40101
“403. Agreements	40301
“405. Tariffs, Service Contracts, Refunds, and Waivers	40501
“407. Controlled Carriers	40701
“409. Ocean Transportation Intermediaries	40901
“411. Prohibitions and Penalties	41101
“413. Enforcement	41301

25 “PART B—ACTIONS TO ADDRESS FOREIGN PRACTICES

“421. Regulations Affecting Shipping in Foreign Trade	42101
“423. Foreign Shipping Practices	42301

26 “PART C—MISCELLANEOUS

“441. Evidence of Financial Responsibility for Passenger Transportation.	44101
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27 “PART A—OCEAN SHIPPING

28 **“CHAPTER 401—GENERAL**

- “Sec.
“40101. Purposes.
“40102. Definitions.
“40103. Administrative exemptions.
“40104. Reports filed with the Commission.

1 § 40101. Purposes

2 “The purposes of this part are to—

3 “(1) establish a nondiscriminatory regulatory process for the com-
4 mon carriage of goods by water in the foreign commerce of the United
5 States with a minimum of government intervention and regulatory
6 costs;

7 “(2) provide an efficient and economic transportation system in the
8 ocean commerce of the United States that is, insofar as possible, in
9 harmony with, and responsive to, international shipping practices;

10 “(3) encourage the development of an economically sound and effi-
11 cient liner fleet of United States documented vessels capable of meeting
12 national security needs; and

13 “(4) promote the growth and development of United States exports
14 through competitive and efficient ocean transportation and by placing
15 a greater reliance on the marketplace.

16 § 40102. Definitions

17 “In this part:

18 “(1) AGREEMENT.—The term ‘agreement’—

19 “(A) means a written or oral understanding, arrangement, or
20 association, and any modification or cancellation thereof; but

21 “(B) does not include a maritime labor agreement.

22 “(2) ANTITRUST LAWS.—The term ‘antitrust laws’ means—

23 “(A) the Sherman Act (15 U.S.C. 1 et seq.);

24 “(B) sections 73 and 74 of the Wilson Tariff Act (15 U.S.C.
25 8, 9);

26 “(C) the Clayton Act (15 U.S.C. 12 et seq.);

27 “(D) the Act of June 19, 1936 (15 U.S.C. 13, 13a, 13b, 21a);

28 “(E) the Federal Trade Commission Act (15 U.S.C. 41 et seq.);

29 “(F) the Antitrust Civil Process Act (15 U.S.C. 1311 et seq.);

30 and

31 “(G) Acts supplementary to those Acts.

32 “(3) ASSESSMENT AGREEMENT.—The term ‘assessment agreement’
33 means an agreement, whether part of a collective bargaining agreement
34 or negotiated separately, to the extent the agreement provides for the
35 funding of collectively bargained fringe-benefit obligations on other
36 than a uniform worker-hour basis, regardless of the cargo handled or
37 type of vessel or equipment used.

38 “(4) BULK CARGO.—The term ‘bulk cargo’ means cargo that is load-
39 ed and carried in bulk without mark or count.

40 “(5) CHEMICAL PARCEL-TANKER.—The term ‘chemical parcel-tank-
41 er’ means a vessel that has—

1 “(A) a cargo-carrying capability consisting of individual cargo
2 tanks for bulk chemicals that—

3 “(i) are a permanent part of the vessel; and

4 “(ii) have segregation capability with piping systems to per-
5 mit simultaneous carriage of several bulk chemical cargoes
6 with minimum risk of cross-contamination; and

7 “(B) a valid certificate of fitness under the International Mari-
8 time Organization Code for the Construction and Equipment of
9 Ships Carrying Dangerous Chemicals in Bulk.

10 “(6) COMMON CARRIER.—The term ‘common carrier’—

11 “(A) means a person that—

12 “(i) holds itself out to the general public to provide trans-
13 portation by water of passengers or cargo between the United
14 States and a foreign country for compensation;

15 “(ii) assumes responsibility for the transportation from the
16 port or point of receipt to the port or point of destination;
17 and

18 “(iii) uses, for all or part of that transportation, a vessel
19 operating on the high seas or the Great Lakes between a port
20 in the United States and a port in a foreign country; but

21 “(B) does not include a carrier engaged in ocean transportation
22 by ferry boat, ocean tramp, or chemical parcel-tanker, or by vessel
23 when primarily engaged in the carriage of perishable agricultural
24 commodities—

25 “(i) if the carrier and the owner of those commodities are
26 wholly-owned, directly or indirectly, by a person primarily en-
27 gaged in the marketing and distribution of those commodities;
28 and

29 “(ii) only with respect to the carriage of those commodities.

30 “(7) CONFERENCE.—The term ‘conference’—

31 “(A) means an association of ocean common carriers permitted,
32 pursuant to an approved or effective agreement, to engage in con-
33 certed activity and to use a common tariff; but

34 “(B) does not include a joint service, consortium, pooling, sail-
35 ing, or transshipment agreement.

36 “(8) CONTROLLED CARRIER.—The term ‘controlled carrier’ means
37 an ocean common carrier that is, or whose operating assets are, di-
38 rectly or indirectly, owned or controlled by a government, with owner-
39 ship or control by a government being deemed to exist for a carrier
40 if—

1 “(A) a majority of the interest in the carrier is owned or con-
2 trolled in any manner by that government, an agency of that gov-
3 ernment, or a public or private person controlled by that govern-
4 ment; or

5 “(B) that government has the right to appoint or disapprove the
6 appointment of a majority of the directors, the chief operating of-
7 ficer, or the chief executive officer of the carrier.

8 “(9) DEFERRED REBATE.—The term ‘deferred rebate’ means a re-
9 turn by a common carrier of any freight money to a shipper, where
10 the return is—

11 “(A) consideration for the shipper giving all or any portion of
12 its shipments to that or any other common carrier over a fixed pe-
13 riod of time;

14 “(B) deferred beyond the completion of the service for which it
15 was paid; and

16 “(C) made only if the shipper has agreed to make a further
17 shipment with that or any other common carrier.

18 “(10) FOREST PRODUCTS.—The term ‘forest products’ includes lum-
19 ber in bundles, rough timber, ties, poles, piling, laminated beams, bun-
20 dled siding, bundled plywood, bundled core stock or veneers, bundled
21 particle or fiber boards, bundled hardwood, wood pulp in rolls, wood
22 pulp in unitized bales, and paper and paper board in rolls or in pallet
23 or skid-sized sheets.

24 “(11) INLAND DIVISION.—The term ‘inland division’ means the
25 amount paid by a common carrier to an inland carrier for the inland
26 portion of through transportation offered to the public by the common
27 carrier.

28 “(12) INLAND PORTION.—The term ‘inland portion’ means the
29 charge to the public by a common carrier for the non-ocean portion of
30 through transportation.

31 “(13) LOYALTY CONTRACT.—The term ‘loyalty contract’ means a
32 contract with an ocean common carrier or agreement providing for—

33 “(A) a shipper to obtain lower rates by committing all or a fixed
34 portion of its cargo to that carrier or agreement; and

35 “(B) a deferred rebate arrangement.

36 “(14) MARINE TERMINAL OPERATOR.—The term ‘marine terminal
37 operator’ means a person engaged in the United States in the business
38 of providing wharfage, dock, warehouse, or other terminal facilities in
39 connection with a common carrier, or in connection with a common car-
40 rier and a water carrier subject to subchapter II of chapter 135 of title
41 49.

1 “(15) MARITIME LABOR AGREEMENT.—The term ‘maritime labor
2 agreement’—

3 “(A) means—

4 “(i) a collective bargaining agreement between an employer
5 subject to this part, or a group of such employers, and a
6 labor organization representing employees in the maritime or
7 stevedoring industry;

8 “(ii) an agreement preparatory to such a collective bar-
9 gaining agreement among members of a multi-employer bar-
10 gaining group; or

11 “(iii) an agreement specifically implementing provisions of
12 such a collective bargaining agreement or providing for the
13 formation, financing, or administration of a multi-employer
14 bargaining group; but

15 “(B) does not include an assessment agreement.

16 “(16) NON-VESSEL-OPERATING COMMON CARRIER.—The term ‘non-
17 vessel-operating common carrier’ means a common carrier that—

18 “(A) does not operate the vessels by which the ocean transpor-
19 tation is provided; and

20 “(B) is a shipper in its relationship with an ocean common car-
21 rier.

22 “(17) OCEAN COMMON CARRIER.—The term ‘ocean common carrier’
23 means a vessel-operating common carrier.

24 “(18) OCEAN FREIGHT FORWARDER.—The term ‘ocean freight for-
25 warder’ means a person that—

26 “(A) in the United States, dispatches shipments from the
27 United States via a common carrier and books or otherwise ar-
28 ranges space for those shipments on behalf of shippers; and

29 “(B) processes the documentation or performs related activities
30 incident to those shipments.

31 “(19) OCEAN TRANSPORTATION INTERMEDIARY.—The term ‘ocean
32 transportation intermediary’ means an ocean freight forwarder or a
33 non-vessel-operating common carrier.

34 “(20) SERVICE CONTRACT.—The term ‘service contract’ means a
35 written contract, other than a bill of lading or receipt, between one or
36 more shippers, on the one hand, and an individual ocean common car-
37 rier or an agreement between or among ocean common carriers, on the
38 other, in which—

39 “(A) the shipper or shippers commit to providing a certain vol-
40 ume or portion of cargo over a fixed time period; and

1 “(B) the ocean common carrier or the agreement commits to a
2 certain rate or rate schedule and a defined service level, such as
3 assured space, transit time, port rotation, or similar service fea-
4 tures.

5 “(21) SHIPMENT.—The term ‘shipment’ means all of the cargo car-
6 ried under the terms of a single bill of lading.

7 “(22) SHIPPER.—The term ‘shipper’ means—

8 “(A) a cargo owner;

9 “(B) the person for whose account the ocean transportation of
10 cargo is provided;

11 “(C) the person to whom delivery is to be made;

12 “(D) a shippers’ association; or

13 “(E) a non-vessel-operating common carrier that accepts re-
14 sponsibility for payment of all charges applicable under the tariff
15 or service contract.

16 “(23) SHIPPERS’ ASSOCIATION.—The term ‘shippers’ association’
17 means a group of shippers that consolidates or distributes freight on
18 a nonprofit basis for the members of the group to obtain carload,
19 truckload, or other volume rates or service contracts.

20 “(24) THROUGH RATE.—The term ‘through rate’ means the single
21 amount charged by a common carrier in connection with through trans-
22 portation.

23 “(25) THROUGH TRANSPORTATION.—The term ‘through transpor-
24 tation’ means continuous transportation between origin and destination
25 for which a through rate is assessed and which is offered or performed
26 by one or more carriers, at least one of which is a common carrier,
27 between a United States port or point and a foreign port or point.

28 **“§ 40103. Administrative exemptions**

29 “(a) IN GENERAL.—The Federal Maritime Commission, on application or
30 its own motion, may by order or regulation exempt for the future any class
31 of agreements between persons subject to this part or any specified activity
32 of those persons from any requirement of this part if the Commission finds
33 that the exemption will not result in substantial reduction in competition
34 or be detrimental to commerce. The Commission may attach conditions to
35 an exemption and may, by order, revoke an exemption.

36 “(b) OPPORTUNITY FOR HEARING.—An order or regulation of exemption
37 or revocation of an exemption may be issued only if the Commission has
38 provided an opportunity for a hearing to interested persons and depart-
39 ments and agencies of the United States Government.

1 **“§ 40104. Reports filed with the Commission**

2 “(a) IN GENERAL.—The Federal Maritime Commission may require a
3 common carrier or an officer, receiver, trustee, lessee, agent, or employee
4 of the carrier to file with the Commission a periodical or special report, an
5 account, record, rate, or charge, or a memorandum of facts and transactions
6 related to the business of the carrier. The report, account, record, rate,
7 charge, or memorandum shall be made under oath if the Commission re-
8 quires, and shall be filed in the form and within the time prescribed by the
9 Commission.

10 “(b) CONFERENCE MINUTES.—Conference minutes required to be filed
11 with the Commission under this section may not be released to third parties
12 or published by the Commission.

13 **“CHAPTER 403—AGREEMENTS**

“Sec.

“40301. Application.

“40302. Filing requirements.

“40303. Content requirements.

“40304. Commission action.

“40305. Assessment agreements.

“40306. Nondisclosure of information.

“40307. Exemption from antitrust laws.

14 **“§ 40301. Application**

15 “(a) OCEAN COMMON CARRIER AGREEMENTS.—This part applies to an
16 agreement between or among ocean common carriers to—

17 “(1) discuss, fix, or regulate transportation rates, including through
18 rates, cargo space accommodations, and other conditions of service;

19 “(2) pool or apportion traffic, revenues, earnings, or losses;

20 “(3) allot ports or regulate the number and character of voyages be-
21 tween ports;

22 “(4) regulate the volume or character of cargo or passenger traffic
23 to be carried;

24 “(5) engage in an exclusive, preferential, or cooperative working ar-
25 rangement between themselves or with a marine terminal operator;

26 “(6) control, regulate, or prevent competition in international ocean
27 transportation; or

28 “(7) discuss and agree on any matter related to a service contract.

29 “(b) MARINE TERMINAL OPERATOR AGREEMENTS.—This part applies to
30 an agreement between or among marine terminal operators, or between or
31 among one or more marine terminal operators and one or more ocean com-
32 mon carriers, to—

33 “(1) discuss, fix, or regulate rates or other conditions of service; or

34 “(2) engage in exclusive, preferential, or cooperative working ar-
35 rangements, to the extent the agreement involves ocean transportation
36 in the foreign commerce of the United States.

1 “(e) ACQUISITIONS.—This part does not apply to an acquisition by any
2 person, directly or indirectly, of any voting security or assets of any other
3 person.

4 “(d) MARITIME LABOR AGREEMENTS.—This part does not apply to a
5 maritime labor agreement. However, this subsection does not exempt from
6 this part any rate, charge, regulation, or practice of a common carrier that
7 is required to be set forth in a tariff or is an essential term of a service
8 contract, whether or not the rate, charge, regulation, or practice arises out
9 of, or is otherwise related to, a maritime labor agreement.

10 “(e) ASSESSMENT AGREEMENTS.—This part (except sections 40305 and
11 40307(a)) does not apply to an assessment agreement.

12 **“§ 40302. Filing requirements**

13 “(a) IN GENERAL.—A true copy of every agreement referred to in section
14 40301(a) or (b) of this title shall be filed with the Federal Maritime Com-
15 mission. If the agreement is oral, a complete memorandum specifying in de-
16 tail the substance of the agreement shall be filed.

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

18 “(1) an agreement related to transportation to be performed within
19 or between foreign countries; or

20 “(2) an agreement among common carriers to establish, operate, or
21 maintain a marine terminal in the United States.

22 “(c) REGULATIONS.—The Commission may by regulation prescribe the
23 form and manner in which an agreement shall be filed and any additional
24 information and documents necessary to evaluate the agreement.

25 **“§ 40303. Content requirements**

26 “(a) OCEAN COMMON CARRIER AGREEMENTS.—

27 “(1) RESTRICTIONS.—An ocean common carrier agreement may
28 not—

29 “(A) prohibit or restrict a member of the agreement from en-
30 gaging in negotiations for a service contract with a shipper;

31 “(B) require a member of the agreement to disclose a negotia-
32 tion on a service contract, or the terms of a service contract, other
33 than those terms required to be published under section 40502(d)
34 of this title; or

35 “(C) adopt mandatory rules or requirements affecting the right
36 of an agreement member to negotiate and enter into a service con-
37 tract.

38 “(2) VOLUNTARY GUIDELINES.—An ocean common carrier agree-
39 ment may provide authority to adopt voluntary guidelines relating to
40 the terms and procedures of an agreement member’s service contracts
41 if the guidelines explicitly state the right of members of the agreement

1 not to follow the guidelines. Any guidelines adopted shall be submitted
2 confidentially to the Federal Maritime Commission.

3 “(b) CONFERENCE AGREEMENTS.—Each conference agreement must—

4 “(1) state its purpose;

5 “(2) provide reasonable and equal terms for admission and readmis-
6 sion to conference membership for any ocean common carrier willing
7 to serve the particular trade or route;

8 “(3) permit any member to withdraw from conference membership
9 on reasonable notice without penalty;

10 “(4) at the request of any member, require an independent neutral
11 body to police fully the obligations of the conference and its members;

12 “(5) prohibit the conference from engaging in conduct prohibited by
13 section 41105(1) or (3) of this title;

14 “(6) provide for a consultation process designed to promote—

15 “(A) commercial resolution of disputes; and

16 “(B) cooperation with shippers in preventing and eliminating
17 malpractices;

18 “(7) establish procedures for promptly and fairly considering re-
19 quests and complaints of shippers; and

20 “(8) provide that—

21 “(A) any member of the conference may take independent ac-
22 tion on a rate or service item on not more than 5 days’ notice to
23 the conference; and

24 “(B) except for an exempt commodity not published in the con-
25 ference tariff, the conference will include the new rate or service
26 item in its tariff for use by that member, effective no later than
27 5 days after receipt of the notice, and by any other member that
28 notifies the conference that it elects to adopt the independent rate
29 or service item on or after its effective date, in lieu of the existing
30 conference tariff provision for that rate or service item.

31 “(c) INTERCONFERENCE AGREEMENTS.—Each agreement between car-
32 riers not members of the same conference must provide the right of inde-
33 pendent action for each carrier. Each agreement between conferences must
34 provide the right of independent action for each conference.

35 “(d) VESSEL SHARING AGREEMENTS.—

36 “(1) IN GENERAL.—An ocean common carrier that is the owner, op-
37 erator, or bareboat, time, or slot charterer of a liner vessel documented
38 under section 12103 or 12111(c) of this title may agree with an ocean
39 common carrier described in paragraph (2) to which it charters or sub-
40 charters the vessel or space on the vessel that the charterer or

1 subcharterer may not use or make available space on the vessel for the
2 carriage of cargo reserved by law for United States documented vessels.

3 “(2) CARRIER DESCRIBED.—An ocean common carrier described in
4 this paragraph is one that is not the owner, operator, or bareboat
5 charterer for at least one year of United States documented liner ves-
6 sels that are eligible to be included in the Maritime Security Fleet Pro-
7 gram and are enrolled in an Emergency Preparedness Program under
8 chapter 531 of this title.

9 **“§ 40304. Commission action**

10 “(a) NOTICE OF FILING.—Within 7 days after an agreement is filed, the
11 Federal Maritime Commission shall transmit a notice of the filing to the
12 Federal Register for publication.

13 “(b) PRELIMINARY REVIEW AND REJECTION.—After preliminary review,
14 the Commission shall reject an agreement that it finds does not meet the
15 requirements of sections 40302 and 40303 of this title. The Commission
16 shall notify in writing the person filing the agreement of the reason for re-
17 jection.

18 “(c) REVIEW AND EFFECTIVE DATE.—Unless rejected under subsection
19 (b), an agreement (other than an assessment agreement) is effective—

20 “(1) on the 45th day after filing, or on the 30th day after notice
21 of the filing is published in the Federal Register, whichever is later;
22 or

23 “(2) if additional information or documents are requested under sub-
24 section (d)—

25 “(A) on the 45th day after the Commission receives all the addi-
26 tional information and documents; or

27 “(B) if the request is not fully complied with, on the 45th day
28 after the Commission receives the information and documents sub-
29 mitted and a statement of the reasons for noncompliance with the
30 request.

31 “(d) REQUEST FOR ADDITIONAL INFORMATION.—Before the expiration of
32 the period specified in subsection (c)(1), the Commission may request from
33 the person filing the agreement any additional information and documents
34 the Commission considers necessary to make the determinations required by
35 this section.

36 “(e) MODIFICATION OF REVIEW PERIOD.—

37 “(1) SHORTENING.—On request of the party filing an agreement,
38 the Commission may shorten a period specified in subsection (c), but
39 not to a date that is less than 14 days after notice of the filing of the
40 agreement is published in the Federal Register.

1 “(2) EXTENSION.—The period specified in subsection (e)(2) may be
2 extended only by the United States District Court for the District of
3 Columbia in a civil action brought by the Commission under section
4 41307(e) of this title.

5 “(f) FIXED TERMS.—The Commission may not limit the effectiveness of
6 an agreement to a fixed term.

7 **“§ 40305. Assessment agreements**

8 “(a) FILING REQUIREMENT.—An assessment agreement shall be filed
9 with the Federal Maritime Commission and is effective on filing.

10 “(b) COMPLAINTS.—If a complaint is filed with the Commission within
11 2 years after the date of an assessment agreement, the Commission shall
12 disapprove, cancel, or modify the agreement, or an assessment or charge
13 pursuant to the agreement, that the Commission finds, after notice and op-
14 portunity for a hearing, to be unjustly discriminatory or unfair as between
15 carriers, shippers, or ports. The Commission shall issue its final decision in
16 the proceeding within one year after the date the complaint is filed.

17 “(c) ADJUSTMENTS OF ASSESSMENTS AND CHARGES.—To the extent
18 that the Commission finds under subsection (b) that an assessment or
19 charge is unjustly discriminatory or unfair as between carriers, shippers, or
20 ports, the Commission shall adjust the assessment or charge for the period
21 between the filing of the complaint and the final decision by awarding pro-
22 spective credits or debits to future assessments and charges. However, if the
23 complainant has ceased activities subject to the assessment or charge, the
24 Commission may award reparations.

25 **“§ 40306. Nondisclosure of information**

26 “Information and documents (other than an agreement) filed with the
27 Federal Maritime Commission under this chapter are exempt from disclo-
28 sure under section 552 of title 5 and may not be made public except as
29 may be relevant to an administrative or judicial proceeding. This section
30 does not prevent disclosure to either House of Congress or to a duly author-
31 ized committee or subcommittee of Congress.

32 **“§ 40307. Exemption from antitrust laws**

33 “(a) IN GENERAL.—The antitrust laws do not apply to—

34 “(1) an agreement (including an assessment agreement) that has
35 been filed and is effective under this chapter;

36 “(2) an agreement that is exempt under section 40103 of this title
37 from any requirement of this part;

38 “(3) an agreement or activity within the scope of this part, whether
39 permitted under or prohibited by this part, undertaken or entered into
40 with a reasonable basis to conclude that it is—

1 “(A) pursuant to an agreement on file with the Federal Mari-
2 time Commission and in effect when the activity takes place; or

3 “(B) exempt under section 40103 of this title from any filing
4 or publication requirement of this part;

5 “(4) an agreement or activity relating to transportation services
6 within or between foreign countries, whether or not via the United
7 States, unless the agreement or activity has a direct, substantial, and
8 reasonably foreseeable effect on the commerce of the United States;

9 “(5) an agreement or activity relating to the foreign inland segment
10 of through transportation that is part of transportation provided in a
11 United States import or export trade;

12 “(6) an agreement or activity to provide wharfage, dock, warehouse,
13 or other terminal facilities outside the United States; or

14 “(7) an agreement, modification, or cancellation approved before
15 June 18, 1984, by the Commission under section 15 of the Shipping
16 Act, 1916, or permitted under section 14b of that Act, and any prop-
17 erly published tariff, rate, fare, or charge, or classification, rule, or reg-
18 ulation explanatory thereof implementing that agreement, modification,
19 or cancellation.

20 “(b) EXCEPTIONS.—This part does not extend antitrust immunity to—

21 “(1) an agreement with or among air carriers, rail carriers, motor
22 carriers, or common carriers by water not subject to this part relating
23 to transportation within the United States;

24 “(2) a discussion or agreement among common carriers subject to
25 this part relating to the inland divisions (as opposed to the inland por-
26 tions) of through rates within the United States;

27 “(3) an agreement among common carriers subject to this part to
28 establish, operate, or maintain a marine terminal in the United States;
29 or

30 “(4) a loyalty contract.

31 “(c) RETROACTIVE EFFECT OF DETERMINATIONS.—A determination by
32 an agency or court that results in the denial or removal of the immunity
33 to the antitrust laws under subsection (a) does not remove or alter the anti-
34 trust immunity for the period before the determination.

35 “(d) RELIEF UNDER CLAYTON ACT.—A person may not recover damages
36 under section 4 of the Clayton Act (15 U.S.C. 15), or obtain injunctive re-
37 lief under section 16 of that Act (15 U.S.C. 26), for conduct prohibited by
38 this part.

39 **“CHAPTER 405—TARIFFS, SERVICE CONTRACTS,**
40 **REFUNDS, AND WAIVERS**

“Sec.

“40501. General rate and tariff requirements.

“40502. Service contracts.

“40503. Refunds and waivers.

1 **“§ 40501. General rate and tariff requirements**

2 “(a) AUTOMATED TARIFF SYSTEM.—

3 “(1) IN GENERAL.—Each common carrier and conference shall keep
4 open to public inspection in an automated tariff system, tariffs showing
5 all its rates, charges, classifications, rules, and practices between all
6 points or ports on its own route and on any through transportation
7 route that has been established. However, a common carrier is not re-
8 quired to state separately or otherwise reveal in tariffs the inland divi-
9 sions of a through rate.

10 “(2) EXCEPTIONS.—Paragraph (1) does not apply with respect to
11 bulk cargo, forest products, recycled metal scrap, new assembled motor
12 vehicles, waste paper, or paper waste.

13 “(b) CONTENTS OF TARIFFS.—A tariff under subsection (a) shall—

14 “(1) state the places between which cargo will be carried;

15 “(2) list each classification of cargo in use;

16 “(3) state the level of compensation, if any, of any ocean freight for-
17 warder by a carrier or conference;

18 “(4) state separately each terminal or other charge, privilege, or fa-
19 cility under the control of the carrier or conference and any rules that
20 in any way change, affect, or determine any part or the total of the
21 rates or charges;

22 “(5) include sample copies of any bill of lading, contract of affreight-
23 ment, or other document evidencing the transportation agreement; and

24 “(6) include copies of any loyalty contract, omitting the shipper’s
25 name.

26 “(c) ELECTRONIC ACCESS.—A tariff under subsection (a) shall be made
27 available electronically to any person, without time, quantity, or other limi-
28 tation, through appropriate access from remote locations. A reasonable fee
29 may be charged for such access, except that no fee may be charged for ac-
30 cess by a Federal agency.

31 “(d) TIME-VOLUME RATES.—A rate contained in a tariff under sub-
32 section (a) may vary with the volume of cargo offered over a specified period
33 of time.

34 “(e) EFFECTIVE DATES.—

35 “(1) INCREASES.—A new or initial rate or change in an existing rate
36 that results in an increased cost to a shipper may not become effective
37 earlier than 30 days after publication. However, for good cause, the
38 Federal Maritime Commission may allow the rate to become effective
39 sooner.

1 “(2) DECREASES.—A change in an existing rate that results in a de-
2 creased cost to a shipper may become effective on publication.

3 “(f) MARINE TERMINAL OPERATOR SCHEDULES.—A marine terminal op-
4 erator may make available to the public a schedule of rates, regulations, and
5 practices, including limitations of liability for cargo loss or damage, per-
6 taining to receiving, delivering, handling, or storing property at its marine
7 terminal. Any such schedule made available to the public is enforceable by
8 an appropriate court as an implied contract without proof of actual knowl-
9 edge of its provisions.

10 “(g) REGULATIONS.—

11 “(1) IN GENERAL.—The Commission shall by regulation prescribe
12 the requirements for the accessibility and accuracy of automated tariff
13 systems established under this section. The Commission, after periodic
14 review, may prohibit the use of any automated tariff system that fails
15 to meet the requirements established under this section.

16 “(2) REMOTE TERMINALS.—The Commission may not require a
17 common carrier to provide a remote terminal for electronic access
18 under subsection (c).

19 “(3) MARINE TERMINAL OPERATOR SCHEDULES.—The Commission
20 shall by regulation prescribe the form and manner in which marine ter-
21 minal operator schedules authorized by this section shall be published.

22 **“§ 40502. Service contracts**

23 “(a) IN GENERAL.—An individual ocean common carrier or an agreement
24 between or among ocean common carriers may enter into a service contract
25 with one or more shippers subject to the requirements of this part.

26 “(b) FILING REQUIREMENTS.—

27 “(1) IN GENERAL.—Each service contract entered into under this
28 section by an individual ocean common carrier or an agreement shall
29 be filed confidentially with the Federal Maritime Commission.

30 “(2) EXCEPTIONS.—Paragraph (1) does not apply to contracts re-
31 garding bulk cargo, forest products, recycled metal scrap, new assem-
32 bled motor vehicles, waste paper, or paper waste.

33 “(c) ESSENTIAL TERMS.—Each service contract shall include—

34 “(1) the origin and destination port ranges;

35 “(2) the origin and destination geographic areas in the case of
36 through intermodal movements;

37 “(3) the commodities involved;

38 “(4) the minimum volume or portion;

39 “(5) the line-haul rate;

40 “(6) the duration;

41 “(7) service commitments; and

1 “(8) the liquidated damages for nonperformance, if any.

2 “(d) PUBLICATION OF CERTAIN TERMS.—When a service contract is filed
3 confidentially with the Commission, a concise statement of the essential
4 terms specified in paragraphs (1), (3), (4), and (6) of subsection (c) shall
5 be published and made available to the general public in tariff format.

6 “(e) DISCLOSURE OF CERTAIN TERMS.—

7 “(1) DEFINITIONS.—In this subsection, the terms ‘dock area’ and
8 ‘within the port area’ have the same meaning and scope as in the appli-
9 cable collective bargaining agreement between the requesting labor or-
10 ganization and the carrier.

11 “(2) DISCLOSURE.—An ocean common carrier that is a party to or
12 is otherwise subject to a collective bargaining agreement with a labor
13 organization shall, in response to a written request by the labor organi-
14 zation, state whether it is responsible for the following work at a dock
15 area or within a port area in the United States with respect to cargo
16 transportation under a service contract:

17 “(A) The movement of the shipper’s cargo on a dock area or
18 within the port area or to or from railroad cars on a dock area
19 or within the port area.

20 “(B) The assignment of intraport carriage of the shipper’s
21 cargo between areas on a dock or within the port area.

22 “(C) The assignment of the carriage of the shipper’s cargo be-
23 tween a container yard on a dock area or within the port area and
24 a rail yard adjacent to the container yard.

25 “(D) The assignment of container freight station work and con-
26 tainer maintenance and repair work performed at a dock area or
27 within the port area.

28 “(3) WITHIN REASONABLE TIME.—The common carrier shall provide
29 the information described in paragraph (2) to the requesting labor or-
30 ganization within a reasonable period of time.

31 “(4) EXISTENCE OF COLLECTIVE BARGAINING AGREEMENT.—This
32 subsection does not require the disclosure of information by an ocean
33 common carrier unless there exists an applicable and otherwise lawful
34 collective bargaining agreement pertaining to that carrier. A disclosure
35 by an ocean common carrier may not be deemed an admission or an
36 agreement that any work is covered by a collective bargaining agree-
37 ment. A dispute about whether any work is covered by a collective bar-
38 gaining agreement and the responsibility of an ocean common carrier
39 under a collective bargaining agreement shall be resolved solely in ac-
40 cordance with the dispute resolution procedures contained in the collec-

1 tive bargaining agreement and the National Labor Relations Act (29
2 U.S.C. 151 et seq.), and without reference to this subsection.

3 “(5) EFFECT UNDER OTHER LAWS.—This subsection does not affect
4 the lawfulness or unlawfulness under this part or any other Federal or
5 State law of any collective bargaining agreement or element thereof, in-
6 cluding any element that constitutes an essential term of a service con-
7 tract.

8 “(f) REMEDY FOR BREACH.—Unless the parties agree otherwise, the ex-
9 clusive remedy for a breach of a service contract is an action in an appro-
10 priate court. The contract dispute resolution forum may not be controlled
11 by or in any way affiliated with a controlled carrier or by the government
12 that owns or controls the carrier.

13 **“§ 40503. Refunds and waivers**

14 “The Federal Maritime Commission, on application of a carrier or ship-
15 per, may permit a common carrier or conference to refund a portion of the
16 freight charges collected from a shipper, or to waive collection of a portion
17 of the charges from a shipper, if—

18 “(1) there is an error in a tariff, a failure to publish a new tariff,
19 or an error in quoting a tariff, and the refund or waiver will not result
20 in discrimination among shippers, ports, or carriers;

21 “(2) the common carrier or conference, before filing an application
22 for authority to refund or waive any charges for an error in a tariff
23 or a failure to publish a tariff, has published a new tariff setting forth
24 the rate on which the refund or waiver would be based; and

25 “(3) the application for the refund or waiver is filed with the Com-
26 mission within 180 days from the date of shipment.

27 **“CHAPTER 407—CONTROLLED CARRIERS**

“Sec.

“40701. Rates.

“40702. Rate standards.

“40703. Effective date of rates.

“40704. Commission review.

“40705. Presidential review of Commission orders.

“40706. Exceptions.

28 **“§ 40701. Rates**

29 “(a) IN GENERAL.—A controlled carrier may not—

30 “(1) maintain a rate or charge in a tariff or service contract, or
31 charge or assess a rate, that is below a just and reasonable level; or

32 “(2) establish, maintain, or enforce in a tariff or service contract a
33 classification, rule, or regulation that results, or is likely to result, in
34 the carriage or handling of cargo at a rate or charge that is below a
35 just and reasonable level.

36 “(b) COMMISSION PROHIBITION.—The Federal Maritime Commission, at
37 any time after notice and opportunity for a hearing, may prohibit the publi-

1 cation or use of a rate, charge, classification, rule, or regulation that a con-
 2 trolled carrier has failed to demonstrate is just and reasonable.

3 “(c) BURDEN OF PROOF.—In a proceeding under this section, the burden
 4 of proof is on the controlled carrier to demonstrate that its rate, charge,
 5 classification, rule, or regulation is just and reasonable.

6 “(d) VOIDNESS.—A rate, charge, classification, rule, or regulation that
 7 has been suspended or prohibited by the Commission is void and its use is
 8 unlawful.

9 **“§ 40702. Rate standards**

10 “(a) DEFINITION.—In this section, the term ‘constructive costs’ means
 11 the costs of another carrier, other than a controlled carrier, operating simi-
 12 lar vessels and equipment in the same or a similar trade.

13 “(b) STANDARDS.—In determining whether a rate, charge, classification,
 14 rule, or regulation of a controlled carrier is just and reasonable, the Federal
 15 Maritime Commission—

16 “(1) shall take into account whether the rate or charge that has been
 17 published or assessed, or that would result from the pertinent classi-
 18 fication, rule, or regulation, is below a level that is fully compensatory
 19 to the controlled carrier based on the carrier’s actual costs or construc-
 20 tive costs; and

21 “(2) may take into account other appropriate factors, including
 22 whether the rate, charge, classification, rule, or regulation is—

23 “(A) the same as, or similar to, those published or assessed by
 24 other carriers in the same trade;

25 “(B) required to ensure movement of particular cargo in the
 26 same trade; or

27 “(C) required to maintain acceptable continuity, level, or quality
 28 of common carrier service to or from affected ports.

29 **“§ 40703. Effective date of rates**

30 “Notwithstanding section 40501(e) of this title and except for service
 31 contracts, a rate, charge, classification, rule, or regulation of a controlled
 32 carrier may not become effective, without special permission of the Federal
 33 Maritime Commission, until the 30th day after publication.

34 **“§ 40704. Commission review**

35 “(a) REQUEST FOR JUSTIFICATION.—On request of the Federal Maritime
 36 Commission, a controlled carrier shall file with the Commission, within 20
 37 days of the request, a statement of justification that sufficiently details the
 38 carrier’s need and purpose for an existing or proposed rate, charge, classi-
 39 fication, rule, or regulation and upon which the Commission may reasonably
 40 base a determination of its lawfulness.

1 “(b) DETERMINATION.—Within 120 days after receipt of information re-
2 quested under subsection (a), the Commission shall determine whether the
3 rate, charge, classification, rule, or regulation may be unjust and unreason-
4 able.

5 “(c) SHOW CAUSE ORDER.—Whenever the Commission is of the opinion
6 that a rate, charge, classification, rule, or regulation published or assessed
7 by a controlled carrier may be unjust and unreasonable, the Commission
8 shall issue an order to the controlled carrier to show cause why the rate,
9 charge, classification, rule, or regulation should not be prohibited.

10 “(d) SUSPENSION PENDING DETERMINATION.—

11 “(1) NOT YET EFFECTIVE.—Pending a determination of the lawfulness
12 of a rate, charge, classification, rule, or regulation in a proceeding
13 under subsection (c), the Commission may suspend the rate, charge,
14 classification, rule, or regulation at any time before its effective date.

15 “(2) ALREADY EFFECTIVE.—If a rate, charge, classification, rule, or
16 regulation has already become effective, the Commission, on issuance
17 of an order to show cause, may suspend the rate, charge, classification,
18 rule, or regulation on at least 30 days’ notice to the controlled carrier.

19 “(3) MAXIMUM SUSPENSION.—A period of suspension under this
20 subsection may not exceed 180 days.

21 “(e) REPLACEMENT DURING SUSPENSION.—Whenever the Commission
22 has suspended a rate, charge, classification, rule, or regulation under this
23 section, the controlled carrier may publish a new rate, charge, classification,
24 rule, or regulation to take effect immediately during the suspension in lieu
25 of the suspended rate, charge, classification, rule, or regulation. However,
26 the Commission may reject the new rate, charge, classification, rule, or reg-
27 ulation if the Commission believes it is unjust and unreasonable.

28 **“§ 40705. Presidential review of Commission orders**

29 “(a) TRANSMISSION TO PRESIDENT.—The Federal Maritime Commission
30 shall transmit to the President, concurrently with publication thereof, each
31 order of suspension or final order of prohibition issued under section 40704
32 of this title.

33 “(b) PRESIDENTIAL REQUEST AND COMMISSION ACTION.—Within 10
34 days after receipt or the effective date of a Commission order referred to
35 in subsection (a), the President, in writing, may request the Commission to
36 stay the effect of the order if the President finds that the stay is required
37 for reasons of national defense or foreign policy. The reasons shall be speci-
38 fied in the request. The Commission shall immediately grant the request by
39 issuing an order in which the President’s request shall be described. During
40 a stay, the President shall, whenever practicable, attempt to resolve the

1 matter by negotiating with representatives of the applicable foreign govern-
2 ments.

3 **“§ 40706. Exceptions**

4 “This chapter does not apply to—

5 “(1) a controlled carrier of a foreign country whose vessels are enti-
6 tled by a treaty of the United States to receive national or most-fa-
7 vored-nation treatment; or

8 “(2) a trade served only by controlled carriers.

9 **“CHAPTER 409—OCEAN TRANSPORTATION**
10 **INTERMEDIARIES**

“Sec.

“40901. License requirement.

“40902. Financial responsibility.

“40903. Suspension or revocation of license.

“40904. Compensation by common carriers.

11 **“§ 40901. License requirement**

12 “(a) IN GENERAL.—A person in the United States may not act as an
13 ocean transportation intermediary unless the person holds an ocean trans-
14 portation intermediary’s license issued by the Federal Maritime Commis-
15 sion. The Commission shall issue a license to a person that the Commission
16 determines to be qualified by experience and character to act as an ocean
17 transportation intermediary.

18 “(b) EXCEPTION.—A person whose primary business is the sale of mer-
19 chandise may forward shipments of the merchandise for its own account
20 without an ocean transportation intermediary’s license.

21 **“§ 40902. Financial responsibility**

22 “(a) IN GENERAL.—A person may not act as an ocean transportation
23 intermediary unless the person furnishes a bond, proof of insurance, or
24 other surety—

25 “(1) in a form and amount determined by the Federal Maritime
26 Commission to insure financial responsibility; and

27 “(2) issued by a surety company found acceptable by the Secretary
28 of the Treasury.

29 “(b) SCOPE OF FINANCIAL RESPONSIBILITY.—A bond, insurance, or
30 other surety obtained under this section—

31 “(1) shall be available to pay any penalty assessed under section
32 41109 of this title or any order for reparation issued under section
33 41305 of this title;

34 “(2) may be available to pay any claim against an ocean transpor-
35 tation intermediary arising from its transportation-related activities—

36 “(A) with the consent of the insured ocean transportation inter-
37 mediary and subject to review by the surety company; or

1 “(B) when the claim is deemed valid by the surety company
2 after the ocean transportation intermediary has failed to respond
3 to adequate notice to address the validity of the claim; and

4 “(3) shall be available to pay any judgment for damages against an
5 ocean transportation intermediary arising from its transportation-re-
6 lated activities, if the claimant has first attempted to resolve the claim
7 under paragraph (2) and the claim has not been resolved within a rea-
8 sonable period of time.

9 “(c) REGULATIONS ON COURT JUDGMENTS.—The Commission shall pre-
10 scribe regulations for the purpose of protecting the interests of claimants,
11 ocean transportation intermediaries, and surety companies with respect to
12 the process of pursuing claims against ocean transportation intermediary
13 bonds, insurance, or sureties through court judgments. The regulations shall
14 provide that a judgment for monetary damages may not be enforced except
15 to the extent that the damages claimed arise from the transportation-related
16 activities of the insured ocean transportation intermediary, as defined by the
17 Commission.

18 “(d) RESIDENT AGENT.—An ocean transportation intermediary not domi-
19 ciled in the United States shall designate a resident agent in the United
20 States for receipt of service of judicial and administrative process, including
21 subpoenas.

22 **“§ 40903. Suspension or revocation of license**

23 “(a) FAILURE TO MAINTAIN QUALIFICATIONS OR TO COMPLY.—The
24 Federal Maritime Commission, after notice and opportunity for a hearing,
25 shall suspend or revoke an ocean transportation intermediary’s license if the
26 Commission finds that the ocean transportation intermediary—

27 “(1) is not qualified to provide intermediary services; or

28 “(2) willfully failed to comply with a provision of this part or with
29 an order or regulation of the Commission.

30 “(b) FAILURE TO MAINTAIN BOND, PROOF OF INSURANCE, OR OTHER
31 SURETY.—The Commission may revoke an ocean transportation
32 intermediary’s license for failure to maintain a bond, proof of insurance, or
33 other surety as required by section 40902(a) of this title.

34 **“§ 40904. Compensation by common carriers**

35 “(a) CERTIFICATION OF LICENSE AND SERVICES.—A common carrier
36 may compensate an ocean freight forwarder for a shipment dispatched for
37 others only when the ocean freight forwarder has certified in writing that
38 it holds an ocean transportation intermediary’s license (if required under
39 section 40901 of this title) and has—

1 “(1) engaged, booked, secured, reserved, or contracted directly with
2 the carrier or its agent for space aboard a vessel or confirmed the
3 availability of the space; and

4 “(2) prepared and processed the ocean bill of lading, dock receipt,
5 or other similar document for the shipment.

6 “(b) DUAL COMPENSATION.—A common carrier may not pay compensa-
7 tion for services described in subsection (a) more than once on the same
8 shipment.

9 “(c) BENEFICIAL INTEREST SHIPMENTS.—An ocean freight forwarder
10 may not receive compensation from a common carrier for a shipment in
11 which the ocean freight forwarder has a direct or indirect beneficial interest.
12 A common carrier may not knowingly pay compensation on that shipment.

13 “(d) LIMITS ON AUTHORITY OF CONFERENCE OR GROUP.—A conference
14 or group of two or more ocean common carriers in the foreign commerce
15 of the United States that is authorized to agree on the level of compensation
16 paid to an ocean freight forwarder may not—

17 “(1) deny a member of the conference or group the right, upon no-
18 tice of not more than 5 days, to take independent action on any level
19 of compensation paid to an ocean freight forwarder; or

20 “(2) agree to limit the payment of compensation to an ocean freight
21 forwarder to less than 1.25 percent of the aggregate of all rates and
22 charges applicable under a tariff and assessed against the cargo on
23 which the services of the ocean freight forwarder are provided.

24 **“CHAPTER 411—PROHIBITIONS AND PENALTIES**

“Sec.

“41101. Joint ventures and consortiums.

“41102. General prohibitions.

“41103. Disclosure of information.

“41104. Common carriers.

“41105. Concerted action.

“41106. Marine terminal operators.

“41107. Monetary penalties.

“41108. Additional penalties.

“41109. Assessment of penalties.

25 **“§ 41101. Joint ventures and consortiums**

26 “In this chapter, a joint venture or consortium of two or more common
27 carriers operating as a single entity is deemed to be a single common car-
28 rier.

29 **“§ 41102. General prohibitions**

30 “(a) OBTAINING TRANSPORTATION AT LESS THAN APPLICABLE
31 RATES.—A person may not knowingly and willfully, directly or indirectly,
32 by means of false billing, false classification, false weighing, false report of
33 weight, false measurement, or any other unjust or unfair device or means,
34 obtain or attempt to obtain ocean transportation for property at less than
35 the rates or charges that would otherwise apply.

1 “(b) OPERATING CONTRARY TO AGREEMENT.—A person may not operate
2 under an agreement required to be filed under section 40302 or 40305 of
3 this title if—

4 “(1) the agreement has not become effective under section 40304 of
5 this title or has been rejected, disapproved, or canceled; or

6 “(2) the operation is not in accordance with the terms of the agree-
7 ment or any modifications to the agreement made by the Federal Mari-
8 time Commission.

9 “(c) PRACTICES IN HANDLING PROPERTY.—A common carrier, marine
10 terminal operator, or ocean transportation intermediary may not fail to es-
11 tablish, observe, and enforce just and reasonable regulations and practices
12 relating to or connected with receiving, handling, storing, or delivering prop-
13 erty.

14 **“§ 41103. Disclosure of information**

15 “(a) PROHIBITION.—A common carrier, marine terminal operator, or
16 ocean freight forwarder, either alone or in conjunction with any other per-
17 son, directly or indirectly, may not knowingly disclose, offer, solicit, or re-
18 ceive any information concerning the nature, kind, quantity, destination,
19 consignee, or routing of any property tendered or delivered to a common
20 carrier, without the consent of the shipper or consignee, if the informa-
21 tion—

22 “(1) may be used to the detriment or prejudice of the shipper, the
23 consignee, or any common carrier; or

24 “(2) may improperly disclose its business transaction to a compet-
25 itor.

26 “(b) EXCEPTIONS.—Subsection (a) does not prevent providing the infor-
27 mation—

28 “(1) in response to legal process;

29 “(2) to the Federal Maritime Commission or an agency of the
30 United States Government; or

31 “(3) to an independent neutral body operating within the scope of
32 its authority to fulfill the policing obligations of the parties to an agree-
33 ment effective under this part.

34 “(c) DISCLOSURE FOR DETERMINING BREACH OR COMPILING STATIS-
35 TICS.—An ocean common carrier that is a party to a conference agreement
36 approved under this part, a receiver, trustee, lessee, agent, or employee of
37 the carrier, or any other person authorized by the carrier to receive informa-
38 tion—

39 “(1) may give information to the conference or any person or agency
40 designated by the conference, for the purpose of—

1 “(A) determining whether a shipper or consignee has breached
2 an agreement with the conference or its member lines;

3 “(B) determining whether a member of the conference has
4 breached the conference agreement; or

5 “(C) compiling statistics of cargo movement; and

6 “(2) may not prevent the conference or its designee from soliciting
7 or receiving information for any of those purposes.

8 **“§ 41104. Common carriers**

9 “A common carrier, either alone or in conjunction with any other person,
10 directly or indirectly, may not—

11 “(1) allow a person to obtain transportation for property at less than
12 the rates or charges established by the carrier in its tariff or service
13 contract by means of false billing, false classification, false weighing,
14 false measurement, or any other unjust or unfair device or means;

15 “(2) provide service in the liner trade that is—

16 “(A) not in accordance with the rates, charges, classifications,
17 rules, and practices contained in a tariff published or a service
18 contract entered into under chapter 405 of this title, unless ex-
19 cepted or exempted under section 40103 or 40501(a)(2) of this
20 title; or

21 “(B) under a tariff or service contract that has been suspended
22 or prohibited by the Federal Maritime Commission under chapter
23 407 or 423 of this title;

24 “(3) retaliate against a shipper by refusing, or threatening to refuse,
25 cargo space accommodations when available, or resort to other unfair
26 or unjustly discriminatory methods because the shipper has patronized
27 another carrier, or has filed a complaint, or for any other reason;

28 “(4) for service pursuant to a tariff, engage in any unfair or unjustly
29 discriminatory practice in the matter of—

30 “(A) rates or charges;

31 “(B) cargo classifications;

32 “(C) cargo space accommodations or other facilities, with due
33 regard being given to the proper loading of the vessel and the
34 available tonnage;

35 “(D) loading and landing of freight; or

36 “(E) adjustment and settlement of claims;

37 “(5) for service pursuant to a service contract, engage in any unfair
38 or unjustly discriminatory practice in the matter of rates or charges
39 with respect to any port;

1 “(6) use a vessel in a particular trade for the purpose of excluding,
2 preventing, or reducing competition by driving another ocean common
3 carrier out of that trade;

4 “(7) offer or pay any deferred rebates;

5 “(8) for service pursuant to a tariff, give any undue or unreasonable
6 preference or advantage or impose any undue or unreasonable prejudice
7 or disadvantage;

8 “(9) for service pursuant to a service contract, give any undue or
9 unreasonable preference or advantage or impose any undue or unrea-
10 sonable prejudice or disadvantage with respect to any port;

11 “(10) unreasonably refuse to deal or negotiate;

12 “(11) knowingly and willfully accept cargo from or transport cargo
13 for the account of an ocean transportation intermediary that does not
14 have a tariff as required by section 40501 of this title and a bond, in-
15 surance, or other surety as required by section 40902 of this title; or

16 “(12) knowingly and willfully enter into a service contract with an
17 ocean transportation intermediary that does not have a tariff as re-
18 quired by section 40501 of this title and a bond, insurance, or other
19 surety as required by section 40902 of this title, or with an affiliate
20 of such an ocean transportation intermediary.

21 **“§ 41105. Concerted action**

22 “A conference or group of two or more common carriers may not—

23 “(1) boycott or take any other concerted action resulting in an un-
24 reasonable refusal to deal;

25 “(2) engage in conduct that unreasonably restricts the use of inter-
26 modal services or technological innovations;

27 “(3) engage in any predatory practice designed to eliminate the par-
28 ticipation, or deny the entry, in a particular trade of a common carrier
29 not a member of the conference, a group of common carriers, an ocean
30 tramp, or a bulk carrier;

31 “(4) negotiate with a non-ocean carrier or group of non-ocean car-
32 riers (such as truck, rail, or air operators) on any matter relating to
33 rates or services provided to ocean common carriers within the United
34 States by those non-ocean carriers, unless the negotiations and any re-
35 sulting agreements are not in violation of the antitrust laws and are
36 consistent with the purposes of this part, except that this paragraph
37 does not prohibit the setting and publishing of a joint through rate by
38 a conference, joint venture, or association of ocean common carriers;

39 “(5) deny in the export foreign commerce of the United States com-
40 pensation to an ocean freight forwarder or limit that compensation to
41 less than a reasonable amount;

1 “(6) allocate shippers among specific carriers that are parties to the
2 agreement or prohibit a carrier that is a party to the agreement from
3 soliciting cargo from a particular shipper, except as—

4 “(A) authorized by section 40303(d) of this title;

5 “(B) required by the law of the United States or the importing
6 or exporting country; or

7 “(C) agreed to by a shipper in a service contract;

8 “(7) for service pursuant to a service contract, engage in any un-
9 justly discriminatory practice in the matter of rates or charges with re-
10 spect to any locality, port, or person due to the person’s status as a
11 shippers’ association or ocean transportation intermediary; or

12 “(8) for service pursuant to a service contract, give any undue or
13 unreasonable preference or advantage or impose any undue or unrea-
14 sonable prejudice or disadvantage with respect to any locality, port, or
15 person due to the person’s status as a shippers’ association or ocean
16 transportation intermediary.

17 **“§ 41106. Marine terminal operators**

18 “A marine terminal operator may not—

19 “(1) agree with another marine terminal operator or with a common
20 carrier to boycott, or unreasonably discriminate in the provision of ter-
21 minal services to, a common carrier or ocean tramp;

22 “(2) give any undue or unreasonable preference or advantage or im-
23 pose any undue or unreasonable prejudice or disadvantage with respect
24 to any person; or

25 “(3) unreasonably refuse to deal or negotiate.

26 **“§ 41107. Monetary penalties**

27 “(a) IN GENERAL.—A person that violates this part or a regulation or
28 order of the Federal Maritime Commission issued under this part is liable
29 to the United States Government for a civil penalty. Unless otherwise pro-
30 vided in this part, the amount of the penalty may not exceed \$5,000 for
31 each violation or, if the violation was willfully and knowingly committed,
32 \$25,000 for each violation. Each day of a continuing violation is a separate
33 violation.

34 “(b) LIEN ON CARRIER’S VESSELS.—The amount of a civil penalty im-
35 posed on a common carrier under this section constitutes a lien on the ves-
36 sels operated by the carrier. Any such vessel is subject to an action in rem
37 to enforce the lien in the district court of the United States for the district
38 in which it is found.

39 **“§ 41108. Additional penalties**

40 “(a) SUSPENSION OF TARIFFS.—For a violation of section 41104(1), (2),
41 or (7) of this title, the Federal Maritime Commission may suspend any or

1 all tariffs of the common carrier, or that common carrier's right to use any
2 or all tariffs of conferences of which it is a member, for a period not to
3 exceed 12 months.

4 “(b) OPERATING UNDER SUSPENDED TARIFF.—A common carrier that
5 accepts or handles cargo for carriage under a tariff that has been sus-
6 pended, or after its right to use that tariff has been suspended, is liable
7 to the United States Government for a civil penalty of not more than
8 \$50,000 for each shipment.

9 “(c) FAILURE TO PROVIDE INFORMATION.—

10 “(1) PENALTIES.—If the Commission finds, after notice and oppor-
11 tunity for a hearing, that a common carrier has failed to supply infor-
12 mation ordered to be produced or compelled by subpoena under section
13 41303 of this title, the Commission may—

14 “(A) suspend any or all tariffs of the carrier or the carrier's
15 right to use any or all tariffs of conferences of which it is a mem-
16 ber; and

17 “(B) request the Secretary of Homeland Security to refuse or
18 revoke any clearance required for a vessel operated by the carrier,
19 and when so requested, the Secretary shall refuse or revoke the
20 clearance.

21 “(2) DEFENSE BASED ON FOREIGN LAW.—If, in defense of its fail-
22 ure to comply with a subpoena or discovery order, a common carrier
23 alleges that information or documents located in a foreign country can-
24 not be produced because of the laws of that country, the Commission
25 shall immediately notify the Secretary of State of the failure to comply
26 and of the allegation relating to foreign laws. On receiving the notifica-
27 tion, the Secretary of State shall promptly consult with the government
28 of the nation within which the information or documents are alleged
29 to be located for the purpose of assisting the Commission in obtaining
30 the information or documents.

31 “(d) IMPAIRING ACCESS TO FOREIGN TRADE.—If the Commission finds,
32 after notice and opportunity for a hearing, that the action of a common car-
33 rier, acting alone or in concert with another person, or a foreign government
34 has unduly impaired access of a vessel documented under the laws of the
35 United States to ocean trade between foreign ports, the Commission shall
36 take action that it finds appropriate, including imposing any of the penalties
37 authorized by this section. The Commission also may take any of the actions
38 authorized by sections 42304 and 42305 of this title.

39 “(e) SUBMISSION OF ORDER TO PRESIDENT.—Before an order under this
40 section becomes effective, it shall be submitted immediately to the President.
41 The President, within 10 days after receiving it, may disapprove it if the

1 President finds that disapproval is required for reasons of national defense
2 or foreign policy.

3 **“§ 41109. Assessment of penalties**

4 “(a) GENERAL AUTHORITY.—Until a matter is referred to the Attorney
5 General, the Federal Maritime Commission may, after notice and oppor-
6 tunity for a hearing, assess a civil penalty provided for in this part. The
7 Commission may compromise, modify, or remit, with or without conditions,
8 a civil penalty.

9 “(b) FACTORS IN DETERMINING AMOUNT.—In determining the amount
10 of a civil penalty, the Commission shall take into account the nature, cir-
11 cumstances, extent, and gravity of the violation committed and, with respect
12 to the violator, the degree of culpability, history of prior offenses, ability to
13 pay, and other matters justice may require.

14 “(c) EXCEPTION.—A civil penalty may not be imposed for conspiracy to
15 violate section 41102(a) or 41104(1) or (2) of this title or to defraud the
16 Commission by concealing such a violation.

17 “(d) PROHIBITED BASIS OF PENALTY.—The Commission or a court may
18 not order a person to pay the difference between the amount billed and
19 agreed upon in writing with a common carrier or its agent and the amount
20 set forth in a tariff or service contract by that common carrier for the
21 transportation service provided.

22 “(e) TIME LIMIT.—A proceeding to assess a civil penalty under this sec-
23 tion must be commenced within 5 years after the date of the violation.

24 “(f) REVIEW OF CIVIL PENALTY.—A person against whom a civil penalty
25 is assessed under this section may obtain review under chapter 158 of title
26 28.

27 “(g) CIVIL ACTIONS TO COLLECT.—If a person does not pay an assess-
28 ment of a civil penalty after it has become final or after the appropriate
29 court has entered final judgment in favor of the Commission, the Attorney
30 General at the request of the Commission may seek to collect the amount
31 assessed in an appropriate district court of the United States. The court
32 shall enforce the order of the Commission unless it finds that the order was
33 not regularly made and duly issued.

34 **“CHAPTER 413—ENFORCEMENT**

“Sec.

“41301. Complaints.

“41302. Investigations.

“41303. Discovery and subpoenas.

“41304. Hearings and orders.

“41305. Award of reparations.

“41306. Injunctive relief sought by complainants.

“41307. Injunctive relief sought by the Commission.

“41308. Enforcement of subpoenas and orders.

“41309. Enforcement of reparation orders.

“§ 41301. Complaints

“(a) IN GENERAL.—A person may file with the Federal Maritime Commission a sworn complaint alleging a violation of this part, except section 41307(b)(1). If the complaint is filed within 3 years after the claim accrues, the complainant may seek reparations for an injury to the complainant caused by the violation.

“(b) NOTICE AND RESPONSE.—The Commission shall provide a copy of the complaint to the person named in the complaint. Within a reasonable time specified by the Commission, the person shall satisfy the complaint or answer it in writing.

“(c) IF COMPLAINT NOT SATISFIED.—If the complaint is not satisfied, the Commission shall investigate the complaint in an appropriate manner and make an appropriate order.

“§ 41302. Investigations

“(a) IN GENERAL.—The Federal Maritime Commission, on complaint or its own motion, may investigate any conduct or agreement that the Commission believes may be in violation of this part. The Commission may by order disapprove, cancel, or modify any agreement that operates in violation of this part.

“(b) EFFECTIVENESS OF AGREEMENT DURING INVESTIGATION.—Unless an injunction is issued under section 41306 or 41307 of this title, an agreement under investigation by the Commission remains in effect until the Commission issues its order.

“(c) DATE FOR DECISION.—Within 10 days after the initiation of a proceeding under this section or section 41301 of this title, the Commission shall set a date by which it will issue its final decision. The Commission by order may extend the date for good cause.

“(d) SANCTIONS FOR DELAY.—If, within the period for final decision under subsection (c), the Commission determines that it is unable to issue a final decision because of undue delay caused by a party to the proceeding, the Commission may impose sanctions, including issuing a decision adverse to the delaying party.

“(e) REPORT.—The Commission shall make a written report of every investigation under this part in which a hearing was held, stating its conclusions, decisions, findings of fact, and order. The Commission shall provide a copy of the report to all parties and publish the report for public information. A published report is competent evidence in a court of the United States.

“§ 41303. Discovery and subpoenas

“(a) IN GENERAL.—In an investigation or adjudicatory proceeding under this part—

1 “(1) the Federal Maritime Commission may subpoena witnesses and
2 evidence; and

3 “(2) a party may use depositions, written interrogatories, and dis-
4 covery procedures under regulations prescribed by the Commission
5 that, to the extent practicable, shall conform to the Federal Rules of
6 Civil Procedure (28 App. U.S.C.).

7 “(b) WITNESS FEES.—Unless otherwise prohibited by law, a witness is
8 entitled to the same fees and mileage as in the courts of the United States.

9 **“§ 41304. Hearings and orders**

10 “(a) OPPORTUNITY FOR HEARING.—The Federal Maritime Commission
11 shall provide an opportunity for a hearing before issuing an order relating
12 to a violation of this part or a regulation prescribed under this part.

13 “(b) MODIFICATION OF ORDER.—The Commission may reverse, suspend,
14 or modify any of its orders.

15 “(c) REHEARING.—On application of a party to a proceeding, the Com-
16 mission may grant a rehearing of the same or any matter determined in
17 the proceeding. Except by order of the Commission, a rehearing does not
18 operate as a stay of an order.

19 “(d) PERIOD OF EFFECTIVENESS.—An order of the Commission remains
20 in effect for the period specified in the order or until suspended, modified,
21 or set aside by the Commission or a court of competent jurisdiction.

22 **“§ 41305. Award of reparations**

23 “(a) DEFINITION.—In this section, the term ‘actual injury’ includes the
24 loss of interest at commercial rates compounded from the date of injury.

25 “(b) BASIC AMOUNT.—If the complaint was filed within the period speci-
26 fied in section 41301(a) of this title, the Federal Maritime Commission shall
27 direct the payment of reparations to the complainant for actual injury
28 caused by a violation of this part, plus reasonable attorney fees.

29 “(c) ADDITIONAL AMOUNTS.—On a showing that the injury was caused
30 by an activity prohibited by section 41102(b), 41104(3) or (6), or 41105(1)
31 or (3) of this title, the Commission may order the payment of additional
32 amounts, but the total recovery of a complainant may not exceed twice the
33 amount of the actual injury.

34 “(d) DIFFERENCE BETWEEN RATES.—If the injury was caused by an ac-
35 tivity prohibited by section 41104(4)(A) or (B) of this title, the amount of
36 the injury shall be the difference between the rate paid by the injured ship-
37 per and the most favorable rate paid by another shipper.

38 **“§ 41306. Injunctive relief sought by complainants**

39 “(a) IN GENERAL.—After filing a complaint with the Federal Maritime
40 Commission under section 41301 of this title, the complainant may bring

1 a civil action in a district court of the United States to enjoin conduct in
2 violation of this part.

3 “(b) VENUE.—The action must be brought in the judicial district in
4 which—

5 “(1) the Commission has brought a civil action against the defendant
6 under section 41307(a) of this title; or

7 “(2) the defendant resides or transacts business, if the Commission
8 has not brought such an action.

9 “(c) REMEDIES BY COURT.—After notice to the defendant, and a showing
10 that the standards for granting injunctive relief by courts of equity are met,
11 the court may grant a temporary restraining order or preliminary injunction
12 for a period not to exceed 10 days after the Commission has issued an order
13 disposing of the complaint.

14 “(d) ATTORNEY FEES.—A defendant prevailing in a civil action under
15 this section shall be allowed reasonable attorney fees to be assessed and col-
16 lected as part of the costs of the action.

17 **“§ 41307. Injunctive relief sought by the Commission**

18 “(a) GENERAL VIOLATIONS.—In connection with an investigation under
19 section 41301 or 41302 of this title, the Federal Maritime Commission may
20 bring a civil action to enjoin conduct in violation of this part. The action
21 must be brought in the district court of the United States for any judicial
22 district in which the defendant resides or transacts business. After notice
23 to the defendant, and a showing that the standards for granting injunctive
24 relief by courts of equity are met, the court may grant a temporary restrain-
25 ing order or preliminary injunction for a period not to exceed 10 days after
26 the Commission has issued an order disposing of the issues under investiga-
27 tion.

28 “(b) REDUCTION IN COMPETITION.—

29 “(1) ACTION BY COMMISSION.—If, at any time after the filing or ef-
30 fective date of an agreement under chapter 403 of this title, the Com-
31 mission determines that the agreement is likely, by a reduction in com-
32 petition, to produce an unreasonable reduction in transportation service
33 or an unreasonable increase in transportation cost, the Commission,
34 after notice to the person filing the agreement, may bring a civil action
35 in the United States District Court for the District of Columbia to en-
36 join the operation of the agreement. The Commission’s sole remedy
37 with respect to an agreement likely to have such an effect is an action
38 under this subsection.

39 “(2) REMEDIES BY COURT.—In an action under this subsection, the
40 court may issue—

1 “(A) a temporary restraining order or a preliminary injunction;
2 and

3 “(B) a permanent injunction after a showing that the agree-
4 ment is likely to have the effect described in paragraph (1).

5 “(3) BURDEN OF PROOF AND THIRD PARTIES.—In an action under
6 this subsection, the burden of proof is on the Commission. The court
7 may not allow a third party to intervene.

8 “(c) FAILURE TO PROVIDE INFORMATION.—If a person filing an agree-
9 ment, or an officer, director, partner, agent, or employee of the person, fails
10 substantially to comply with a request for the submission of additional infor-
11 mation or documents within the period provided in section 40304(c) of this
12 title, the Commission may bring a civil action in the United States District
13 Court for the District of Columbia. At the request of the Commission, the
14 Court—

15 “(1) may order compliance;

16 “(2) shall extend the period specified in section 40304(c)(2) of this
17 title until there has been substantial compliance; and

18 “(3) may grant other equitable relief that the court decides is appro-
19 priate.

20 “(d) REPRESENTATION.—The Commission may represent itself in a pro-
21 ceeding under this section in—

22 “(1) a district court of the United States, on notice to the Attorney
23 General; and

24 “(2) a court of appeals of the United States, with the approval of
25 the Attorney General.

26 **“§ 41308. Enforcement of subpoenas and orders**

27 “(a) CIVIL ACTION.—If a person does not comply with a subpoena or
28 order of the Federal Maritime Commission, the Attorney General, at the re-
29 quest of the Commission, or an injured party, may seek enforcement in a
30 district court of the United States having jurisdiction over the parties. If,
31 after hearing, the court determines that the subpoena or order was regularly
32 made and duly issued, the court shall enforce the subpoena or order.

33 “(b) TIME LIMIT ON BRINGING ACTIONS.—An action under this section
34 to enforce an order of the Commission must be brought within 3 years after
35 the date the order was violated.

36 **“§ 41309. Enforcement of reparation orders**

37 “(a) CIVIL ACTION.—If a person does not comply with an order of the
38 Federal Maritime Commission for the payment of reparation, the person to
39 whom the award was made may seek enforcement of the order in a district
40 court of the United States having jurisdiction over the parties.

1 “(b) PARTIES AND SERVICE OF PROCESS.—All parties in whose favor the
 2 Commission has made an award of reparation by a single order may be
 3 joined as plaintiffs, and all other parties in the order may be joined as de-
 4 fendants, in a single action in a judicial district in which any one plaintiff
 5 could maintain an action against any one defendant. Service of process
 6 against a defendant not found in that district may be made in a district
 7 in which any office of that defendant is located or in which any port of call
 8 on a regular route operated by that defendant is located. Judgment may
 9 be entered for any plaintiff against the defendant liable to that plaintiff.

10 “(c) NATURE OF REVIEW.—In an action under this section, the findings
 11 and order of the Commission are prima facie evidence of the facts stated
 12 in the findings and order.

13 “(d) COSTS AND ATTORNEY FEES.—The plaintiff is not liable for costs
 14 of the action or for costs of any subsequent stage of the proceedings unless
 15 they accrue on the plaintiff’s appeal. A prevailing plaintiff shall be allowed
 16 reasonable attorney fees to be assessed and collected as part of the costs
 17 of the action.

18 “(e) TIME LIMIT ON BRINGING ACTIONS.—An action under this section
 19 to enforce an order of the Commission must be brought within 3 years after
 20 the date the order was violated.

21 “PART B—ACTIONS TO ADDRESS FOREIGN PRACTICES
 22 **“CHAPTER 421—REGULATIONS AFFECTING SHIPPING IN**
 23 **FOREIGN TRADE**

“Sec.

“42101. Regulations of the Commission.

“42102. Regulations of other agencies.

“42103. No preference to Government-owned vessels.

“42104. Information, witnesses, and evidence.

“42105. Disclosure to public.

“42106. Other actions to remedy unfavorable conditions.

“42107. Refusal of clearance and entry.

“42108. Penalty for operating under suspended tariff or service contract.

“42109. Consultation with other agencies.

24 **“§ 42101. Regulations of the Commission**

25 “(a) UNFAVORABLE CONDITIONS.—To further the objectives and policy
 26 set forth in section 50101 of this title, the Federal Maritime Commission
 27 shall prescribe regulations affecting shipping in foreign trade, not in conflict
 28 with law, to adjust or meet general or special conditions unfavorable to ship-
 29 ping in foreign trade, whether in a particular trade or on a particular route
 30 or in commerce generally, including intermodal movements, terminal oper-
 31 ations, cargo solicitation, agency services, ocean transportation intermediary
 32 services and operations, and other activities and services integral to trans-
 33 portation systems, and which arise out of or result from laws or regulations
 34 of a foreign country or competitive methods, pricing practices, or other

1 practices employed by owners, operators, agents, or masters of vessels of a
2 foreign country.

3 “(b) INITIATION OF REGULATION.—A regulation under subsection (a)
4 may be initiated by the Commission on its own motion or on the petition
5 of any person, including another component of the United States Govern-
6 ment.

7 **“§ 42102. Regulations of other agencies**

8 “(a) REQUEST TO AGENCY.—To further the objectives and policy set
9 forth in section 50101 of this title, the Federal Maritime Commission shall
10 request the head of a department, agency, or instrumentality of the United
11 States Government to suspend, modify, or annul any existing regulations,
12 or to make new regulations, affecting shipping in the foreign trade, except
13 regulations relating to the Public Health Service, the Consular Service, or
14 the inspection of vessels.

15 “(b) PRIOR REVIEW AND APPROVAL.—A department, agency, or instru-
16 mentality of the Government may not prescribe a regulation affecting ship-
17 ping in the foreign trade (except a regulation affecting the Public Health
18 Service, the Consular Service, or the inspection of vessels) until the regula-
19 tion has been submitted to the Commission for its approval and final action
20 has been taken by the Commission or the President.

21 “(c) SUBMISSION TO PRESIDENT.—If the head of a department, agency,
22 or instrumentality of the Government refuses to comply with a request
23 under subsection (a) or objects to a decision of the Commission under sub-
24 section (b), the Commission or the head of the department, agency, or in-
25 strumentality may submit the facts to the President. The President may es-
26 tablish, suspend, modify, or annul the regulation.

27 **“§ 42103. No preference to Government-owned vessels**

28 “A regulation may not give a vessel owned by the United States Govern-
29 ment a preference over a vessel owned by citizens of the United States and
30 documented under the laws of the United States.

31 **“§ 42104. Information, witnesses, and evidence**

32 “(a) ORDER TO SUPPLY INFORMATION.—In carrying out section 42101
33 of this title, the Federal Maritime Commission may order any person (in-
34 cluding a common carrier, tramp operator, bulk operator, shipper, shippers’
35 association, ocean transportation intermediary, or marine terminal operator,
36 or an officer, receiver, trustee, lessee, agent, or employee thereof) to file
37 with the Commission a report, answers to questions, documentary material,
38 or other information the Commission considers necessary or appropriate.
39 The Commission may require the response to any such order to be made
40 under oath. The response shall be provided in the form and within the time
41 specified by the Commission.

1 “(b) SUBPOENAS AND DISCOVERY.—In carrying out section 42101 of this
2 title, the Commission may—

3 “(1) subpoena witnesses and evidence; and

4 “(2) authorize a party to use depositions, written interrogatories,
5 and discovery procedures that, to the extent practicable, conform to the
6 Federal Rules of Civil Procedure (28 App. U.S.C.).

7 “(c) WITNESS FEES.—Unless otherwise prohibited by law, and subject to
8 funds being appropriated, a witness in a proceeding under section 42101
9 of this title is entitled to the same fees and mileage as in the courts of the
10 United States.

11 “(d) PENALTIES.—For failure to supply information ordered to be pro-
12 duced or compelled by subpoena under this section, the Commission may—

13 “(1) after notice and opportunity for a hearing, suspend tariffs and
14 service contracts of a common carrier or the common carrier’s right to
15 use tariffs of conferences and service contracts of agreements of which
16 it is a member; or

17 “(2) assess a civil penalty of not more than \$5,000 for each day that
18 the information is not provided.

19 “(e) ENFORCEMENT.—If a person does not comply with an order or sub-
20 poena of the Commission under this section, the Commission may seek en-
21 forcement in a district court of the United States having jurisdiction over
22 the parties. If, after hearing, the court determines that the order or sub-
23 poena was regularly made and duly issued, the court shall enforce the order
24 or subpoena.

25 **“§ 42105. Disclosure to public**

26 “Notwithstanding any other provision of law, the Federal Maritime Com-
27 mission may refuse to disclose to the public a response or other information
28 submitted to it under this chapter.

29 **“§ 42106. Other actions to remedy unfavorable conditions**

30 “If the Federal Maritime Commission finds that conditions unfavorable
31 to shipping in foreign trade as described in section 42101 of this title exist,
32 the Commission may—

33 “(1) limit voyages to and from United States ports or the amount
34 or type of cargo carried;

35 “(2) suspend, in whole or in part, tariffs and service contracts for
36 carriage to or from United States ports, including a common carrier’s
37 right to use tariffs of conferences and service contracts of agreements
38 in United States trades of which it is a member for any period the
39 Commission specifies;

40 “(3) suspend, in whole or in part, an ocean common carrier’s right
41 to operate under any agreement filed with the Commission, including

1 any agreement authorizing preferential treatment at terminals, pref-
 2 erential terminal leases, space chartering, or pooling of cargo or rev-
 3 enue with other ocean common carriers;

4 “(4) impose a fee not to exceed \$1,000,000 per voyage; or

5 “(5) take any other action the Commission finds necessary and ap-
 6 propriate to adjust or meet any condition unfavorable to shipping in
 7 the foreign trade of the United States.

8 **“§ 42107. Refusal of clearance and entry**

9 “At the request of the Federal Maritime Commission—

10 “(1) the Secretary of Homeland Security shall—

11 “(A) refuse the clearance required by section 60105 of this title
 12 to a vessel of a country that is named in a regulation prescribed
 13 by the Commission under section 42101 of this title; and

14 “(B) collect any fees imposed by the Commission under section
 15 42106(4) of this title; and

16 “(2) the Secretary of the department in which the Coast Guard is
 17 operating shall—

18 “(A) deny entry, for purposes of oceanborne trade, of a vessel
 19 of a country that is named in a regulation prescribed by the Com-
 20 mission under section 42101 of this title, to a port or place in the
 21 United States or the navigable waters of the United States; or

22 “(B) detain the vessel at the port or place in the United States
 23 from which it is about to depart for another port or place in the
 24 United States.

25 **“§ 42108. Penalty for operating under suspended tariff or**
 26 **service contract**

27 “A common carrier that accepts or handles cargo for carriage under a
 28 tariff or service contract that has been suspended under section 42104(d)(1)
 29 or 42106(2) of this title, or after its right to use another tariff or service
 30 contract has been suspended under those provisions, is liable to the United
 31 States Government for a civil penalty of not more than \$50,000 for each
 32 day that it is found to be operating under a suspended tariff or service con-
 33 tract.

34 **“§ 42109. Consultation with other agencies**

35 “The Federal Maritime Commission may consult with, seek the coopera-
 36 tion of, or make recommendations to other appropriate agencies of the
 37 United States Government prior to taking any action under this chapter.

38 **“CHAPTER 423—FOREIGN SHIPPING PRACTICES**

“Sec.

“42301. Definitions.

“42302. Investigations.

“42303. Information requests.

“42304. Action against foreign carriers.

“42305. Refusal of clearance and entry.

“42306. Submission of determinations to President.

“42307. Review of regulations and orders.

1 **“§ 42301. Definitions**

2 “(a) DEFINED IN PART A.—In this chapter, the terms ‘common carrier’,
3 ‘marine terminal operator’, ‘ocean common carrier’, ‘ocean transportation
4 intermediary’, ‘shipper’, and ‘shippers’ association’ have the meaning given
5 those terms in section 40102 of this title.

6 “(b) OTHER DEFINITIONS.—In this chapter:

7 “(1) FOREIGN CARRIER.—The term ‘foreign carrier’ means an ocean
8 common carrier a majority of whose vessels are documented under the
9 laws of a foreign country.

10 “(2) MARITIME SERVICES.—The term ‘maritime services’ means
11 port-to-port transportation of cargo by vessels operated by an ocean
12 common carrier.

13 “(3) MARITIME-RELATED SERVICES.—The term ‘maritime-related
14 services’ means intermodal operations, terminal operations, cargo solici-
15 tation, agency services, ocean transportation intermediary services and
16 operations, and all other activities and services integral to total trans-
17 portation systems of ocean common carriers and their foreign domiciled
18 affiliates for themselves and others.

19 “(4) UNITED STATES CARRIER.—The term ‘United States carrier’
20 means an ocean common carrier operating vessels documented under
21 the laws of the United States.

22 “(5) UNITED STATES OCEANBORNE TRADE.—The term ‘United
23 States oceanborne trade’ means the carriage of cargo between the
24 United States and a foreign country, whether directly or indirectly, by
25 an ocean common carrier.

26 **“§ 42302. Investigations**

27 “(a) IN GENERAL.—The Federal Maritime Commission shall investigate
28 whether any laws, rules, regulations, policies, or practices of a foreign gov-
29 ernment, or any practices of a foreign carrier or other person providing
30 maritime or maritime-related services in a foreign country, result in the ex-
31 istence of conditions that—

32 “(1) adversely affect the operations of United States carriers in
33 United States oceanborne trade; and

34 “(2) do not exist for foreign carriers of that country in the United
35 States under the laws of the United States or as a result of acts of
36 United States carriers or other persons providing maritime or mari-
37 time-related services in the United States.

38 “(b) INITIATION OF INVESTIGATION.—An investigation under subsection
39 (a) may be initiated by the Commission on its own motion or on the petition

1 of any person, including another component of the United States Govern-
2 ment.

3 “(c) TIME FOR DECISION.—The Commission shall complete an investiga-
4 tion under this section and render a decision within 120 days after it is ini-
5 tiated. However, the Commission may extend this 120-day period for an ad-
6 ditional 90 days if the Commission is unable to obtain sufficient information
7 to determine whether a condition specified in subsection (a) exists. A notice
8 providing an extension shall state clearly the reasons for the extension.

9 **“§ 42303. Information requests**

10 “(a) IN GENERAL.—To further the purposes of section 42302(a) of this
11 title, the Federal Maritime Commission may order any person (including a
12 common carrier, shipper, shippers’ association, ocean transportation inter-
13 mediary, or marine terminal operator, or an officer, receiver, trustee, lessee,
14 agent or employee thereof) to file with the Commission any periodic or spe-
15 cial report, answers to questions, documentary material, or other informa-
16 tion the Commission considers necessary or appropriate. The Commission
17 may require the response to any such order to be made under oath. The
18 response shall be provided in the form and within the time specified by the
19 Commission.

20 “(b) SUBPOENAS.—In an investigation under section 42302 of this title,
21 the Commission may subpoena witnesses and evidence.

22 “(c) NONDISCLOSURE.—Notwithstanding any other provision of law, the
23 Commission may determine that any information submitted to it in response
24 to a request under this section, or otherwise, shall not be disclosed to the
25 public.

26 **“§ 42304. Action against foreign carriers**

27 “(a) IN GENERAL.—Subject to section 42306 of this title, whenever the
28 Federal Maritime Commission, after notice and opportunity for comment or
29 hearing, determines that the conditions specified in section 42302(a) of this
30 title exist, the Commission shall take such action to offset those conditions
31 as it considers necessary and appropriate against any foreign carrier that
32 is a contributing cause, or whose government is a contributing cause, to
33 those conditions. The action may include—

34 “(1) limitations on voyages to and from United States ports or on
35 the amount or type of cargo carried;

36 “(2) suspension, in whole or in part, of any or all tariffs and service
37 contracts, including an ocean common carrier’s right to use any or all
38 tariffs and service contracts of conferences in United States trades of
39 which it is a member for any period the Commission specifies;

40 “(3) suspension, in whole or in part, of an ocean common carrier’s
41 right to operate under any agreement filed with the Commission, in-

cluding any agreement authorizing preferential treatment at terminals, preferential terminal leases, space chartering, or pooling of cargo or revenue with other ocean common carriers; and

“(4) a fee not to exceed \$1,000,000 per voyage.

“(b) CONSULTATION.—The Commission may consult with, seek the cooperation of, or make recommendations to other appropriate agencies of the United States Government prior to taking any action under subsection (a).

“§ 42305. Refusal of clearance and entry

“Subject to section 42306 of this title, whenever the Federal Maritime Commission determines that the conditions specified in section 42302(a) of this title exist, then at the request of the Commission—

“(1) the Secretary of Homeland Security shall refuse the clearance required by section 60105 of this title to a vessel of a foreign carrier that is identified by the Commission under section 42304 of this title; and

“(2) the Secretary of the department in which the Coast Guard is operating shall—

“(A) deny entry, for purposes of oceanborne trade, of a vessel of a foreign carrier that is identified by the Commission under section 42304 of this title, to a port or place in the United States or the navigable waters of the United States; or

“(B) detain the vessel at the port or place in the United States from which it is about to depart for another port or place in the United States.

“§ 42306. Submission of determinations to President

“Before a determination under section 42304 of this title becomes effective or a request is made under section 42305 of this title, the determination shall be submitted immediately to the President. The President, within 10 days after receiving it, may disapprove it in writing, setting forth the reasons for the disapproval, if the President finds that disapproval is required for reasons of national defense or foreign policy.

“§ 42307. Review of regulations and orders

“A regulation or final order of the Federal Maritime Commission under this chapter is reviewable exclusively in the same forum and in the same manner as provided in section 2342(3)(B) of title 28.

“PART C—MISCELLANEOUS

“CHAPTER 441—EVIDENCE OF FINANCIAL

RESPONSIBILITY FOR PASSENGER TRANSPORTATION

“Sec.

“44101. Application.

“44102. Financial responsibility to indemnify passengers for nonperformance of transportation.

“44103. Financial responsibility to pay liability for death or injury.

- “44104. Civil penalty.
 “44105. Refusal of clearance.
 “44106. Conduct of proceedings.

1 **“§ 44101. Application**

2 “This chapter applies to a vessel that—

3 “(1) has berth or stateroom accommodations for at least 50 pas-
 4 sengers; and

5 “(2) boards passengers at a port in the United States.

6 **“§ 44102. Financial responsibility to indemnify passengers**
 7 **for nonperformance of transportation**

8 “(a) FILING REQUIREMENT.—A person in the United States may not ar-
 9 range, offer, advertise, or provide transportation on a vessel to which this
 10 chapter applies unless the person has filed with the Federal Maritime Com-
 11 mission evidence of financial responsibility to indemnify passengers for non-
 12 performance of the transportation.

13 “(b) SATISFACTORY EVIDENCE.—To satisfy subsection (a), a person must
 14 file—

15 “(1) information the Commission considers necessary; or

16 “(2) a copy of a bond or other security, in such form as the Commis-
 17 sion by regulation may require.

18 “(c) AUTHORIZED ISSUER OF BOND.—If a bond is filed, it must be
 19 issued by a bonding company authorized to do business in the United
 20 States.

21 **“§ 44103. Financial responsibility to pay liability for death**
 22 **or injury**

23 “(a) GENERAL REQUIREMENT.—The owner or charterer of a vessel to
 24 which this chapter applies shall establish, under regulations prescribed by
 25 the Federal Maritime Commission, financial responsibility to meet liability
 26 for death or injury to passengers or other individuals on a voyage to or from
 27 a port in the United States.

28 “(b) AMOUNTS.—

29 “(1) IN GENERAL.—The amount of financial responsibility required
 30 under subsection (a) shall be based on the number of passenger accom-
 31 modations as follows:

32 “(A) \$20,000 for each of the first 500 passenger accommoda-
 33 tions.

34 “(B) \$15,000 for each additional passenger accommodation be-
 35 tween 501 and 1,000.

36 “(C) \$10,000 for each additional passenger accommodation be-
 37 tween 1,001 and 1,500.

38 “(D) \$5,000 for each additional passenger accommodation over
 39 1,500.

“515. State Maritime Academy Support Program	51501
“517. Other Support for Merchant Marine Training	51701
“519. Merchant Marine Awards	51901
“521. Miscellaneous	52101

1 “PART C—FINANCIAL ASSISTANCE PROGRAMS

“531. Maritime Security Fleet	53101
“533. Construction Reserve Funds	53301
“535. Capital Construction Funds	53501
“537. Loans and Guarantees	53701
“539. War Risk Insurance	53901

2 “PART D—PROMOTIONAL PROGRAMS

“551. Coastwise Trade	55101
“553. Passenger and Cargo Preferences	55301
“555. Miscellaneous	55501

3 “PART E—CONTROL OF MERCHANT MARINE CAPABILITIES

“561. Restrictions on Transfers	56101
“563. Emergency Acquisition of Vessels	56301
“565. Essential Vessels Affected by Neutrality Act	56501

4 “PART F—GOVERNMENT-OWNED MERCHANT VESSELS

“571. General Authority	57101
“573. Vessel Trade-In Program	57301
“575. Construction, Charter, and Sale of Vessels	57501

5 “PART G—RESTRICTIONS AND PENALTIES

“581. Restrictions and Penalties	58101”.
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6 (b) CHAPTERS PRECEDING CHAPTER 531.—Subtitle V of title 46, United
7 States Code, is amended by inserting after the subtitle analysis the fol-
8 lowing:

9 “PART A—GENERAL

10 “CHAPTER 501—POLICY, STUDIES, AND REPORTS

“Sec.

- “50101. Objectives and policy.
- “50102. Survey of merchant marine.
- “50103. Determinations of essential services.
- “50104. Studies of general maritime problems.
- “50105. Studies and cooperation relating to the construction of vessels.
- “50106. Studies on the operation of vessels.
- “50107. Studies on marine insurance.
- “50108. Studies on cargo carriage and cargo containers.
- “50109. Miscellaneous studies.
- “50110. Securing preference to vessels of the United States.
- “50111. Reports to Congress.
- “50112. National Maritime Enhancement Institutes.
- “50113. Use and performance reports by operators of vessels.

11 “§ 50101. Objectives and policy

12 “(a) OBJECTIVES.—It is necessary for the national defense and the devel-
13 opment of the domestic and foreign commerce of the United States that the
14 United States have a merchant marine—

15 “(1) sufficient to carry the waterborne domestic commerce and a
16 substantial part of the waterborne export and import foreign commerce
17 of the United States and to provide shipping service essential for main-

1 taining the flow of the waterborne domestic and foreign commerce at
2 all times;

3 “(2) capable of serving as a naval and military auxiliary in time of
4 war or national emergency;

5 “(3) owned and operated by citizens of the United States;

6 “(4) composed of the best-equipped, safest, and most suitable types
7 of vessels, built in the United States, documented under chapter 121
8 of this title, and manned with a trained and efficient citizen personnel;
9 and

10 “(5) supplemented by efficient facilities for building and repairing
11 vessels.

12 “(b) POLICY.—It is the policy of the United States to encourage and aid
13 the development and maintenance of a merchant marine satisfying the ob-
14 jectives described in subsection (a).

15 **“§ 50102. Survey of merchant marine**

16 “(a) IN GENERAL.—The Secretary of Transportation shall survey the
17 merchant marine of the United States to determine whether replacements
18 and additions are required to carry out the objectives and policy of section
19 50101 of this title. The Secretary shall study, perfect, and adopt a long-
20 range program for replacements and additions that will result, as soon as
21 practicable, in—

22 “(1) an adequate and well-balanced merchant fleet, including vessels
23 of all types, that will provide shipping service essential for maintaining
24 the flow of foreign commerce by vessels designed to be readily and
25 quickly convertible into transport and supply vessels in a time of na-
26 tional emergency;

27 “(2) ownership and operation of the fleet by citizens of the United
28 States insofar as practicable;

29 “(3) vessels designed to afford the best and most complete protection
30 for passengers and crew against fire and all marine perils; and

31 “(4) an efficient capacity for building and repairing vessels in the
32 United States with an adequate number of skilled personnel to provide
33 an adequate mobilization base.

34 “(b) COOPERATION WITH SECRETARY OF NAVY.—In carrying out sub-
35 section (a)(1), the Secretary of Transportation shall cooperate closely with
36 the Secretary of the Navy as to national defense requirements.

37 **“§ 50103. Determinations of essential services**

38 “(a) ESSENTIAL SERVICES, ROUTES, AND LINES.—

39 “(1) IN GENERAL.—The Secretary of Transportation shall inves-
40 tigate, determine, and keep current records of the ocean services,
41 routes, and lines from ports in the United States, or in the territories

1 and possessions of the United States, to foreign markets, which the
 2 Secretary determines to be essential for the promotion, development,
 3 expansion, and maintenance of the foreign commerce of the United
 4 States. In making such a determination, the Secretary shall consider
 5 and give due weight to—

6 “(A) the cost of maintaining each line;

7 “(B) the probability that a line cannot be maintained except at
 8 a heavy loss disproportionate to the benefit to foreign trade;

9 “(C) the number of voyages and types of vessels that should be
 10 employed in a line;

11 “(D) the intangible benefit of maintaining a line to the foreign
 12 commerce of the United States, the national defense, and other
 13 national requirements; and

14 “(E) any other facts and conditions a prudent business person
 15 would consider when dealing with the person’s own business.

16 “(2) SAINT LAWRENCE SEAWAY.—For purposes of paragraph (1),
 17 the Secretary shall establish services, routes, and lines that reflect the
 18 seasonal closing of the Saint Lawrence Seaway and provide for alter-
 19 nate routing of vessels through a different range of ports during that
 20 closing to maintain continuity of service on a year-round basis.

21 “(b) BULK CARGO CARRYING SERVICES.—The Secretary shall inves-
 22 tigate, determine, and keep current records of the bulk cargo carrying serv-
 23 ices that should be provided by United States documented vessels (whether
 24 or not operating on particular services, routes, or lines) for the promotion,
 25 development, expansion, and maintenance of the foreign commerce of the
 26 United States and the national defense or other national requirements.

27 “(c) TYPES OF VESSELS.—The Secretary shall investigate, determine,
 28 and keep current records of the type, size, speed, method of propulsion, and
 29 other requirements of the vessels, including express-liner or super-liner ves-
 30 sels, that should be employed in—

31 “(1) the services, routes, or lines described in subsection (a), and the
 32 frequency and regularity of the voyages of the vessels, with a view to
 33 furnishing adequate, regular, certain, and permanent service; and

34 “(2) the bulk cargo carrying services described in subsection (b).

35 **“§ 50104. Studies of general maritime problems**

36 “The Secretary of Transportation shall study all maritime problems aris-
 37 ing in carrying out the policy in section 50101 of this title.

38 **“§ 50105. Studies and cooperation relating to the construc-**
 39 **tion of vessels**

40 “(a) RELATIVE COSTS AND NEW DESIGNS.—The Secretary of Transpor-
 41 tation shall investigate, determine, and keep current records of—

1 “(1) the relative cost of construction of comparable vessels in the
2 United States and in foreign countries; and

3 “(2) new designs, new methods of construction, and new types of
4 equipment for vessels.

5 “(b) RULES, CLASSIFICATIONS, AND RATINGS.—The Secretary shall ex-
6 amine the rules under which vessels are constructed abroad and in the
7 United States and the methods of classifying and rating the vessels.

8 “(c) COLLABORATION WITH OWNERS AND BUILDERS.—The Secretary
9 shall collaborate with vessel owners and shipbuilders in developing plans for
10 the economical construction of vessels and their propelling machinery, of
11 most modern economical types, giving thorough consideration to all well-rec-
12 ognized means of propulsion and taking into account the benefits from
13 standardized production where practicable and desirable.

14 “(d) EXPRESS-LINER AND SUPER-LINER VESSELS.—The Secretary shall
15 study and cooperate with vessel owners in devising means by which there
16 may be constructed, by or with the aid of the United States Government,
17 express-liner or super-liner vessels comparable to those of other nations, es-
18 pecially with a view to their use in a national emergency, and the use of
19 transoceanic aircraft service in connection with or in lieu of those vessels.

20 **“§ 50106. Studies on the operation of vessels**

21 “(a) RELATIVE COSTS.—The Secretary of Transportation shall inves-
22 tigate, determine, and keep current records of the relative cost of marine
23 insurance, maintenance, repairs, wages and subsistence of officers and
24 crews, and all other items of expense, in the operation of comparable vessels
25 under the laws and regulations of the United States and those of the foreign
26 countries whose vessels are substantial competitors of American vessels.

27 “(b) SHIPYARDS.—The Secretary shall investigate, determine, and keep
28 current records of the number, location, and efficiency of shipyards in the
29 United States.

30 “(c) NAVIGATION LAWS.—The Secretary shall examine the navigation
31 laws and regulations of the United States and make such recommendations
32 to Congress as the Secretary considers proper for the amendment, improve-
33 ment, and revision of those laws and for the development of the merchant
34 marine of the United States.

35 **“§ 50107. Studies on marine insurance**

36 “The Secretary of Transportation shall—

37 “(1) examine into the subject of marine insurance, the number of
38 companies in the United States, domestic and foreign, engaging in ma-
39 rine insurance, the extent of the insurance on hulls and cargoes placed
40 or written in the United States, and the extent of reinsurance of Amer-
41 ican maritime risks in foreign companies; and

1 “(2) ascertain what steps may be necessary to develop an ample ma-
 2 rine insurance system as an aid in the development of the merchant
 3 marine of the United States.

4 **“§ 50108. Studies on cargo carriage and cargo containers**

5 “(a) STUDIES.—The Secretary of Transportation shall study—

6 “(1) the methods of encouraging the development and implementa-
 7 tion of new concepts for the carriage of cargo in the domestic and for-
 8 eign commerce of the United States; and

9 “(2) the economic and technological aspects of the use of cargo con-
 10 tainers as a method of carrying out the policy in section 50101 of this
 11 title.

12 “(b) RESTRICTION.—In carrying out subsection (a) and the policy in sec-
 13 tion 50101 of this title, the United States Government may not give pref-
 14 erence as between carriers based on the length, height, or width of cargo
 15 containers or the length, height, or width of cargo container cells. This re-
 16 striction applies to all existing container vessels and any container vessel to
 17 be constructed or rebuilt.

18 **“§ 50109. Miscellaneous studies**

19 “(a) FOREIGN SUBSIDIES.—The Secretary of Transportation shall inves-
 20 tigate, determine, and keep current records of the extent and character of
 21 the governmental aid and subsidies granted by foreign governments to their
 22 merchant marine.

23 “(b) LAWS APPLICABLE TO AIRCRAFT.—The Secretary shall investigate,
 24 determine, and keep current records of the provisions of law relating to
 25 shipping that should be made applicable to aircraft engaged in foreign com-
 26 merce to further the policy in section 50101 of this title, and any appro-
 27 priate legislation in this regard.

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

38 “(d) INTERCOASTAL AND INLAND WATER TRANSPORTATION.—The Sec-
 39 retary shall investigate, determine, and keep current records of intercoastal
 40 and inland water transportation, including their relation to transportation
 41 by land and air.

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

3 “(1) the scrapping or removal from service of old or obsolete mer-
4 chant tonnage owned by the United States Government or in use in
5 the merchant marine; and

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

9 “(f) MORTGAGE LOANS.—The Secretary shall investigate the legal status
10 of mortgage loans on vessel property, with a view to the means of improving
11 the security of those loans and of encouraging investment in American ship-
12 ping.

13 **“§ 50110. Securing preference to vessels of the United States**

14 “(a) POSSIBILITIES OF PROMOTING CARRIAGE.—The Secretary of Trans-
15 portation shall investigate, determine, and keep current records of the possi-
16 bilities of promoting the carriage of United States foreign trade in vessels
17 of the United States.

18 “(b) INDUCEMENTS TO IMPORTERS AND EXPORTERS.—The Secretary
19 shall study and cooperate with vessel owners in devising means by which
20 the importers and exporters of the United States can be induced to give
21 preference to vessels of the United States.

22 “(c) LIAISON WITH AGENCIES AND ORGANIZATIONS.—The Secretary
23 shall establish and maintain liaison with such other agencies of the United
24 States Government, and with such representative trade organizations
25 throughout the United States, as may be concerned, directly or indirectly,
26 with any movement of commodities in the waterborne export and import for-
27 eign commerce of the United States, for the purpose of securing preference
28 to vessels of the United States in the shipment of those commodities.

29 **“§ 50111. Reports to Congress**

30 “(a) IN GENERAL.—Not later than April 1 of each year, the Secretary
31 of Transportation shall submit a report to Congress. The report shall in-
32 clude, with respect to activities of the Secretary under this subtitle, the re-
33 sults of investigations, a summary of transactions, a statement of all ex-
34 penditures and receipts, the purposes for which all expenditures were made,
35 and any recommendations for legislation.

36 “(b) ADMINISTERED AND OVERSIGHT FUNDS.—The Secretary, in the re-
37 port under subsection (a) and in the annual budget estimate for the Mari-
38 time Administration submitted to Congress, shall state separately the
39 amount, source, intended use, and nature of any funds (other than funds
40 appropriated to the Administration or to the Secretary of Transportation

1 for use by the Administration) administered, or subject to oversight, by the
2 Administration.

3 “(c) ADDITIONAL RECOMMENDATIONS FOR LEGISLATION.—The Sec-
4 retary, from time to time, shall make recommendations to Congress for leg-
5 islation the Secretary considers necessary to better achieve the objectives
6 and policy of section 50101 of this title.

7 **“§ 50112. National Maritime Enhancement Institutes**

8 “(a) DESIGNATION.—The Secretary of Transportation may designate Na-
9 tional Maritime Enhancement Institutes.

10 “(b) ACTIVITIES.—Activities undertaken by an institute may include—

11 “(1) conducting research about methods to improve the performance
12 of maritime industries;

13 “(2) enhancing the competitiveness of domestic maritime industries
14 in international trade;

15 “(3) forecasting trends in maritime trade;

16 “(4) assessing technological advancements;

17 “(5) developing management initiatives and training;

18 “(6) analyzing economic and operational impacts of regulatory poli-
19 cies and international negotiations or agreements pending before inter-
20 national bodies;

21 “(7) assessing the compatibility of domestic maritime infrastructure
22 systems with overseas transport systems;

23 “(8) fostering innovations in maritime transportation pricing; and

24 “(9) improving maritime economics and finance.

25 “(c) APPLICATION FOR DESIGNATION.—An institution seeking designa-
26 tion as a National Maritime Enhancement Institute shall submit an applica-
27 tion under regulations prescribed by the Secretary.

28 “(d) CRITERIA FOR DESIGNATION.—The Secretary shall designate an in-
29 stitute under this section on the basis of the following criteria:

30 “(1) The demonstrated research and extension resources available to
31 the applicant for carrying out the activities specified in subsection (b).

32 “(2) The ability of the applicant to provide leadership in making na-
33 tional and regional contributions to the solution of both long-range and
34 immediate problems of the domestic maritime industry.

35 “(3) The existence of an established program of the applicant encom-
36 passing research and training directed to enhancing maritime indus-
37 tries.

38 “(4) The demonstrated ability of the applicant to assemble and
39 evaluate pertinent information from national and international sources
40 and to disseminate results of maritime industry research and edu-
41 cational programs through a continuing education program.

1 diction of the Secretary. The Fund has a working capital of \$20,000,000,
2 to remain available until expended.

3 “(b) RELATIONSHIP TO OTHER LAWS.—Notwithstanding any other law,
4 rates for shipping services provided under the Fund shall be prescribed by
5 the Secretary and the Fund shall be credited with receipts from vessel oper-
6 ations conducted under the Fund. Sections 1(a) and (c), 3(e), and 4 of the
7 Act of March 24, 1943 (50 App. U.S.C. 1291(a), (c), 1293(e), 1294), apply
8 to those operations and to seamen employed through general agents as em-
9 ployees of the United States Government. Notwithstanding any other law
10 on the employment of persons by the Government, the seamen may be em-
11 ployed in accordance with customary commercial practices in the maritime
12 industry.

13 “(c) ADVANCEMENTS.—With the approval of the Director of the Office
14 of Management and Budget, the Secretary may advance amounts the Sec-
15 retary considers necessary, but not more than 2 percent of vessel operating
16 expenses, from the Fund to the appropriation ‘Salaries and Expenses’ in
17 carrying out duties and powers related to vessel operations, without regard
18 to the limitations on amounts stated in that appropriation.

19 “(d) TRANSFERS.—The unexpended balances of working funds or of allo-
20 cation accounts established after January 1, 1951, for the activities pro-
21 vided for in subsection (a), and receipts received from those activities, may
22 be transferred to the Fund, which shall be available for the purposes of
23 those working funds or allocation accounts.

24 “(e) LIMITATION.—

25 “(1) IN GENERAL.—Amounts made available to the Secretary for
26 maritime activities by this section or any other law may not be used
27 to pay for a vessel described in paragraph (2) unless the compensation
28 to be paid is computed under section 56303 of this title as that section
29 is interpreted by the Comptroller General.

30 “(2) APPLICABLE VESSELS.—Paragraph (1) applies to a vessel—

31 “(A) the title to which is acquired by the Government by req-
32 uisition or purchase;

33 “(B) the use of which is taken by requisition or agreement; or

34 “(C) lost while insured by the Government.

35 “(3) NONAPPLICABLE VESSELS.—Paragraph (1) does not apply to a
36 vessel under a construction-differential subsidy contract.

37 “(f) AVAILABILITY FOR ADDITIONAL PURPOSES.—The Fund is available
38 for—

39 “(1) necessary expenses incurred in the protection, preservation,
40 maintenance, acquisition, or use of vessels involved in mortgage fore-
41 closure or forfeiture proceedings instituted by the Government, includ-

1 ing payment of prior claims and liens, expenses of sale, or other related
2 charges;

3 “(2) necessary expenses incident to the redelivery and lay-up, in the
4 United States, of vessels chartered as of June 20, 1956, under agree-
5 ments not calling for their return to the Government;

6 “(3) the activation, repair, and deactivation of merchant vessels
7 chartered for limited emergency purposes during fiscal year 1957 under
8 the jurisdiction of the Secretary; and

9 “(4) payment of expenses of custody and maintenance of Govern-
10 ment-owned vessels not in the National Defense Reserve Fleet.

11 “(g) EXPENSES AND RECEIPTS RELATED TO CHARTER OPERATIONS.—
12 The Fund is available for expenses incurred in activating, repairing, and de-
13 activating merchant vessels chartered under the jurisdiction of the Sec-
14 retary. Receipts from charter operations of Government-owned vessels under
15 the jurisdiction of the Secretary shall be credited to the Fund.

16 **“§ 50302. Port development**

17 “(a) GENERAL REQUIREMENTS.—With the objective of promoting, en-
18 couraging, and developing ports and transportation facilities in connection
19 with water commerce over which the Secretary of Transportation has juris-
20 diction, the Secretary, in cooperation with the Secretary of the Army,
21 shall—

22 “(1) investigate territorial regions and zones tributary to ports, tak-
23 ing into consideration the economies of transportation by rail, water,
24 and highway and the natural direction of the flow of commerce;

25 “(2) investigate the causes of congestion of commerce at ports and
26 applicable remedies;

27 “(3) investigate the subject of water terminals, including the nec-
28 essary docks, warehouses, and equipment, to devise and suggest the
29 types most appropriate for different locations and for the most expedi-
30 tious and economical transfer or interchange of passengers or property
31 between water carriers and rail carriers;

32 “(4) consult with communities on the appropriate location and plan
33 of construction of wharves, piers, and water terminals;

34 “(5) investigate the practicability and advantages of harbor, river,
35 and port improvements in connection with foreign and coastwise trade;
36 and

37 “(6) investigate any other matter that may tend to promote and en-
38 courage the use by vessels of ports adequate to care for the freight that
39 naturally would pass through those ports.

40 “(b) SUBMISSION OF FINDINGS TO SURFACE TRANSPORTATION
41 BOARD.—After an investigation under subsection (a), if the Secretary of

1 Transportation believes that the rates or practices of a rail carrier subject
 2 to the jurisdiction of the Surface Transportation Board are detrimental to
 3 the objective specified in subsection (a), or that new rates or practices, new
 4 or additional port terminal facilities, or affirmative action by a rail carrier
 5 is necessary to promote that objective, the Secretary may submit findings
 6 to the Board for action the Board considers appropriate under existing law.

7 **“§ 50303. Operating property and extending term of notes**

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

9 “(1) operate or lease docks, wharves, piers, or real property under
 10 the Secretary’s control; and

11 “(2) make extensions and accept renewals of—

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

14 “(B) mortgages and other contracts securing the property.

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

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

21 **“§ 50304. Sale and transfer of property**

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

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

32 “(c) TRANSFERS FROM CIVILIAN TO MILITARY CONTROL.—When the
 33 President considers it necessary, the President by executive order may
 34 transfer to the Secretary of a military department possession and control
 35 of property described in section 17 of the Merchant Marine Act, 1920 (ch.
 36 250, 41 Stat. 994), as originally enacted, that is possessed and controlled
 37 by the Secretary of Transportation. The President’s order shall state the
 38 need for the transfer and the period of the need. When the President de-
 39 cides that the need has ended, the possession and control shall revert to the
 40 Secretary of Transportation. The property may not be sold except as pro-
 41 vided by law.

1 **“§ 50305. Appointment of trustee or receiver and operation**
2 **of vessels**

3 “(a) APPOINTMENT OF TRUSTEES AND RECEIVERS.—

4 “(1) APPOINTMENT OF SECRETARY.—In a proceeding in a court of
5 the United States in which a trustee or receiver may be appointed for
6 a corporation operating a vessel of United States registry between the
7 United States and a foreign country, on which the United States Gov-
8 ernment holds a mortgage, the court may appoint the Secretary of
9 Transportation as the sole trustee or receiver (subject to the direction
10 of the court) if—

11 “(A) the court finds that the appointment will—

12 “(i) inure to the advantage of the estate and the parties
13 in interest; and

14 “(ii) tend to carry out the purposes of this subtitle; and

15 “(B) the Secretary expressly consents to the appointment.

16 “(2) APPOINTMENT OF OTHER PERSON.—The appointment of an-
17 other person as trustee or receiver without a hearing becomes effective
18 when ratified by the Secretary, but the Secretary may demand a hear-
19 ing.

20 “(b) OPERATION OF VESSELS.—

21 “(1) IN GENERAL.—If the court is unwilling to allow the trustee or
22 receiver to operate the vessel in foreign commerce without financial aid
23 from the Government pending termination of the proceeding, and the
24 Secretary certifies to the court that the continued operation of the ves-
25 sel is essential to the foreign commerce of the United States and is rea-
26 sonably calculated to carry out the purposes of this subtitle, the court
27 may allow the Secretary to operate the vessel, either directly or through
28 a managing agent or operator employed by the Secretary. The Sec-
29 retary must agree to comply with terms imposed by the court sufficient
30 to protect the parties in interest. The Secretary also must agree to pay
31 all operating losses resulting from the operation. The operation shall
32 be for the account of the trustee or receiver.

33 “(2) PAYMENT OF OPERATING LOSSES AND OTHER AMOUNTS.—The
34 Secretary has no claim against the corporation, its estate, or its assets
35 for operating losses paid by the Secretary, but the Secretary may pay
36 amounts for depreciation the Secretary considers reasonable and other
37 amounts the court considers just. The payment of operating losses and
38 the other amounts and compliance with terms imposed by the court
39 shall be in satisfaction of any claim against the Secretary resulting
40 from the operation of the vessel.

1 “(3) DEEMED OPERATION BY GOVERNMENT.—A vessel operated by
2 the Secretary under this subsection is deemed to be a vessel operated
3 by the United States under chapter 309 of this title.

4 **“§ 50306. Requiring testimony and records in investigations**

5 “(a) IN GENERAL.—In conducting an investigation that the Secretary of
6 Transportation considers necessary and proper to carry out this subtitle, the
7 Secretary may administer oaths, take evidence, and subpoena persons to
8 testify and produce documents relevant to the matter under investigation.
9 Persons may be required to attend or produce documents from any place
10 in the United States at any designated place of hearing.

11 “(b) FEES AND MILEAGE.—Persons subpoenaed by the Secretary under
12 subsection (a) shall be paid the same fees and mileage paid to witnesses in
13 the courts of the United States.

14 “(c) ENFORCEMENT OF SUBPOENAS.—If a person disobeys a subpoena
15 issued under subsection (a), the Secretary may seek an order enforcing the
16 subpoena from the district court of the United States for the district in
17 which the person resides or does business. Process may be served in the ju-
18 dicial district in which the person resides or is found. The court may issue
19 an order to obey the subpoena and punish a refusal to obey as a contempt
20 of court.

21 **“CHAPTER 505—OTHER GENERAL PROVISIONS**

“Sec.

“50501. Entities deemed citizens of the United States.

“50502. Applicability to receivers, trustees, successors, and assigns.

“50503. Oceanographic research vessels.

“50504. Sailing school vessels.

22 **“§ 50501. Entities deemed citizens of the United States**

23 “(a) IN GENERAL.—In this subtitle, a corporation, partnership, or asso-
24 ciation is deemed to be a citizen of the United States only if the controlling
25 interest is owned by citizens of the United States. However, if the corpora-
26 tion, partnership, or association is operating a vessel in the coastwise trade,
27 at least 75 percent of the interest must be owned by citizens of the United
28 States.

29 “(b) ADDITIONAL REQUIREMENTS FOR CORPORATIONS.—In this subtitle,
30 a corporation is deemed to be a citizen of the United States only if, in addi-
31 tion to satisfying the requirements in subsection (a)—

32 “(1) it is incorporated under the laws of the United States or a
33 State;

34 “(2) its chief executive officer, by whatever title, and the chairman
35 of its board of directors are citizens of the United States; and

36 “(3) no more of its directors are noncitizens than a minority of the
37 number necessary to constitute a quorum.

1 “(e) DETERMINATION OF CONTROLLING CORPORATE INTEREST.—The
2 controlling interest in a corporation is owned by citizens of the United
3 States under subsection (a) only if—

4 “(1) title to the majority of the stock in the corporation is vested
5 in citizens of the United States free from any trust or fiduciary obliga-
6 tion in favor of a person not a citizen of the United States;

7 “(2) the majority of the voting power in the corporation is vested
8 in citizens of the United States;

9 “(3) there is no contract or understanding by which the majority of
10 the voting power in the corporation may be exercised, directly or indi-
11 rectly, in behalf of a person not a citizen of the United States; and

12 “(4) there is no other means by which control of the corporation is
13 given to or permitted to be exercised by a person not a citizen of the
14 United States.

15 “(d) DETERMINATION OF 75 PERCENT CORPORATE INTEREST.—At least
16 75 percent of the interest in a corporation is owned by citizens of the
17 United States under subsection (a) only if—

18 “(1) title to at least 75 percent of the stock in the corporation is
19 vested in citizens of the United States free from any trust or fiduciary
20 obligation in favor of a person not a citizen of the United States;

21 “(2) at least 75 percent of the voting power in the corporation is
22 vested in citizens of the United States;

23 “(3) there is no contract or understanding by which more than 25
24 percent of the voting power in the corporation may be exercised, di-
25 rectly or indirectly, in behalf of a person not a citizen of the United
26 States; and

27 “(4) there is no other means by which control of more than 25 per-
28 cent of any interest in the corporation is given to or permitted to be
29 exercised by a person not a citizen of the United States.

30 **“§ 50502. Applicability to receivers, trustees, successors, and**
31 **assigns**

32 “This subtitle applies to receivers, trustees, successors, and assigns of any
33 person to whom this subtitle applies.

34 **“§ 50503. Oceanographic research vessels**

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

37 **“§ 50504. Sailing school vessels**

38 “(a) DEFINITIONS.—In this section, the terms ‘sailing school instructor’,
39 ‘sailing school student’, and ‘sailing school vessel’ have the meaning given
40 those terms in section 2101 of this title.

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

3 “(1) parts B, F, and G of subtitle II of this title; or

4 “(2) the maritime law doctrines of maintenance and cure or war-
5 ranty of seaworthiness.

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

8 “(1) a merchant vessel under section 11101(a)–(c) of this title; or

9 “(2) a vessel engaged in trade or commerce.

10 “(d) EVIDENCE OF FINANCIAL RESPONSIBILITY.—The owner or
11 charterer of a sailing school vessel shall maintain evidence of financial re-
12 sponsibility to meet liability for death or injury to sailing school students
13 and sailing school instructors on a voyage on the vessel. The amount of fi-
14 nancial responsibility shall be at least \$50,000 for each student and instruc-
15 tor. Financial responsibility under this subsection may be evidenced by in-
16 surance or other adequate financial resources.

17 “PART B—MERCHANT MARINE SERVICE

18 “CHAPTER 511—GENERAL

“Sec.

“51101. Policy.

“51102. Definitions.

“51103. General authority of Secretary of Transportation.

“51104. General authority of Secretary of the Navy.

19 “§ 51101. Policy

20 “‘It is the policy of the United States that merchant marine vessels of the
21 United States should be operated by highly trained and efficient citizens of
22 the United States and that the United States Navy and the merchant ma-
23 rine of the United States should work closely together to promote the max-
24 imum integration of the total seapower forces of the United States.

25 “§ 51102. Definitions

26 “‘In this part:

27 “(1) ACADEMY.—The term ‘Academy’ means the United States Mer-
28 chant Marine Academy located at Kings Point, New York, and main-
29 tained under chapter 513 of this title.

30 “(2) COST OF EDUCATION PROVIDED.—The term ‘cost of education
31 provided’ means the financial costs incurred by the United States Gov-
32 ernment for providing training or financial assistance to students at
33 the Academy and the State maritime academies, including direct finan-
34 cial assistance, room, board, classroom academics, and other training
35 activities.

36 “(3) MERCHANT MARINE OFFICER.—The term ‘merchant marine of-
37 ficer’ means an individual issued a license by the Coast Guard author-
38 izing service as—

- 1 “(A) a master, mate, or pilot on a documented vessel that—
 2 “(i) is of at least 1,000 gross tons as measured under sec-
 3 tion 14502 of this title or an alternate tonnage measured
 4 under section 14302 of this title as prescribed by the Sec-
 5 retary under section 14104 of this title; and
 6 “(ii) operates on the oceans or the Great Lakes; or
 7 “(B) an engineer officer on a documented vessel propelled by
 8 machinery of at least 4,000 horsepower.

9 “(4) STATE MARITIME ACADEMY.—The term ‘State maritime acad-
 10 emy’ means—

11 “(A) a State maritime academy or college sponsored by a State
 12 and assisted under chapter 515 of this title; and

13 “(B) a regional maritime academy or college sponsored by a
 14 group of States and assisted under chapter 515 of this title.

15 **“§ 51103. General authority of Secretary of Transportation**

16 “(a) EDUCATION AND TRAINING.—The Secretary of Transportation may
 17 provide for the education and training of citizens of the United States for
 18 the safe and efficient operation of the merchant marine of the United States
 19 at all times, including operation as a naval and military auxiliary in time
 20 of war or national emergency.

21 “(b) SURPLUS PROPERTY FOR INSTRUCTIONAL PURPOSES.—

22 “(1) IN GENERAL.—The Secretary may cooperate with and assist the
 23 institutions named in paragraph (2) by making vessels, shipboard
 24 equipment, and other marine equipment, owned by the United States
 25 Government and determined to be excess or surplus, available to those
 26 institutions for instructional purposes, by gift, loan, sale, lease, or char-
 27 ter on terms the Secretary considers appropriate.

28 “(2) INSTITUTIONS.—The institutions referred to in paragraph (1)
 29 are—

30 “(A) the United States Merchant Marine Academy;

31 “(B) a State maritime academy; and

32 “(C) a nonprofit training institution jointly approved by the
 33 Secretary of Transportation and the Secretary of the department
 34 in which the Coast Guard is operating as offering training courses
 35 that meet Federal regulations for maritime training.

36 “(c) ASSISTANCE FROM OTHER AGENCIES.—

37 “(1) IN GENERAL.—The Secretary of Transportation may secure di-
 38 rectly from an agency, on a reimbursable basis, information, facilities,
 39 and equipment necessary to carry out this part.

40 “(2) DETAILING PERSONNEL.—At the request of the Secretary, the
 41 head of an agency (including a military department) may detail, on a

1 reimbursable basis, personnel from the agency to the Secretary to as-
2 sist in carrying out this part.

3 “(d) ACADEMY PERSONNEL.—To carry out this part, the Secretary
4 may—

5 “(1) employ an individual as a professor, lecturer, or instructor at
6 the Academy, without regard to the provisions of title 5 governing ap-
7 pointments in the competitive service; and

8 “(2) pay the individual without regard to chapter 51 and subchapter
9 III of chapter 53 of title 5.

10 **“§ 51104. General authority of Secretary of the Navy**

11 “The Secretary of the Navy, in cooperation with the Maritime Adminis-
12 trator and the head of each State maritime academy, shall ensure that—

13 “(1) the training of future merchant marine officers at the United
14 States Merchant Marine Academy and at State maritime academies in-
15 cludes programs for naval science training in the operation of merchant
16 vessels as a naval and military auxiliary; and

17 “(2) naval officer training programs for future officers, insofar as
18 possible, are maintained at designated maritime academies consistent
19 with Navy standards and needs.

20 **“CHAPTER 513—UNITED STATES MERCHANT MARINE**
21 **ACADEMY**

“Sec.

“51301. Maintenance of the Academy.

“51302. Nomination and competitive appointment of cadets.

“51303. Non-competitive appointments.

“51304. Additional appointments from particular areas.

“51305. Prohibited basis for appointment.

“51306. Cadet commitment agreements.

“51307. Places of training.

“51308. Uniforms, textbooks, and transportation allowances.

“51309. Academic degree.

“51310. Deferment of service obligation under cadet commitment agreements.

“51311. Midshipman status in the Naval Reserve.

“51312. Board of Visitors.

“51313. Advisory Board.

“51314. Limitation on charges and fees for attendance.

22 **“§ 51301. Maintenance of the Academy**

23 “The Secretary of Transportation shall maintain the United States Mer-
24 chant Marine Academy to provide instruction to individuals to prepare them
25 for service in the merchant marine of the United States.

26 **“§ 51302. Nomination and competitive appointment of ca-**
27 **dets**

28 “(a) REQUIREMENTS.—An individual may be nominated for a competitive
29 appointment as a cadet at the United States Merchant Marine Academy
30 only if the individual—

31 “(1) is a citizen or national of the United States; and

1 “(2) meets the minimum requirements that the Secretary of Trans-
2 portation shall establish.

3 “(b) NOMINATORS.—Nominations for competitive appointments for the
4 positions allocated under subsection (c) may be made as follows:

5 “(1) A Senator may nominate residents of the State represented by
6 that Senator.

7 “(2) A Member of the House of Representatives may nominate resi-
8 dents of the State in which the congressional district represented by
9 that Member is located.

10 “(3) A Delegate to the House of Representatives from the District
11 of Columbia, the Virgin Islands, Guam, or American Samoa may nomi-
12 nate residents of the jurisdiction represented by that Delegate.

13 “(4) The Resident Commissioner to the United States from Puerto
14 Rico may nominate residents of Puerto Rico.

15 “(5) The Governor of the Northern Mariana Islands may nominate
16 residents of the Northern Mariana Islands.

17 “(6) The Panama Canal Commission may nominate—

18 “(A) residents, or sons or daughters of residents, of an area or
19 installation in Panama and made available to the United States
20 under the Panama Canal Treaty of 1977, the agreements relating
21 to and implementing that Treaty, signed September 7, 1977, and
22 the Agreement Between the United States of America and the Re-
23 public of Panama Concerning Air Traffic Control and Related
24 Services, concluded January 8, 1979; and

25 “(B) sons or daughters of personnel of the United States Gov-
26 ernment and the Panama Canal Commission residing in Panama.

27 “(c) ALLOCATION OF POSITIONS.—Positions for competitive appointments
28 shall be allocated each year as follows:

29 “(1) Positions shall be allocated for residents of each State nomi-
30 nated by the Members of Congress from that State in proportion to
31 the representation in Congress from that State.

32 “(2) Four positions shall be allocated for residents of the District
33 of Columbia nominated by the Delegate to the House of Representa-
34 tives from the District of Columbia.

35 “(3) One position each shall be allocated for residents of the Virgin
36 Islands, Guam, and American Samoa nominated by the Delegates to
37 the House of Representatives from the Virgin Islands, Guam, and
38 American Samoa, respectively.

39 “(4) One position shall be allocated for a resident of Puerto Rico
40 nominated by the Resident Commissioner to the United States from
41 Puerto Rico.

1 “(5) One position shall be allocated for a resident of the Northern
2 Mariana Islands nominated by the Governor of the Northern Mariana
3 Islands.

4 “(6) Two positions shall be allocated for individuals nominated by
5 the Panama Canal Commission.

6 “(d) COMPETITIVE SYSTEM FOR APPOINTMENT.—

7 “(1) ESTABLISHMENT OF SYSTEM.—The Secretary shall establish a
8 competitive system for selecting individuals nominated under subsection
9 (b) to fill the positions allocated under subsection (c). The system must
10 determine the relative merit of each individual based on competitive ex-
11 aminations, an assessment of the individual’s academic background,
12 and other effective indicators of motivation and probability of success-
13 ful completion of training at the Academy.

14 “(2) APPOINTMENTS BY JURISDICTION.—The Secretary shall ap-
15 point individuals to fill the positions allocated under subsection (c) for
16 each jurisdiction in the order of merit of the individuals nominated
17 from that jurisdiction.

18 “(3) REMAINING UNFILLED POSITIONS.—If positions remain unfilled
19 after the appointments are made under paragraph (2), the Secretary
20 shall appoint individuals to fill the positions in the order of merit of
21 the remaining individuals nominated from all jurisdictions.

22 **“§ 51303. Non-competitive appointments**

23 “The Secretary of Transportation may appoint each year without com-
24 petition as cadets at the United States Merchant Marine Academy not more
25 than 40 qualified individuals with qualities the Secretary considers to be of
26 special value to the Academy. In making these appointments, the Secretary
27 shall try to achieve a national demographic balance at the Academy.

28 **“§ 51304. Additional appointments from particular areas**

29 “(a) OTHER COUNTRIES IN WESTERN HEMISPHERE.—The President
30 may appoint individuals from countries in the Western Hemisphere other
31 than the United States to receive instruction at the United States Merchant
32 Marine Academy. Not more than 12 individuals may receive instruction
33 under this subsection at the same time, and not more than 2 individuals
34 from the same country may receive instruction under this subsection at the
35 same time.

36 “(b) OTHER COUNTRIES GENERALLY.—

37 “(1) APPOINTMENT.—The Secretary of Transportation, with the ap-
38 proval of the Secretary of State, may appoint individuals from coun-
39 tries other than the United States to receive instruction at the Acad-
40 emy. Not more than 30 individuals may receive instruction under this
41 subsection at the same time.

1 “(2) REIMBURSEMENT.—The Secretary of Transportation shall en-
 2 sure that the country from which an individual comes under this sub-
 3 section will reimburse the Secretary for the cost (as determined by the
 4 Secretary) of the instruction and allowances received by the individual.

5 “(c) PANAMA.—

6 “(1) APPOINTMENT.—The Secretary of Transportation, with the ap-
 7 proval of the Secretary of State, may appoint individuals from Panama
 8 to receive instruction at the Academy. Individuals appointed under this
 9 subsection are in addition to those appointed under any other provision
 10 of this chapter.

11 “(2) REIMBURSEMENT.—The Secretary of Transportation shall be
 12 reimbursed for the cost (as determined by the Secretary) of the instruc-
 13 tion and allowances received by an individual appointed under this sub-
 14 section.

15 “(d) ALLOWANCES AND REGULATIONS.—Individuals receiving instruction
 16 under this section are entitled to the same allowances and are subject to
 17 the same regulations on admission, attendance, discipline, resignation, dis-
 18 charge, dismissal, and graduation, as cadets at the Academy appointed from
 19 the United States.

20 **“§ 51305. Prohibited basis for appointment**

21 “Preference may not be given to an individual for appointment as a cadet
 22 at the United States Merchant Marine Academy because one or more mem-
 23 bers of the individual’s immediate family are alumni of the Academy.

24 **“§ 51306. Cadet commitment agreements**

25 “(a) AGREEMENT REQUIREMENTS.—A citizen of the United States ap-
 26 pointed as a cadet at the United States Merchant Marine Academy must
 27 sign, as a condition of the appointment, an agreement to—

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

29 “(2) fulfill the requirements for a license as an officer in the mer-
 30 chant marine of the United States before graduation from the Acad-
 31 emy;

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

37 “(4) apply for, and accept if tendered, an appointment as a commis-
 38 sioned officer in the Naval Reserve (including the Merchant Marine Re-
 39 serve, Naval Reserve), the Coast Guard Reserve, or any other reserve
 40 unit of an armed force of the United States, and, if tendered the ap-

1 pointment, to serve for at least 6 years after graduation from the Acad-
2 emy;

3 “(5) serve the foreign and domestic commerce and the national de-
4 fense of the United States for at least 5 years after graduation from
5 the Academy—

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

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

13 “(C) as a commissioned officer on active duty in an armed force
14 of the United States, as a commissioned officer in the National
15 Oceanic and Atmospheric Administration, or in other maritime-re-
16 lated Federal employment which serves the national security inter-
17 ests of the United States, as determined by the Secretary; or

18 “(D) by a combination of the service alternatives referred to in
19 subparagraphs (A)–(C); and

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

21 “(b) FAILURE TO COMPLETE COURSE OF INSTRUCTION.—

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

30 “(2) RECOVERY OF COST.—If the Secretary of Defense is unable or
31 unwilling to order an individual to serve on active duty under para-
32 graph (1), or if the Secretary of Transportation determines that reim-
33 bursement of the cost of education provided would better serve the in-
34 terests of the United States, the Secretary of Transportation may re-
35 cover from the individual the cost of education provided by the Govern-
36 ment.

37 “(c) FAILURE TO CARRY OUT OTHER REQUIREMENTS.—

38 “(1) ACTIVE DUTY.—If the Secretary of Transportation determines
39 that an individual has failed to fulfill any part of the agreement de-
40 scribed in subsection (a)(2)–(6), the individual may be ordered to serve
41 on active duty for a period of at least 3 years but not more than the

1 unexpired period (as determined by the Secretary) of the service re-
 2 quired by subsection (a)(5). The Secretary of Transportation, in con-
 3 sultation with the Secretary of Defense, shall determine in which serv-
 4 ice the individual shall serve. In cases of hardship as determined by
 5 the Secretary of Transportation, the Secretary of Transportation may
 6 waive this paragraph in whole or in part.

7 “(2) RECOVERY OF COST.—If the Secretary of Defense is unable or
 8 unwilling to order an individual to serve on active duty under para-
 9 graph (1), or if the Secretary of Transportation determines that reim-
 10 bursement of the cost of education provided would better serve the in-
 11 terests of the United States, the Secretary of Transportation may re-
 12 cover from the individual the cost of education provided. The Secretary
 13 may reduce the amount to be recovered to reflect partial performance
 14 of service obligations and other factors the Secretary determines merit
 15 a reduction.

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

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

21 “(2) make use of the Federal debt collection procedures in chapter
 22 176 of title 28 or other applicable administrative remedies.

23 **“§ 51307. Places of training**

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

26 “(1) on vessels owned or subsidized by the United States Govern-
 27 ment;

28 “(2) on other documented vessels, with the permission of the owner;
 29 and

30 “(3) in shipyards or plants and with industrial or educational organi-
 31 zations.

32 **“§ 51308. Uniforms, textbooks, and transportation allow-
 33 ances**

34 “The Secretary of Transportation shall provide cadets at the United
 35 States Merchant Marine Academy—

36 “(1) all required uniforms and textbooks; and

37 “(2) allowances for transportation (including reimbursement of trav-
 38 eling expenses) when traveling under orders as a cadet.

39 **“§ 51309. Academic degree**

40 “(a) BACHELOR’S DEGREE.—

1 “(1) IN GENERAL.—The Superintendent of the United States Mer-
2 chant Marine Academy may confer the degree of bachelor of science
3 on an individual who—

4 “(A) has met the conditions prescribed by the Secretary of
5 Transportation; and

6 “(B) if a citizen of the United States, has passed the examina-
7 tion for a merchant marine officer’s license.

8 “(2) EFFECT OF PHYSICAL DISQUALIFICATION.—An individual not
9 allowed to take the examination for a merchant marine officer’s license
10 only because of physical disqualification may not be denied a degree for
11 not taking the examination.

12 “(b) MASTER’S DEGREE.—The Superintendent of the Academy may con-
13 fer a master’s degree on an individual who has met the conditions pre-
14 scribed by the Secretary. A master’s degree program may be funded
15 through non-appropriated funds. To maintain the appropriate academic
16 standards, the program shall be accredited by the appropriate accreditation
17 body. The Secretary may prescribe regulations necessary to administer such
18 a program.

19 “(c) GRADUATION NOT ENTITLEMENT TO HOLD LICENSE.—Graduation
20 from the Academy does not entitle an individual to hold a license author-
21 izing service on a merchant vessel.

22 **“§ 51310. Deferment of service obligation under cadet com-
23 mitment agreements**

24 “The Secretary of Transportation may defer the service commitment of
25 an individual under section 51306(a)(5) of this title (as specified in the
26 cadet commitment agreement) for not more than 2 years if the individual
27 is engaged in a graduate course of study approved by the Secretary. How-
28 ever, deferment of service as a commissioned officer under section
29 51306(a)(5) must be approved by the Secretary of the military department
30 that has jurisdiction over the service or by the Secretary of Commerce for
31 service with the National Oceanic and Atmospheric Administration.

32 **“§ 51311. Midshipman status in the Naval Reserve**

33 “(a) APPLICATION REQUIREMENT.—Before being appointed as a cadet at
34 the United States Merchant Marine Academy, a citizen of the United States
35 must agree to apply for midshipman status in the Naval Reserve (including
36 the Merchant Marine Reserve, Naval Reserve).

37 “(b) APPOINTMENT.—

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

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

4 “(A) issued an identification card (referred to as a ‘military ID
5 card’); and

6 “(B) entitled to all rights and privileges in accordance with the
7 same eligibility criteria as apply to other members of the Ready
8 Reserve of the reserve components of the armed forces.

9 “(3) COORDINATION.—The Secretary of the Navy shall carry out
10 paragraphs (1) and (2) in coordination with the Secretary of Transpor-
11 tation.

12 **“§ 51312. Board of Visitors**

13 “(a) IN GENERAL.—A Board of Visitors to the United States Merchant
14 Marine Academy shall be established, for a term of 2 years commencing at
15 the beginning of each Congress, to visit the Academy annually on a date
16 determined by the Secretary of Transportation and to make recommenda-
17 tions on the operation of the Academy.

18 “(b) APPOINTMENT.—

19 “(1) IN GENERAL.—The Board shall be composed of—

20 “(A) 2 Senators appointed by the chairman of the Committee
21 on Commerce, Science, and Transportation of the Senate;

22 “(B) 3 Members of the House of Representatives appointed by
23 the chairman of the Committee on Armed Services of the House
24 of Representatives;

25 “(C) 1 Senator appointed by the Vice President;

26 “(D) 2 Members of the House of Representatives appointed by
27 the Speaker of the House of Representatives; and

28 “(E) the chairmen of the Committee on Commerce, Science, and
29 Transportation of the Senate and the Committee on Armed Serv-
30 ices of the House of Representatives, as ex officio members.

31 “(2) SUBSTITUTE APPOINTMENT.—If an appointed member of the
32 Board is unable to visit the Academy as provided in subsection (a), an-
33 other individual may be appointed as a substitute in the manner pro-
34 vided in paragraph (1).

35 “(c) STAFF.—The chairmen of the Committee on Commerce, Science, and
36 Transportation of the Senate and the Committee on Armed Services of the
37 House of Representatives may designate staff members of their committees
38 to serve without reimbursement as staff for the Board.

39 “(d) TRAVEL EXPENSES.—When serving away from home or regular
40 place of business, a member of the Board or a staff member designated

1 under subsection (c) shall be allowed travel expenses, including per diem in
2 lieu of subsistence, as authorized by section 5703 of title 5.

3 **“§ 51313. Advisory Board**

4 “(a) IN GENERAL.—An Advisory Board to the United States Merchant
5 Marine Academy shall be established to visit the Academy at least once dur-
6 ing each academic year, for the purpose of examining the course of instruc-
7 tion and management of the Academy and advising the Maritime Adminis-
8 trator and the Superintendent of the Academy.

9 “(b) APPOINTMENT AND TERMS.—The Board shall be composed of not
10 more than 7 individuals appointed by the Secretary of Transportation. The
11 individuals must be distinguished in education and other fields related to
12 the Academy. Members of the Board shall be appointed for terms of not
13 more than 3 years and may be reappointed. The Secretary shall designate
14 one of the members as chairman.

15 “(c) TRAVEL EXPENSES.—When serving away from home or regular
16 place of business, a member of the Board shall be allowed travel expenses,
17 including per diem in lieu of subsistence, as authorized by section 5703 of
18 title 5.

19 “(d) RELATIONSHIP TO OTHER LAW.—The Federal Advisory Committee
20 Act (5 App. U.S.C.) does not apply to the Board.

21 **“§ 51314. Limitation on charges and fees for attendance**

22 “(a) PROHIBITION.—Except as provided in subsection (b), no charge or
23 fee for tuition, room, or board for attendance at the United States Merchant
24 Marine Academy may be imposed unless the charge or fee is specifically au-
25 thorized by a law enacted after October 5, 1994.

26 “(b) EXCEPTION.—The prohibition specified in subsection (a) does not
27 apply with respect to any item or service provided to cadets for which a
28 charge or fee is imposed as of October 5, 1994. The Secretary of Transpor-
29 tation shall notify Congress of any change made by the Academy in the
30 amount of a charge or fee authorized under this subsection.

31 **“CHAPTER 515—STATE MARITIME ACADEMY SUPPORT**
32 **PROGRAM**

“Sec.

“51501. General support program.

“51502. Detailing of personnel.

“51503. Regional maritime academies.

“51504. Use of training vessels.

“51505. Annual payments for maintenance and support.

“51506. Conditions to receiving payments and use of vessels.

“51507. Places of training.

“51508. Allowances for students.

“51509. Student incentive payment agreements.

“51510. Deferment of service obligation under student incentive payment agreements.

“51511. Midshipman status in the Naval Reserve.

1 **“§ 51501. General support program**

2 “(a) ASSISTANCE TO STATE MARITIME ACADEMIES.—The Secretary of
3 Transportation shall cooperate with and assist State maritime academies in
4 providing instruction to individuals to prepare them for service in the mer-
5 chant marine of the United States.

6 “(b) COURSE DEVELOPMENT.—The Secretary shall provide to each State
7 maritime academy guidance and assistance in developing courses on the op-
8 eration and maintenance of new vessels, on equipment, and on innovations
9 being introduced to the merchant marine of the United States.

10 **“§ 51502. Detailing of personnel**

11 “At the request of the Governor of a State, the President may detail,
12 without reimbursement, personnel of the Navy, the Coast Guard, and the
13 Maritime Service to a State maritime academy to serve as a superintendent,
14 professor, lecturer, or instructor at the academy.

15 **“§ 51503. Regional maritime academies**

16 “The Governors of the States cooperating to sponsor a regional maritime
17 academy shall designate in writing one of those States to conduct the affairs
18 of that academy. A regional maritime academy is eligible for assistance from
19 the United States Government on the same basis as a State maritime acad-
20 emy sponsored by a single State.

21 **“§ 51504. Use of training vessels**

22 “(a) APPLICATIONS TO USE VESSELS.—The Governor of a State spon-
23 soring a State maritime academy (or the Governor of the State designated
24 to conduct the affairs of a regional maritime academy) may apply in writing
25 to the Secretary of Transportation to obtain the use of a training vessel for
26 the academy. A vessel provided under this section remains the property of
27 the United States Government.

28 “(b) GENERAL AUTHORITY.—Subject to subsection (c), the Secretary
29 may provide to a State maritime academy, for use as a training vessel, a
30 suitable vessel under the control of the Secretary or made available to the
31 Secretary under subsection (c). If a suitable vessel is not available, the Sec-
32 retary may build and provide a suitable vessel.

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

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

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

38 “(3) a suitable port will be available for the safe mooring of the ves-
39 sel while the academy is using the vessel.

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

1 “(1) repaired, reconditioned, and equipped (with all apparel, charts,
2 books, and instruments of navigation) as necessary for use as a train-
3 ing vessel; and

4 “(2) maintained in good repair by the Secretary.

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

7 “(1) is suitable for training purposes; and

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

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

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

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

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

22 **“§ 51505. Annual payments for maintenance and support**

23 “(a) PAYMENT AGREEMENTS.—The Secretary of Transportation may
24 make an agreement (effective for not more than 4 years) with the following
25 academies to provide annual payments to those academies for their mainte-
26 nance and support:

27 “(1) One State maritime academy in each State that satisfies section
28 51506(a) of this title.

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

31 “(b) PAYMENTS.—

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

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

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

41 “(B) \$200,000 for a regional maritime academy.

1 **“§ 51506. Conditions to receiving payments and use of ves-**
 2 **sels**

3 “(a) GENERAL CONDITIONS.—As conditions of receiving an annual pay-
 4 ment or the use of a vessel under this chapter, a State maritime academy
 5 must—

6 “(1) provide courses of instruction on navigation, marine engineering
 7 (including steam and diesel propulsion), the operation and maintenance
 8 of new vessels and equipment, and innovations being introduced to the
 9 merchant marine of the United States;

10 “(2) agree in writing to conform to the standards for courses, train-
 11 ing facilities, admissions, and instruction that the Secretary of Trans-
 12 portation may establish after consultation with the superintendents of
 13 State maritime academies; and

14 “(3) agree in writing to require, as a condition for graduation, that
 15 each individual who is a citizen of the United States and who is attend-
 16 ing the academy in a merchant marine officer preparation program
 17 pass the examination required for the issuance of a license under sec-
 18 tion 7101 of this title.

19 “(b) ADDITIONAL CONDITION TO PAYMENTS OF MORE THAN \$25,000.—
 20 As a condition of receiving an annual payment of more than \$25,000 under
 21 section 51505 of this title, a State maritime academy also must agree to
 22 admit each year a number of citizens of the United States who meet its ad-
 23 mission requirements and reside in a State not supporting that academy.
 24 The Secretary shall determine the number of individuals to be admitted by
 25 each academy under this subsection. The number may not be more than
 26 one-third of the total number of individuals attending the academy at any
 27 time.

28 **“§ 51507. Places of training**

29 “The Secretary of Transportation may provide for the training of stu-
 30 dents attending a State maritime academy—

31 “(1) on vessels owned or subsidized by the United States Govern-
 32 ment;

33 “(2) on other documented vessels, with the permission of the owner;
 34 and

35 “(3) in shipyards or plants and with industrial or educational organi-
 36 zations.

37 **“§ 51508. Allowances for students**

38 “Under regulations prescribed by the Secretary of Transportation, a stu-
 39 dent at a State maritime academy shall receive from the Secretary allow-
 40 ances for transportation (including reimbursement of traveling expenses)

1 when traveling under orders to receive training under section 51507 of this
2 title.

3 **“§ 51509. Student incentive payment agreements**

4 “(a) GENERAL AUTHORITY.—If a State maritime academy has an agree-
5 ment with the Secretary of Transportation under section 51505 of this title,
6 the Secretary may make an agreement with a student at the academy who
7 is a citizen of the United States to make student incentive payments to the
8 individual. An agreement with a student may not be effective for more than
9 4 academic years. The Secretary shall allocate payments under this section
10 among the various State maritime academies in an equitable manner.

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

15 “(c) MIDSHIPMAN AND ENLISTED RESERVE STATUS.—An agreement
16 under this section shall require the student to accept midshipman and en-
17 listed reserve status in the Naval Reserve (including the Merchant Marine
18 Reserve, Naval Reserve) before receiving any payments under the agree-
19 ment.

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

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

24 “(2) take the examination for a license as an officer in the merchant
25 marine of the United States before graduation from the academy and
26 fulfill the requirements for such a license within 3 months after grad-
27 uation from the academy;

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

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

38 “(5) serve the foreign and domestic commerce and the national de-
39 fense of the United States for at least 3 years after graduation from
40 the academy—

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

4 “(B) as an employee in a United States maritime-related indus-
5 try, profession, or marine science (as determined by the Sec-
6 retary), if the Secretary determines that service under subpara-
7 graph (A) is not available to the individual;

8 “(C) as a commissioned officer on active duty in an armed force
9 of the United States, as a commissioned officer in the National
10 Oceanic and Atmospheric Administration, or in other maritime-re-
11 lated Federal employment which serves the national security inter-
12 ests of the United States, as determined by the Secretary; or

13 “(D) by a combination of the service alternatives referred to in
14 subparagraphs (A)–(C); and

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

16 “(e) FAILURE TO COMPLETE COURSE OF INSTRUCTION.—

17 “(1) ACTIVE DUTY.—If the Secretary of Transportation determines
18 that an individual who has accepted the payments described in sub-
19 section (b) for a minimum of 2 academic years has failed to fulfill the
20 part of the agreement described in subsection (d)(1), the individual
21 may be ordered by the Secretary of Defense to serve on active duty
22 in the armed forces of the United States for a period of not more than
23 2 years. In cases of hardship as determined by the Secretary of Trans-
24 portation, the Secretary of Transportation may waive this paragraph
25 in whole or in part.

26 “(2) RECOVERY OF COST.—If the Secretary of Defense is unable or
27 unwilling to order an individual to serve on active duty under para-
28 graph (1), or if the Secretary of Transportation determines that reim-
29 bursement of the cost of education provided would better serve the in-
30 terests of the United States, the Secretary of Transportation may re-
31 cover from the individual the amount of student incentive payments,
32 plus interest and attorney fees. The Secretary may reduce the amount
33 to be recovered to reflect partial performance of service obligations and
34 other factors the Secretary determines merit a reduction.

35 “(f) FAILURE TO CARRY OUT OTHER REQUIREMENTS.—

36 “(1) ACTIVE DUTY.—If the Secretary of Transportation determines
37 that an individual has failed to fulfill any part of the agreement de-
38 scribed in subsection (d)(2)–(6), the individual may be ordered to serve
39 on active duty for a period of at least 2 years but not more than the
40 unexpired period (as determined by the Secretary) of the service re-
41 quired by subsection (d)(5). The Secretary of Transportation, in con-

1 sultation with the Secretary of Defense, shall determine in which serv-
 2 ice the individual shall serve. In cases of hardship as determined by
 3 the Secretary of Transportation, the Secretary of Transportation may
 4 waive this paragraph in whole or in part.

5 “(2) RECOVERY OF COST.—If the Secretary of Defense is unable or
 6 unwilling to order an individual to serve on active duty under para-
 7 graph (1), or if the Secretary of Transportation determines that reim-
 8 bursement of the cost of education provided would better serve the in-
 9 terests of the United States, the Secretary of Transportation may re-
 10 cover from the individual the amount of student incentive payments,
 11 plus interest and attorney fees. The Secretary may reduce the amount
 12 to be recovered to reflect partial performance of service obligations and
 13 other factors the Secretary determines merit a reduction.

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

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

19 “(2) make use of the Federal debt collection procedures in chapter
 20 176 of title 28 or other applicable administrative remedies.

21 **“§ 51510. Deferment of service obligation under student in-**
 22 **centive payment agreements**

23 “The Secretary of Transportation may defer the service commitment of
 24 an individual under section 51509(d)(5) of this title (as specified in the
 25 agreement under section 51509) for not more than 2 years if the individual
 26 is engaged in a graduate course of study approved by the Secretary. How-
 27 ever, deferment of service as a commissioned officer on active duty must be
 28 approved by the Secretary of the affected military department (or the Sec-
 29 retary of Commerce, for service with the National Oceanic and Atmospheric
 30 Administration).

31 **“§ 51511. Midshipman status in the Naval Reserve**

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

35 **“CHAPTER 517—OTHER SUPPORT FOR MERCHANT**
 36 **MARINE TRAINING**

“Sec.

“51701. United States Maritime Service.

“51702. Civilian nautical schools.

“51703. Additional training.

“51704. Training for maritime oil pollution prevention, response, and clean-up.

“§ 51701. United States Maritime Service

“(a) GENERAL AUTHORITY.—The Secretary of Transportation may establish and maintain a voluntary organization, to be known as the United States Maritime Service, for the training of citizens of the United States to serve on merchant vessels of the United States.

“(b) SPECIFIC AUTHORITY.—The Secretary may—

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

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

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

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

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

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

“§ 51702. Civilian nautical schools

“(a) DEFINITION.—In this section, the term ‘civilian nautical school’ means a school operated in the United States (except the United States Merchant Marine Academy, a State maritime academy, or another school operated by the United States Government) that offers instruction to individuals quartered on a vessel primarily to train them for service in the merchant marine.

“(b) INSPECTION.—Each civilian nautical school is subject to inspection by the Secretary of Transportation.

“(c) RATING AND CERTIFICATION.—The Secretary may, under regulations the Secretary may prescribe, provide for the rating and certification of civilian nautical schools as to the adequacy of their course of instruction, the competence of their instructors, and the suitability of the equipment used in their course of instruction.

“§ 51703. Additional training

“(a) GENERAL AUTHORITY.—The Secretary of Transportation may provide additional training on maritime subjects to supplement other training opportunities and make the training available to the personnel of the merchant marine of the United States and individuals preparing for a career in the merchant marine of the United States.

1 “(b) EQUIPMENT, SUPPLIES, AND CONTRACTS.—The Secretary may—

2 “(1) prepare or buy equipment or supplies required for the additional
3 training; and

4 “(2) without regard to section 3709 of the Revised Statutes (41
5 U.S.C. 5), make contracts for services the Secretary considers nec-
6 essary to prepare the equipment and supplies and to supervise and ad-
7 minister the additional training.

8 **“§ 51704. Training for maritime oil pollution prevention, re-
9 sponse, and clean-up**

10 “(a) ASSISTANCE IN ESTABLISHING PROGRAM.—The Secretary of Trans-
11 portation shall assist maritime training institutions approved by the Sec-
12 retary in establishing a training program for maritime oil pollution preven-
13 tion, response, and clean-up.

14 “(b) PROVIDING TRAINING VESSELS.—Subject to subsection (c), the Sec-
15 retary may provide, with title free of all liens, to maritime training institu-
16 tions that have a program established under subsection (a), offshore supply
17 vessels and tug/supply vessels that were built in the United States and are
18 in the possession of the Maritime Administration because of a default on
19 a loan guaranteed under chapter 537 of this title.

20 “(c) REQUIREMENTS.—In addition to any other requirements the Sec-
21 retary considers appropriate, the following requirements apply to vessels
22 provided under this section:

23 “(1) The vessel shall be offered to the institution at a location se-
24 lected by the Secretary.

25 “(2) The institution shall use the vessel to train students and appro-
26 priate maritime industry personnel in oil spill prevention, response,
27 clean-up, and related skills.

28 “(3) The institution shall make the vessel and qualified students
29 available to appropriate Federal, State, and local oil spill response au-
30 thorities when there is a maritime oil spill.

31 “(4) The institution may not sell, trade, charter, donate, scrap, or
32 in any way alter or dispose of the vessel without prior approval of the
33 Secretary.

34 “(5) The institution may not use the vessel in competition with a
35 privately-owned vessel documented under chapter 121 of this title or
36 titled under the law of a State, unless necessary to carry out this sec-
37 tion.

38 “(6) When the institution can no longer use the vessel for its train-
39 ing program, the institution shall return the vessel to the Secretary.

40 The Secretary shall take possession at the institution and thereafter

1 may provide the vessel to another institution under this section or dis-
2 pose of the vessel.

3 **“CHAPTER 519—MERCHANT MARINE AWARDS**

“Sec.

“51901. Awards for individual acts or service.

“51902. Gallant Ship Award.

“51903. Multiple awards.

“51904. Presentation to representatives.

“51905. Flags and grave markers.

“51906. Special certificates for civilian service to armed forces.

“51907. Manufacture and sale of awards and replacements.

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

4 **“§ 51901. Awards for individual acts or service**

5 “(a) GENERAL AUTHORITY.—The Secretary of Transportation may
6 award decorations and medals of appropriate design (including ribbons, rib-
7 bon bars, emblems, rosettes, miniature facsimiles, plaques, citations, or
8 other suitable devices or insignia) for individual acts or service in the mer-
9 chant marine of the United States. The design may be similar to the design
10 of a decoration or medal authorized for members of the armed forces for
11 similar acts or service.

12 “(b) SPECIFIC AUTHORITY.—The Secretary may award—

13 “(1) a Merchant Marine Distinguished Service Medal to an indi-
14 vidual for outstanding acts, conduct, or valor beyond the line of duty;

15 “(2) a Merchant Marine Meritorious Service Medal to an individual
16 for meritorious acts, conduct, or valor in the line of duty, but not of
17 the outstanding character that would warrant the award of the Mer-
18 chant Marine Distinguished Service Medal;

19 “(3) a decoration or medal to an individual for service during a war,
20 national emergency proclaimed by the President or Congress, or oper-
21 ations by the armed forces outside the continental United States under
22 conditions of danger to life and property; and

23 “(4) a decoration or medal to an individual for other acts or service
24 of conspicuous gallantry, intrepidity, and extraordinary heroism under
25 conditions of danger to life and property that would warrant a similar
26 decoration or medal for a member of the armed forces.

27 **“§ 51902. Gallant Ship Award**

28 “(a) AWARDS TO VESSELS.—The Secretary of Transportation may award
29 a Gallant Ship Award and a citation to a vessel (including a foreign vessel)
30 participating in outstanding or gallant action in a marine disaster or other
31 emergency to save life or property at sea. The Secretary may award a
32 plaque to the vessel, and a replica of the plaque may be preserved as a per-
33 manent historical record.

34 “(b) AWARDS TO CREWS.—The Secretary of Transportation may award
35 an appropriate citation ribbon bar to the master and each individual serv-

1 ing, at the time of the action, on a vessel issued an award under subsection
2 (a).

3 “(c) CONSULTATION.—The Secretary of Transportation shall consult with
4 the Secretary of State before awarding an award or citation to a foreign
5 vessel or its crew under this section.

6 **“§ 51903. Multiple awards**

7 “An individual may not be awarded more than one of any type of decora-
8 tion or medal under this chapter. For each succeeding act or service justi-
9 fying the same decoration or medal, a suitable device may be awarded to
10 be worn with the decoration or medal.

11 **“§ 51904. Presentation to representatives**

12 “If an individual to be issued an award under this chapter is unable to
13 accept the award personally, the Secretary of Transportation may present
14 the award to an appropriate representative.

15 **“§ 51905. Flags and grave markers**

16 “Except as authorized under another law, the Secretary of Transpor-
17 tation may issue, at no cost, a flag of the United States and a grave marker
18 to the family or personal representative of a deceased individual who served
19 in the merchant marine of the United States in support of the armed forces
20 of the United States or its allies during a war or national emergency.

21 **“§ 51906. Special certificates for civilian service to armed
22 forces**

23 “(a) GENERAL AUTHORITY.—The Maritime Administrator may issue a
24 special certificate to an individual, or the personal representative of an indi-
25 vidual, in recognition of service of that individual in the merchant marine
26 of the United States, if the service has been determined to be active duty
27 under section 401 of the GI Bill Improvement Act of 1977 (Public Law 95-
28 202; 38 U.S.C. 106 note).

29 “(b) RELATIONSHIP TO OTHER LAWS.—Issuance of a certificate under
30 subsection (a) does not entitle an individual to any rights, privileges, or ben-
31 efits under a law of the United States.

32 **“§ 51907. Manufacture and sale of awards and replacements**

33 “The Secretary of Transportation may—

34 “(1) authorize private persons to manufacture decorations and med-
35 als authorized under this chapter or a prior law; and

36 “(2) provide at cost, or authorize private persons to sell at reason-
37 able prices, replacements for those decorations and medals.

1 **“§ 51908. Prohibition against unauthorized manufacture,**
 2 **sale, possession, or display of awards**

3 “(a) PROHIBITION.—Except as authorized under this chapter, a person
 4 may not manufacture, sell, possess, or display a decoration or medal pro-
 5 vided for in this chapter.

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

8 **“CHAPTER 521—MISCELLANEOUS**

“Sec.

“52101. Reemployment rights for certain merchant seamen.

9 **“§ 52101. Reemployment rights for certain merchant seamen**

10 “(a) IN GENERAL.—An individual who is certified by the Secretary of
 11 Transportation under subsection (c) shall be entitled to reemployment rights
 12 and other benefits substantially equivalent to the rights and benefits pro-
 13 vided for by chapter 43 of title 38 for any member of a reserve component
 14 of the armed forces of the United States who is ordered to active duty.

15 “(b) TIME FOR APPLICATION.—An individual may submit an application
 16 for certification under subsection (c) to the Secretary not later than 45 days
 17 after the date the individual completes a period of employment described in
 18 subsection (c)(1)(A) with respect to which the application is submitted.

19 “(c) CERTIFICATION DETERMINATION.—Not later than 20 days after the
 20 date the Secretary receives from an individual an application for certifi-
 21 cation under this subsection, the Secretary shall—

22 “(1) determine whether the individual—

23 “(A) was employed in the activation or operation of a vessel—

24 “(i) in the National Defense Reserve Fleet maintained
 25 under section 11 of the Merchant Ship Sales Act of 1946 (50
 26 App. U.S.C. 1744) in a period in which the vessel was in use
 27 or being activated for use under subsection (b) of that sec-
 28 tion;

29 “(ii) requisitioned or purchased under chapter 563 of this
 30 title; or

31 “(iii) owned, chartered, or controlled by the United States
 32 Government and used by the Government for a war, armed
 33 conflict, national emergency, or maritime mobilization need
 34 (including for training purposes or testing for readiness and
 35 suitability for mission performance); and

36 “(B) during the period of that employment, possessed a valid
 37 license, certificate of registry, or merchant mariner’s document
 38 issued under chapter 71 or 73 of this title; and

1 “(2) if the Secretary makes affirmative determinations under sub-
2 paragraphs (A) and (B) of paragraph (1), certify that individual under
3 this subsection.

4 “(d) EQUIVALENCE TO MILITARY SELECTIVE SERVICE ACT CERTIFI-
5 CATE.—For purposes of reemployment rights and benefits provided by this
6 section, a certification under subsection (c) shall be considered to be the
7 equivalent of a certificate described in section 9(a) of the Military Selective
8 Service Act (50 App. U.S.C. 459(a)).

9 “PART C—FINANCIAL ASSISTANCE PROGRAMS”.

10 “(e) CHAPTERS FOLLOWING CHAPTER 531.—Subtitle V of title 46, United
11 States Code, is amended by adding at the end the following:

12 **“CHAPTER 533—CONSTRUCTION RESERVE FUNDS**

“Sec.

“53301. Definitions.

“53302. Authority for construction reserve funds.

“53303. Persons eligible to establish funds.

“53304. Vessel ownership.

“53305. Eligible fund deposits.

“53306. Recognition of gain for tax purposes.

“53307. Basis for determining gain or loss and for depreciating new vessels.

“53308. Order and proportions of deposits and withdrawals.

“53309. Accumulation of deposits.

“53310. Obligation of deposits and period for construction of certain vessels.

“53311. Taxation of deposits on failure of conditions.

“53312. Assessment and collection of deficiency tax.

13 **“§ 53301. Definitions**

14 “(a) IN GENERAL.—In this chapter:

15 “(1) CONSTRUCTION CONTRACT.—The term ‘construction contract’
16 includes, for a taxpayer constructing a new vessel in a shipyard owned
17 by that taxpayer, an agreement between the taxpayer and the Secretary
18 of Transportation for that construction containing provisions the Sec-
19 retary considers advisable to carry out this chapter.

20 “(2) NEW VESSEL.—The term ‘new vessel’ means—

21 “(A) a vessel—

22 “(i) constructed in the United States after December 31,
23 1939, constructed with a construction-differential subsidy
24 under title V of the Merchant Marine Act, 1936, or con-
25 structed with financing or a financing guarantee under chap-
26 ter 537 or 575 of this title;

27 “(ii) documented or agreed with the Secretary to be docu-
28 mented under the laws of the United States; and

29 “(iii)(I) of a type, size, and speed that the Secretary deter-
30 mines is suitable for use on the high seas or Great Lakes in
31 carrying out this subtitle, but not less than 2,000 gross tons
32 or less than 12 knots speed unless the Secretary certifies in
33 each case that a vessel of lesser tonnage or speed is desirable

1 for use by the United States Government in case of war or
2 national emergency; or

3 “(II) constructed to replace a vessel bought or requisitioned
4 by the Government; and

5 “(B) a vessel reconstructed or reconditioned for use only on the
6 Great Lakes, including the Saint Lawrence River and Gulf, if the
7 Secretary finds that the reconstruction or reconditioning will pro-
8 mote the objectives of this subtitle.

9 “(b) ADDITIONAL TAX-RELATED TERMS.—Other terms used in this
10 chapter have the same meaning as in chapter 1 of the Internal Revenue
11 Code of 1986 (26 U.S.C. ch. 1).

12 **“§ 53302. Authority for construction reserve funds**

13 “(a) GENERAL AUTHORITY.—An eligible person under section 53303 of
14 this title may establish a construction reserve fund for the construction, re-
15 construction, reconditioning, or acquisition of a new vessel or for other pur-
16 poses authorized by this chapter.

17 “(b) APPLICATION OF CERTAIN LAWS AND REGULATIONS.—The fund
18 shall be established, maintained, expended, and used as provided by this
19 chapter and regulations prescribed jointly by the Secretary of Transpor-
20 tation and the Secretary of the Treasury.

21 **“§ 53303. Persons eligible to establish funds**

22 “A construction reserve fund may be established by a citizen of the
23 United States that—

24 “(1) is operating a vessel in the foreign or domestic commerce of the
25 United States or in the fisheries;

26 “(2) owns, in whole or in part, a vessel being operated in the foreign
27 or domestic commerce of the United States or in the fisheries;

28 “(3) was operating a vessel in the foreign or domestic commerce of
29 the United States or in the fisheries when it was bought or requi-
30 sitioned by the United States Government;

31 “(4) owned, in whole or in part, a vessel being operated in the for-
32 eign or domestic commerce of the United States or in the fisheries
33 when it was bought or requisitioned by the Government; or

34 “(5) had acquired or was having constructed a vessel to operate in
35 the foreign or domestic commerce of the United States or in the fish-
36 eries when it was bought or requisitioned by the Government.

37 **“§ 53304. Vessel ownership**

38 “In this chapter, a vessel is deemed to be constructed or acquired by a
39 taxpayer if constructed or acquired by a corporation when the taxpayer
40 owns at least 95 percent of each class of stock of the corporation.

1 **“§ 53305. Eligible fund deposits**

2 “A construction reserve fund may include deposits of—

3 “(1) the proceeds from the sale of a vessel;

4 “(2) indemnities for the loss of a vessel;

5 “(3) earnings from the operation of a documented vessel and from
6 services incident to the operation; and

7 “(4) interest or other amounts accrued on deposits in the fund.

8 **“§ 53306. Recognition of gain for tax purposes**

9 “(a) DEFINITIONS.—In this section, the terms ‘net proceeds’ and ‘net in-
10 demnity’ mean the sum of—

11 “(1) the adjusted basis of the vessel; and

12 “(2) the amount of gain the taxpayer would recognize without regard
13 to this section.

14 “(b) RECOGNITION OF GAIN.—In computing net income under the income
15 or excess profits tax laws of the United States, a taxpayer does not recog-
16 nize a gain on the sale or the actual or constructive total loss of a vessel
17 if the taxpayer—

18 “(1) deposits an amount equal to the net proceeds of the sale or the
19 net indemnity for the loss in a construction reserve fund within 60 days
20 after receiving the payment of proceeds or indemnity; and

21 “(2) elects under this section not to recognize the gain.

22 “(c) WHEN ELECTION MUST BE MADE.—

23 “(1) IN GENERAL.—Except as provided in paragraph (2), the tax-
24 payer must make the election referred to in subsection (b) in the tax-
25 payer’s income tax return for the taxable year in which the gain was
26 realized.

27 “(2) RECEIPT AFTER TAXABLE YEAR.—If the vessel is bought or
28 requisitioned by the United States Government, or is lost, and the tax-
29 payer receives payment for the vessel or indemnity for the loss from
30 the Government after the end of the taxable year in which it was
31 bought, requisitioned, or lost, the taxpayer must make the election re-
32 ferred to in subsection (b) within 60 days after receiving the payment
33 or indemnity, on a form prescribed by the Secretary of the Treasury.

34 “(d) EFFECT OF STATUTE OF LIMITATION.—If the taxpayer makes an
35 election under subsection (c)(2), and computation or recomputation under
36 this section is otherwise allowable but is prevented by a statute of limitation
37 on the date the election is made or within 6 months thereafter, the com-
38 putation or recomputation nevertheless shall be made notwithstanding the
39 statute if the taxpayer files a claim for the computation or recomputation
40 within 6 months after the date of making the election.

1 **“§ 53307. Basis for determining gain or loss and for depre-**
 2 **ciating new vessels**

3 “Under the income or excess profits tax laws of the United States, the
 4 basis for determining a gain or loss and for depreciation of a new vessel
 5 constructed, reconstructed, reconditioned, or acquired by the taxpayer, or
 6 for which purchase-money indebtedness is liquidated as provided in section
 7 53310 of this title, with amounts from a construction reserve fund, shall
 8 be reduced by that part of the deposits in the fund expended in the con-
 9 struction, reconstruction, reconditioning, acquisition, or liquidation of pur-
 10 chase-money indebtedness of the new vessel that represents a gain not rec-
 11 ognized for tax purposes under section 53306 of this title.

12 **“§ 53308. Order and proportions of deposits and with-**
 13 **drawals**

14 “In this chapter—

15 “(1) if the net proceeds of a sale or the net indemnity for a loss is
 16 deposited in more than one deposit, the amount consisting of the gain
 17 shall be deemed to be deposited first;

18 “(2) amounts expended, obligated, or otherwise withdrawn shall be
 19 applied against the amounts deposited in the fund in the order of de-
 20 posit; and

21 “(3) if a deposit consists in part of a gain not recognized under sec-
 22 tion 53306 of this title, any expenditure, obligation, or withdrawal ap-
 23 plied against that deposit shall be deemed to be a gain in the propor-
 24 tion that the part of the deposit consisting of a gain bears to the total
 25 amount of the deposit.

26 **“§ 53309. Accumulation of deposits**

27 “For any taxable year, amounts on deposit in a construction reserve fund
 28 on the last day of the taxable year, for which the requirements of section
 29 53310 of this title have been satisfied (to the extent they apply on the last
 30 day of the taxable year), are deemed to have been retained for the reason-
 31 able needs of the business within the meaning of section 537(a) of the Inter-
 32 nal Revenue Code of 1986 (26 U.S.C. 537(a)).

33 **“§ 53310. Obligation of deposits and period for construction**
 34 **of certain vessels**

35 “(a) APPLICATION OF SECTIONS 53306 AND 53309.—Sections 53306 and
 36 53309 of this title apply to a deposit in a construction reserve fund only
 37 if, within 3 years after the date of the deposit (and any extension under
 38 subsection (c))—

39 “(1)(A) a contract is made for the construction or acquisition of a
 40 new vessel or, with the approval of the Secretary of Transportation, for

1 a part interest in a new vessel or for the reconstruction or recondi-
2 tioning of a new vessel;

3 “(B) the deposit is expended or obligated for expenditure under that
4 contract;

5 “(C) at least 12.5 percent of the construction or contract price of
6 the vessel is paid or irrevocably committed for payment; and

7 “(D) the plans and specifications for the vessel are approved by the
8 Secretary to the extent the Secretary considers necessary; or

9 “(2) the deposit is expended or obligated for expenditure for the liq-
10 uidation of existing or subsequently incurred purchase-money indebted-
11 ness to a person not a parent company of, or a company affiliated or
12 associated with, the mortgagor on a new vessel.

13 “(b) **ADDITIONAL REQUIREMENTS FOR CERTAIN VESSELS.**—In addition
14 to the requirements of subsection (a)(1), for a vessel not constructed under
15 a construction-differential subsidy contract or not bought from the Sec-
16 retary of Transportation—

17 “(1) at least 5 percent of the construction (or, if the contract covers
18 more than one vessel, at least 5 percent of the construction of the first
19 vessel) must be completed within 6 months after the date of the con-
20 struction contract (or within the period of an extension under sub-
21 section (c)), as estimated by the Secretary and certified by the Sec-
22 retary to the Secretary of the Treasury; and

23 “(2) construction under the contract must be completed with reason-
24 able dispatch thereafter.

25 “(c) **EXTENSIONS.**—The Secretary of Transportation may grant exten-
26 sions of the period within which the deposits must be expended or obligated
27 or within which the construction must have progressed to the extent of 5
28 percent completion under this section. However, the extensions may not be
29 for a total of more than 2 years for the expenditure or obligation of deposits
30 or one year for the progress of construction.

31 **“§ 53311. Taxation of deposits on failure of conditions**

32 “A deposited gain, if otherwise taxable income under the law applicable
33 to the taxable year in which the gain was realized, shall be included in gross
34 income for that taxable year, except for purposes of the declared value ex-
35 cess profits tax and the capital stock tax, if—

36 “(1) the deposited gain is not expended or obligated within the ap-
37 appropriate period under section 53310 of this title;

38 “(2) the deposited gain is withdrawn before the end of that period;

39 “(3) the construction related to that deposited gain has not pro-
40 gressed to the extent of 5 percent of completion within the appropriate
41 period under section 53310 of this title; or

1 “(4) the Secretary of Transportation finds and certifies to the Sec-
2 retary of the Treasury that, for causes within the control of the tax-
3 payer, the entire construction related to that deposited gain is not com-
4 pleted with reasonable dispatch.

5 **“§ 53312. Assessment and collection of deficiency tax**

6 “Notwithstanding any other provision of law, a deficiency in tax for a tax-
7 able year resulting from the inclusion of an amount in gross income as pro-
8 vided by section 53311 of this title, and the amount to be treated as a defi-
9 ciency under section 53311 instead of as an adjustment for the declared
10 value excess profits tax, may be assessed or a civil action may be brought
11 to collect the deficiency without assessment, at any time. Interest on a defi-
12 ciency or amount to be treated as a deficiency does not begin until the date
13 the deposited gain or part of the deposited gain in question is required to
14 be included in gross income under section 51111.

15 **“CHAPTER 535—CAPITAL CONSTRUCTION FUNDS**

“Sec.

“53501. Definitions.

“53502. Regulations.

“53503. Establishing a capital construction fund.

“53504. Deposits and withdrawals.

“53505. Ceiling on deposits.

“53506. Investment and fiduciary requirements.

“53507. Nontaxation of deposits.

“53508. Separate accounts within a fund.

“53509. Qualified withdrawals.

“53510. Tax treatment of qualified withdrawals and basis of property.

“53511. Tax treatment of nonqualified withdrawals.

“53512. FIFO and LIFO withdrawals.

“53513. Corporate reorganizations and partnership changes.

“53514. Relationship of old fund to new fund.

“53515. Records and reports.

“53516. Termination of agreement after change in regulations.

“53517. Reports.

16 **“§ 53501. Definitions**

17 “In this chapter:

18 “(1) AGREEMENT VESSEL.—The term ‘agreement vessel’ means—

19 “(A) an eligible vessel or a qualified vessel that is subject to an
20 agreement under this chapter; and

21 “(B) a barge or container that is part of the complement of a
22 vessel described in subparagraph (A) if provided for in the agree-
23 ment.

24 “(2) ELIGIBLE VESSEL.—The term ‘eligible vessel’ means—

25 “(A) a vessel—

26 “(i) constructed in the United States (and, if recon-
27 structed, reconstructed in the United States), constructed
28 outside the United States but documented under the laws of
29 the United States on April 15, 1970, or constructed outside

1 the United States for use in the United States foreign trade
 2 pursuant to a contract made before April 15, 1970;

3 “(ii) documented under the laws of the United States; and

4 “(iii) operated in the foreign or domestic trade of the
 5 United States or in the fisheries of the United States; and

6 “(B) a commercial fishing vessel—

7 “(i) constructed in the United States and, if reconstructed,
 8 reconstructed in the United States;

9 “(ii) of at least 2 net tons but less than 5 net tons;

10 “(iii) owned by a citizen of the United States;

11 “(iv) having its home port in the United States; and

12 “(v) operated in the commercial fisheries of the United
 13 States.

14 “(3) JOINT REGULATIONS.—The term ‘joint regulations’ means reg-
 15 ulations prescribed jointly by the Secretary and the Secretary of the
 16 Treasury under section 53502(b) of this title.

17 “(4) NONCONTIGUOUS TRADE.—The term ‘noncontiguous trade’
 18 means—

19 “(A) trade between—

20 “(i) one of the contiguous 48 States; and

21 “(ii) Alaska, Hawaii, Puerto Rico, or an insular territory
 22 or possession of the United States; and

23 “(B) trade between—

24 “(i) a place in Alaska, Hawaii, Puerto Rico, or an insular
 25 territory or possession of the United States; and

26 “(ii) another place in Alaska, Hawaii, Puerto Rico, or an
 27 insular territory or possession of the United States.

28 “(5) QUALIFIED VESSEL.—The term ‘qualified vessel’ means—

29 “(A) a vessel—

30 “(i) constructed in the United States (and, if recon-
 31 structed, reconstructed in the United States), constructed
 32 outside the United States but documented under the laws of
 33 the United States on April 15, 1970, or constructed outside
 34 the United States for use in the United States foreign trade
 35 pursuant to a contract made before April 15, 1970;

36 “(ii) documented under the laws of the United States; and

37 “(iii) agreed, between the Secretary and the person main-
 38 taining the capital construction fund established under sec-
 39 tion 53503 of this title, to be operated in the United States
 40 foreign, Great Lakes, or noncontiguous domestic trade or in
 41 the fisheries of the United States; and

1 “(B) a commercial fishing vessel—
 2 “(i) constructed in the United States and, if reconstructed,
 3 reconstructed in the United States;
 4 “(ii) of at least 2 net tons but less than 5 net tons;
 5 “(iii) owned by a citizen of the United States;
 6 “(iv) having its home port in the United States; and
 7 “(v) operated in the commercial fisheries of the United
 8 States.

9 “(6) SECRETARY.—The term ‘Secretary’ means—
 10 “(A) the Secretary of Commerce with respect to an eligible ves-
 11 sel or a qualified vessel operated or to be operated in the fisheries
 12 of the United States; and
 13 “(B) the Secretary of Transportation with respect to other ves-
 14 sels.

15 “(7) UNITED STATES FOREIGN TRADE.—The term ‘United States
 16 foreign trade’ includes those areas in domestic trade in which a vessel
 17 built with a construction-differential subsidy is allowed to operate
 18 under the first sentence of section 506 of the Merchant Marine Act,
 19 1936.

20 “(8) VESSEL.—The term ‘vessel’ includes—
 21 “(A) cargo handling equipment that the Secretary determines is
 22 intended for use primarily on the vessel; and
 23 “(B) an ocean-going towing vessel, an ocean-going barge, or a
 24 comparable towing vessel or barge operated on the Great Lakes.

25 **“§ 53502. Regulations**

26 “(a) IN GENERAL.—Except as provided in subsection (b), the Secretary
 27 shall prescribe regulations to carry out this chapter.

28 “(b) TAX LIABILITY.—The Secretary and the Secretary of the Treasury
 29 shall prescribe joint regulations for the determination of tax liability under
 30 this chapter.

31 **“§ 53503. Establishing a capital construction fund**

32 “(a) IN GENERAL.—A citizen of the United States owning or leasing an
 33 eligible vessel may make an agreement with the Secretary under this chap-
 34 ter to establish a capital construction fund for the vessel.

35 “(b) ALLOWABLE PURPOSE.—The purpose of the agreement shall be to
 36 provide replacement vessels, additional vessels, or reconstructed vessels,
 37 built in the United States and documented under the laws of the United
 38 States, for operation in the United States foreign, Great Lakes, or non-
 39 contiguous domestic trade or in the fisheries of the United States.

“§ 53504. Deposits and withdrawals

“(a) REQUIRED DEPOSITS.—An agreement to establish a capital construction fund shall provide for the deposit in the fund of the amounts agreed to be appropriate to provide for qualified withdrawals under section 53509 of this title.

“(b) APPLICABLE REQUIREMENTS.—Deposits in and withdrawals from the fund are subject to the requirements included in the agreement or prescribed by the Secretary by regulation. However, the Secretary may not require a person to deposit in the fund for a taxable year more than 50 percent of that portion of the person’s taxable income for that year (as determined under section 53505(a)(1) of this title) that is attributable to the operation of an agreement vessel.

“§ 53505. Ceiling on deposits

“(a) MAXIMUM DEPOSITS.—The amount deposited in a capital construction fund for a taxable year may not exceed the sum of—

“(1) that portion of the taxable income of the owner or lessee for the taxable year (computed under chapter 1 of the Internal Revenue Code of 1986 (26 U.S.C. ch. 1) but without regard to the carryback of net operating loss or net capital loss or this chapter) that is attributable to the operation of agreement vessels in the foreign or domestic trade of the United States or in the fisheries of the United States;

“(2) the amount allowable as a deduction under section 167 of such Code (26 U.S.C. 167) for the taxable year for agreement vessels;

“(3) if the transaction is not taken into account for purposes of paragraph (1), the net proceeds (as defined in joint regulations) from the disposition of an agreement vessel or from insurance or indemnity attributable to an agreement vessel; and

“(4) the receipts from the investment or reinvestment of amounts held in the fund.

“(b) REDUCTIONS FOR LESSEES.—For a lessee, the maximum amount that may be deposited for an agreement vessel under subsection (a)(2) for any period shall be reduced by any amount the owner is required or permitted, under the capital construction fund agreement, to deposit for that period for the vessel under subsection (a)(2).

“§ 53506. Investment and fiduciary requirements

“(a) IN GENERAL.—Amounts in a capital construction fund shall be kept in the depository specified in the agreement and shall be subject to trustee and other fiduciary requirements prescribed by the Secretary. Except as provided in subsection (b), amounts in the fund may be invested only in interest-bearing securities approved by the Secretary.

“(b) STOCK INVESTMENTS.—

1 “(1) IN GENERAL.—With the approval of the Secretary, an agreed
2 percentage (but not more than 60 percent) of the assets of the fund
3 may be invested in the stock of domestic corporations that—

4 “(A) is fully listed and registered on an exchange registered
5 with the Securities and Exchange Commission as a national secu-
6 rities exchange; and

7 “(B) would be acquired by a prudent investor seeking a reason-
8 able income and the preservation of capital.

9 “(2) PREFERRED STOCK.—The preferred stock of a corporation is
10 deemed to satisfy the requirements of this subsection, even though it
11 may not be registered and listed because it is nonvoting stock, if the
12 common stock of the corporation satisfies the requirements and the
13 preferred stock otherwise would satisfy the requirements.

14 “(c) MAINTAINING AGREED PERCENTAGE.—If at any time the fair mar-
15 ket value of the stock in the fund is more than the agreed percentage of
16 the assets in the fund, any subsequent investment of amounts deposited in
17 the fund, and any subsequent withdrawal from the fund, shall be made in
18 a way that tends to restore the fair market value of the stock to not more
19 than the agreed percentage.

20 **“§ 53507. Nontaxation of deposits**

21 “(a) TAX TREATMENT.—Subject to subsection (b), under the Internal
22 Revenue Code of 1986 (26 U.S.C. 1 et seq.)—

23 “(1) taxable income (determined without regard to this chapter and
24 section 7518 of such Code (26 U.S.C. 7518)) for the taxable year shall
25 be reduced by the amount deposited for the taxable year out of
26 amounts referred to in section 53505(a)(1) of this title;

27 “(2) a gain from a transaction referred to in section 53505(a)(3) of
28 this title shall not be taken into account if an amount equal to the net
29 proceeds (as defined in joint regulations) from the transaction is depos-
30 ited in the fund;

31 “(3) the earnings (including gains and losses) from the investment
32 and reinvestment of amounts held in the fund shall not be taken into
33 account;

34 “(4) the earnings and profits of a corporation (within the meaning
35 of section 316 of such Code (26 U.S.C. 316)) shall be determined with-
36 out regard to this chapter and section 7518 of such Code (26 U.S.C.
37 7518); and

38 “(5) in applying the tax imposed by section 531 of such Code (26
39 U.S.C. 531), amounts held in the fund shall not be taken into account.

1 “(b) CONDITION.—This section applies to an amount only if the amount
2 is deposited in the fund under the agreement within the time provided in
3 joint regulations.

4 **“§ 53508. Separate accounts within a fund**

5 “(a) IN GENERAL.—A capital construction fund shall have three ac-
6 counts:

7 “(1) The capital account.

8 “(2) The capital gain account.

9 “(3) The ordinary income account.

10 “(b) CAPITAL ACCOUNT.—The capital account shall consist of—

11 “(1) amounts referred to in section 53505(a)(2) of this title;

12 “(2) amounts referred to in section 53505(a)(3) of this title, except
13 that portion representing a gain not taken into account because of sec-
14 tion 53507(a)(2) of this title;

15 “(3) the percentage applicable under section 243(a)(1) of the Inter-
16 nal Revenue Code of 1986 (26 U.S.C. 243(a)(1)) of any dividend re-
17 ceived by the fund for which the person maintaining the fund would
18 be allowed (were it not for section 53507(a)(3) of this title) a deduction
19 under section 243 of such Code (26 U.S.C. 243); and

20 “(4) interest income exempt from taxation under section 103 of such
21 Code (26 U.S.C. 103).

22 “(c) CAPITAL GAIN ACCOUNT.—The capital gain account shall consist
23 of—

24 “(1) amounts representing capital gains on assets held for more than
25 6 months and referred to in section 53505(a)(3) or (4) of this title;
26 minus

27 “(2) amounts representing capital losses on assets held in the fund
28 for more than 6 months.

29 “(d) ORDINARY INCOME ACCOUNT.—The ordinary income account shall
30 consist of—

31 “(1) amounts referred to in section 53505(a)(1) of this title;

32 “(2)(A) amounts representing capital gains on assets held for not
33 more than 6 months and referred to in section 53505(a)(3) or (4) of
34 this title; minus

35 “(B) amounts representing capital losses on assets held in the fund
36 for not more than 6 months;

37 “(3) interest (except tax-exempt interest referred to in subsection
38 (b)(4)) and other ordinary income (except any dividend referred to in
39 paragraph (5)) received on assets held in the fund;

40 “(4) ordinary income from a transaction described in section
41 53505(a)(3) of this title; and

1 “(5) that portion of any dividend referred to in subsection (b)(3) not
2 taken into account under subsection (b)(3).

3 “(e) WHEN LOSSES ALLOWED.—Except on termination of a fund, capital
4 losses referred to in subsection (c) or (d)(2) shall be allowed only as an off-
5 set to gains referred to in subsection (c) or (d)(2), respectively.

6 **“§ 53509. Qualified withdrawals**

7 “(a) IN GENERAL.—Subject to subsection (b), a withdrawal from a cap-
8 ital construction fund is a qualified withdrawal if it is made under the terms
9 of the agreement and is for—

10 “(1) the acquisition, construction, or reconstruction of a qualified
11 vessel or a barge or container that is part of the complement of a quali-
12 fied vessel; or

13 “(2) the payment of the principal on indebtedness incurred in the
14 acquisition, construction, or reconstruction of a qualified vessel or a
15 barge or container that is part of the complement of a qualified vessel.

16 “(b) BARGES AND CONTAINERS.—Except as provided in regulations pre-
17 scribed by the Secretary, subsection (a) applies to a barge or container only
18 if it is constructed in the United States.

19 “(c) TREATMENT AS NONQUALIFIED WITHDRAWAL.—Under joint regula-
20 tions, if the Secretary determines that a substantial obligation under an
21 agreement is not being fulfilled, the Secretary, after notice and opportunity
22 for a hearing to the person maintaining the fund, may treat any amount
23 in the fund as an amount withdrawn from the fund in a nonqualified with-
24 drawal.

25 **“§ 53510. Tax treatment of qualified withdrawals and basis**
26 **of property**

27 “(a) ORDER OF WITHDRAWALS.—A qualified withdrawal from a capital
28 construction fund shall be treated as made—

29 “(1) first from the capital account;

30 “(2) second from the capital gain account; and

31 “(3) third from the ordinary income account.

32 “(b) ORDINARY INCOME ACCOUNT WITHDRAWALS.—If a portion of a
33 qualified withdrawal for a vessel, barge, or container is made from the ordi-
34 nary income account, the basis of the vessel, barge, or container shall be
35 reduced by an amount equal to that portion.

36 “(c) CAPITAL GAIN ACCOUNT WITHDRAWALS.—If a portion of a qualified
37 withdrawal for a vessel, barge, or container is made from the capital gain
38 account, the basis of the vessel, barge, or container shall be reduced by an
39 amount equal to that portion.

40 “(d) WITHDRAWALS TO PAY PRINCIPAL.—If a portion of a qualified
41 withdrawal to pay the principal on indebtedness is made from the ordinary

1 income account or the capital gain account, an amount equal to the total
 2 reduction that would be required by subsections (b) and (c) if the with-
 3 drawal were a qualified withdrawal for a purpose described in those sub-
 4 sections shall be applied, in the order provided in joint regulations, to re-
 5 duce the basis of vessels, barges, and containers owned by the person main-
 6 taining the fund. The remaining amount of the withdrawal shall be treated
 7 as a nonqualified withdrawal.

8 “(e) GAIN ON PROPERTY WITH REDUCED BASIS.—If property, the basis
 9 of which was reduced under subsection (b), (c), or (d), is disposed of, any
 10 gain realized on the disposition, to the extent it does not exceed the total
 11 reduction in the basis of the property under those subsections, shall be
 12 treated as an amount referred to in section 53511(c)(1) of this title with-
 13 drawn on the date of disposition of the property. Subject to conditions pre-
 14 scribed in joint regulations, this subsection does not apply to a disposition
 15 if there is a redeposit, in an amount determined under joint regulations,
 16 that restores the fund as far as practicable to the position it was in before
 17 the withdrawal.

18 **“§ 53511. Tax treatment of nonqualified withdrawals**

19 “(a) IN GENERAL.—Except as provided in section 53513 of this title, a
 20 withdrawal from a fund that is not a qualified withdrawal shall be treated
 21 as a nonqualified withdrawal.

22 “(b) ORDER OF WITHDRAWALS.—A nonqualified withdrawal shall be
 23 treated as made—

24 “(1) first from the ordinary income account;

25 “(2) second from the capital gain account; and

26 “(3) third from the capital account.

27 “(c) TAX TREATMENT.—For purposes of the Internal Revenue Code of
 28 1986 (26 U.S.C. 1 et seq.)—

29 “(1) a nonqualified withdrawal from the ordinary income account
 30 shall be included in income as an item of ordinary income for the tax-
 31 able year in which the withdrawal is made;

32 “(2) a nonqualified withdrawal from the capital gain account shall
 33 be included in income for the taxable year in which the withdrawal is
 34 made as an item of gain realized during that year from the disposition
 35 of an asset held for more than 6 months; and

36 “(3) for the period through the last date prescribed for payment of
 37 tax for the taxable year in which the withdrawal is made—

38 “(A) no interest shall be payable under section 6601 of such
 39 Code (26 U.S.C. 6601) and no addition to the tax shall be payable
 40 under section 6651 of such Code (26 U.S.C. 6651);

1 “(B) interest on the amount of the additional tax attributable
 2 to an amount treated as a nonqualified withdrawal from the ordi-
 3 nary income account or the capital gain account shall be paid at
 4 the rate determined under subsection (d) from the last date pre-
 5 scribed for payment of the tax for the taxable year for which the
 6 amount was deposited in the fund; and

7 “(C) no interest shall be payable on amounts treated as with-
 8 drawn on a last-in-first-out basis under section 53512 of this title.

9 “(d) INTEREST RATE.—The rate of interest under subsection (c)(3)(B)
 10 for a nonqualified withdrawal made in a taxable year beginning after 1971
 11 shall be determined and published jointly by the Secretary and the Secretary
 12 of the Treasury. The rate shall be such that its relationship to 8 percent
 13 is comparable, as determined by the Secretaries under joint regulations, to
 14 the relationship between—

15 “(1) the money rates and investment yields for the calendar year im-
 16 mediately before the beginning of the taxable year; and

17 “(2) the money rates and investment yields for the calendar year
 18 1970.

19 “(e) NONQUALIFIED WITHDRAWALS.—

20 “(1) IN GENERAL.—The following applicable percentage of any
 21 amount that remains in a capital construction fund at the close of the
 22 following specified taxable year following the taxable year for which the
 23 amount was deposited shall be treated as a nonqualified withdrawal:

“If the amount remains in the fund at the close of the—	The applicable percentage is—
“26th taxable year	20 percent
“27th taxable year	40 percent
“28th taxable year	60 percent
“29th taxable year	80 percent
“30th taxable year	100 percent.

24 “(2) EARNINGS.—The earnings of a capital construction fund for
 25 any taxable year (except net gains) shall be treated under this sub-
 26 section as an amount deposited for the taxable year.

27 “(3) CONTRACT FOR QUALIFIED WITHDRAWAL.—Under paragraph
 28 (1), an amount shall not be treated as remaining in a capital construc-
 29 tion fund at the close of a taxable year to the extent there is a binding
 30 contract at the close of the taxable year for a qualified withdrawal of
 31 the amount for an identified item for which the withdrawal may be
 32 made.

33 “(4) EXCESS EARNINGS.—If the Secretary determines that the bal-
 34 ance in a capital construction fund exceeds the amount appropriate to
 35 meet the vessel construction program objectives of the person that es-
 36 tablished the fund, the amount of the excess shall be treated as a non-

1 qualified withdrawal under paragraph (1) unless the person develops
2 appropriate program objectives within 3 years to dissipate the excess.

3 “(5) AMOUNTS IN FUND ON JANUARY 1, 1987.—Under this sub-
4 section, amounts in a capital construction fund on January 1, 1987,
5 shall be treated as having been deposited in that fund on that date.

6 “(f) TAX DETERMINATIONS.—

7 “(1) IN GENERAL.—For a taxable year for which there is a non-
8 qualified withdrawal (including an amount treated as a nonqualified
9 withdrawal under subsection (e)), the tax imposed by chapter 1 of the
10 Internal Revenue Code of 1986 (26 U.S.C. ch. 1) shall be determined
11 by—

12 “(A) excluding the withdrawal from gross income; and

13 “(B) increasing the tax imposed by chapter 1 of such Code by
14 the product of the amount of the withdrawal and the highest tax
15 rate specified in section 1 (or section 11 for a corporation) of such
16 Code (26 U.S.C. 1, 11).

17 “(2) MAXIMUM TAX RATE.—For that portion of a nonqualified with-
18 drawal made from the capital gain account during a taxable year to
19 which section 1(h) or 1201(a) of such Code (26 U.S.C. 1(h), 1201(a))
20 applies, the tax rate used under paragraph (1)(B) may not exceed 15
21 percent (or 34 percent for a corporation).

22 “(3) TAX BENEFIT RULE.—If any portion of a nonqualified with-
23 drawal is properly attributable to deposits (except earnings on deposits)
24 made by the taxpayer in a taxable year that did not reduce the tax-
25 payer’s liability for tax under chapter 1 of such Code (26 U.S.C. ch.
26 1) for a taxable year before the taxable year in which the withdrawal
27 occurs—

28 “(A) that portion shall not be taken into account under para-
29 graph (1); and

30 “(B) an amount equal to that portion shall be allowed as a de-
31 duction under section 172 of such Code (26 U.S.C. 172) for the
32 taxable year in which the withdrawal occurs.

33 “(4) COORDINATION WITH DEDUCTION FOR NET OPERATING
34 LOSSES.—A nonqualified withdrawal excluded from gross income under
35 paragraph (1) shall be excluded in determining taxable income under
36 section 172(b)(2) of such Code (26 U.S.C. 172(b)(2)).

37 **“§ 53512. FIFO and LIFO withdrawals**

38 “(a) FIFO.—Except as provided in subsection (b), an amount withdrawn
39 from an account under this chapter shall be treated as withdrawn on a first-
40 in-first-out basis.

1 “(b) LIFO.—An amount withdrawn from an account under this chapter
2 shall be treated as withdrawn on a last-in-first-out basis if it is—

3 “(1) a nonqualified withdrawal for research, development, and design
4 expenses incident to new and advanced vessel design, machinery, and
5 equipment; or

6 “(2) an amount treated as a nonqualified withdrawal under section
7 53510(d) of this title.

8 **“§ 53513. Corporate reorganizations and partnership**
9 **changes**

10 “Under joint regulations—

11 “(1) a transfer of a capital construction fund from one person to an-
12 other person in a transaction to which section 381 of the Internal Rev-
13 enue Code of 1986 (26 U.S.C. 381) applies may be treated as if the
14 transaction is not a nonqualified withdrawal; and

15 “(2) a similar rule shall be applied to a continuation of a partnership
16 (within the meaning of subchapter K of chapter 1 of such Code (26
17 U.S.C. 701 et seq.)).

18 **“§ 53514. Relationship of old fund to new fund**

19 “(a) DEFINITION.—In this section, the term ‘old fund’ means a capital
20 construction fund maintained before October 21, 1970.

21 “(b) ELECTION TO MAINTAIN OLD FUND.—A person maintaining an old
22 fund may elect to continue the old fund, but may not—

23 “(1) hold amounts in the old fund beyond the expiration date pro-
24 vided in the agreement under which the old fund is maintained (deter-
25 mined without regard to an extension or renewal made after April 14,
26 1970); or

27 “(2) maintain simultaneously the old fund and a new fund estab-
28 lished under this chapter.

29 “(c) APPLICATION OF NEW FUND AGREEMENT TO OLD FUND
30 AMOUNTS.—If a person makes an agreement under this chapter to establish
31 a new fund, the person may agree to extend the agreement to some or all
32 of the amounts in an old fund. Each item in the old fund to be transferred
33 shall be transferred in a nontaxable transaction to the appropriate account
34 in the new fund. For purposes of section 53511(e)(3) of this title, the date
35 of the deposit of an item so transferred shall be July 1, 1971, or the date
36 of the deposit in the old fund, whichever is later.

37 **“§ 53515. Records and reports**

38 “A person maintaining a fund under this chapter shall keep records and
39 make reports as required by the Secretary or the Secretary of the Treasury.

1 **“§ 53516. Termination of agreement after change in regula-**
 2 **tions**

3 “If, after an agreement has been made under this chapter, a change is
 4 made either in the joint regulations or in the regulations prescribed by the
 5 Secretary under this chapter that could have a substantial effect on the
 6 rights or duties of a person maintaining a fund under this chapter, that per-
 7 son may terminate the agreement.

8 **“§ 53517. Reports**

9 “(a) IN GENERAL.—Within 120 days after the close of each calendar
 10 year, the Secretary of Transportation and the Secretary of Commerce each
 11 shall provide the Secretary of the Treasury a written report on the capital
 12 construction funds under the particular Secretary’s jurisdiction for the cal-
 13 endar year.

14 “(b) CONTENTS.—The report shall state the name and taxpayer identi-
 15 fication number of each person—

16 “(1) establishing a capital construction fund during the calendar
 17 year;

18 “(2) maintaining a capital construction fund on the last day of the
 19 calendar year;

20 “(3) terminating a capital construction fund during the calendar
 21 year;

22 “(4) making a deposit to or withdrawal from a capital construction
 23 fund during the calendar year, and the amount of the deposit or with-
 24 drawal; or

25 “(5) having been determined during the calendar year to have failed
 26 to fulfill a substantial obligation under a capital construction fund
 27 agreement to which the person is a party.

28 **“CHAPTER 537—LOANS AND GUARANTEES**

“SUBCHAPTER I—GENERAL

“Sec.

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“53702. General authority.

“53703. Application procedures.

“53704. Funding limits.

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“53706. Eligible purposes of obligations.

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“53711. Security interest.

“53712. Monitoring financial condition and operations of obligor.

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“53718. Annual report to Congress.

“SUBCHAPTER II—DEFAULT PROVISIONS

- “53721. Rights of obligee.
- “53722. Actions by Secretary.
- “53723. Payments by Secretary and issuance of obligations.
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“SUBCHAPTER III—PARTICULAR PROJECTS

- “53731. Commercial demonstration ocean thermal energy conversion facilities and plantships.
- “53732. Eligible export vessels.
- “53733. Shipyard modernization and improvement.
- “53734. Replacement of vessels because of changes in operating standards.
- “53735. Fisheries financing and capacity reduction.

“SUBCHAPTER I—GENERAL

“§ 53701. Definitions

“In this chapter:

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

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

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

“(2) CONSTRUCTION, RECONSTRUCTION, AND RECONDITIONING.—The terms ‘construction’, ‘reconstruction’, and ‘reconditioning’ include designing, inspecting, outfitting, and equipping.

“(3) DEPRECIATED ACTUAL COST.—The term ‘depreciated actual cost’ of a vessel means—

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

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

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

1 “(ii) any amount paid or obligated to be paid for the recon-
 2 struction or reconditioning, depreciated on a straight line
 3 basis using a useful life of the vessel determined by the Sec-
 4 retary.

5 “(4) ELIGIBLE EXPORT VESSEL.—The term ‘eligible export vessel’
 6 means a vessel that—

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

9 “(B) will, on delivery or redelivery, become or remain docu-
 10 mented under the laws of a country other than the United States.

11 “(5) FISHERY FACILITY.—

12 “(A) IN GENERAL.—Subject to subparagraph (B), the term
 13 ‘fishery facility’ means—

14 “(i) for operations on land—

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

20 “(II) the land necessary for the structure or appur-
 21 tenance; and

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

25 “(ii) for operations not on land, a vessel built in the United
 26 States and used for, equipped to be used for, or of a type nor-
 27 mally used for, the processing of fish; or

28 “(iii) for aquaculture, including operations on land or else-
 29 where—

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

32 “(II) the land necessary for the structure or appur-
 33 tenance;

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

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

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

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

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

9 “(6) FISHING VESSEL.—The term ‘fishing vessel’ has the meaning
10 given that term in section 3 of the Magnuson-Stevens Fishery Con-
11 servation and Management Act (16 U.S.C. 1802), and any reference
12 in this chapter to a vessel designed principally for commercial use in
13 the fishing trade or industry is deemed to be a reference to a fishing
14 vessel.

15 “(7) MORTGAGE.—The term ‘mortgage’ includes—

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

18 “(B) a mortgage on a vessel that will become a preferred mort-
19 gage when filed or recorded under chapter 313 of this title.

20 “(8) OBLIGATION.—The term ‘obligation’ means an instrument of
21 indebtedness issued for a purpose described in section 53706 of this
22 title, except—

23 “(A) an obligation issued by the Secretary under section 53723
24 of this title; and

25 “(B) an obligation eligible for investment of funds under section
26 53715(f) or 53717 of this title.

27 “(9) OBLIGEE.—The term ‘obligee’ means the holder of an obliga-
28 tion.

29 “(10) OBLIGOR.—The term ‘obligor’ means a party primarily liable
30 for payment of the principal of or interest on an obligation.

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

37 “(A) equipment installed on the facility or vessel to use the elec-
38 tricity or other form of energy to produce, process, refine, or man-
39 ufacture a product;

40 “(B) a cable or pipeline used to deliver the electricity, fresh-
41 water, or product to shore; and

1 “(C) other associated equipment and appurtenances of the facil-
2 ity or vessel to the extent they are located seaward of the high
3 water mark.

4 “(12) SECRETARY.—The term ‘Secretary’ means—

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

7 “(B) the Secretary of Transportation with respect to other ves-
8 sels and general shipyard facilities (as defined in section 53733(a)
9 of this title).

10 “(13) VESSEL.—The term ‘vessel’ means any type of vessel, whether
11 in existence or under construction, including—

12 “(A) a cargo vessel;

13 “(B) a passenger vessel;

14 “(C) a combination cargo and passenger vessel;

15 “(D) a tanker;

16 “(E) a tug or towboat;

17 “(F) a barge;

18 “(G) a dredge;

19 “(H) a floating drydock with a capacity of at least 35,000 lift-
20 ing tons and a beam of at least 125 feet between the wing walls;

21 “(I) an oceanographic research vessel;

22 “(J) an instruction vessel;

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

24 “(L) a fishing vessel whose ownership meets the citizenship re-
25 quirements under section 50501 of this title for documenting ves-
26 sels to operate in the coastwise trade; and

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

29 **“§ 53702. General authority**

30 “(a) IN GENERAL.—The Secretary, on terms the Secretary may pre-
31 scribe, may guarantee or make a commitment to guarantee the payment of
32 the principal of and interest on an obligation eligible to be guaranteed under
33 this chapter. A guarantee or commitment to guarantee shall cover 100 per-
34 cent of the principal and interest.

35 “(b) DIRECT LOANS FOR FISHERIES.—

36 “(1) IN GENERAL.—Notwithstanding any other provision of this
37 chapter, any obligation involving a fishing vessel, fishery facility, aqua-
38 culture facility, individual fishing quota, or fishing capacity reduction
39 program issued under this chapter after October 11, 1996, shall be a
40 direct loan obligation for which the Secretary shall be the obligee, rath-
41 er than an obligation issued to an obligee other than the Secretary and

1 guaranteed by the Secretary. A direct loan obligation under this sub-
 2 section shall be treated in the same manner and to the same extent
 3 as an obligation guaranteed under this chapter except with respect to
 4 provisions of this chapter that by their nature can only be applied to
 5 obligations guaranteed under this chapter.

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

11 **“§ 53703. Application procedures**

12 “(a) TIME FOR DECISION.—

13 “(1) IN GENERAL.—The Secretary shall approve or deny an applica-
 14 tion for a loan guarantee under this chapter within 270 days after the
 15 date on which the signed application is received by the Secretary.

16 “(2) EXTENSION.—On request by an applicant, the Secretary may
 17 extend the 270-day period in paragraph (1) to a date not later than
 18 2 years after the date on which the signed application was received by
 19 the Secretary.

20 “(b) CERTIFICATION OF REVIEW.—The Secretary may not guarantee or
 21 make a commitment to guarantee an obligation under this chapter unless
 22 the Secretary certifies that a full and fair consideration of all the regulatory
 23 requirements, including economic soundness and financial requirements ap-
 24 plicable to the obligor and related parties, and a thorough assessment of the
 25 technical, economic, and financial aspects of the loan application, has been
 26 made.

27 **“§ 53704. Funding limits**

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

31 “(1) \$850,000,000 shall be limited to obligations related to fishing
 32 vessels and fishery facilities; and

33 “(2) \$3,000,000,000 shall be limited to obligations related to eligible
 34 export vessels.

35 “(b) ADDITIONAL LIMITATIONS.—Additional limitations may not be im-
 36 posed on new commitments to guarantee loans for any fiscal year, except
 37 in amounts established in advance by annual authorization laws. A vessel
 38 eligible for a guarantee under this chapter may not be denied eligibility be-
 39 cause of its type.

40 “(c) LIMITS BASED ON RISK FACTORS.—

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

4 “(2) SYSTEM OF RISK CATEGORIES.—The Secretary shall—

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

9 “(B) determine annually for each risk category a subsidy rate
10 equivalent to the cost of obligations in the category, expressed as
11 a percentage of the amount guaranteed for obligations in the cat-
12 egory; and

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

20 “(3) USE OF SYSTEM.—

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

26 “(B) REDUCTION OF AVAILABLE AMOUNT.—The Secretary shall
27 consider the total amount available to the Secretary for making
28 guarantees under this chapter to be reduced by the amount deter-
29 mined by multiplying—

30 “(i) the amount guaranteed under this chapter for an obli-
31 gation; by

32 “(ii) the subsidy rate for the category in which the obli-
33 gation is placed under subparagraph (A).

34 “(C) ESTIMATED COST.—The estimated cost to the United
35 States Government of a guarantee under this chapter for an obli-
36 gation is deemed to be the amount determined under subpara-
37 graph (B) for the obligation.

38 “(D) RESTRICTION ON FURTHER GUARANTEES.—The Secretary
39 may not guarantee obligations under this chapter after the total
40 amount available to the Secretary under appropriations laws for

1 the cost of loan guarantees is considered to be reduced to zero
2 under subparagraph (B).

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

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

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

9 “(C) the amount of an obligation guaranteed or to be guaran-
10 teed in relation to the total cost of the project financed or to be
11 financed by the obligation;

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

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

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

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

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

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

22 “(J) whether a guarantee under this chapter is or will be in ef-
23 fect during the construction period of the project; and

24 “(K) the concentration risk presented by an unduly large per-
25 centage of loans outstanding by any one borrower or group of af-
26 filiated borrowers.

27 **“§ 53705. Pledge of United States Government**

28 “(a) FULL FAITH AND CREDIT.—The full faith and credit of the United
29 States Government is pledged to the payment of a guarantee made under
30 this chapter, for both principal and interest, including interest (as may be
31 provided for in the guarantee) accruing between the date of default under
32 a guaranteed obligation and the date of payment in full of the guarantee.

33 “(b) INCONTESTABILITY.—A guarantee or commitment to guarantee
34 made under this chapter is conclusive evidence of the eligibility of the obli-
35 gation for the guarantee. The validity of a guarantee or commitment to
36 guarantee made under this chapter is incontestable.

37 **“§ 53706. Eligible purposes of obligations**

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

40 “(1)(A) Financing (including reimbursement of an obligor for ex-
41 penditures previously made for) the construction, reconstruction, or re-

1 conditioning of a vessel (including an eligible export vessel) designed
2 principally for research, or for commercial use—

3 “(i) in the coastwise or intercoastal trade;

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

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

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

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

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

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

17 “(2) Financing (including reimbursement of an obligor for expendi-
18 tures previously made for) the construction, reconstruction, recondi-
19 tioning, or purchase of a vessel owned by citizens of the United States
20 and designed principally for research, or for commercial use in the fish-
21 ing industry.

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

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

25 and

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

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

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

31 “(iii) was sold at foreclosure begun by the Secretary.

32 “(4) Financing any part of the repayment to the United States Gov-
33 ernment of any amount of a construction-differential subsidy paid for
34 a vessel.

35 “(5) Refinancing an existing obligation (regardless of whether guar-
36 anteed under this chapter) issued for a purpose described in para-
37 graphs (1)–(4), including a short-term obligation incurred to obtain
38 temporary funds with the intention of refinancing.

39 “(6) Financing or refinancing (including reimbursement of an obli-
40 gor for expenditures previously made for) the construction, reconstruc-
41 tion, reconditioning, or purchase of a fishery facility.

1 “(7) Financing or refinancing (including reimbursement of an obli-
2 gor for expenditures previously made for) the purchase of an individual
3 fishing quota in accordance with section 303(d)(4) of the Magnuson-
4 Stevens Fishery Conservation and Management Act (16 U.S.C.
5 1853(d)(4)).

6 “(b) NON-VESSELS TREATED AS VESSELS.—An obligation guaranteed
7 under subsection (a)(6) or (7) shall be treated, for purposes of this chapter,
8 in the same manner and to the same extent as an obligation that aids in
9 financing the construction, reconstruction, reconditioning, or purchase of a
10 vessel, except with respect to provisions that by their nature can only be
11 applied to vessels.

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

15 “(1) a vessel that is otherwise eligible for a guarantee and is con-
16 structed with assistance under subtitle D of the Maritime Security Act
17 of 2003 (46 U.S.C. 53101 note); and

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

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

22 “(B) meets a shortfall in sealift capacity or capability.

23 **“§ 53707. Findings related to obligors and operators**

24 “(a) RESPONSIBLE OBLIGOR.—The Secretary may not guarantee or make
25 a commitment to guarantee an obligation under this chapter unless the Sec-
26 retary finds that the obligor is responsible and has the ability, experience,
27 financial resources, and other qualifications necessary for the adequate oper-
28 ation and maintenance of each vessel that will serve as security for the
29 guarantee.

30 “(b) OPERATORS OF LINER VESSELS.—The Secretary of Transportation
31 may not guarantee or make a commitment to guarantee a loan for the con-
32 struction, reconstruction, or reconditioning of a liner vessel under this chap-
33 ter unless the Chairman of the Federal Maritime Commission certifies that
34 the operator of the vessel has not been found by the Commission to have
35 committed, within the previous 5 years—

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

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

1 “(c) OPERATORS OF FISHING VESSELS.—The Secretary of Commerce
 2 may not guarantee or make a commitment to guarantee a loan for the con-
 3 struction, reconstruction, or reconditioning of a fishing vessel under this
 4 chapter if the operator of the vessel has been—

5 “(1) held liable or liable in rem for a civil penalty under section 1858
 6 of title 16 and not paid the penalty;

7 “(2) found guilty of an offense under section 1859 of title 16 and
 8 not paid the assessed fine or served the assessed sentence;

9 “(3) held liable for a civil or criminal penalty under section 1375 of
 10 title 16 and not paid the assessed fine or served the assessed sentence;
 11 or

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

14 “(d) WAIVERS CONCERNING FINANCIAL CONDITION.—The Secretary
 15 shall prescribe regulations concerning circumstances under which waivers of,
 16 or exceptions to, otherwise applicable regulatory requirements concerning fi-
 17 nancial condition can be made. The regulations shall require that—

18 “(1) the economic soundness requirements in section 53708(a) of
 19 this title are met after the waiver of the financial condition require-
 20 ment; and

21 “(2) the waiver shall provide for the imposition of other requirements
 22 on the obligor designed to compensate for the increased risk associated
 23 with the obligor’s failure to meet regulatory requirements applicable to
 24 financial condition.

25 **“§ 53708. Findings related to economic soundness**

26 “(a) BY SECRETARY OF TRANSPORTATION.—The Secretary of Transporta-
 27 tion may not guarantee or make a commitment to guarantee an obligation
 28 under this chapter unless the Secretary finds that the property or project
 29 for which the obligation will be executed will be economically sound. In mak-
 30 ing that finding, the Secretary shall consider—

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

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

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

38 “(4) any charter, contract of affreightment, transportation agree-
 39 ment, or similar agreement or undertaking relevant to the employment
 40 of the vessel;

41 “(5) other relevant criteria; and

1 “(6) for inland waterways, the need for technical improvements, in-
2 cluding increased fuel efficiency or improved safety.

3 “(b) BY SECRETARY OF COMMERCE.—The Secretary of Commerce may
4 not guarantee or make a commitment to guarantee an obligation under this
5 chapter unless the Secretary finds, at or prior to the time the commitment
6 is made or the guarantee becomes effective, that—

7 “(1) the property or project for which the obligation will be executed
8 will be economically sound; and

9 “(2) for a fishing vessel, the purpose of the financing or refinancing
10 is consistent with—

11 “(A) the wise use of the fisheries resources and the develop-
12 ment, advancement, management, conservation, and protection of
13 the fisheries resources; or

14 “(B) the need for technical improvements, including increased
15 fuel efficiency or improved safety.

16 “(c) USED FISHING VESSELS AND FACILITIES.—The Secretary of Com-
17 merce may not guarantee or make a commitment to guarantee an obligation
18 under this chapter for the purchase of a used fishing vessel or used fishery
19 facility unless the vessel or facility will be—

20 “(1) reconstructed or reconditioned in the United States and will
21 contribute to the development of the United States fishing industry; or

22 “(2) used—

23 “(A) in the harvesting of fish from an underused fishery; or

24 “(B) for a purpose described in the definition of ‘fishery facility’
25 in section 53701 of this title with respect to an underused fishery.

26 “(d) INDEPENDENT ANALYSIS.—The Secretary may make a determina-
27 tion that aspects of an application under this chapter require independent
28 analysis to be conducted by third party experts due to risk factors associ-
29 ated with markets, technology, financial structures, or other risk factors
30 identified by the Secretary. Any independent analysis conducted under this
31 subsection shall be performed by a party chosen by the Secretary.

32 “(e) ADDITIONAL EQUITY BECAUSE OF INCREASED RISKS.—Notwith-
33 standing any other provision of this chapter, the Secretary may make a de-
34 termination that an application under this title requires additional equity
35 because of increased risk factors associated with markets, technology, finan-
36 cial structures, or other risk factors identified by the Secretary.

37 **“§ 53709. Amount of obligations**

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

1 “(1) the amount paid by or for the account of the obligor (as deter-
2 mined by the Secretary, which determination shall be conclusive) for
3 the construction, reconstruction, or reconditioning of the vessel used as
4 security for the guarantee; or

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

7 “(b) LIMITATIONS ON AMOUNT BORROWED.—

8 “(1) IN GENERAL.—Except as otherwise provided, the principal
9 amount of an obligation guaranteed under this chapter may not exceed
10 75 percent of the actual cost or depreciated actual cost, as determined
11 by the Secretary, of the vessel used as security for the guarantee.

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

14 “(A) the size and speed of the vessel are approved by the Sec-
15 retary;

16 “(B) the vessel is or would have been eligible for mortgage aid
17 for construction under section 509 of the Merchant Marine Act,
18 1936, or would have been eligible except that the vessel was built
19 with a construction-differential subsidy and the subsidy has been
20 repaid; and

21 “(C) the vessel is of a type described in that section for which
22 the minimum down payment required by that section is 12.5 per-
23 cent of the cost of the vessel.

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

28 “(4) FISHING VESSELS AND FISHERY FACILITIES.—For a fishing
29 vessel or fishery facility, the principal amount may not exceed 80 per-
30 cent of the actual cost or depreciated actual cost. However, debt for
31 the vessel or facility may not be placed through the Federal Financing
32 Bank.

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

37 “(6) ELIGIBLE EXPORT VESSELS.—For an eligible export vessel, the
38 principal amount may not exceed 87.5 percent of the actual cost or de-
39 preciated actual cost.

40 “(c) SECURITY INVOLVING MULTIPLE VESSELS.—The principal amount
41 of an obligation having more than one vessel as security for the guarantee

1 may not exceed the sum of the principal amounts allowable for all the ves-
2 sels.

3 “(d) PROHIBITION ON UNIFORM PERCENTAGE LIMITATIONS.—The Sec-
4 retary may not establish a percentage under any provision of subsection (b)
5 that is to be applied uniformly to all guarantees or commitments to guar-
6 antee made under that provision.

7 “(e) PROHIBITION ON MINIMUM PRINCIPAL AMOUNT.—The Secretary
8 may not establish, as a condition of eligibility for a guarantee under this
9 chapter, a minimum principal amount for an obligation covering the recon-
10 struction or reconditioning of a fishing vessel or fishery facility. For pur-
11 poses of this chapter, the reconstruction or reconditioning of a fishing vessel
12 or fishery facility does not include the routine minor repair or maintenance
13 of the vessel or facility.

14 **“§ 53710. Contents of obligations**

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

16 “(1) provide for payments by the obligor satisfactory to the Sec-
17 retary;

18 “(2) provide for interest (exclusive of guarantee fees and other fees)
19 at a rate not more than the annual rate on the unpaid principal that
20 the Secretary determines is reasonable, considering the range of inter-
21 est rates prevailing in the private market for similar loans and the
22 risks assumed by the Secretary;

23 “(3) have a maturity date satisfactory to the Secretary, but—

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

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

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

29 “(ii) the remaining years of useful life of the vessel as de-
30 termined by the Secretary; and

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

34 “(A) in class A-1, American Bureau of Shipping, or meet other
35 standards acceptable to the Secretary, with all required certifi-
36 cates, including marine inspection certificates of the Coast Guard
37 or, in the case of an eligible export vessel, of the appropriate for-
38 eign authorities under a treaty, convention, or other international
39 agreement to which the United States is a party, and with all out-
40 standing requirements and recommendations necessary for class

1 retention accomplished, unless the Secretary permits a deferment
2 of repairs necessary to meet these requirements; and

3 “(B) well equipped, in good repair, and in every respect sea-
4 worthy and fit for service.

5 “(b) PROVISIONS FOR CERTAIN PASSENGER VESSELS.—

6 “(1) IN GENERAL.—With the Secretary’s approval, if the vessel used
7 as security for the guarantee is a passenger vessel having the tonnage,
8 speed, passenger accommodations, and other characteristics described
9 in section 503 of the Merchant Marine Act, 1936, an obligation guar-
10 anteed under this chapter or a related agreement may provide that—

11 “(A) the only recourse by the United States Government
12 against the obligor for payments under the guarantee will be re-
13 possession of the vessel and assignment of insurance claims; and

14 “(B) the obligor’s liability for payments under the guarantee
15 will be satisfied and discharged by the surrender of the vessel and
16 all interest in the vessel to the Government in the condition de-
17 scribed in paragraph (2).

18 “(2) SURRENDER OF VESSEL.—

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

20 “(i) free and clear of all liens and encumbrances except the
21 security interest conveyed to the Secretary under this chapter;

22 “(ii) in class; and

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

25 “(B) COVERING DEFICIENCIES BY INSURANCE.—To the extent
26 covered by insurance, a deficiency related to a requirement in sub-
27 paragraph (A) may be satisfied by assignment of the obligor’s in-
28 surance claims to the Government.

29 “(c) OTHER PROVISIONS TO PROTECT SECURITY INTERESTS.—An obli-
30 gation guaranteed under this chapter and any related agreement must con-
31 tain other provisions for the protection of the security interests of the Gov-
32 ernment (including acceleration, assumption, and subrogation provisions and
33 the issuance of notes by the obligor to the Secretary), liens and releases of
34 liens, payment of taxes, and other matters that the Secretary may prescribe.

35 “§ 53711. Security interest

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

40 “(b) MULTIPLE VESSELS AND TYPES OF SECURITY.—The security inter-
41 est may relate to more than one vessel and may consist of more than one

1 type of security. If the security interest relates to more than one vessel, the
2 obligation may have the latest maturity date allowable under section
3 53710(a)(3) of this title for any of the vessels used as security for the guar-
4 antee. However, the Secretary may require such payments of principal prior
5 to maturity, with respect to all related obligations, as the Secretary con-
6 siders necessary to maintain adequate security for the guarantee.

7 **“§ 53712. Monitoring financial condition and operations of**
8 **obligor**

9 “(a) IN GENERAL.—The Secretary shall monitor the financial condition
10 and operations of the obligor on a regular basis during the term of the
11 guarantee. The Secretary shall document the results of the monitoring on
12 an annual or quarterly basis depending on the condition of the obligor. If
13 the Secretary determines that the financial condition of the obligor warrants
14 additional protections to the Secretary, the Secretary shall take appropriate
15 action under subsection (b). If the Secretary determines that the financial
16 condition of the obligor jeopardizes its continued ability to perform its re-
17 sponsibilities in connection with the guarantee of an obligation by the Sec-
18 retary, the Secretary shall make an immediate determination whether de-
19 fault should take place and whether further measures described in sub-
20 section (b) should be taken to protect the interests of the Secretary while
21 ensuring that program objectives are met.

22 “(b) CONTRACT PROVISIONS TO PROTECT SECRETARY.—The Secretary
23 shall include provisions in a loan agreement with an obligor that provides
24 additional authority to the Secretary to take action to limit potential losses
25 in connection with a defaulted loan or a loan that is in jeopardy due to the
26 deteriorating financial condition of the obligor. These provisions include re-
27 quirements for additional collateral or greater equity contributions that are
28 effective upon the occurrence of verifiable conditions relating to the obligor’s
29 financial condition or the status of the vessel or shipyard project.

30 **“§ 53713. Administrative fees**

31 “(a) IN GENERAL.—The Secretary shall charge and collect from the obli-
32 gor fees the Secretary considers reasonable for—

33 “(1) investigating an application for a guarantee;

34 “(2) appraising property offered as security for a guarantee;

35 “(3) issuing a commitment;

36 “(4) providing services related to an escrow fund under section
37 53715 of this title; and

38 “(5) inspecting property during construction, reconstruction, or re-
39 conditioning.

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

4 “(c) FEES FOR INDEPENDENT ANALYSIS.—The Secretary may charge
5 and collect fees to cover the costs of independent analysis under section
6 53708(d) of this title. Notwithstanding section 3302 of title 31, any fee col-
7 lected under this subsection shall—

8 “(1) be credited as an offsetting collection to the account that fi-
9 nances the administration of the loan guarantee program;

10 “(2) be available for expenditure only to pay the costs of activities
11 and services for which the fee is imposed; and

12 “(3) remain available until expended.

13 **“§ 53714. Guarantee fees**

14 “(a) REGULATIONS.—Subject to this section, the Secretary shall prescribe
15 regulations to assess a fee for guaranteeing an obligation under this chap-
16 ter.

17 “(b) COMPUTATION OF FEE.—

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

21 “(2) PRESENT VALUE FOR EACH YEAR.—The amount referred to in
22 paragraph (1) for a year in which the guarantee is in effect is the
23 present value of the amount calculated under paragraph (3). To deter-
24 mine the present value, the Secretary shall apply a discount rate deter-
25 mined by the Secretary of the Treasury, considering current market
26 yields on outstanding obligations of the United States Government hav-
27 ing periods to maturity comparable to the period to maturity for the
28 guaranteed obligation.

29 “(3) CALCULATION OF AMOUNT.—The amount referred to in para-
30 graph (2) shall be calculated by multiplying—

31 “(A) the estimated average unpaid principal amount of the obli-
32 gation that will be outstanding during the year (excluding the av-
33 erage amount, other than interest, on deposit during the year in
34 an escrow fund under section 53715 of this title); by

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

36 “(4) SETTING FEE RATES.—To set the fee rate referred to in para-
37 graph (3)(B), the Secretary shall establish a formula that—

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

40 “(B) is a sliding scale based on the creditworthiness of the obli-
41 gor, using—

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

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

5 “(5) PERMISSIBLE RANGE OF RATES.—The fee rate set under para-
6 graph (4) shall be—

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

9 “(B) for a vessel to be constructed, reconstructed, or recondi-
10 tioned or equipment to be delivered, at least 0.25 percent and not
11 more than 0.5 percent.

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

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

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

22 **“§ 53715. Escrow fund**

23 “(a) IN GENERAL.—If the proceeds of an obligation guaranteed under
24 this chapter are to be used to finance the construction, reconstruction, or
25 reconditioning of a vessel that will serve as security for a guarantee under
26 this chapter, the Secretary may accept and hold in escrow, under an escrow
27 agreement with the obligor, a portion of the proceeds of all obligations guar-
28 anteed under this chapter whose proceeds are to be so used which is equal
29 to—

30 “(1) the excess of—

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

33 “(B) 75 percent or 87.5 percent, whichever is applicable under
34 section 53709(b) of this title, of the amount paid by or for the
35 account of the obligor for the construction, reconstruction, or re-
36 conditioning of the vessel; plus

37 “(2) any interest the Secretary may require on the amount described
38 in paragraph (1).

39 “(b) SECURITY INVOLVING BOTH UNCOMPLETED AND DELIVERED VES-
40 SELS.—If the security for the guarantee of an obligation relates both to a
41 vessel to be constructed, reconstructed, or reconditioned and to a delivered

1 vessel, the principal amount of the obligation shall be prorated for purposes
2 of subsection (a) under regulations prescribed by the Secretary.

3 “(c) DISBURSEMENT BEFORE TERMINATION OF AGREEMENT.—

4 “(1) PURPOSES.—The Secretary shall disburse amounts in the es-
5 crow fund, as specified in the escrow agreement, to—

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

7 “(i) the construction, reconstruction, or reconditioning of a
8 vessel used as security for the guarantee; and

9 “(ii) interest on the obligations;

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

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

14 “(2) MANNER OF PAYMENT.—If a payment becomes due under the
15 guarantee before the termination of the escrow agreement, the amount
16 in the escrow fund at the time the payment becomes due, including re-
17 alized income not yet paid to the obligor, shall be paid into the appro-
18 priate account under section 53717 of this title. The amount shall be
19 credited against amounts due or to become due from the obligor to the
20 Secretary on the guaranteed obligations or, to the extent not so re-
21 quired, be paid to the obligor.

22 “(d) PAYMENTS REQUIRED BEFORE DISBURSEMENT.—

23 “(1) IN GENERAL.—No disbursement shall be made under subsection
24 (c) to any person until the total amount paid by or for the account
25 of the obligor from sources other than the proceeds of the obligation
26 equals at least 25 percent or 12.5 percent, whichever is applicable
27 under section 53709(b) of this title, of the aggregate actual cost of the
28 vessel, as previously approved by the Secretary. If the aggregate actual
29 cost of the vessel has increased since the Secretary’s initial approval
30 or if it increases after the first disbursement is permitted under this
31 subsection, then no further disbursements shall be made under sub-
32 section (c) until the total amount paid by or for the account of the obli-
33 gor from sources other than the proceeds of the obligation equals at
34 least 25 percent or 12.5 percent, as applicable, of the increase, as de-
35 termined by the Secretary, in the aggregate actual cost of the vessel.
36 This paragraph does not require the Secretary to consent to finance
37 any increase in actual cost unless the Secretary determines that such
38 an increase in the obligation meets all the terms and conditions of this
39 chapter or other applicable law.

40 “(2) DOCUMENTED PROOF OF PROGRESS REQUIREMENT.—The Sec-
41 retary shall, by regulation, establish a transparent, independent, and

1 risk-based process for verifying and documenting the progress of
 2 projects under construction before disbursing guaranteed loan funds.
 3 At a minimum, the process shall require documented proof of progress
 4 in connection with the construction, reconstruction, or reconditioning of
 5 a vessel or vessels before disbursements are made from the escrow
 6 fund. The Secretary may require that the obligor provide a certificate
 7 from an independent party certifying that the requisite progress in con-
 8 struction, reconstruction, or reconditioning has taken place.

9 “(e) DISBURSEMENT ON TERMINATION OF AGREEMENT.—

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

13 “(A) prepay the excess of—

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

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

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

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

24 “(f) INVESTMENT.—The Secretary may invest and reinvest any part of
 25 an escrow fund in obligations of the United States Government with matu-
 26 rities such that the escrow fund will be available as required for purposes
 27 of the escrow agreement. Investment income shall be paid to the obligor
 28 when received.

29 “(g) TERMS TO PROTECT GOVERNMENT.—The escrow agreement shall
 30 contain other terms the Secretary considers necessary to protect fully the
 31 interests of the Government.

32 **“§ 53716. Deposit fund**

33 “(a) IN GENERAL.—There is a deposit fund in the Treasury for purposes
 34 of this section. The Secretary, in accordance with an agreement under sub-
 35 section (b), may deposit into and hold in the fund cash belonging to an obli-
 36 gor to serve as collateral for a guarantee made under this chapter with re-
 37 spect to the obligor.

38 “(b) AGREEMENT.—The Secretary and an obligor shall make a reserve
 39 fund or other collateral account agreement to govern the deposit, with-
 40 drawal, retention, use, and reinvestment of cash of the obligor held in the
 41 fund. The agreement shall contain—

1 “(1) terms and conditions required by this section;

2 “(2) terms that grant to the United States Government a security
3 interest in all amounts deposited into the fund; and

4 “(3) any additional terms considered by the Secretary to be nec-
5 essary to protect fully the interests of the Government.

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

12 “(d) WITHDRAWALS.—

13 “(1) IN GENERAL.—Cash deposited into the fund may not be with-
14 drawn without the consent of the Secretary.

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

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

22 **“§ 53717. Management of funds in the Treasury**

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

25 “(b) LOAN GUARANTEES BY SECRETARY OF TRANSPORTATION.—

26 “(1) WHEN NOT SUBJECT TO FCRA.—The Secretary of Transporta-
27 tion shall account for payments and disbursements involving obliga-
28 tions guaranteed under this chapter and not subject to FCRA in an
29 account in the Treasury entitled the Federal Ship Financing Fund Liq-
30 uidating Account (a liquidating account as defined in FCRA).

31 “(2) WHEN SUBJECT TO FCRA.—The Secretary of Transportation
32 shall account for payments and disbursements involving obligations
33 guaranteed under this chapter and subject to FCRA in a separate ac-
34 count in the Treasury entitled the Federal Ship Financing Guaranteed
35 Loan Financing Account (a financing account as defined in FCRA).

36 “(c) LOAN GUARANTEES BY SECRETARY OF COMMERCE.—

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

1 “(2) WHEN SUBJECT TO FCRA.—The Secretary of Commerce shall
2 account for payments and disbursements involving obligations guaran-
3 teed under this chapter and subject to FCRA in a separate account in
4 the Treasury established for this purpose.

5 “(d) DIRECT LOANS BY SECRETARY OF COMMERCE.—The Secretary of
6 Commerce shall account for payments and disbursements involving direct
7 loans made under this chapter in a separate account in the Treasury estab-
8 lished for this purpose.

9 **“§ 53718. Annual report to Congress**

10 “The Secretary of Transportation shall report to Congress annually on
11 the loan guarantee program under this chapter. Each report shall include—

12 “(1) the size, in dollars, of the portfolio of loans guaranteed;

13 “(2) the size, in dollars, of projects in the portfolio facing financial
14 difficulties;

15 “(3) the number and type of projects covered;

16 “(4) a profile of pending loan applications;

17 “(5) the amount of appropriations available for new guarantees;

18 “(6) a profile of each project approved since the last report; and

19 “(7) a profile of any defaults since the last report.

20 “SUBCHAPTER II—DEFAULT PROVISIONS

21 **“§ 53721. Rights of obligee**

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

28 “(1) a period that may be specified in the guarantee or a related
29 agreement; or

30 “(2) 90 days from the date of the default.

31 “(b) PAYMENTS BY SECRETARY.—

32 “(1) IN GENERAL.—If a demand is made under subsection (a), the
33 Secretary shall pay to the obligee or the obligee’s agent the unpaid
34 principal amount of the obligation and the unpaid interest on the obli-
35 gation to the date of payment. Payment shall be made within the ear-
36 lier of—

37 “(A) a period that may be specified in the guarantee or a re-
38 lated agreement; or

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

40 “(2) IF NO EXISTING DEFAULT.—The Secretary is not required to
41 make payment under this subsection if, within the appropriate period

1 under paragraph (1), the Secretary finds that the obligor was not in
2 default or that the default was remedied before the demand.

3 “(c) ASSUMPTION OF RIGHTS AND OBLIGATIONS BEFORE DEMAND.—An
4 obligee or the obligee’s agent may not demand payment under this section
5 if the Secretary, before the demand and on terms that may be provided in
6 the obligation or a related agreement, has assumed the obligor’s rights and
7 duties under the obligation and any related agreement and made any pay-
8 ment in default. However, the guarantee of the obligation remains in effect
9 after the Secretary’s assumption.

10 **“§ 53722. Actions by Secretary**

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

14 “(1) assume the obligor’s rights and duties under the obligation or
15 agreement, make any payment in default, and notify the obligee or the
16 obligee’s agent of the default and the Secretary’s assumption; or

17 “(2) notify the obligee or the obligee’s agent of the default.

18 “(b) DEMANDS BY OBLIGEEES.—

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

23 “(A) a period that may be specified in the guarantee or a re-
24 lated agreement; or

25 “(B) 60 days from the date of the Secretary’s notice.

26 “(2) PAYMENT.—If a demand is made under paragraph (1), the Sec-
27 retary shall pay to the obligee or the obligee’s agent the unpaid prin-
28 cipal amount of the obligation and the unpaid interest on the obligation
29 to the date of payment. Payment shall be made within the earlier of—

30 “(A) a period that may be specified in the guarantee or a re-
31 lated agreement; or

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

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

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

37 “(1) maximizes the net present value return from the sale or disposi-
38 tion of assets associated with the obligation, including prompt referral
39 to the Attorney General for collection as appropriate;

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

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

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

4 **“§ 53723. Payments by Secretary and issuance of obligations**

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

7 “(b) ISSUANCE OF OBLIGATIONS.—If amounts in the appropriate account
8 under section 53717 of this title are not sufficient to make a payment re-
9 quired under section 53721 or 53722 of this title, the Secretary may issue
10 obligations to the Secretary of the Treasury. The Secretary, with the ap-
11 proval of the Secretary of the Treasury, shall prescribe the form, denomina-
12 tion, maturity, and other terms (except the interest rate) of the obligations.
13 The Secretary of the Treasury shall set the interest rate for the obligations,
14 considering the current average market yield on outstanding marketable ob-
15 ligations of the United States Government of comparable maturities during
16 the month before the obligations are issued.

17 “(c) PURCHASE OF OBLIGATIONS.—The Secretary of the Treasury shall
18 purchase the obligations issued under this section. To purchase the obliga-
19 tions, the Secretary of the Treasury may use as a public debt transaction
20 the proceeds from the sale of securities issued under chapter 31 of title 31.
21 The purposes for which securities may be issued under that chapter are ex-
22 tended to include the purchase of obligations under this subsection. The
23 Secretary of the Treasury may sell obligations purchased under this section.
24 A redemption, purchase, or sale of the obligations by the Secretary of the
25 Treasury is a public debt transaction of the Government.

26 “(d) DEPOSITS AND REDEMPTIONS.—The Secretary shall deposit
27 amounts borrowed under this section in the appropriate account under sec-
28 tion 53717 of this title and make redemptions of the obligations from that
29 account.

30 **“§ 53724. Rights to secured property**

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

35 “(b) USE AND DISPOSITION OF SECURED PROPERTY.—Notwithstanding
36 any other law relating to the acquisition, handling, or disposal of property
37 by the United States Government, the Secretary has the right, in the Sec-
38 retary’s discretion, to complete, reconstruct, recondition, renovate, repair,
39 maintain, operate, charter, or sell any property acquired under a security
40 agreement with an obligor, or to place a vessel so acquired in the National

1 Defense Reserve Fleet. The terms of a sale under this subsection shall be
2 as approved by the Secretary.

3 **“§ 53725. Actions against obligor**

4 “(a) IN GENERAL.—For a default under a guaranteed obligation or re-
5 lated agreement, the Secretary may take any action against the obligor or
6 another liable party that the Secretary considers necessary to protect the
7 interests of the United States Government. A civil action may be brought
8 in the name of the United States or the obligee. The obligee shall make
9 available to the Government all records and evidence necessary to prosecute
10 the action.

11 “(b) TITLE, POSSESSION, AND PURCHASE.—

12 “(1) IN GENERAL.—The Secretary may—

13 “(A) accept a conveyance of title to and possession of property
14 from the obligor or another party liable to the Secretary; and

15 “(B) purchase the property for an amount not greater than the
16 unpaid principal amount of the obligation and interest thereon.

17 “(2) PAYMENT OF EXCESS.—If, through the sale of property, the
18 Secretary receives an amount of cash greater than the unpaid principal
19 amount of the obligation, the unpaid interest on the obligation, and the
20 expenses of collecting those amounts, the Secretary shall pay the excess
21 to the obligor.

22 “SUBCHAPTER III—PARTICULAR PROJECTS

23 **“§ 53731. Commercial demonstration ocean thermal energy
24 conversion facilities and plantships**

25 “(a) IN GENERAL.—Under subchapter I of this chapter, the Secretary
26 may guarantee or make a commitment to guarantee the payment of the
27 principal of and interest on an obligation that aids in financing (including
28 reimbursement of an obligor for expenditures previously made for) the con-
29 struction, reconstruction, or reconditioning of a commercial demonstration
30 ocean thermal energy conversion facility or plantship. This section may be
31 used to guarantee obligations for a total of not more than 5 separate faci-
32 lities and plantships or a demonstrated 400 megawatt capacity, whichever
33 comes first.

34 “(b) APPLICABILITY OF OTHER PROVISIONS.—Except as otherwise pro-
35 vided in this section, a guarantee or commitment to guarantee under this
36 section is subject to all the provisions applicable to a guarantee or commit-
37 ment to guarantee under subchapter I of this chapter.

38 “(c) ECONOMIC SOUNDNESS.—The required determination of economic
39 soundness under section 53708 of this title applies to a guarantee or com-
40 mitment to guarantee for that portion of a facility or plantship not to be
41 supported with appropriated Federal funds.

1 “(d) REASONABLENESS OF RISK.—A guarantee or commitment to guar-
2 antee may not be made under this section unless the Secretary of Energy,
3 in consultation with the Secretary, certifies to the Secretary that, for the
4 facility or plantship for which the guarantee or commitment to guarantee
5 is sought, there is sufficient guarantee of performance and payment to lower
6 the risk to the United States Government to a reasonable level. In deciding
7 whether to issue such a certification, the Secretary of Energy shall con-
8 sider—

9 “(1) the successful demonstration of the technology to be used in the
10 facility at a scale sufficient to establish the likelihood of technical and
11 economic viability in the proposed market; and

12 “(2) the need of the United States to develop new and renewable
13 sources of energy and the benefits to be realized from the construction
14 and successful operation of the facility or plantship.

15 “(e) AMOUNT OF OBLIGATION.—The total principal amount of an obliga-
16 tion guaranteed under this section may not exceed 87.5 percent of—

17 “(1) the actual cost or depreciated actual cost of the facility or
18 plantship; or

19 “(2) if the facility or plantship is supported with appropriated Fed-
20 eral funds, the total principal amount of that portion of the actual cost
21 or depreciated actual cost for which the obligor is obligated to secure
22 financing under the agreement between the obligor and the Department
23 of Energy or other Federal agency.

24 “(f) OTEC DEMONSTRATION FUND.—

25 “(1) IN GENERAL.—There is a special subaccount, known as the
26 OTEC Demonstration Fund, in the account established under section
27 53717(b)(1) of this title.

28 “(2) USE AND OPERATION.—The OTEC Demonstration Fund shall
29 be used for obligation guarantees authorized under this section that do
30 not qualify under subchapter I of this chapter. Except as otherwise
31 provided in this section, the OTEC Demonstration Fund shall be oper-
32 ated in the same manner as the parent account. However—

33 “(A) amounts received by the Secretary under subchapter I of
34 this chapter related to guarantees or commitments to guarantee
35 made under this section shall be deposited only in the OTEC
36 Demonstration Fund; and

37 “(B) when obligations issued by the Secretary under section
38 53723 of this title related to the OTEC Demonstration Fund are
39 outstanding, any amount received by the Secretary under sub-
40 chapter I of this chapter related to ocean thermal energy conver-

1 sion facilities or plantships shall be deposited in the OTEC Dem-
2 onstration Fund.

3 “(3) TRANSFERS.—Assets in the OTEC Demonstration Fund may
4 be transferred to the parent account when and to the extent the bal-
5 ance in the OTEC Demonstration Fund exceeds the total guarantees
6 or commitments to guarantee made under this section then out-
7 standing, plus obligations issued by the Secretary under section 53723
8 of this title related to the OTEC Demonstration Fund.

9 “(4) LIABILITY.—The parent account is not liable for a guarantee
10 or commitment to guarantee made under this section.

11 “(5) MAXIMUM UNPAID PRINCIPAL AMOUNT.—The total unpaid prin-
12 cipal amount of the obligations guaranteed with the backing of the
13 OTEC Demonstration Fund and outstanding at any one time may not
14 exceed \$1,650,000,000.

15 “(g) ISSUANCE AND PAYMENT OF OBLIGATIONS.—Section 53723 of this
16 title applies to the OTEC Demonstration Fund. However, obligations issued
17 by the Secretary under that section related to the OTEC Demonstration
18 Fund shall be payable only from proceeds realized by the OTEC Dem-
19 onstration Fund.

20 “(h) TAXATION OF INTEREST.—Interest on an obligation guaranteed
21 under this section shall be included in gross income under chapter 1 of the
22 Internal Revenue Code of 1986 (26 U.S.C. ch. 1).

23 **“§ 53732. Eligible export vessels**

24 “(a) APPLICABLE TERMS.—The Secretary may guarantee an obligation
25 for an eligible export vessel in accordance with—

26 “(1) the terms applicable under this chapter for vessels documented
27 under the laws of the United States; or

28 “(2) other terms the Secretary determines are more favorable than
29 those terms and compatible with export credit terms offered by foreign
30 governments for the sale of vessels built in foreign shipyards.

31 “(b) INTERAGENCY COUNCIL.—

32 “(1) ESTABLISHMENT.—There is an interagency council to carry out
33 this section.

34 “(2) COMPOSITION.—The council is composed of the following indi-
35 viduals or their designees:

36 “(A) The Secretary of Transportation, who is the chairman of
37 the council.

38 “(B) The Secretary of the Treasury.

39 “(C) The Secretary of State.

40 “(D) The Assistant to the President for Economic Policy.

41 “(E) The United States Trade Representative.

1 “(F) The President and Chairman of the Export-Import Bank
2 of the United States.

3 “(3) FUNCTIONS.—The council shall—

4 “(A) obtain information on shipbuilding loan guarantees, direct
5 and indirect subsidies, and other favorable treatment of shipyards
6 provided by foreign governments to shipyards in competition with
7 United States shipyards;

8 “(B) consult regularly with United States shipbuilders to obtain
9 the essential information about international shipbuilding competi-
10 tion on which to set terms for loan guarantees under subsection
11 (a)(2); and

12 “(C) provide guidance to the Secretary in establishing terms for
13 loan guarantees under subsection (a)(2).

14 “(4) ANNUAL REPORT.—Not later than January 31 of each year, the
15 Secretary shall submit to Congress a report on activities of the Sec-
16 retary under this section during the preceding year. The report shall
17 include—

18 “(A) documentation of sources of information about assistance
19 by governments of other countries to shipyards in those countries;
20 and

21 “(B) a summary of recommendations made to the Secretary
22 during the preceding year about applications submitted to the Sec-
23 retary during that year for loan guarantees to construct eligible
24 export vessels.

25 “(e) REQUIRED FINDINGS.—

26 “(1) BENEFIT TO SHIPBUILDING INDUSTRY.—The Secretary may
27 not guarantee or make a commitment to guarantee an obligation for
28 an eligible export vessel unless the Secretary finds that the construc-
29 tion, reconstruction, or reconditioning of the vessel will aid in the tran-
30 sition of United States shipyards to commercial activities or will pre-
31 serve shipbuilding assets that would be essential in time of war or na-
32 tional emergency.

33 “(2) PRIORITY OF DOCUMENTED VESSELS.—The Secretary may not
34 make a commitment to guarantee an obligation for an eligible export
35 vessel unless the Secretary determines that making the commitment
36 will not result in denial of an economically sound application for a com-
37 mitment to guarantee an obligation for a vessel documented under the
38 laws of the United States and operating in the domestic or foreign
39 commerce of the United States. The Secretary has sole discretion in
40 making the determination. In making the determination, the Secretary
41 shall consider—

1 “(A) the status and economic soundness of pending applications
2 for commitments to guarantee obligations for vessels documented
3 under the laws of the United States that are operating or will be
4 operating in the domestic or foreign commerce of the United
5 States; and

6 “(B) the amount of guarantee authority available.

7 “(d) RESTRICTION ON TRANSFER OF VESSEL.—The Secretary may not
8 guarantee or make a commitment to guarantee an obligation for an eligible
9 export vessel unless the owner of the vessel agrees with the Secretary that
10 the vessel will not be transferred to a country designated by the Secretary
11 of Defense as a country whose interests are hostile to the interests of the
12 United States.

13 “(e) REVIEW BY SECRETARY OF DEFENSE.—

14 “(1) NOTIFICATION.—The Secretary shall promptly notify the Sec-
15 retary of Defense of the receipt of an application for a loan guarantee
16 for an eligible export vessel.

17 “(2) DISAPPROVAL.—The Secretary of Defense, within 30 days after
18 receiving the notice, may disapprove the guarantee based on an assess-
19 ment of the potential use of the vessel in a manner that may harm the
20 national security interests of the United States. The Secretary may not
21 disapprove a guarantee solely because of the type of vessel to be con-
22 structed.

23 “(3) DELEGATION.—The authority of the Secretary of Defense to
24 disapprove a guarantee under this subsection may be delegated only to
25 a civilian officer of the Department of Defense appointed by the Presi-
26 dent by and with the advice and consent of the Senate.

27 “(4) PROHIBITION.—The Secretary may not make a loan guarantee
28 disapproved by the Secretary of Defense under this subsection.

29 “(f) EXPIRATION OF AUTHORITY.—The Secretary may not issue a com-
30 mitment to guarantee an obligation for an eligible export vessel under this
31 chapter after the last date on which such a commitment may be issued
32 under any treaty or convention entered into after November 30, 1993, that
33 prohibits guarantee of such an obligation.

34 **“§ 53733. Shipyard modernization and improvement**

35 “(a) DEFINITIONS.—In this section:

36 “(1) ADVANCED SHIPBUILDING TECHNOLOGY.—The term ‘advanced
37 shipbuilding technology’ includes—

38 “(A) numerically controlled machine tools, robots, automated
39 process control equipment, computerized flexible manufacturing
40 systems, associated computer software, and other technology for

1 improving shipbuilding and related industrial production that ad-
2 vance the state-of-the-art; and

3 “(B) novel techniques and processes designed to improve ship-
4 building quality, productivity, and practice, and to promote sus-
5 tainable development, including engineering design, quality assur-
6 ance, concurrent engineering, continuous process production tech-
7 nology, energy efficiency, waste minimization, design for
8 recyclability or parts reuse, inventory management, upgraded
9 worker skills, and communications with customers and suppliers.

10 “(2) GENERAL SHIPYARD FACILITY.—The term ‘general shipyard fa-
11 cility’ means—

12 “(A) for operations on land—

13 “(i) a structure or appurtenance thereto designed for the
14 construction, reconstruction, repair, rehabilitation, or refur-
15 bishment of a vessel, including a graving dock, building way,
16 ship lift, wharf, or pier crane;

17 “(ii) the land necessary for the structure or appurtenance;
18 and

19 “(iii) equipment that is for use with the structure or ap-
20 purtenance and that is necessary for performing a function
21 referred to in clause (i); and

22 “(B) for operations not on land, a vessel, floating drydock, or
23 barge built in the United States and used for, equipped to be used
24 for, or of a type normally used for, performing a function referred
25 to in subparagraph (A)(i).

26 “(3) MODERN SHIPBUILDING TECHNOLOGY.—The term ‘modern
27 shipbuilding technology’ means the best available proven technology,
28 techniques, and processes appropriate to enhancing the productivity of
29 shipyards.

30 “(b) GENERAL AUTHORITY.—Under subchapter I of this chapter, the
31 Secretary may guarantee or make a commitment to guarantee the payment
32 of the principal of and interest on an obligation for advanced shipbuilding
33 technology and modern shipbuilding technology of a general shipyard facility
34 in the United States. Only a private shipyard is eligible to receive a guar-
35 antee.

36 “(c) APPLICABILITY OF OTHER PROVISIONS.—Except as otherwise pro-
37 vided in this section, a guarantee or commitment to guarantee under this
38 section is subject to all the provisions applicable to a guarantee or commit-
39 ment to guarantee under subchapter I of this chapter.

40 “(d) AMOUNT OF OBLIGATION.—The principal amount of an obligation
41 guaranteed under this chapter may not exceed 87.5 percent of the actual

1 cost of the advanced shipbuilding technology or modern shipbuilding tech-
2 nology.

3 “(e) TRANSFER OF AMOUNTS.—The Secretary may accept the transfer
4 of amounts from a department, agency, or instrumentality of the United
5 States Government and may use those amounts to cover the cost (as defined
6 in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a))
7 of making guarantees or commitments to guarantee under this section.

8 **“§ 53734. Replacement of vessels because of changes in oper-
9 ating standards**

10 “(a) GENERAL AUTHORITY.—Notwithstanding any other provision of this
11 chapter, the Secretary, on terms the Secretary may prescribe, may guar-
12 antee or make a commitment to guarantee the payment of the principal of
13 and interest on an obligation that aids in financing or refinancing (including
14 reimbursement of an obligor for expenditures previously made for) a con-
15 tract for the construction or reconstruction of a vessel if—

16 “(1) the vessel is designed and to be used for commercial use in
17 coastwise, intercoastal, or foreign trade;

18 “(2) the construction or reconstruction is necessary to replace a ves-
19 sel that cannot continue to be operated because of a change required
20 by law in the standards for the operation of vessels, and the applicant
21 for the guarantee or commitment would not otherwise legally be able
22 to continue operating vessels in the trades in which the applicant oper-
23 ated vessels before the change;

24 “(3) the applicant is presently engaged in transporting cargoes in
25 vessels of the type and class that will be constructed or reconstructed
26 under this section and agrees to employ vessels constructed or recon-
27 structed under this section as replacements only for vessels made obso-
28 lete by the change in operating standards;

29 “(4) the capacity of the vessels to be constructed or reconstructed
30 under this section will not increase the cargo carrying capacity of the
31 vessels being replaced;

32 “(5) the Secretary has not determined that the market demand for
33 the vessel over its useful life will diminish so as to make granting the
34 guarantee fiducially imprudent;

35 “(6) the vessel, if to be reconstructed, will have a useful life of at
36 least 15 years after the reconstruction; and

37 “(7) the Secretary has considered the criteria specified in section
38 53708(a)(3)–(5) of this title.

39 “(b) TERM AND AMOUNT OF OBLIGATION.—

40 “(1) TERM.—The term of an obligation guaranteed under this sec-
41 tion may not exceed 25 years.

1 “(2) AMOUNT.—The amount of an obligation guaranteed under this
2 section may not exceed 87.5 percent of the actual cost or depreciated
3 actual cost to the applicant for the construction or reconstruction of
4 the vessel. The Secretary may not establish a percentage under this
5 paragraph that is to be applied uniformly to all guarantees or commit-
6 ments to guarantee made under this section.

7 “(c) APPLICABILITY OF OTHER PROVISIONS.—A guarantee or commit-
8 ment to guarantee under this section is also subject to sections 53701,
9 53702(a), 53704, 53705, 53707(a), 53708(d) and (e), 53709(a),
10 53710(a)(1), (2), and (4) and (c), 53711(a), 53713, 53714, 53717, and
11 53721–53725 of this title.

12 “(d) SECURITY AGAINST DEFAULT.—The Secretary shall require by reg-
13 ulation that an applicant under this section provide adequate security
14 against default.

15 “(e) GUARANTEE FEES.—The Secretary may establish a fee for the guar-
16 antee of an obligation under this section that is in addition to the fee estab-
17 lished under section 53714 of this title. The fee may be—

18 “(1) an annual fee of not more than an additional 1 percent added
19 to the fee established under section 53714 of this title; or

20 “(2) a fee based on the amount of the obligation versus the percent-
21 age of the obligor’s fleet being replaced by vessels constructed or recon-
22 structed under this section.

23 **“§ 53735. Fisheries financing and capacity reduction**

24 “(a) DEFINITION.—In this section, the term ‘program’ means a fishing
25 capacity reduction program established under section 312 of the Magnuson-
26 Stevens Fishery Conservation and Management Act (16 U.S.C. 1861a).

27 “(b) GUARANTEE AUTHORITY.—The Secretary may guarantee the repay-
28 ment of debt obligations issued by entities under this section. Debt obliga-
29 tions to be guaranteed may be issued by any entity that has been approved
30 by the Secretary and has agreed with the Secretary to conditions the Sec-
31 retary considers necessary for this section to achieve the objective of the
32 program and to protect the interest of the United States.

33 “(c) REQUIREMENTS OF OBLIGATIONS.—A debt obligation guaranteed
34 under this section shall—

35 “(1) be treated in the same manner and to the same extent as other
36 obligations guaranteed under this chapter, except with respect to provi-
37 sions of this chapter that by their nature cannot be applied to obliga-
38 tions guaranteed under this section;

39 “(2) have the fishing fees established under the program paid into
40 a separate subaccount of the fishing capacity reduction fund estab-
41 lished under this section;

1 “(3) not exceed \$100,000,000 in an unpaid principal amount out-
2 standing at any one time for a program;

3 “(4) have such maturity (not to exceed 20 years), take such form,
4 and contain such conditions as the Secretary determines necessary for
5 the program to which they relate;

6 “(5) have as the exclusive source of repayment (subject to the second
7 sentence of subsection (d)(2)) and as the exclusive payment security,
8 the fishing fees established under the program; and

9 “(6) at the discretion of the Secretary be issued in the public market
10 or sold to the Federal Financing Bank.

11 “(d) FISHING CAPACITY REDUCTION FUND.—

12 “(1) IN GENERAL.—There is a separate account in the Treasury,
13 known as the Fishing Capacity Reduction Fund. Within the Fund, at
14 least one subaccount shall be established for each program into which
15 shall be paid all fishing fees established under the program and other
16 amounts authorized for the program.

17 “(2) AVAILABILITY OF AMOUNTS.—Amounts in the Fund shall be
18 available, without appropriation or fiscal year limitation, to the Sec-
19 retary to pay the cost of the program, including payments to financial
20 institutions to pay debt obligations incurred by entities under this sec-
21 tion. Funds available for this purpose from other amounts available for
22 the program may also be used to pay those debt obligations.

23 “(3) INVESTMENT.—Amounts in the Fund that are not currently
24 needed for the purpose of this section shall be kept on deposit or in-
25 vested in obligations of the United States Government.

26 “(e) REGULATIONS.—The Secretary shall prescribe regulations the Sec-
27 retary considers necessary to carry out this section.

28 **“CHAPTER 539—WAR RISK INSURANCE**

“Sec.

“53901. Definitions.

“53902. Authority to provide insurance.

“53903. Insurable interests.

“53904. Liability insurance for persons involved in war or defense efforts.

“53905. Agency insurance.

“53906. Hull insurance valuation.

“53907. Reinsurance.

“53908. Additional insurance privately obtained.

“53909. War risk insurance revolving fund.

“53910. Administrative.

“53911. Civil actions for losses.

“53912. Expiration date.

29 **“§ 53901. Definitions**

30 “In this chapter:

31 “(1) AMERICAN VESSEL.—The term ‘American vessel’ includes—

32 “(A) a documented vessel with a registry or coastwise endorse-
33 ment under chapter 121 of this title;

1 “(B) an undocumented vessel owned or chartered by or made
2 available to the United States Government; and

3 “(C) a tug, barge, or other watercraft (whether or not docu-
4 mented) owned by a citizen of the United States and used in es-
5 sential water transportation or in the fisheries, except only for
6 sport fishing.

7 “(2) CARGO.—The term ‘cargo’ includes a loaded or empty container
8 on a vessel.

9 “(3) TRANSPORTATION IN THE WATERBORNE COMMERCE OF THE
10 UNITED STATES.—The term ‘transportation in the waterborne com-
11 merce of the United States’ includes the operation of a vessel in the
12 fisheries, except only for sport fishing.

13 “(4) WAR RISKS.—The term ‘war risks’ includes, to the extent the
14 Secretary of Transportation determines—

15 “(A) any part of a loss excluded from marine insurance cov-
16 erage under a ‘free of capture or seizure’ clause or analogous
17 clause; and

18 “(B) any other loss from a hostile act, including confiscation,
19 expropriation, nationalization, or deprivation.

20 **“§ 53902. Authority to provide insurance**

21 “(a) IN GENERAL.—With the approval of the President, and after such
22 consultation with interested agencies of United States Government as the
23 President may require, the Secretary of Transportation may provide insur-
24 ance and reinsurance against loss or damage from war risks as provided by
25 this chapter whenever it appears to the Secretary that insurance adequate
26 for the needs of the waterborne commerce of the United States cannot be
27 obtained on reasonable terms and conditions from companies authorized to
28 do insurance business in a State of the United States.

29 “(b) CONSIDERATION OF RISK.—Insurance or reinsurance under this
30 chapter shall be based, insofar as practicable, on consideration of the risk
31 involved.

32 “(c) AVAILABILITY OF VESSEL DURING WAR OR NATIONAL EMER-
33 GENCY.—Insurance or reinsurance for a vessel may be provided under this
34 chapter only on the condition that the vessel will be available to the Govern-
35 ment in time of war or national emergency.

36 **“§ 53903. Insurable interests**

37 “(a) IN GENERAL.—The Secretary of Transportation may provide insur-
38 ance and reinsurance under this chapter for—

39 “(1) an American vessel, including a vessel under construction;

40 “(2) a foreign vessel—

41 “(A) owned by a citizen of the United States; or

1 “(B) engaged in transportation in the waterborne commerce of
2 the United States or in such other transportation by water or such
3 other services as the Secretary considers to be in the interest of
4 the national defense or national economy of the United States,
5 when so engaged;

6 “(3) cargo—

7 “(A) shipped or to be shipped on a vessel insurable under this
8 section, including by express or registered mail;

9 “(B) owned by a citizen or resident of the United States;

10 “(C) imported to or exported from the United States, or sold
11 or purchased by a citizen or resident of the United States, under
12 a contract of sale or purchase the terms of which provide that the
13 risk of loss by war risks or the obligation to provide insurance
14 against war risks is on a citizen or resident of the United States;
15 or

16 “(D) shipped between ports in the United States;

17 “(4) disbursements, including advances to masters and general aver-
18 age disbursements, and freight and passage money of a vessel insurable
19 under this section;

20 “(5) personal effects of an individual on a vessel insurable under this
21 section;

22 “(6) loss of life, injury, or detention by an enemy of the United
23 States after capture, with respect to an individual on a vessel insurable
24 under this section; and

25 “(7) statutory or contractual obligations or other liabilities of a ves-
26 sel insurable under this section or of the owner or charterer of such
27 a vessel, of a nature customarily covered by insurance.

28 “(b) CONSIDERATIONS FOR FOREIGN VESSELS.—In determining whether
29 to provide insurance or reinsurance for a foreign vessel, the Secretary shall
30 consider the characteristics, employment, and general management of the
31 vessel by the owner or charterer.

32 “(c) NON-WAR RISKS.—Insurance of a risk under subsection (a)(5)–(7),
33 insofar as it involves a liability related to an individual on the vessel, may
34 include risks other than war risks to the extent the Secretary considers ad-
35 visable.

36 **“§ 53904. Liability insurance for persons involved in war or**
37 **defense efforts**

38 “(a) IN GENERAL.—The Secretary of Transportation may provide insur-
39 ance under this chapter against legal liability that a person may incur in
40 providing services or facilities for a vessel if, in the opinion of the Secretary,
41 the insurance—

1 “(1) is required in prosecuting a war or for national defense; and
 2 “(2) cannot be obtained at reasonable rates or on reasonable terms
 3 and conditions from approved companies authorized to do insurance
 4 business in a State of the United States.

5 “(b) LIMITATIONS.—Employer liability insurance and worker compensa-
 6 tion insurance against legal liability to employees may not be provided under
 7 this section.

8 **“§ 53905. Agency insurance**

9 “(a) IN GENERAL.—With the approval of the President, an agency of the
 10 United States Government may obtain insurance provided for by this chap-
 11 ter from the Secretary of Transportation, except as provided in sections
 12 17302 and 17303 of title 40.

13 “(b) PREMIUM WAIVERS.—With the approval of the President, the Sec-
 14 retary of Transportation may provide insurance under this chapter at the
 15 request of the Secretary of Defense and other agencies the President may
 16 prescribe, without payment of an insurance premium if the Secretary of De-
 17 fense or agency agrees to indemnify the Secretary of Transportation against
 18 loss covered by the insurance. The Secretary of Defense and agencies may
 19 make such an indemnity agreement.

20 “(c) PRESIDENTIAL APPROVAL.—The signature of the President (or an
 21 official designated by the President) on the agreement shall be treated as
 22 the approval required by section 53902(a) of this title.

23 **“§ 53906. Hull insurance valuation**

24 “(a) STATED VALUATION.—The valuation in a hull insurance policy for
 25 actual or constructive total loss of the insured vessel shall be a stated valu-
 26 ation determined by the Secretary of Transportation. The stated valu-
 27 ation—

28 “(1) shall exclude national defense features paid for by the United
 29 States Government; and

30 “(2) may not exceed the amount that would be payable if the owner-
 31 ship of the vessel had been requisitioned under chapter 563 of this title
 32 at the time the insurance attached under the policy.

33 “(b) REJECTING STATED VALUATION.—Within 60 days after the insur-
 34 ance attaches under a policy referred to in subsection (a) or within 60 days
 35 after the Secretary determines the valuation, whichever is later, the insured
 36 may reject the valuation and pay, at the rate provided in the policy, pre-
 37 miums based on the asserted valuation the insured specifies at the time of
 38 rejection. However, the asserted valuation is not binding on the Government
 39 in any subsequent action on the policy.

40 “(c) AMOUNT OF CLAIM.—If a vessel is actually or constructively totally
 41 lost and the insured under a policy referred to in subsection (a) has not

1 rejected the stated valuation determined by the Secretary, the amount of a
 2 claim adjusted, compromised, settled, adjudged, or paid may not exceed the
 3 stated valuation. However, if the insured has rejected the valuation, the insured—
 4

5 “(1) shall be paid, as a tentative advance only, 75 percent of the
 6 stated valuation; and

7 “(2) may bring a civil action against the United States in a court
 8 having jurisdiction of the claim to recover a valuation equal to the just
 9 compensation the court determines would have been payable if the own-
 10 ership of the vessel had been requisitioned under chapter 563 of this
 11 title at the time the insurance attached under the policy.

12 “(d) ADJUSTING PREMIUMS.—If a court makes a determination as pro-
 13 vided under subsection (c)(2), premiums paid under the policy shall be ad-
 14 justed based on the court’s determination and the rates provided for in the
 15 policy.

16 **“§ 53907. Reinsurance**

17 “(a) IN GENERAL.—To the extent the Secretary of Transportation is au-
 18 thorized to provide insurance under this chapter, the Secretary may provide
 19 reinsurance to a company authorized to do insurance business in a State
 20 of the United States. The Secretary may obtain reinsurance from such a
 21 company for any insurance provided by the Secretary under this chapter.

22 “(b) RATES.—The Secretary may not provide reinsurance at rates less
 23 than, nor obtain reinsurance at rates more than, the rates established by
 24 the Secretary on the same or similar risks or the rates charged by the insur-
 25 ance company for the insurance reinsured, whichever is more advantageous
 26 to the Secretary. However, the Secretary may provide an allowance to the
 27 insurance company for the costs of services and facilities the company pro-
 28 vides, in an amount the Secretary considers reasonable according to good
 29 business practice. The allowance to the company may not include any
 30 amount for soliciting or stimulating insurance business.

31 **“§ 53908. Additional insurance privately obtained**

32 “With the approval of the Secretary of Transportation, a person having
 33 an insurable interest in a vessel may obtain insurance on the vessel with
 34 other underwriting agents in addition to the insurance with the Secretary.
 35 The Secretary is not entitled to the benefit of the additional insurance.

36 **“§ 53909. War risk insurance revolving fund**

37 “(a) IN GENERAL.—There is a war risk insurance revolving fund in the
 38 Treasury.

39 “(b) DEPOSITS.—There shall be deposited in the fund amounts appro-
 40 priated to carry out this chapter and amounts received in carrying out this
 41 chapter.

1 “(c) PAYMENTS.—There shall be paid from the fund amounts for return
2 premiums, losses, settlements, judgments, and all liabilities incurred by the
3 United States Government under this chapter.

4 “(d) INVESTMENT.—The Secretary of Transportation may request the
5 Secretary of the Treasury to invest such portion of the fund as is not, in
6 the judgment of the Secretary of Transportation, required to meet the cur-
7 rent needs of the fund. These investments shall be made by the Secretary
8 of the Treasury in public debt securities of the Government, with maturities
9 suitable to the needs of the fund, and bearing interest rates determined by
10 the Secretary of the Treasury, taking into consideration current market
11 yields on outstanding marketable obligations of the Government of com-
12 parable maturity. Interest and benefits from the securities shall be deposited
13 in the fund.

14 **“§ 53910. Administrative**

15 “(a) ACCORDANCE WITH COMMERCIAL PRACTICE.—In carrying out this
16 chapter, the Secretary of Transportation may act in accordance with com-
17 mercial practice in the marine insurance business.

18 “(b) REGULATIONS.—The Secretary may prescribe regulations the Sec-
19 retary considers appropriate to carry out this chapter.

20 “(c) POLICIES, RATES, AND ANNUAL FEES.—The Secretary may pre-
21 scribe and change forms and policies, and fix and change the amounts in-
22 sured and rates of premium, under this chapter.

23 “(d) ANNUAL FEES.—The Secretary may charge and collect an annual
24 fee in an amount calculated to cover the expenses of processing applications
25 for insurance, employing underwriting agents, and appointing experts under
26 this chapter.

27 “(e) PAYMENT OF CLAIMS AND JUDGMENTS.—The Secretary may settle
28 and pay claims, and pay judgments against the United States, related to
29 insurance under this chapter.

30 “(f) UNDERWRITING AGENTS.—

31 “(1) IN GENERAL.—The Secretary may, and when the Secretary
32 finds it practical to do so shall, employ a domestic company or group
33 of domestic companies, authorized to do marine insurance business in
34 a State of the United States, to act as underwriting agent for the Sec-
35 retary. The services of an underwriting agent may be used in adjusting
36 claims, but a claim may not be paid until approved by the Secretary.

37 “(2) COMPENSATION.—The Secretary may allow the company or
38 group of companies reasonable compensation for services as the under-
39 writing agent. The compensation may include an allowance for expenses
40 reasonably incurred by the agent, but may not include any amount for
41 soliciting or stimulating business.

1 “(g) FEES FOR ARRANGING INSURANCE.—Except as provided in sub-
2 section (f)(2), the Secretary may not pay an insurance broker or other per-
3 son acting in a similar intermediary capacity a fee or other consideration
4 for participating in arranging insurance when the Secretary directly insures
5 any of the risk.

6 “(h) EMPLOYMENT OF MARINE INSURANCE EXPERTS.—The Secretary,
7 without regard to the laws and regulations on the employment of Federal
8 employees, may appoint and prescribe the duties of experts in marine insur-
9 ance as the Secretary considers necessary to carry out this chapter.

10 “(i) SERVICES OF OTHER GOVERNMENT AGENCIES.—With the consent of
11 another agency of the United States Government, the Secretary may use in-
12 formation, services, facilities, officers, and employees of the agency in car-
13 rying out this chapter.

14 “(j) VESSEL LOCATION REPORTING.—The Secretary may prescribe by
15 regulation vessel location reporting requirements for a vessel insured under
16 this chapter.

17 **“§ 53911. Civil actions for losses**

18 “(a) IN GENERAL.—If there is a disagreement about a loss insured under
19 this chapter, a civil action in admiralty may be brought against the United
20 States in the district court of the United States for the district in which
21 the plaintiff or the plaintiff’s agent resides. If the plaintiff has no residence
22 in the United States, the action may be brought in the United States Dis-
23 trict Court for the District of Columbia or in the district court for any dis-
24 trict in which the Attorney General agrees to accept service. Any person
25 who may have an interest in the insurance may be made a party, either ini-
26 tially or on the motion of either party.

27 “(b) EXCLUSIVE REMEDY.—A civil action against the United States
28 under this section is exclusive of any other action by reason of the same
29 subject matter against an officer, employee, or agent employed or retained
30 by the Government under this chapter.

31 “(c) PROCEDURE.—A civil action under this section shall be heard and
32 determined under chapter 309 of this title.

33 “(d) TOLLING OF LIMITATIONS PERIOD.—If a claim is filed with the Sec-
34 retary of Transportation, the running of the limitations period for bringing
35 a civil action is suspended until the Secretary denies the claim, and for 60
36 days thereafter. The Secretary is deemed to have denied the claim if the
37 Secretary does not act on the claim within 6 months after the claim is filed,
38 unless the Secretary for good cause shown agrees with the claimant on a
39 different period for the Secretary to act on the claim.

40 “(e) INTERPLEADER.—If the Secretary acknowledges the indebtedness of
41 the Government under the insurance and there is a dispute about the per-

1 sons entitled to receive payment, the Government may bring a civil action
 2 interpleading those persons. The action shall be brought in the United
 3 States District Court for the District of Columbia or in the district court
 4 for the district in which any of those persons resides. A person not residing
 5 or found in the district may be made a party by service in any reasonable
 6 manner the court directs. If the court is satisfied that unknown persons
 7 might make a claim under the insurance, the court may direct service on
 8 those unknown persons by publication in the Federal Register. Judgment
 9 after service by publication in the Federal Register discharges the Govern-
 10 ment from further liability to all persons.

11 **“§ 53912. Expiration date**

12 “The authority of the Secretary of Transportation to provide insurance
 13 and reinsurance under this chapter expires on December 31, 2010.

14 **“PART D—PROMOTIONAL PROGRAMS**

15 **“CHAPTER 551—COASTWISE TRADE**

“Sec.

“55101. Application of coastwise laws.

“55102. Transportation of merchandise.

“55103. Transportation of passengers.

“55104. Transportation of passengers between Puerto Rico and other ports in the United States.

“55105. Transportation of hazardous waste.

“55106. Merchandise transferred between barges.

“55107. Empty cargo containers and barges.

“55108. Platform jackets.

“55109. Dredging.

“55110. Transportation of dredged material.

“55111. Towing.

“55112. Vessel escort operations and towing assistance.

“55113. Use of foreign documented oil spill response vessels.

“55114. Unloading fish from foreign vessels.

“55115. Supplies on fish processing vessels.

“55116. Canadian rail lines.

“55117. Great Lakes rail route.

“55118. Foreign railroads whose road enters by ferry, tugboat, or towboat.

“55119. Yukon River.

“55120. Transshipment of imported merchandise intended for immediate exportation.

16 **“§ 55101. Application of coastwise laws**

17 “(a) IN GENERAL.—Except as provided in subsection (b), the coastwise
 18 laws apply to the United States, including the island territories and posses-
 19 sions of the United States.

20 “(b) EXCEPTIONS.—The coastwise laws do not apply to—

21 “(1) the Virgin Islands until the President declares by proclamation
 22 that the coastwise laws apply to the Virgin Islands; or

23 “(2) American Samoa.

24 **“§ 55102. Transportation of merchandise**

25 “(a) DEFINITION.—In this section, the term ‘merchandise’ includes—

26 “(1) merchandise owned by the United States Government, a State,
 27 or a subdivision of a State; and

1 “(2) valueless material.

2 “(b) REQUIREMENTS.—Except as otherwise provided in this chapter or
3 chapter 121 of this title, a vessel may not provide any part of the transpor-
4 tation of merchandise by water, or by land and water, between points in
5 the United States to which the coastwise laws apply, either directly or via
6 a foreign port, unless the vessel—

7 “(1) is wholly owned by citizens of the United States for purposes
8 of engaging in the coastwise trade; and

9 “(2) has been issued a certificate of documentation with a coastwise
10 endorsement under chapter 121 or is exempt from documentation but
11 would otherwise be eligible for such a certificate and endorsement.

12 “(c) PENALTY.—Merchandise transported in violation of subsection (b) is
13 liable to seizure by and forfeiture to the Government. Alternatively, an
14 amount equal to the value of the merchandise (as determined by the Sec-
15 retary of Homeland Security) or the actual cost of the transportation,
16 whichever is greater, may be recovered from any person transporting the
17 merchandise or causing the merchandise to be transported.

18 **“§ 55103. Transportation of passengers**

19 “(a) IN GENERAL.—Except as otherwise provided in this chapter or chap-
20 ter 121 of this title, a vessel may not transport passengers between ports
21 or places in the United States, either directly or via a foreign port, unless
22 the vessel—

23 “(1) is wholly owned by citizens of the United States for purposes
24 of engaging in the coastwise trade; and

25 “(2) has been issued a certificate of documentation with a coastwise
26 endorsement under chapter 121 or is exempt from documentation but
27 would otherwise be eligible for such a certificate and endorsement.

28 “(b) PENALTY.—The penalty for violating subsection (a) is \$300 for each
29 passenger transported and landed.

30 **“§ 55104. Transportation of passengers between Puerto Rico
31 and other ports in the United States**

32 “(a) DEFINITIONS.—In this section:

33 “(1) CERTIFICATE.—The term ‘certificate’ means a certificate of fi-
34 nancial responsibility for indemnification of passengers for nonperform-
35 ance of transportation issued by the Federal Maritime Commission
36 under section 44102 of this title.

37 “(2) PASSENGER VESSEL.—The term ‘passenger vessel’ means a ves-
38 sel of similar size, or offering similar service, as any other vessel trans-
39 porting passengers under subsection (b).

1 “(b) EXEMPTION.—Except as otherwise provided in this section, a vessel
2 not qualified to engage in the coastwise trade may transport passengers be-
3 tween a port in Puerto Rico and another port in the United States.

4 “(c) EXPIRATION OF EXEMPTION.—

5 “(1) WHEN COASTWISE-QUALIFIED VESSEL OFFERING SERVICE.—On
6 a showing to the Secretary of the department in which the Coast Guard
7 is operating, by the vessel owner or charterer, that a United States
8 passenger vessel qualified to engage in the coastwise trade is offering
9 or advertising passenger service between a port in Puerto Rico and an-
10 other port in the United States pursuant to a certificate, the Secretary
11 shall notify the owner or operator of each vessel transporting pas-
12 sengers under subsection (b) to terminate that transportation within
13 270 days after the Secretary’s notification. Except as provided in sub-
14 section (d), the authority to transport passengers under subsection (b)
15 expires at the end of that 270-day period.

16 “(2) WHEN NON-COASTWISE-QUALIFIED VESSEL OFFERING SERV-
17 ICE.—On a showing to the Secretary, by the vessel owner or charterer,
18 that a United States passenger vessel not qualified to engage in the
19 coastwise trade is offering or advertising passenger service between a
20 port in Puerto Rico and another port in the United States pursuant
21 to a certificate, the Secretary shall notify the owner or operator of each
22 foreign vessel transporting passengers under subsection (b) to termi-
23 nate that transportation within 270 days after the Secretary’s notifica-
24 tion. Except as provided in subsection (d), the authority of a foreign
25 vessel to transport passengers under subsection (b) expires at the end
26 of that 270-day period.

27 “(d) DELAYING EXPIRATION.—If the vessel offering or advertising the
28 service described in subsection (c) has not begun that service within 270
29 days after the Secretary’s notification, the expiration provided by subsection
30 (c) is delayed until 90 days after the vessel offering or advertising the ser-
31 vice begins that service.

32 “(e) REINSTATEMENT OF EXEMPTION.—If the Secretary finds that the
33 service on which an expiration was based is no longer available, the expired
34 authority to transport passengers is reinstated.

35 **“§ 55105. Transportation of hazardous waste**

36 “(a) IN GENERAL.—The transportation of hazardous waste, as defined in
37 section 1004(5) of the Resource Conservation and Recovery Act of 1976 (42
38 U.S.C. 6903(5)), from a point in the United States to sea for incineration
39 is deemed to be transportation of merchandise under section 55102 of this
40 title.

41 “(b) NONAPPLICATION TO CERTAIN FOREIGN VESSELS.—

1 “(1) IN GENERAL.—Subsection (a) does not apply to transportation
2 performed by a foreign ocean incineration vessel owned by or under
3 construction on May 1, 1982, for a corporation wholly owned by citi-
4 zens of the United States under section 50501(a)–(e) of this title.

5 “(2) STANDARDS FOR INCINERATION EQUIPMENT.—Incineration
6 equipment on a vessel described in paragraph (1) must meet standards
7 of the Coast Guard and the Environmental Protection Agency.

8 “(3) INSPECTION.—A vessel described in paragraph (1) shall be in-
9 spected by the Coast Guard, regardless of whether inspected by the na-
10 tion in which it is registered. The inspection shall be the same as would
11 be required of a documented vessel, including drydock inspection and
12 internal examination of tanks and void spaces. The inspection may be
13 made concurrently with an inspection by that nation or within one year
14 after the initial issuance or next scheduled issuance of the Safety of
15 Life at Sea Safety Construction Certificate. In making the inspection,
16 the Coast Guard shall refer to the condition of the hull and super-
17 structure established by the initial foreign certification as the basis for
18 evaluating the current condition of the hull and superstructure. The
19 Coast Guard shall allow the substitution of fittings, material, appa-
20 ratus, equipment, and appliances different from those required for doc-
21 umented vessels if satisfied they are equivalent and at least as effective
22 as those required for documented vessels. A satisfactory inspection
23 under this paragraph shall be certified in writing by the Secretary of
24 the department in which the Coast Guard is operating.

25 “(e) EFFECTIVE DATE.—Subsection (a) is not effective until an appro-
26 priate vessel has been built and documented under chapter 121 of this title.

27 **“§ 55106. Merchandise transferred between barges**

28 “(a) IN GENERAL.—On terms and conditions the Secretary of Homeland
29 Security may prescribe by regulation, the Secretary may suspend the appli-
30 cation of section 55102 of this title to the transportation of merchandise
31 that is transferred, when moving in the foreign trade of the United States,
32 from a barge certified by the owner or operator as designed specifically for
33 carriage on a vessel and carried regularly on a vessel in foreign trade, to
34 another such barge owned or leased by the same owner or operator. How-
35 ever, this subsection does not apply to transportation between the conti-
36 nental United States and noncontiguous States, territories, or possessions
37 to which the coastwise laws apply.

38 “(b) RECIPROCITY REQUIREMENT FOR FOREIGN VESSELS.—This section
39 applies to a vessel of foreign registry only if the Secretary of Homeland Se-
40 curity finds, based on information from the Secretary of State, that the gov-

ernment of the nation of registry extends reciprocal privileges to vessels of the United States.

“§ 55107. Empty cargo containers and barges

“(a) IN GENERAL.—Subject to subsections (b) and (c), and on terms and conditions the Secretary of Homeland Security may prescribe by regulation, section 55102 of this title does not apply to the transportation of—

“(1) empty cargo vans, empty lift vans, or empty shipping tanks;

“(2) equipment for use with cargo vans, lift vans, or shipping tanks;

“(3) empty barges specifically designed for carriage aboard a vessel and equipment (except propulsion equipment) for use with those barges;

“(4) empty instruments for international traffic exempted from the customs laws under section 322(a) of the Tariff Act of 1930 (19 U.S.C. 1322(a)); or

“(5) stevedoring equipment and material.

“(b) CONDITIONS.—

“(1) PARAGRAPHS (1)–(4).—Paragraphs (1)–(4) of subsection (a) apply only if the items named are owned or leased by the owner or operator of the vessel and transported for its use in handling its cargo in foreign trade.

“(2) PARAGRAPH (5).—Paragraph (5) of subsection (a) applies only if the items named are—

“(A) owned or leased by the owner or operator of the vessel or by the stevedoring company having the contract for the loading or unloading of the vessel; and

“(B) transported without charge for use in the handling of cargo in foreign trade.

“(c) RECIPROcity REQUIREMENT FOR FOREIGN VESSELS.—This section applies to a vessel of foreign registry only if the Secretary of Homeland Security finds, based on information from the Secretary of State, that the government of the nation of registry extends reciprocal privileges to vessels of the United States.

“§ 55108. Platform jackets

“(a) DEFINITIONS.—In this section:

“(1) COASTWISE QUALIFIED VESSEL.—The term ‘coastwise qualified vessel’ means a vessel that has been issued a certificate of documentation with a coastwise endorsement under chapter 121 of this title.

“(2) PLATFORM JACKET.—The term ‘platform jacket’ refers to a single physical component and includes any type of offshore exploration, development, or production structure or component thereof, including—

- 1 “(A) platform jackets;
- 2 “(B) tension leg or SPAR platform superstructures (including
- 3 the deck, drilling rig and support utilities, and supporting struc-
- 4 ture);
- 5 “(C) hull (including vertical legs and connecting pontoons or
- 6 vertical cylinder);
- 7 “(D) tower and base sections of a platform jacket;
- 8 “(E) jacket structures; and
- 9 “(F) deck modules (known as ‘topsides’).

10 “(b) AUTHORIZED TRANSPORTATION.—Section 55102 of this title does

11 not apply to the transportation of a platform jacket in or on a non-coastwise

12 qualified launch barge between two points in the United States, at one of

13 which there is an installation or other device within the meaning of section

14 4(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1333(a)), if—

15 “(1) the launch barge was built before December 31, 2000, and has

16 a launch capacity of at least 12,000 long tons; and

17 “(2) the Secretary of Transportation makes a determination, in ac-

18 cordance with procedures established under subsection (c), that a suit-

19 able coastwise qualified vessel is not available for use in the transpor-

20 tation and, if needed, launch or installation of a platform jacket.

21 “(c) PROCEDURES TO MAXIMIZE USE OF COASTWISE QUALIFIED VES-

22 SELS.—The Secretary of Transportation shall adopt procedures imple-

23 menting this section that are reasonably designed to provide timely informa-

24 tion so as to maximize the use of coastwise qualified vessels. The procedures

25 shall, among other things, establish that for purposes of this section, a

26 coastwise qualified vessel shall be deemed to be not available only if—

27 “(1) on application by an owner or operator for the use of a non-

28 coastwise qualified launch barge for transportation of a platform jacket

29 under this section (which application shall include all relevant informa-

30 tion, including engineering details and timing requirements), the Sec-

31 retary promptly publishes a notice in the Federal Register—

32 “(A) describing the project and the platform jacket involved;

33 “(B) advising that all relevant information reasonably needed to

34 assess the transportation requirements for the platform jacket will

35 be made available to interested parties on request; and

36 “(C) requesting that information on the availability of coastwise

37 qualified vessels be submitted within 30 days after publication of

38 that notice; and

39 “(2)(A) no information is submitted to the Secretary within that 30

40 day period; or

1 “(B) the owner or operator of a coastwise qualified vessel submits
2 information to the Secretary asserting that the owner or operator has
3 a suitable coastwise qualified vessel available for the transportation, but
4 the Secretary determines, within 90 days after the notice is first pub-
5 lished, that the coastwise qualified vessel is not suitable or reasonably
6 available for the transportation.

7 **“§ 55109. Dredging**

8 “(a) IN GENERAL.—Except as provided in subsection (b), a vessel may
9 engage in dredging in the navigable waters of the United States only if—

10 “(1) the vessel is wholly owned by citizens of the United States for
11 purposes of engaging in the coastwise trade;

12 “(2) the charterer, if any, is a citizen of the United States for pur-
13 poses of engaging in the coastwise trade; and

14 “(3) the vessel has been issued a certificate of documentation with
15 a coastwise endorsement under chapter 121 of this title or is exempt
16 from documentation but would otherwise be eligible for such a certifi-
17 cate and endorsement.

18 “(b) DREDGING OF GOLD IN ALASKA.—A documented vessel with a reg-
19 istry endorsement may engage in the dredging of gold in Alaska.

20 “(c) PENALTY.—If a vessel is operated in knowing violation of this sec-
21 tion, the vessel and its equipment are liable to seizure by and forfeiture to
22 the United States Government.

23 **“§ 55110. Transportation of dredged material**

24 “Section 55102 of this title applies to the transportation of valueless ma-
25 terial or dredged material, regardless of whether it has commercial value,
26 from a point in the United States or on the high seas within the exclusive
27 economic zone, to another point in the United States or on the high seas
28 within the exclusive economic zone.

29 **“§ 55111. Towing**

30 “(a) IN GENERAL.—Except when towing a vessel in distress, a vessel may
31 not do any part of any towing described in subsection (b) unless the towing
32 vessel—

33 “(1) is wholly owned by citizens of the United States for purposes
34 of engaging in the coastwise trade; and

35 “(2) has been issued a certificate of documentation with a coastwise
36 endorsement under chapter 121 of this title or is exempt from docu-
37 mentation but would otherwise be eligible for such a certificate and en-
38 dorsement.

39 “(b) APPLICABLE TOWING.—Subsection (a) applies to the towing of—

40 “(1) a vessel between ports or places in the United States to which
41 the coastwise laws apply, either directly or via a foreign port or place;

1 “(2) a vessel from point to point within the harbors of ports or
2 places to which the coastwise laws apply; or

3 “(3) a vessel transporting valueless material or dredged material, re-
4 gardless of whether it has commercial value, from a point in the United
5 States or on the high seas within the exclusive economic zone, to an-
6 other point in the United States or on the high seas within the exclu-
7 sive economic zone.

8 “(c) PENALTIES.—

9 “(1) OWNER AND MASTER.—The owner and master of a vessel tow-
10 ing another vessel in violation of this section are each liable for a pen-
11 alty of at least \$350 but not more than \$1,100. A penalty under this
12 paragraph constitutes a lien on the vessel. The lien is enforceable in
13 a district court of the United States for any district in which the vessel
14 is found. Clearance may not be granted to the vessel until the penalties
15 have been paid.

16 “(2) VESSEL.—In addition to the penalties under paragraph (1), the
17 towing vessel is liable for a penalty of \$60 per ton based on the ton-
18 nage of each towed vessel.

19 **“§ 55112. Vessel escort operations and towing assistance**

20 “(a) IN GENERAL.—Except in the case of a vessel in distress, only a ves-
21 sel of the United States may perform the following escort vessel operations
22 within the navigable waters of the United States:

23 “(1) Operations that commence or terminate at a port or place in
24 the United States.

25 “(2) Operations required by United States law or regulation.

26 “(3) Operations provided in whole or in part within or through navi-
27 gation facilities owned, maintained, or operated by the United States
28 Government or the approaches to those facilities, other than facilities
29 operated by the St. Lawrence Seaway Development Corporation on the
30 St. Lawrence River portion of the Seaway.

31 “(b) ESCORT VESSELS.—For purposes of this section, an escort vessel
32 is—

33 “(1) any vessel that is assigned and dedicated to assist another ves-
34 sel, whether or not tethered to that vessel, solely as a safety precaution
35 to assist in controlling the speed or course of the assisted vessel in the
36 event of a steering or propulsion equipment failure, or any other simi-
37 lar emergency circumstance, or in restricted waters where additional
38 assistance in maneuvering the vessel is required to ensure its safe oper-
39 ation; and

1 “(2) in the case of a vessel being towed under section 55111 of this
2 title, any vessel that is assigned and dedicated to the vessel being towed
3 in addition to any towing vessel required under that section.

4 “(e) RELATIONSHIP TO OTHER LAW.—This section does not affect sec-
5 tion 55111 of this title.

6 “(d) PENALTY.—A person violating this section is liable to the Govern-
7 ment for a civil penalty of not more than \$10,000 for each day during which
8 the violation occurs.

9 **“§ 55113. Use of foreign documented oil spill response ves-**
10 **sels**

11 “Notwithstanding any other provision of law, an oil spill response vessel
12 documented under the laws of a foreign country may operate in waters of
13 the United States on an emergency and temporary basis, for the purpose
14 of recovering, transporting, and unloading in a United States port oil dis-
15 charged as a result of an oil spill in or near those waters, if—

16 “(1) an adequate number and type of oil spill response vessels docu-
17 mented under the laws of the United States cannot be engaged to re-
18 cover oil from an oil spill in or near those waters in a timely manner,
19 as determined by the Federal On-Scene Coordinator for a discharge or
20 threat of a discharge of oil; and

21 “(2) the foreign country has by its laws accorded to vessels of the
22 United States the same privileges accorded to vessels of the foreign
23 country under this section.

24 **“§ 55114. Unloading fish from foreign vessels**

25 “(a) PROHIBITIONS.—Except as otherwise provided by this section or a
26 treaty or convention to which the United States is a party, a foreign vessel
27 may not unload, in a port of the United States—

28 “(1) its catch of fish taken on board on the high seas or fish prod-
29 ucts processed from that catch of fish; or

30 “(2) fish or fish products taken on board that vessel on the high seas
31 from a vessel engaged in fishing operations or the processing of fish
32 or fish products.

33 “(b) REGULATIONS ON OBTAINING INFORMATION.—The Secretary of
34 Commerce may prescribe regulations the Secretary considers necessary to
35 obtain information on the transportation of fish products by vessels of the
36 United States for foreign fish processing vessels to points in the United
37 States.

38 “(c) VIRGIN ISLANDS EXEMPTION.—A foreign vessel of not more than 50
39 feet overall in length may unload its catch of fresh fish (whole or with the
40 heads, viscera, or fins removed, but not frozen, otherwise processed, or fur-
41 ther advanced) in a port of the Virgin Islands for immediate consumption

1 in those islands. Fish unloaded under this subsection may be sold or trans-
 2 ferred only for immediate consumption. In the absence of satisfactory evi-
 3 dence that a sale or transfer to an agent, representative, or employee of a
 4 freezer or cannery is for immediate consumption, the sale or transfer is
 5 deemed not to be for immediate consumption. This subsection does not pro-
 6 hibit the freezing, smoking, or other processing of fresh fish by the ultimate
 7 consumer of the fish.

8 “(d) SEIZURE, FORFEITURE, AND PENALTY.—Fish unloaded in the Vir-
 9 gin Islands that are retained, sold, or transferred, except as allowed by sub-
 10 section (c), are liable to seizure by and forfeiture to the United States Gov-
 11 ernment. A person retaining, selling, transferring, buying, or receiving the
 12 fish is liable to the Government for a civil penalty of not more than \$1,000
 13 for each violation. A penalty or forfeiture under this section may be com-
 14 promised, modified, or remitted under section 2107(b) of this title.

15 **“§ 55115. Supplies on fish processing vessels**

16 “Section 55102 of this title does not apply to supplies aboard a United
 17 States documented fish processing vessel that are necessary and used for
 18 processing or assembling fishery products aboard such a vessel.

19 **“§ 55116. Canadian rail lines**

20 “Section 55102 of this title does not apply to the transportation of mer-
 21 chandise between points in the continental United States, including Alaska,
 22 over through routes in part over Canadian rail lines and connecting water
 23 facilities if the routes are recognized by the Surface Transportation Board
 24 and rate tariffs for the routes have been filed with the Board.

25 **“§ 55117. Great Lakes rail route**

26 “Section 55102 of this title does not apply to the transportation of mer-
 27 chandise loaded on a railroad car or to a motor vehicle with or without a
 28 trailer, and with its passengers or contents when accompanied by the oper-
 29 ator, when the railroad car or motor vehicle is transported in a railroad car
 30 ferry operated between fixed terminals on the Great Lakes as part of a rail
 31 route, if—

32 “(1) the car ferry is owned by a common carrier by water and oper-
 33 ated as part of a rail route with the approval of the Surface Transpor-
 34 tation Board;

35 “(2) the stock of the common carrier by water, or its predecessor,
 36 was owned or controlled by a common carrier by rail prior to June 5,
 37 1920;

38 “(3) the stock of the common carrier owning the car ferry is, with
 39 the approval of the Board, now owned or controlled by a common car-
 40 rier by rail; and

1 “(4) the car ferry is built in and documented under the laws of the
2 United States.

3 **“§ 55118. Foreign railroads whose road enters by ferry, tug-**
4 **boat, or towboat**

5 “A foreign railroad, whose road enters the United States by ferry, tug-
6 boat, or towboat, may own and operate a vessel not having a coastwise en-
7 dorsement in connection with the water transportation of the passenger,
8 freight, express, baggage, and mail cars used by that road, together with
9 the passengers, freight, express matter, baggage, and mails transported in
10 those cars. However, the foreign railroad is subject to the same restrictions
11 imposed by law on a vessel of the United States entering a port of the
12 United States from the same foreign country. Except as otherwise author-
13 ized by this chapter, the ferry, tugboat, or towboat may not, under penalty
14 of forfeiture, be used in the transportation of merchandise between ports
15 or places in the United States to which the coastwise laws apply.

16 **“§ 55119. Yukon River**

17 “Section 55102 of this title does not apply to the transportation of mer-
18 chandise on the Yukon River until the Alaska Railroad is completed and the
19 Secretary of Transportation finds that proper facilities will be available for
20 transportation by citizens of the United States to properly handle the traf-
21 fic.

22 **“§ 55120. Transshipment of imported merchandise intended**
23 **for immediate exportation**

24 “The Secretary of Homeland Security may prescribe regulations for the
25 transshipment and transportation of merchandise that is imported into the
26 United States by sea for immediate exportation to a foreign port by sea,
27 or by a river, the right to ascend or descend which for the purposes of com-
28 merce is secured by treaty to the citizens of the United States and the sub-
29 jects of a foreign power.

30 **“CHAPTER 553—PASSENGER AND CARGO PREFERENCES**

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- “55302. Transportation of United States Government personnel.
- “55303. Motor vehicles owned by United States Government personnel.
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“55331. Definitions.

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“55334. Restrictions on operations.

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1

“SUBCHAPTER I—GENERAL

2

“§ 55301. Priority loading for coal

3

“A vessel engaged in the coastwise transportation of coal produced in the United States, from a port in the United States to another port in the United States, shall be given priority in loading at any of those ports ahead of a waiting vessel engaged in the export transportation of coal produced in the United States. However, if the Secretary of Transportation finds that it is in the national interest, the Secretary may eliminate this priority loading at any port. The Secretary shall report to Congress within 30 days an action eliminating priority loading under this section.

10

“§ 55302. Transportation of United States Government personnel

12

“(a) IN GENERAL.—An officer or employee of the United States Government traveling by sea on official business overseas or to or from a territory or possession of the United States shall travel and transport personal effects on a vessel documented under the laws of the United States if such a vessel is available, unless the necessity of the mission requires the use of a foreign vessel.

18

“(b) REGULATIONS.—The Administrator of General Services shall prescribe regulations under which agencies may not pay for or reimburse an officer or employee for travel or transportation expenses incurred on a foreign vessel in the absence of satisfactory proof of the necessity of using the vessel.

23

“§ 55303. Motor vehicles owned by United States Government personnel

25

“Notwithstanding any other law, privately-owned American shipping services may be used to transport motor vehicles owned by personnel of the United States Government whenever transportation of those vehicles at Government expense is otherwise authorized by law.

29

“§ 55304. Exports financed by the United States Government

30

“It is the sense of Congress that any loans made by an instrumentality of the United States Government to foster the exporting of agricultural or other products shall provide that the products may be transported only on vessels of the United States unless, as to any or all of those products, the Secretary of Transportation, after investigation, certifies to the instrumentality that vessels of the United States are not available in sufficient num-

36

1 ber, in sufficient tonnage capacity, on necessary schedules, or at reasonable
2 rates.

3 **“§ 55305. Cargoes procured, furnished, or financed by the**
4 **United States Government**

5 “(a) DEFINITION.—In this section, the term ‘privately-owned United
6 States documented commercial vessel’ does not include a vessel that, after
7 September 21, 1961, was built or rebuilt outside the United States or docu-
8 mented under the laws of a foreign country, until the vessel has been docu-
9 mented under the laws of the United States for at least 3 years.

10 “(b) MINIMUM TONNAGE.—When the United States Government pro-
11 cures, contracts for, or otherwise obtains for its own account, or furnishes
12 to or for the account of a foreign country without provision for reimburse-
13 ment, any equipment, materials, or commodities, within or without the
14 United States, or advances funds or credits, or guarantees the convertibility
15 of foreign currencies in connection with the furnishing of the equipment,
16 materials, or commodities, the appropriate agencies shall take steps nec-
17 essary and practicable to ensure that at least 50 percent of the gross ton-
18 nage of the equipment, materials, or commodities (computed separately for
19 dry bulk carriers, dry cargo liners, and tankers) which may be transported
20 on ocean vessels is transported on privately-owned United States docu-
21 mented commercial vessels, to the extent those vessels are available at fair
22 and reasonable rates for United States documented commercial vessels, in
23 a manner that will ensure a fair and reasonable participation of United
24 States documented commercial vessels in those cargoes by geographic areas.

25 “(c) WAIVERS.—The President, the Secretary of Defense, or Congress (by
26 concurrent resolution or otherwise) may waive this section temporarily by—

27 “(1) declaring the existence of an emergency justifying a waiver; and

28 “(2) notifying the appropriate agencies of the waiver.

29 “(d) PROGRAMS OF OTHER AGENCIES.—An agency having responsibility
30 under this section shall administer its programs with respect to this section
31 under regulations prescribed by the Secretary of Transportation. The Sec-
32 retary shall review the administration of those programs and report annu-
33 ally to Congress on their administration.

34 “SUBCHAPTER II—EXPORT TRANSPORTATION OF
35 AGRICULTURAL COMMODITIES

36 **“§ 55311. Findings and purposes**

37 “(a) FINDINGS.—Congress finds that—

38 “(1) a productive and healthy agricultural industry and a strong and
39 active United States maritime industry are vitally important to the eco-
40 nomic well-being and security of the United States;

1 “(2) both industries must compete in international markets increas-
2 ingly dominated by foreign trade barriers and the subsidization prac-
3 tices of foreign governments; and

4 “(3) increased agricultural exports and the use of merchant vessels
5 of the United States contribute positively to the United States balance
6 of trade and generate employment opportunities in the United States.

7 “(b) PURPOSES.—The purposes of this subchapter are to—

8 “(1) enable the Secretary of Agriculture to plan export programs ef-
9 fectively, by clarifying the ocean transportation requirements applicable
10 to those programs;

11 “(2) take immediate and positive steps to promote the growth of the
12 cargo-carrying capacity of the United States merchant marine;

13 “(3) expand international trade in United States agricultural com-
14 modities and products and develop, maintain, and expand markets for
15 United States agricultural exports;

16 “(4) improve the efficiency of administration of both the commodity
17 purchasing and selling activities and the ocean transportation activities
18 associated with export programs sponsored by the Secretary;

19 “(5) stimulate and promote the agricultural and maritime industries
20 of the United States and encourage cooperative efforts by both indus-
21 tries to address their common problems; and

22 “(6) provide for the appropriate disposition of these findings and
23 purposes.

24 **“§ 55312. Determining prevailing world market price**

25 “(a) AGRICULTURAL COMMODITIES AND PRODUCTS.—The prevailing
26 world market price for agricultural commodities or their products shall be
27 determined under this subchapter under procedures prescribed by the Sec-
28 retary of Agriculture. The Secretary shall prescribe the procedures by regu-
29 lation, with notice and opportunity for public comment under section 553
30 of title 5.

31 “(b) SERVICES AND NON-AGRICULTURAL COMMODITIES AND PROD-
32 UCTS.—If a determination of the prevailing world market price of any other
33 type of materials, goods, equipment, or service is required to determine
34 whether a barter or exchange transaction is subject to section 55314(b)(6)
35 or (7) of this title, the determination shall be made by the Secretary of Ag-
36 riculture in consultation with the heads of other appropriate agencies.

37 **“§ 55313. Exemption of certain agricultural exports from**
38 **cargo preference provisions**

39 “Sections 55304 and 55305 of this title do not apply to export activities
40 of the Secretary of Agriculture or the Commodity Credit Corporation under
41 which—

1 purpose of compliance with minimum percentage requirements is the
2 12-month period beginning October 1 of each year.

3 “(b) APPLICABLE EXPORT ACTIVITY.—This section applies to export ac-
4 tivity (except inspection or weighing activities, other activities carried out
5 for health or safety, or technical assistance provided in the handling of com-
6 mercial transactions) of the Secretary of Agriculture or the Commodity
7 Credit Corporation—

8 “(1) carried out under the Agricultural Trade Development and As-
9 sistance Act of 1954 (7 U.S.C. 1691 et seq.);

10 “(2) carried out under section 416 of the Agricultural Act of 1949
11 (7 U.S.C. 1431);

12 “(3) carried out under the Bill Emerson Humanitarian Trust Act (7
13 U.S.C. 1736f-1);

14 “(4) under which agricultural commodities or their products are—

15 “(A) donated through foreign governments or private or public
16 agencies, including intergovernmental organizations; or

17 “(B) sold for foreign currencies or for dollars on credit terms
18 of more than 10 years;

19 “(5) under which agricultural commodities or their products are
20 made available for emergency food relief at less than prevailing world
21 market prices;

22 “(6) under which a cash grant is made directly or through an inter-
23 mediary to a foreign purchaser to enable the purchaser to obtain
24 United States agricultural commodities or their products in an amount
25 greater than the difference between the prevailing world market price
26 and the United States market price, free along side vessel at a United
27 States port; or

28 “(7) under which agricultural commodities owned or controlled by or
29 under loan from the Corporation are exchanged or bartered for mate-
30 rials, goods, equipment, or services produced in foreign countries, ex-
31 cept export activities described in section 55313(5) of this title.

32 “(c) ADDITIONAL REQUIREMENTS.—

33 “(1) APPLICATION OF SECTION 55305.—The requirement for trans-
34 portation on United States documented vessels under subsection (a) is
35 subject to the same terms and conditions as provided in section 55305
36 of this title.

37 “(2) ALLOCATION OF COMMODITIES.—Subject to paragraph (3), in
38 carrying out this section and section 55305 of this title, the Corpora-
39 tion shall take steps necessary and practicable, and consistent with this
40 section and section 55305, without detriment to any port range to allo-
41 cate, on the principle of lowest landed cost without regard to the coun-

1 try of registry of the vessel, 25 percent of the bagged, processed, or
 2 fortified commodities provided under title II of the Agricultural Trade
 3 Development and Assistance Act of 1954 (7 U.S.C. 1721 et seq.).

4 “(3) CALCULATIONS.—In carrying out paragraph (2), first there
 5 shall be calculated the allocation of 100 percent of the quantity to be
 6 procured on an overall lowest landed cost basis without regard to the
 7 country of registry of the vessel, and then there shall be allocated to
 8 the Great Lakes port range any cargoes for which it has the lowest
 9 landed cost under that calculation. The requirements for transportation
 10 on United States documented vessels under this section and section
 11 55305 of this title do not apply to commodities allocated to the Great
 12 Lakes port range under paragraph (2). To the extent that the Great
 13 Lakes port range is used to furnish and transport less than 25 percent
 14 of the total annual tonnage of commodities to which paragraph (2) ap-
 15 plies, the commodities allocated to the Great Lakes port range under
 16 paragraph (2) may not be reallocated or diverted to another port range
 17 to meet the requirements for transportation on United States docu-
 18 mented vessels under this section and section 55305 of this title.

19 “(4) AWARDING CONTRACTS.—In awarding a contract for the trans-
 20 portation by vessel of commodities from the Great Lakes port range
 21 pursuant to an export activity referred to in subsection (b), an agen-
 22 cy—

23 “(A) shall consider expressions of freight interest for any vessel
 24 from a vessel operator who meets reasonable requirements for fi-
 25 nancial and operational integrity; and

26 “(B) may not deny award of the contract to a person based on
 27 the type of vessel on which the transportation would be provided
 28 (including on the basis that the transportation would not be pro-
 29 vided on a liner vessel, as that term is used in the Shipping Act
 30 of 1984, as in effect on November 14, 1995), if the person other-
 31 wise satisfies reasonable requirements for financial and operational
 32 integrity.

33 “(5) NONAVAILABILITY OF VESSELS.—A determination of nonavail-
 34 ability of United States documented vessels resulting from the applica-
 35 tion of this subsection may not reduce the gross tonnage of commod-
 36 ities required by this section and section 55305 of this title to be trans-
 37 ported on United States documented vessels.

38 **“§ 55315. Minimum tonnage**

39 “(a) DEFINITION.—In this section, the term ‘base period’ means the 5-
 40 year period running from the sixth through the second prior fiscal years.

1 “(b) REQUIREMENT.—For each fiscal year, the minimum quantity of ag-
2 ricultural commodities to be exported under programs subject to section
3 55314 of this title is the average of the tonnage exported under those pro-
4 grams during the base period, discarding the high and low years.

5 “(c) WAIVERS.—The President may waive the minimum quantity for a
6 fiscal year under this section if the President determines and reports to
7 Congress, together with reasons, that the quantity cannot be used effectively
8 for the purposes of those programs or, based on a certification by the Sec-
9 retary of Agriculture, that the commodities are not available for reasons
10 that include the unavailability of funds.

11 **“§ 55316. Financing the transportation of agricultural com-
12 modities**

13 “(a) FINANCING OF INCREASED CHARGES.—The Secretary of Transpor-
14 tation shall finance any increased ocean freight charges incurred in any fis-
15 cal year that result from the application of section 55314 of this title.

16 “(b) REIMBURSEMENT OF INCREASED CHARGES.—

17 “(1) IN GENERAL.—The Secretary of Transportation shall reimburse
18 the Secretary of Agriculture and the Commodity Credit Corporation for
19 the amount by which, in any fiscal year—

20 “(A) the total cost of ocean freight and ocean freight differen-
21 tial for which obligations are incurred by the Secretary of Agri-
22 culture and the Corporation on exports of agricultural commodities
23 and their products under the agricultural export programs speci-
24 fied in section 55314(b) of this title; exceeds

25 “(B) 20 percent of the value of the commodities and their prod-
26 ucts and the cost of the ocean freight and ocean freight differen-
27 tial on which obligations are incurred by the Secretary of Agri-
28 culture and the Corporation during that fiscal year.

29 “(2) COMMODITIES SHIPPED FROM INVENTORY.—For purposes of
30 this subsection, commodities shipped from the inventory of the Cor-
31 poration shall be valued as provided in section 412(d) of the Agricul-
32 tural Trade Development and Assistance Act of 1954 (7 U.S.C.
33 1736f(d)).

34 “(c) ISSUANCE AND PURCHASE OF OBLIGATIONS.—

35 “(1) ISSUANCE.—To meet the expenses required to be assumed
36 under subsections (a) and (b), the Secretary of Transportation shall
37 issue obligations to the Secretary of the Treasury. The Secretary of
38 Transportation, with the approval of the Secretary of the Treasury,
39 shall prescribe the form, denomination, maturity, and other terms (ex-
40 cept the interest rate) of the obligations. The Secretary of the Treasury
41 shall set the interest rate for the obligations, considering the average

1 market yield on outstanding marketable obligations of the United
2 States Government of comparable maturities during the month before
3 the obligations are issued.

4 “(2) PURCHASE.—The Secretary of the Treasury shall purchase the
5 obligations issued under this subsection. To purchase the obligations,
6 the Secretary of the Treasury may use as a public debt transaction the
7 proceeds from the sale of securities issued under chapter 31 of title 31.
8 The purposes for which securities may be issued under that chapter are
9 extended to include the purchase of obligations under this subsection.
10 A redemption or purchase of the obligations by the Secretary of the
11 Treasury is a public debt transaction of the Government.

12 “(d) SOURCE OF FUNDS FOR REIMBURSEMENT.—Reimbursement of the
13 Secretary of Transportation for costs incurred under this section shall be
14 made with appropriated funds rather than through cancellation of notes.

15 “(e) APPROPRIATIONS.—

16 “(1) AUTHORIZATION.—Each fiscal year, there is authorized to be
17 appropriated an amount sufficient to reimburse the Secretary of Trans-
18 portation for the costs incurred under this section, including adminis-
19 trative expenses and the principal and interest due on obligations
20 issued to the Secretary of the Treasury.

21 “(2) APPROPRIATION FOR ADMINISTRATIVE EXPENSES.—Each fiscal
22 year, such amounts as may be necessary are hereby appropriated to
23 pay interest and to liquidate debt on obligations issued to the Secretary
24 of the Treasury under this section.

25 “(f) NOTIFICATION TO CONGRESS OF INSUFFICIENCY.—If the Secretary
26 of Transportation is unable to obtain the funds necessary to finance the in-
27 creased ocean freight charges resulting from the requirements of subsections
28 (a) and (b) and section 55314(a) of this title, the Secretary shall notify
29 Congress within 10 working days of the discovery of the insufficiency.

30 **“§ 55317. Termination of subchapter**

31 “This subchapter terminates 90 days after the date on which a notifica-
32 tion is made under section 55316(f) of this title, except for shipments of
33 agricultural commodities and their products subject to contracts made be-
34 fore the end of that 90-day period, unless within that 90-day period the Sec-
35 retary of Transportation proclaims that funds are available to finance in-
36 creased freight charges resulting from the requirements of sections
37 55314(a) and 55316(a) and (b) of this title. On the termination of this sub-
38 chapter under this section—

39 “(1) this subchapter does not exempt export activities from, or sub-
40 ject export activities to, the cargo preference laws; and

1 “(2) the 50-percent requirement in section 55305 of this title re-
2 mains in effect.

3 **“§ 55318. Effect on other law**

4 “‘This subchapter does not affect chapter 5 of title 5.

5 “SUBCHAPTER III—AMERICAN GREAT LAKES VESSELS

6 **“§ 55331. Definitions**

7 “‘In this subchapter:

8 “(1) AMERICAN GREAT LAKES VESSEL.—The term ‘American Great
9 Lakes vessel’ means a vessel so designated under section 55332 of this
10 title, but only during the period the designation is in effect.

11 “(2) GREAT LAKES.—The term ‘Great Lakes’ means Lake Superior,
12 Lake Michigan, Lake Huron, Lake Erie, Lake Ontario, the Saint Law-
13 rence River west of Saint Regis, New York, and their connecting and
14 tributary waters.

15 “(3) GREAT LAKES SHIPPING SEASON.—The term ‘Great Lakes
16 shipping season’ means the period each year during which the Saint
17 Lawrence Seaway is open for navigation by vessels, as declared by the
18 Saint Lawrence Seaway Development Corporation.

19 **“§ 55332. Designating American Great Lakes vessels**

20 “(a) DESIGNATIONS.—The Secretary of Transportation shall designate a
21 vessel as an American Great Lakes vessel if—

22 “(1) an application for designation is submitted to the Secretary
23 under regulations prescribed by the Secretary;

24 “(2) the vessel is documented under the laws of the United States;

25 “(3) the vessel, on the effective date of the designation, is—

26 “(A) at least 1, but not more than 6, years old; or

27 “(B) at least 1, but not more than 11, years old if the Secretary
28 finds that suitable vessels are not available to provide the type of
29 service for which the vessel will be used after the designation;

30 “(4) the vessel has not previously been designated as an American
31 Great Lakes vessel; and

32 “(5) the owner makes an agreement as provided under subsection
33 (b).

34 “(b) AGREEMENTS.—A vessel may be designated as an American Great
35 Lakes vessel only if the person that will be the owner of the vessel at the
36 time of the designation makes an agreement with the Secretary providing
37 that if the Secretary determines that the vessel is necessary to the defense
38 of the United States, the United States Government will have an exclusive
39 right, during the 120-day period following the date of a revocation of the
40 designation under section 55335 of this title, to purchase the vessel for a
41 price equal to the greater of—

1 “(1) IN GENERAL.—Except as otherwise provided in this section,
2 section 12119 of this title, or section 611 of the Merchant Marine Act,
3 1936, a person may not, without the approval of the Secretary of
4 Transportation—

5 “(A) sell, lease, charter, deliver, or in any other manner trans-
6 fer, or agree to sell, lease, charter, deliver, or in any other manner
7 transfer, to a person not a citizen of the United States, an interest
8 in or control of—

9 “(i) a documented vessel owned by a citizen of the United
10 States; or

11 “(ii) a vessel last documented under the laws of the United
12 States; or

13 “(B) place under foreign registry, or operate under the author-
14 ity of a foreign country, a documented vessel or a vessel last docu-
15 mented under the laws of the United States.

16 “(2) EXCEPTIONS.—Paragraph (1)(A) does not apply to a vessel
17 that has been operated only for pleasure or only as a fishing vessel,
18 fish processing vessel, or fish tender vessel (as defined in section 2101
19 of this title).

20 “(b) APPROVAL BEFORE DOCUMENTATION.—To promote financing with
21 respect to a vessel to be documented under chapter 121 of this title, the
22 Secretary may grant approval under subsection (a) before the vessel is docu-
23 mented.

24 “(c) EXCEPTIONS.—Notwithstanding any other provision of this subtitle,
25 the Merchant Marine Act, 1936, or any contract with the Secretary made
26 under this subtitle or that Act, a person may place a vessel under foreign
27 registry without the approval of the Secretary if—

28 “(1)(A) the Secretary, in conjunction with the Secretary of Defense,
29 determines that at least one replacement vessel of equal or greater mili-
30 tary capability and of a capacity that is equivalent or greater, as meas-
31 ured by deadweight tons, gross tons, or container equivalent units, as
32 appropriate, is documented under chapter 121 of this title by the owner
33 of the vessel placed under foreign registry; and

34 “(B) the replacement vessel is not more than 10 years old on the
35 date of that documentation; or

36 “(2) an operating agreement covering the vessel under chapter 531
37 of this title has expired.

38 “(d) STATUS OF PROHIBITED TRANSACTION.—A charter, sale, or trans-
39 fer of a vessel, or of an interest in or control of a vessel, in violation of
40 this section is void.

41 “(e) PENALTIES.—

1 “(1) CRIMINAL PENALTY.—A person that knowingly sells, charters,
2 or transfers a vessel, or an interest in or control of a vessel, in violation
3 of this section shall be fined under title 18, imprisoned for not more
4 than 5 years, or both.

5 “(2) CIVIL PENALTY.—A person that sells, charters, or transfers a
6 vessel, or an interest in or control of a vessel, in violation of this sec-
7 tion is liable to the United States Government for a civil penalty of
8 not more than \$10,000 for each violation.

9 “(3) FORFEITURE.—A documented vessel may be seized by and for-
10 feited to the Government if, in violation of this section, a person—

11 “(A) knowingly sells, charters, or transfers the vessel or an in-
12 terest in or control of the vessel; or

13 “(B) places the vessel under foreign registry or operates the
14 vessel under the authority of a foreign country.

15 **“§ 56102. Additional controls during war or national emer-**
16 **gency**

17 “(a) IN GENERAL.—During war, or a national emergency declared by
18 Presidential proclamation, a person may not, without the approval of the
19 Secretary of Transportation—

20 “(1) place under foreign registry a vessel owned in whole or in part
21 by a citizen of the United States or a corporation incorporated under
22 the laws of the United States or of a State;

23 “(2) sell, mortgage, lease, charter, deliver, or in any other manner
24 transfer, or agree to sell, mortgage, lease, charter, deliver, or in any
25 other manner transfer, to a person not a citizen of the United States—

26 “(A) a vessel owned as described in paragraph (1), or an inter-
27 est therein;

28 “(B) a vessel documented under the laws of the United States,
29 or an interest therein; or

30 “(C) a facility for building or repairing vessels, or an interest
31 therein;

32 “(3) issue, assign, or transfer to a person not a citizen of the United
33 States an instrument of indebtedness secured by a mortgage of a vessel
34 to a trustee, by an assignment of an owner’s interest in a vessel under
35 construction to a trustee, or by a mortgage of a facility for building
36 or repairing vessels to a trustee, unless the trustee or a substitute
37 trustee is approved by the Secretary under subsection (b);

38 “(4) enter into an agreement or understanding to construct a vessel
39 in the United States for, or to be delivered to, a person not a citizen
40 of the United States without expressly stipulating that construction will
41 not begin until after the war or national emergency has ended;

1 “(5) enter into an agreement or understanding whereby there is vest-
2 ed in, or for the benefit of, a person not a citizen of the United States
3 the controlling interest in a corporation that is incorporated under the
4 laws of the United States or a State and that owns a vessel or facility
5 for building or repairing vessels; or

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

10 “(b) TRUSTEES.—

11 “(1) APPROVAL.—The Secretary shall approve a trustee or sub-
12 stitute trustee under subsection (a)(3) if and only if the trustee is a
13 bank or trust company that—

14 “(A) is organized as a corporation, and is doing business, under
15 the laws of the United States or a State;

16 “(B) is authorized under those laws to exercise corporate trust
17 powers;

18 “(C) is a citizen of the United States;

19 “(D) is subject to supervision or examination by Federal or
20 State authority; and

21 “(E) has a combined capital and surplus (as set forth in its
22 most recent published report of condition) of at least \$3,000,000.

23 “(2) DISAPPROVAL.—If a trustee or substitute trustee ceases to meet
24 the conditions in paragraph (1), the Secretary shall disapprove the
25 trustee or substitute trustee. After the disapproval, the restrictions on
26 transfer or assignment without the Secretary’s approval in subsection
27 (a)(3) apply.

28 “(3) OPERATION OF VESSEL.—During a period when subsection (a)
29 applies, a trustee referred to in subsection (a)(3), even though ap-
30 proved as a trustee by the Secretary, may not operate the vessel under
31 the mortgage or assignment without the Secretary’s approval.

32 “(c) STATUS OF PROHIBITED TRANSACTION.—A transaction in violation
33 of this section is void.

34 “(d) RECOVERY OF CONSIDERATION.—

35 “(1) IN GENERAL.—A person that deposited or paid consideration in
36 connection with a transaction prohibited by this section may recover
37 the consideration after tender of the vessel, facility, stock, or other se-
38 curity, or interest therein, to the person entitled to it, or the forfeiture
39 thereof to the United States Government.

40 “(2) EXCEPTION.—Paragraph (1) does not apply if the person in
41 whose interest the consideration was deposited, or to whom it was paid,

1 entered into the transaction in the belief that the person depositing or
2 paying the consideration was a citizen of the United States.

3 “(e) PENALTIES.—

4 “(1) CRIMINAL PENALTY.—A person that violates, or attempts or
5 conspires to violate, this section shall be fined under title 18, impris-
6 oned for not more than 5 years, or both.

7 “(2) FORFEITURE.—The following shall be forfeited to the Govern-
8 ment:

9 “(A) A vessel, a facility for building or repairing vessels, or an
10 interest in a vessel or such a facility, that is sold, mortgaged,
11 leased, chartered, delivered, transferred, or documented, or agreed
12 to be sold, mortgaged, leased, chartered, delivered, transferred, or
13 documented, in violation of this section.

14 “(B) Stock and other securities sold or transferred, or agreed
15 to be sold or transferred, in violation of this section.

16 “(C) A vessel departing in violation of subsection (a)(6).

17 **“§ 56103. Conditional approvals**

18 “(a) IN GENERAL.—In approving an act or transaction under section
19 56101 or 56102 of this title, the Secretary of Transportation may do so
20 absolutely or upon conditions the Secretary considers advisable. The Sec-
21 retary shall state the conditions in the notice of approval.

22 “(b) VIOLATIONS.—A violation of a condition of approval is subject to the
23 same penalties as a violation resulting from an act done without the re-
24 quired approval. The violation occurs at the time the condition is violated.

25 **“§ 56104. Penalty for false statements**

26 “A person that knowingly makes a false statement of a material fact to
27 the Secretary of Transportation or another officer, employee, or agent of the
28 Department of Transportation, to obtain the Secretary’s approval under sec-
29 tion 56101 or 56102 of this title, shall be fined under title 18, imprisoned
30 for not more than 5 years, or both.

31 **“§ 56105. Forfeiture procedure**

32 “(a) IN GENERAL.—A forfeiture under this chapter may be enforced in
33 the same way as a forfeiture under the laws on the collection of duties.
34 However, such a forfeiture may be remitted without seizure of the vessel.

35 “(b) PRIOR CONVICTIONS.—In a proceeding under this chapter to enforce
36 a forfeiture, a prior criminal conviction of a person for a violation of this
37 chapter with respect to the subject matter of the forfeiture is prima facie
38 evidence of the violation against the person convicted.

39 **“CHAPTER 563—EMERGENCY ACQUISITION OF VESSELS**

“Sec.

“56301. General authority.

“56302. Charter terms.

- “56303. Compensation.
- “56304. Disputed compensation.
- “56305. Vessel encumbrances.
- “56306. Use and transfer of vessels.
- “56307. Return of vessels.

1 **“§ 56301. General authority**

2 “During a national emergency declared by Presidential proclamation, or
3 a period for which the President has proclaimed that the security of the na-
4 tional defense makes it advisable, the Secretary of Transportation may req-
5 uisition or purchase, or requisition or charter the use of, a vessel owned by
6 citizens of the United States, a documented vessel, or a vessel under con-
7 struction in the United States.

8 **“§ 56302. Charter terms**

9 “(a) IN GENERAL.—If a vessel is requisitioned for use but not ownership
10 under this chapter, the Secretary of Transportation, at the time of requisi-
11 tion or as soon thereafter as the situation allows, shall offer the person enti-
12 tled to possession of the vessel a charter containing—

13 “(1) the terms the Secretary believes should govern the relationship
14 between the United States Government and the person; and

15 “(2) the rate of hire the Secretary considers just compensation for
16 the use of the vessel and the services required under the charter.

17 “(b) REFUSAL TO ACCEPT.—If the person does not accept the charter
18 and rate of hire, the parties shall proceed as provided in section 56304 of
19 this title.

20 **“§ 56303. Compensation**

21 “(a) IN GENERAL.—As soon as practicable, the Secretary of Transpor-
22 tation shall determine and pay just compensation for a vessel requisitioned
23 under this chapter.

24 “(b) FACTORS NOT AFFECTING VALUE.—The value of a vessel may not
25 be considered enhanced by the circumstances requiring its requisition. Con-
26 sequential damages arising from the requisition may not be paid.

27 “(c) EFFECT OF CONSTRUCTION-DIFFERENTIAL SUBSIDY.—

28 “(1) IF PAID.—If a construction-differential subsidy has been paid
29 for the vessel, the value of the vessel at the time of requisition shall
30 be determined under section 802 of the Merchant Marine Act, 1936.

31 “(2) IF NOT PAID.—If a construction-differential subsidy has not
32 been paid for the vessel, the value of any national defense features pre-
33 viously paid for by the United States Government shall be excluded.

34 “(d) LOSS OR DAMAGE DURING CHARTER.—If a vessel is lost or dam-
35 aged by a risk assumed by the Government under the charter, but a valu-
36 ation for the vessel or a means of compensation has not been agreed to,
37 the Secretary shall pay just compensation for the loss or damage, to the
38 extent the person is not reimbursed through insurance.

“§ 56304. Disputed compensation

“If the person entitled to compensation disputes the amount of just compensation determined by the Secretary of Transportation under this chapter, the Secretary shall pay the person, as a tentative advance, 75 percent of the amount determined. The person may bring a civil action against the United States to recover just compensation. If the tentative advance paid under this section is greater than the amount of the court’s judgment, the person shall refund the difference.

“§ 56305. Vessel encumbrances

“(a) IN GENERAL.—The existence of an encumbrance on a vessel does not prevent the requisition of the vessel under this chapter.

“(b) DEPOSIT IN TREASURY.—

“(1) IN GENERAL.—If an encumbrance exists, the Secretary of Transportation may deposit part of the compensation or advance of compensation to be paid under this chapter (but not more than the total amount of all encumbrances) in a fund in the Treasury. The Secretary shall publish notice of the creation of the fund in the Federal Register.

“(2) AVAILABILITY OF AMOUNTS DEPOSITED.—Amounts deposited in the fund shall be available to pay the compensation or any of the encumbrances (including encumbrances stipulated to in a court of the United States or a State) existing at the time the vessel was requisitioned.

“(c) CIVIL ACTION.—

“(1) IN GENERAL.—Within 6 months after publication of notice under subsection (b), the holder of an encumbrance may bring a civil action in admiralty, according to the principles of libels in rem, against the fund.

“(2) VENUE.—The action must be brought in the district court of the United States—

“(A) from whose custody the vessel was or may be requisitioned;

or

“(B) in whose district the vessel was located when it was requisitioned.

“(3) SERVICE OF PROCESS.—Service of process shall be made on the appropriate United States Attorney, the Attorney General, and the Secretary, in the manner provided by the Federal Rules of Civil Procedure (28 App. U.S.C.). Notice of the action shall be given to all interested persons as ordered by the court.

1 “(4) AS BETWEEN PRIVATE PARTIES.—The action shall proceed and
2 be determined according to the principles of law and the rules of prac-
3 tice applicable in like cases between private parties.

4 **“§ 56306. Use and transfer of vessels**

5 “(a) IN GENERAL.—The Secretary of Transportation may repair, recon-
6 dition, reconstruct, operate, or charter for operation, a vessel acquired under
7 this chapter.

8 “(b) TRANSFER TO OTHER AGENCIES.—The Secretary may transfer the
9 possession or control of a vessel acquired under this chapter to another de-
10 partment or agency of the United States Government on terms and condi-
11 tions approved by the President. The department or agency shall promptly
12 reimburse the Secretary for expenditures for just compensation, purchase
13 price, charter hire, repairs, reconditioning, or reconstruction.

14 **“§ 56307. Return of vessels**

15 “When a vessel requisitioned for use but not ownership is returned to the
16 owner, the Secretary of Transportation shall—

17 “(1) return the vessel in a condition at least as good as when taken,
18 less ordinary wear and tear; or

19 “(2) pay the owner an amount sufficient to recondition the vessel to
20 that condition, less ordinary wear and tear.

21 **“CHAPTER 565—ESSENTIAL VESSELS AFFECTED BY**
22 **NEUTRALITY ACT**

“Sec.

“56501. Definition.

“56502. Adjusting obligations and arranging maintenance.

“56503. Types of adjustments and arrangements.

“56504. Changes in adjustments and arrangements.

23 **“§ 56501. Definition**

24 “In this chapter, the term ‘essential vessel’ means a vessel that is—

25 “(1)(A) security for a mortgage indebtedness to the United States
26 Government; or

27 “(B) constructed under this subtitle or required by a contract under
28 this subtitle to be operated on a certain essential foreign trade route;
29 and

30 “(2) necessary in the interests of commerce and national defense to
31 be maintained in condition for prompt use.

32 **“§ 56502. Adjusting obligations and arranging maintenance**

33 “(a) GENERAL AUTHORITY.—On written application, the Secretary of
34 Transportation may adjust obligations and arrange for maintenance of an
35 essential vessel as provided in this chapter if the Secretary determines, after
36 any investigation or proceeding the Secretary considers desirable, that—

1 “(1) the operation of the vessel in the service, route, or line to which
2 it is assigned under this subtitle, or in which it otherwise would be op-
3 erated, is not—

4 “(A) lawful under the Neutrality Act of 1939 (22 U.S.C. 441
5 et seq.) or a proclamation issued under that Act; or

6 “(B) compatible with maintaining the availability of the vessel
7 for national defense and commerce;

8 “(2) it is not feasible under existing law to employ the vessel in any
9 other service or operation in foreign or domestic trade (except tem-
10 porary or emergency operation under section 56503(b)(5) of this title);
11 and

12 “(3) the applicant, because of the restrictions of the Neutrality Act
13 of 1939 (22 U.S.C. 441 et seq.) or the withdrawal of vessels for na-
14 tional defense under paragraph (1), is not earning or will not earn a
15 reasonable return on the capital necessarily employed in its business.

16 “(b) EFFECTIVE PERIOD.—Adjustments and arrangements under sub-
17 section (a) shall continue in effect only as long as the circumstances de-
18 scribed in subsection (a) continue to exist.

19 **“§ 56503. Types of adjustments and arrangements**

20 “(a) SUSPENSION REQUIREMENTS.—An adjustment or arrangement
21 under this chapter shall include suspension of—

22 “(1) the requirement to operate the vessel in foreign trade under the
23 applicable operating-differential or construction-differential subsidy
24 contract or mortgage or other agreement; and

25 “(2) the right to operating-differential subsidy for the vessel.

26 “(b) DISCRETIONARY ADJUSTMENTS AND ARRANGEMENTS.—To the ex-
27 tent the Secretary of Transportation considers appropriate to carry out the
28 purposes of this subtitle, an adjustment or arrangement under this chapter
29 may include any of the following:

30 “(1) Lay-up of the vessel by the owner or in the custody of the Sec-
31 retary, with payment or reimbursement by the Secretary of necessary
32 and proper expenses (including reasonable overhead and insurance) or
33 a fixed periodic allowance instead of payment or reimbursement.

34 “(2) Postponement, for not more than the total period of the lay-
35 up, of the maturity date of each installment of the principal of obliga-
36 tions to the United States Government for the vessel (regardless of
37 whether the maturity date is during a lay-up period), or rearrangement
38 of those maturities.

39 “(3) Postponement or cancellation of interest accruing on the obliga-
40 tions during a lay-up period.

1 “(4) Extension, for not more than the total period of the lay-up, of
2 the 20-year life limitation for the vessel and other limitations and pro-
3 visions of this subtitle based on a 20-year life.

4 “(5) Provision for temporary or emergency employment of the vessel
5 (instead of lay-up) as may be practicable, with such arrangements for
6 management of the vessel, payment of expenses, and application of the
7 proceeds of the employment, as the Secretary may approve, with any
8 period of operation being included as part of the lay-up period.

9 “(6) Payment to the Secretary, on termination of the arrangements
10 with the applicant, of the applicant’s net profits (earned while the ar-
11 rangements were in effect) in excess of 10 percent a year on the capital
12 necessarily employed in the applicant’s business, as reimbursement for
13 obligations postponed or canceled and expenses incurred or paid by the
14 Secretary under this section.

15 “(c) LAID-UP VESSELS.—Under subsection (b)(6), capital of the appli-
16 cant represented by a vessel of the applicant laid-up or operated under this
17 section shall be included in capital necessarily employed in the applicant’s
18 business. The Secretary may require a vessel laid-up or operated under this
19 section to be security for reimbursement.

20 **“§ 56504. Changes in adjustments and arrangements**

21 “The Secretary of Transportation may change an adjustment or arrange-
22 ment made under this chapter as the Secretary considers necessary to carry
23 out this chapter.

24 **“PART F—GOVERNMENT-OWNED MERCHANT VESSELS**

25 **“CHAPTER 571—GENERAL AUTHORITY**

“Sec.

“57101. Placement of vessels in National Defense Reserve Fleet.

“57102. Disposition of vessels not worth preserving.

“57103. Sale of obsolete vessels in National Defense Reserve Fleet.

“57104. Acquisition of vessels from sale of obsolete vessels.

“57105. Acquisition of vessels for essential services, routes, or lines.

“57106. Maintenance, improvement, and operation of vessels.

“57107. Vessels for other agencies.

“57108. Consideration of ballast and equipment in determining selling price.

“57109. Operation of vessels purchased, chartered, or leased from Secretary of Transpor-
tation.

26 **“§ 57101. Placement of vessels in National Defense Reserve**
27 **Fleet**

28 “(a) IN GENERAL.—Any vessel acquired by the Maritime Administration
29 shall be placed in the National Defense Reserve Fleet maintained under sec-
30 tion 11 of the Merchant Ship Sales Act of 1946 (50 App. U.S.C. 1744).

31 “(b) REMOVAL FROM FLEET.—A vessel placed in the Fleet under sub-
32 section (a) may not be traded out or sold from the Fleet, except as provided
33 in section 57102, 57103, or 57104 or chapter 533, 537, 573, or 575 of this
34 title.

1 **“§ 57102. Disposition of vessels not worth preserving**

2 “(a) IN GENERAL.—If the Secretary of Transportation determines that
3 a vessel owned by the Maritime Administration is of insufficient value for
4 commercial or military operation to warrant its further preservation, the
5 Secretary may scrap the vessel or sell the vessel for cash.

6 “(b) SELLING PROCEDURE.—The sale of a vessel under subsection (a)
7 shall be made on the basis of competitive sealed bids, after an appraisal and
8 due advertisement. The purchaser does not have to be a citizen of the
9 United States. The purchaser shall provide a surety bond, with a surety ap-
10 proved by the Secretary, to ensure that the vessel will not be operated in
11 the foreign trade of the United States at any time within 10 years after
12 the sale, in competition with a vessel owned by a citizen of the United
13 States and documented under the laws of the United States.

14 **“§ 57103. Sale of obsolete vessels in National Defense Re-**
15 **serve Fleet**

16 “(a) IN GENERAL.—The Secretary of Transportation may convey the
17 right, title, and interest of the United States Government in any vessel of
18 the National Defense Reserve Fleet that has been identified by the Sec-
19 retary as an obsolete vessel of insufficient value to warrant its further pres-
20 ervation, if the recipient—

21 “(1) is a non-profit organization, a State, or a municipal corporation
22 or political subdivision of a State;

23 “(2) agrees not to use, or allow others to use, the vessel for commer-
24 cial transportation purposes;

25 “(3) agrees to make the vessel available to the Government whenever
26 the Secretary indicates that it is needed by the Government;

27 “(4) agrees to hold the Government harmless for any claims arising
28 from exposure to asbestos, polychlorinated biphenyls, lead paint, or
29 other hazardous substances after conveyance of the vessel, except for
30 claims arising from use of the vessel by the Government;

31 “(5) has a conveyance plan and a business plan that describes the
32 intended use of the vessel, each of which has been submitted to and
33 approved by the Secretary;

34 “(6) has provided proof, as determined by the Secretary, of resources
35 sufficient to accomplish the transfer, necessary repairs and modifica-
36 tions, and initiation of the intended use of the vessel; and

37 “(7) agrees that when the recipient no longer requires the vessel for
38 use as described in the business plan required under paragraph (5)—

39 “(A) the recipient will, at the discretion of the Secretary, re-
40 convey the vessel to the Government in good condition except for
41 ordinary wear and tear; or

1 “(B) if the Board of Trustees of the recipient has decided to
2 dissolve the recipient according to the laws of the State in which
3 the recipient is incorporated, then—

4 “(i) the recipient shall distribute the vessel, as an asset of
5 the recipient, to a person that has been determined exempt
6 from taxation under section 501(c)(3) of the Internal Rev-
7 enue Code of 1986 (26 U.S.C. 501(c)(3)), or to the Federal
8 Government or a State or local government for a public pur-
9 pose; and

10 “(ii) the vessel shall be disposed of by a court of competent
11 jurisdiction of the county in which the principal office of the
12 recipient is located, for such purposes as the court shall de-
13 termine, or to such organizations as the court shall determine
14 are organized exclusively for public purposes.

15 “(b) OTHER EQUIPMENT.—At the Secretary’s discretion, additional
16 equipment from other obsolete vessels of the Fleet may be conveyed to assist
17 the recipient with maintenance, repairs, or modifications.

18 “(c) ADDITIONAL TERMS.—The Secretary may require any additional
19 terms the Secretary considers appropriate.

20 “(d) DELIVERY OF VESSEL.—If conveyance is made under this section,
21 the vessel shall be delivered to the recipient at a time and place to be deter-
22 mined by the Secretary. The vessel shall be conveyed in an ‘as is’ condition.

23 “(e) LIMITATIONS.—If at any time prior to delivery of the vessel to the
24 recipient, the Secretary determines that a different disposition of the vessel
25 would better serve the interests of the Government, the Secretary shall pur-
26 sue the more favorable disposition of the obsolete vessel and shall not be
27 liable for any damages that may result from an intended recipient’s reliance
28 upon a proposed transfer.

29 “(f) REVERSION.—The Secretary shall include in any conveyance under
30 this section terms under which all right, title, and interest conveyed by the
31 Secretary shall revert to the Government if the Secretary determines the
32 vessel has been used other than as described in the business plan required
33 under subsection (a)(5).

34 **“§ 57104. Acquisition of vessels from sale of obsolete vessels**

35 “(a) IN GENERAL.—The Secretary of Transportation may acquire suit-
36 able documented vessels with amounts in the Vessel Operations Revolving
37 Fund derived from the sale of obsolete vessels in the National Defense Re-
38 serve Fleet.

39 “(b) VALUATION.—The acquired and obsolete vessels shall be valued at
40 their scrap value in domestic or foreign markets as of the date of the acqui-
41 sition for or sale from the Fleet. However, the value assigned to those ves-

1 sels shall be determined on the same basis, with consideration given to the
2 fair value of the cost of moving the vessel sold from the Fleet to the place
3 of scrapping.

4 “(e) COSTS INCIDENT TO LAY-UP.—Costs incident to the lay-up of the
5 vessel acquired under this section may be paid from amounts in the Fund.

6 “(d) TRANSFERS TO NON-CITIZENS.—A vessel sold from the Fleet under
7 this section may be scrapped in an approved foreign market without obtain-
8 ing additional separate approval from the Secretary to transfer the vessel
9 to a person not a citizen of the United States.

10 **“§ 57105. Acquisition of vessels for essential services, routes,**
11 **or lines**

12 “(a) IN GENERAL.—The Secretary of Transportation may acquire a ves-
13 sel, by purchase or otherwise, if—

14 “(1) the Secretary considers the vessel necessary to establish, main-
15 tain, improve, or serve as a replacement on an essential service, route,
16 or line in the foreign commerce of the United States, as determined
17 under section 50103 of this title;

18 “(2) the vessel was constructed in the United States; and

19 “(3) the Secretary of the Navy has certified to the Secretary of
20 Transportation that the vessel is suitable for economical and speedy
21 conversion into a naval or military auxiliary or otherwise suitable for
22 use by the United States Government in time of war or national emer-
23 gency.

24 “(b) PRICE.—The price paid for the vessel shall be based on a fair and
25 reasonable valuation. However, the price may not exceed by more than 5
26 percent the cost of the vessel to the owner (excluding any construction-dif-
27 ferential subsidy and the cost of national defense features paid by the Sec-
28 retary of Transportation) plus the actual cost previously expended for recon-
29 ditioning, less depreciation based on a 25-year life for a dry-cargo or pas-
30 senger vessel and a 20-year life for a tanker or other liquid bulk carrier
31 vessel.

32 “(c) DOCUMENTATION.—A vessel acquired under this section that is not
33 documented under the laws of the United States at the time of acquisition
34 shall be so documented as soon as practicable.

35 **“§ 57106. Maintenance, improvement, and operation of ves-**
36 **sels**

37 “(a) IN GENERAL.—The Secretary of Transportation may maintain, re-
38 pair, recondition, remodel, and improve vessels owned by the United States
39 Government and in the possession or under the control of the Secretary, to
40 equip them adequately for competition in the foreign trade of the United
41 States. The Secretary may operate such a vessel or charter the vessel on

1 terms and conditions the Secretary considers appropriate to carry out the
2 purposes of this subtitle.

3 “(b) DOCUMENTATION AND RESTRICTIONS ON OPERATION.—A vessel re-
4 conditioned, remodeled, or improved under subsection (a) shall be docu-
5 mented under the laws of the United States and remain so documented for
6 at least 5 years after completion of the reconditioning, remodeling, or im-
7 provement. During that period, it shall be operated on voyages that are not
8 exclusively coastwise.

9 **“§ 57107. Vessels for other agencies**

10 “(a) IN GENERAL.—The Secretary of Transportation may construct, re-
11 construct, repair, equip, and outfit, by contract or otherwise, vessels or
12 parts thereof, for any other department or agency of the United States Gov-
13 ernment to the extent the other department or agency is authorized by law
14 to do so for its own account.

15 “(b) EFFECT ON CONTRACT AUTHORIZATION.—An obligation incurred or
16 expenditure made by the Secretary under this section does not affect any
17 contract authorization of the Secretary, but instead shall be charged against
18 the existing appropriation or contract authorization of the department or
19 agency.

20 **“§ 57108. Consideration of ballast and equipment in deter-
21 mining selling price**

22 “The Maritime Administration may not sell a vessel until its ballast and
23 equipment have been inventoried and their value considered in determining
24 the selling price of the vessel.

25 **“§ 57109. Operation of vessels purchased, chartered, or
26 leased from Secretary of Transportation**

27 “Unless otherwise authorized by the Secretary of Transportation, a vessel
28 purchased, chartered, or leased from the Secretary may be operated only
29 under a certificate of documentation with a registry or coastwise endorse-
30 ment. Such a vessel, while employed solely as a merchant vessel, is subject
31 to the laws, regulations, and liabilities governing merchant vessels, whether
32 the United States Government has an interest in the vessel as an owner or
33 holds a mortgage, lien, or other interest.

34 **“CHAPTER 573—VESSEL TRADE-IN PROGRAM**

“Sec.

“57301. Definitions.

“57302. Authority to acquire vessels.

“57303. Utility value and tonnage requirements.

“57304. Eligible acquisition dates.

“57305. Determination of trade-in allowance.

“57306. Payment of trade-in allowance.

“57307. Recognition of gain for tax purposes.

“57308. Use of vessels at least 25 years old.

1 § 57301. Definitions

2 “In this chapter:

3 “(1) NEW VESSEL.—The term ‘new vessel’ means a vessel—

4 “(A) constructed under this subtitle and acquired within 2 years
5 after the date of completion; or

6 “(B) constructed in a domestic shipyard on private account and
7 not under this subtitle, and documented under the laws of the
8 United States.

9 “(2) OBSOLETE VESSEL.—The term ‘obsolete vessel’ means a vessel
10 that—

11 “(A) is of at least 1,350 gross tons;

12 “(B) the Secretary of Transportation believes should, because of
13 its age, obsolescence, or other reasons, be replaced in the public
14 interest; and

15 “(C) has been owned by a citizen of the United States for at
16 least 3 years immediately before its acquisition under this chapter.

17 § 57302. Authority to acquire vessels

18 “To promote the construction of new, safe, and efficient vessels to carry
19 the domestic and foreign waterborne commerce of the United States, the
20 Secretary of Transportation may acquire an obsolete vessel in exchange for
21 an allowance of credit toward the cost of construction or purchase of a new
22 vessel as provided in this chapter.

23 § 57303. Utility value and tonnage requirements

24 “(a) UTILITY VALUE.—The utility value of a new vessel to be acquired
25 under this chapter for operation in the domestic or foreign commerce of the
26 United States may not be substantially less than that of the obsolete vessel
27 acquired in exchange under this chapter.

28 “(b) TONNAGE.—If the Secretary of Transportation finds that the new
29 vessel will have a utility value at least equal to that of the obsolete vessel,
30 the new vessel may be of lesser gross tonnage than the obsolete vessel. How-
31 ever, the gross tonnage of the new vessel must be at least one-third the
32 gross tonnage of the obsolete vessel.

33 § 57304. Eligible acquisition dates

34 “At the option of the owner, the acquisition of an obsolete vessel under
35 this chapter shall occur—

36 “(1) when the owner contracts for the construction or purchase of
37 a new vessel; or

38 “(2) within 5 days of the actual date of delivery of the new vessel
39 to the owner.

“§ 57305. Determination of trade-in allowance

“(a) IN GENERAL.—The Secretary of Transportation shall determine the trade-in allowance for an obsolete vessel at the time of acquisition of the vessel. The allowance shall be the fair value of the vessel. In determining the value, the Secretary shall consider—

“(1) the scrap value of the obsolete vessel in American and foreign markets;

“(2) the depreciated value based on a 20-year or 25-year life, whichever applies to the obsolete vessel; and

“(3) the market value of the obsolete vessel for operation in world commerce or in the domestic or foreign commerce of the United States.

“(b) USE OF OBSOLETE VESSELS.—If acquisition of the obsolete vessel occurs when the owner contracts for the construction of the new vessel, and the owner uses the obsolete vessel during the period of construction of the new vessel, the Secretary shall reduce the trade-in allowance by an amount representing the fair value of that use. The Secretary shall establish the rate for use of the obsolete vessel when the contract for construction of the new vessel is made.

“§ 57306. Payment of trade-in allowance

“(a) ACQUISITION AT TIME OF CONTRACT.—If acquisition of an obsolete vessel under this chapter occurs when the owner contracts for the construction or purchase of the new vessel, the Secretary of Transportation shall apply the trade-in allowance to the purchase price of the new vessel rather than paying it to the owner. If the new vessel is constructed under this subtitle, the Secretary may apply the trade-in allowance to the required cash payments on terms and conditions the Secretary may prescribe. If the new vessel is not constructed under this subtitle, the Secretary shall pay the trade-in allowance to the builder of the vessel for the account of the owner when the Secretary acquires the obsolete vessel.

“(b) ACQUISITION AT TIME OF DELIVERY.—If acquisition of the obsolete vessel occurs when the new vessel is delivered to the owner, the Secretary shall deposit the trade-in allowance in the owner’s capital construction fund.

“§ 57307. Recognition of gain for tax purposes

“The owner of an obsolete vessel does not recognize a gain under the Federal income tax laws when the vessel is transferred to the Secretary of Transportation in exchange for a trade-in allowance under this chapter. The basis of the new vessel acquired with the allowance is the same as the basis of the obsolete vessel—

“(1) increased by the difference between the cost of the new vessel and the trade-in allowance of the obsolete vessel; and

“(2) decreased by the amount of loss recognized on the transfer.

1 **“§ 57308. Use of vessels at least 25 years old**

2 “An obsolete vessel acquired under this chapter that is or becomes at
3 least 25 years old may not be used for commercial operation. However, the
4 vessel may be used—

5 “(1) during a period in which vessels may be requisitioned under
6 chapter 563 of this title; or

7 “(2) except as otherwise provided in this subtitle, on trade routes
8 serving only the foreign trade of the United States.

9 **“CHAPTER 575—CONSTRUCTION, CHARTER, AND SALE**
10 **OF VESSELS**

“SUBCHAPTER I—GENERAL

“Sec.

- “57501. Completion of long-range program.
- “57502. Construction, reconditioning, and remodeling of vessels.
- “57503. Competitive bidding.
- “57504. Charter or sale of vessels acquired by Department of Transportation.
- “57505. Employment of vessels on foreign trade routes.
- “57506. Minimum selling price of vessels.

“SUBCHAPTER II—CHARTERS

- “57511. Demise charters.
- “57512. Competitive bidding.
- “57513. Minimum bid.
- “57514. Qualifications of bidders.
- “57515. Awarding of charters.
- “57516. Operating-differential subsidies.
- “57517. Recovery of excess profits.
- “57518. Performance bond.
- “57519. Insurance.
- “57520. Vessel maintenance.
- “57521. Termination of charter during national emergency.

“SUBCHAPTER III—MISCELLANEOUS

- “57531. Construction and charter of vessels for unsuccessful routes.
- “57532. Operation of experimental vessels.

11 “SUBCHAPTER I—GENERAL

12 **“§ 57501. Completion of long-range program**

13 “Whenever the Secretary of Transportation determines that the objectives
14 and policies declared in sections 50101 and 50102 of this title cannot be
15 fully realized within a reasonable time under titles V and VI of the Mer-
16 chant Marine Act, 1936, and the President approves the determination, the
17 Secretary, in accordance with this chapter, shall complete the long-range
18 program described in section 50102 of this title.

19 **“§ 57502. Construction, reconditioning, and remodeling of**
20 **vessels**

21 “(a) IN GENERAL.—The Secretary of Transportation may have new ves-
22 sels constructed, and have old vessels reconditioned or remodeled, as the
23 Secretary determines necessary to carry out the objectives of this subtitle.

24 “(b) PLACE OF WORK.—Construction, reconditioning, and remodeling of
25 vessels under subsection (a) shall take place in shipyards in the continental
26 United States (including Alaska and Hawaii). However, if satisfactory con-

1 tracts cannot be obtained from private shipbuilders, the Secretary may have
2 the work done in navy yards.

3 “(c) APPLICABILITY OF CONSTRUCTION-DIFFERENTIAL SUBSIDY PROVI-
4 SIONS.—Contracts for the construction, reconstruction, or reconditioning of
5 a vessel by a private shipbuilder under this chapter are subject to the provi-
6 sions of title V of the Merchant Marine Act, 1936, applicable to a contract
7 with a private shipbuilder for the construction of a vessel under title V of
8 that Act.

9 **“§ 57503. Competitive bidding**

10 “(a) ADVERTISEMENT AND BIDDING.—The Secretary of Transportation
11 may make a contract with a private shipbuilder for the construction of a
12 new vessel, or for the reconstruction or reconditioning of an existing vessel,
13 only after due advertisement and upon sealed competitive bids.

14 “(b) OPENING OF BIDS.—Bids required under this section shall be
15 opened at the time and place stated in the advertisement for bids. All inter-
16 ested persons, including representatives of the press, shall be permitted to
17 attend. The results of the bidding shall be publicly announced.

18 **“§ 57504. Charter or sale of vessels acquired by Department
19 of Transportation**

20 “Vessels transferred to or otherwise acquired by the Department of
21 Transportation in any manner may be chartered or sold by the Secretary
22 of Transportation as provided in this chapter.

23 **“§ 57505. Employment of vessels on foreign trade routes**

24 “(a) IN GENERAL.—The Secretary of Transportation shall arrange for
25 the employment of the Department of Transportation’s vessels in steamship
26 lines on such trade routes, exclusively serving the foreign trade of the
27 United States, as the Secretary determines are essential for the development
28 and maintenance of the commerce of the United States and the national de-
29 fense. However, the Secretary shall first determine that those routes are not
30 being adequately served by existing steamship lines privately owned and op-
31 erated by citizens of the United States and documented under the laws of
32 the United States.

33 “(b) POLICY TO ENCOURAGE PRIVATE OPERATION.—The Secretary shall
34 have a policy of encouraging private operation of each essential steamship
35 line now owned by the United States Government by—

36 “(1) selling the line to a citizen of the United States; or

37 “(2) demising the Secretary’s vessels on bareboat charter to citizens
38 of the United States who agree to maintain the line in the manner pro-
39 vided in this chapter.

“§ 57506. Minimum selling price of vessels

“(a) IN GENERAL.—A vessel constructed under this subtitle or the Merchant Marine Act, 1936, may not be sold by the Secretary of Transportation for less than the price specified in this section.

“(b) OPERATION IN FOREIGN TRADE.—If the vessel is to be operated in foreign trade, the minimum price is the estimated foreign construction cost (exclusive of national defense features) determined as of the date the construction contract is executed, less depreciation under subsection (d).

“(c) OPERATION IN DOMESTIC TRADE.—If the vessel is to be operated in domestic trade, the minimum price is the cost of construction in the United States (exclusive of national defense features), less depreciation under subsection (d).

“(d) DEPRECIATION.—Depreciation under subsections (b) and (c) shall be based on—

“(1) a 25-year life for dry-cargo and passenger vessels; and

“(2) a 20-year life for tankers and other bulk liquid carrier vessels.

“SUBCHAPTER II—CHARTERS**“§ 57511. Demise charters**

“A charter by the Secretary of Transportation under this chapter shall demise the vessel to the charterer subject to all usual conditions contained in a bareboat charter. The charter shall be for a term the Secretary considers to be in the best interest of the United States Government and the merchant marine.

“§ 57512. Competitive bidding

“(a) IN GENERAL.—The Secretary of Transportation may charter a vessel of the Department of Transportation to a private operator only on the basis of competitive sealed bidding. The bids must be submitted in strict compliance with the terms and conditions of a public advertisement soliciting the bids.

“(b) ADVERTISEMENT FOR BIDS.—An advertisement for bids shall state—

“(1) the number, type, and tonnage of the vessels being offered for bareboat charter for operation as a steamship line on a designated trade route;

“(2) the minimum number of sailings required;

“(3) the length of time of the charter;

“(4) the right of the Secretary to reject all bids; and

“(5) other information the Secretary considers necessary for the information of prospective bidders.

“(c) OPENING OF BIDS.—Bids required under this section shall be opened at the time and place stated in the advertisement for bids. All inter-

1 ested persons, including representatives of the press, shall be permitted to
2 attend. The results of the bidding shall be publicly announced.

3 **“§ 57513. Minimum bid**

4 “The Secretary of Transportation shall reject any bid for the charter
5 under this subchapter of a vessel constructed under this subtitle or the Mer-
6 chant Marine Act, 1936, if the charter hire offered is lower than the min-
7 imum charter hire would be if the vessel were chartered under section
8 57531 of this title.

9 **“§ 57514. Qualifications of bidders**

10 “(a) CONSIDERATIONS.—In deciding whether to award a charter to a bid-
11 der, the Secretary of Transportation shall consider—

12 “(1) the bidder’s financial resources, credit standing, and practical
13 experience in operating vessels; and

14 “(2) other factors a prudent business person would consider in enter-
15 ing into a transaction involving a large capital investment.

16 “(b) DISQUALIFICATIONS.—The Secretary may not charter a vessel to a
17 person appearing to lack sufficient capital, credit, and experience to operate
18 the vessel successfully over the period covered by the charter.

19 **“§ 57515. Awarding of charters**

20 “(a) IN GENERAL.—The Secretary of Transportation shall award the
21 charter to the bidder proposing to pay the highest monthly charter hire.
22 However, the Secretary may reject the highest or most advantageous or any
23 other bid if the Secretary considers the charter hire offered too low or deter-
24 mines that the bidder lacks the qualifications required by section 57514 of
25 this title.

26 “(b) HIGHEST BID REJECTED.—If the Secretary rejects the highest bid,
27 the Secretary may—

28 “(1) award the charter to the next highest bidder; or

29 “(2) reject all bids and either readvertise the line or operate the line
30 until conditions appear more favorable to reoffer the line for private
31 charter.

32 “(c) REASON FOR REJECTION.—On request of a bidder, the reason for
33 rejection shall be stated in writing to the bidder.

34 **“§ 57516. Operating-differential subsidies**

35 “If the Secretary of Transportation considers it necessary, the Secretary
36 may make a contract with a charterer of a vessel owned by the Secretary
37 for payment of an operating-differential subsidy, on the same terms and
38 conditions, and subject to the same limitations and restrictions, as otherwise
39 provided with respect to payment of operating-differential subsidies to oper-
40 ators of privately-owned vessels.

“§ 57517. Recovery of excess profits

“(a) IN GENERAL.—A charter under this chapter shall provide that if, at the end of a calendar year subsequent to the execution of the charter, the cumulative net voyage profit (after payment of the charter hire reserved in the charter and payment of the charterer’s fair and reasonable overhead expenses applicable to operation of the chartered vessel) exceeds 10 percent a year of the charterer’s capital necessarily employed in the business of the chartered vessel, the charterer shall pay to the Secretary of Transportation, as additional charter hire, half the cumulative net voyage profit in excess of 10 percent a year. However, any cumulative net voyage profit accounted for under this subsection is not to be included in the calculation of cumulative net voyage profit in any subsequent year.

“(b) TERMS TO BE DEFINED AND USED.—The Secretary shall define the terms ‘net voyage profit’, ‘fair and reasonable overhead expenses’, and ‘capital necessarily employed’ for this section. Each advertisement for bids and each charter shall contain these definitions, stating the formula for determining each of these three amounts.

“§ 57518. Performance bond

“The Secretary of Transportation shall require a charterer of a vessel of the Secretary to deposit with the Secretary an undertaking, with approved sureties, in such amount as the Secretary may require as security for the faithful performance of the terms of the charter, including indemnity against liens on the chartered vessel.

“§ 57519. Insurance

“A charter under this chapter shall require the charterer to carry, at the charterer’s expense, insurance on the chartered vessel covering all marine and port risks, protection and indemnity risks, and all other hazards and liabilities, adequate to cover damages claimed against and losses sustained by the chartered vessel arising during the term of the charter. The insurance shall be in such form, in such amount, and with such companies as the Secretary of Transportation may require. In accordance with law, any of the insurance risks may be underwritten by the Secretary.

“§ 57520. Vessel maintenance

“(a) IN GENERAL.—A charter under this chapter shall require the charterer, at the charterer’s expense, to—

“(1) keep the chartered vessel in good repair and efficient operating condition; and

“(2) make any repairs required by the Secretary of Transportation.

“(b) INSPECTION.—The charter shall provide that the Secretary has the right to inspect the vessel at any time to ascertain its condition.

1 **“§ 57521. Termination of charter during national emergency**

2 “A charter under this chapter shall provide that during a national emer-
3 gency proclaimed by the President or a period for which the President has
4 proclaimed that the security of the national defense makes it advisable, the
5 Secretary of Transportation may terminate the charter without cost to the
6 United States Government on such notice to the charterer as the President
7 determines.

8 “SUBCHAPTER III—MISCELLANEOUS

9 **“§ 57531. Construction and charter of vessels for unsuccess-
10 ful routes**

11 “(a) IN GENERAL.—If the Secretary of Transportation finds that a trade
12 route determined to be essential under section 50103 of this title cannot be
13 successfully developed and maintained and the Secretary’s replacement pro-
14 gram cannot be achieved under private operation of the trade route by a
15 citizen of the United States with vessels documented under chapter 121 of
16 this title, without further aid by the United States Government in addition
17 to the financial aid authorized under titles V and VI of the Merchant Ma-
18 rine Act, 1936, the Secretary, without advertisement or competition, may—

19 “(1) have constructed, in private shipyards or in navy yards, vessels
20 of the types necessary for the trade route; and

21 “(2) demise charter those new vessels to the operator of United
22 States documented vessels established on the trade route.

23 “(b) AMOUNT OF CHARTER HIRE.—

24 “(1) IN GENERAL.—The annual charter hire under subsection (a)
25 shall be at least 4 percent of the price (referred to in this section as
26 the ‘foreign cost’) at which the vessel would be sold if constructed
27 under title V of the Merchant Marine Act, 1936, plus—

28 “(A) a percentage of the depreciated foreign cost computed an-
29 nually determined by the Secretary of the Treasury, taking into
30 consideration the current average market yield on outstanding
31 marketable obligations of the Government with remaining periods
32 to maturity comparable to the term of the charter, adjusted to the
33 nearest one-eighth percent; and

34 “(B) an allowance adequate in the judgment of the Secretary
35 of Transportation to cover administrative costs.

36 “(2) DEPRECIATION.—Depreciation under paragraph (1)(A) shall be
37 based on—

38 “(A) a 25-year life for dry-cargo and passenger vessels; and

39 “(B) a 20-year life for tankers and other bulk liquid carrier ves-
40 sels.

1 “(e) OPTION TO PURCHASE.—The charter may contain an option to the
2 charterer to purchase the vessels from the Secretary of Transportation with-
3 in 5 years after delivery under the charter, on the same terms and condi-
4 tions as provided in title V of the Merchant Marine Act, 1936, for the pur-
5 chase of new vessels from the Secretary. However—

6 “(1) the purchase price shall be the foreign cost less depreciation to
7 the date of purchase based on the useful life specified in subsection
8 (b)(2);

9 “(2) the required cash payment payable at the time of the purchase
10 shall be 25 percent of the purchase price;

11 “(3) the charter may provide that any part of the charter hire paid
12 in excess of the minimum charter hire provided for in this section may
13 be credited against the cash payment payable at the time of the pur-
14 chase;

15 “(4) the balance of the purchase price shall be paid within the re-
16 maining years of useful life (as specified in subsection (b)(2)) after the
17 date of delivery of the vessel under the charter and in approximately
18 equal annual installments, except that the first installment, which shall
19 be payable on the next ensuing anniversary date of the delivery under
20 the charter, shall be a proportionate part of the annual installment;
21 and

22 “(5) interest shall be payable on the unpaid balances from the date
23 of purchase, at a rate not less than—

24 “(A) a rate determined by the Secretary of the Treasury, taking
25 into consideration the current average market yield on outstanding
26 marketable obligations of the Government with remaining periods
27 to maturity comparable to the average maturities of the loans, ad-
28 justed to the nearest one-eighth percent; plus

29 “(B) an allowance adequate in the judgment of the Secretary
30 of Transportation to cover administrative costs.

31 “(d) OPERATION OF VESSEL.—

32 “(1) PERMISSIBLE VOYAGES.—The charter shall provide for oper-
33 ation of the vessel exclusively—

34 “(A) in foreign trade;

35 “(B) on a round-the-world voyage;

36 “(C) on a round voyage from the west coast of the United
37 States to a European port that includes an intercoastal port of the
38 United States;

39 “(D) on a round voyage from the Atlantic coast of the United
40 States to the Orient that includes an intercoastal port of the
41 United States; or

1 “(E) on a voyage in foreign trade on which the vessel may stop
2 at Hawaii or an island territory or possession of the United
3 States.

4 “(2) DOMESTIC TRADE.—The charter shall provide if the vessel is
5 operated in domestic trade on any of the services specified in para-
6 graph (1), the charterer will pay annually to the Secretary of Transpor-
7 tation that proportion of $\frac{1}{25}$ of the difference between the domestic
8 and foreign cost of the vessel as the gross revenue derived from the
9 domestic trade bears to the gross revenue derived from the entire voy-
10 ages completed during the preceding year.

11 **“§ 57532. Operation of experimental vessels**

12 “(a) DEFINITION.—In this section, the term ‘experimental vessel’ means
13 a vessel owned by the United States Government (including a vessel in the
14 National Defense Reserve Fleet) that has been constructed, reconditioned,
15 or remodeled for experimental or testing purposes.

16 “(b) AUTHORITY TO OPERATE.—The Secretary of Transportation, for
17 the purpose of practical development, trial, and testing, may operate an ex-
18 perimental vessel under a bareboat charter or general agency agreement in
19 the foreign or domestic trade of the United States or for use for the account
20 of a department or agency of the Government, without regard to other pro-
21 visions of this subtitle and other laws related to chartering and general
22 agency operations. Not more than 10 vessels may be operated and tested
23 under this section in any one year.

24 “(c) TERMS OF OPERATION.—Operation of a vessel under this section
25 shall be on terms the Secretary considers appropriate to carry out the pur-
26 poses of this subtitle. A bareboat charter under this section shall be at rea-
27 sonable rates and include restrictions the Secretary considers appropriate to
28 protect the public interest, including provisions for recapture of profits
29 under section 57517 of this title. A charter or general agency agreement
30 under this section shall be reviewed annually to determine whether condi-
31 tions exist to justify continuance of the charter or agreement.

32 “(d) RIGHTS OF SEAMEN.—A seaman engaged in vessel operations of the
33 Secretary under this section and employed through a general agent in con-
34 nection with a charter or agreement under this section is entitled to all the
35 rights and remedies provided in sections 1(a) and (c), 3(e), and 4 of the
36 Act of March 24, 1943 (50 App. U.S.C. 1291(a), (c), 1293(c), 1294).

37 “PART G—RESTRICTIONS AND PENALTIES
38 **“CHAPTER 581—RESTRICTIONS AND PENALTIES**

“Sec.

“58101. Operating in domestic intercoastal or coastwise service.

“58102. Default on payment or maintenance of reserves.

“58103. Employing another person as managing or operating agent.

“58104. Willful violation constitutes breach of contract or charter.

- “58105. Preferences for cargo in which charterer has interest.
 “58106. Concerted discriminatory activities.
 “58107. Discrimination at ports by water common carriers.
 “58108. Charges for transportation subject to subtitle IV of title 49.
 “58109. Penalties.

1 **“§ 58101. Operating in domestic intercoastal or coastwise**
 2 **service**

3 “(a) PROHIBITION.—A subsidy may not be awarded or paid to a con-
 4 tractor under the operating-differential subsidy program, and a vessel may
 5 not be chartered to a person under chapter 575 of this title, if the con-
 6 tractor or charterer, or a holding company, subsidiary, affiliate, or associate
 7 of the contractor or charterer, or an officer, director, agent, or executive
 8 thereof, directly or indirectly—

9 “(1) owns, charters, or operates a vessel engaged in the domestic
 10 intercoastal or coastwise service; or

11 “(2) owns a pecuniary interest in a person that owns, charters, or
 12 operates a vessel in the domestic intercoastal or coastwise service.

13 “(b) WAIVER.—A person may apply to the Secretary of Transportation
 14 for a waiver of subsection (a). Before deciding on the waiver, the Secretary
 15 shall give the applicant and other interested persons an opportunity for a
 16 hearing. The Secretary may not grant the waiver if the Secretary finds it
 17 would—

18 “(1) result in unfair competition to a person operating exclusively in
 19 the domestic intercoastal or coastwise service; or

20 “(2) be prejudicial to the objectives and policy of this subtitle.

21 “(c) CONTINUOUS OPERATION SINCE 1935.—The Secretary shall grant
 22 an application under subsection (b) without requiring further proof that the
 23 public interest and convenience will be served and without further pro-
 24 ceedings as to the competition in the route or trade, if the contractor or
 25 other person, or a predecessor in interest, was in bona-fide operation as a
 26 common carrier by water in the domestic intercoastal or coastwise trade in
 27 1935 over the route or in the trade for which the application is made and
 28 has so operated since that time or, if engaged in furnishing seasonal service
 29 only, was in bona-fide operation in 1935 during the season ordinarily cov-
 30 ered by its operation, except in either event as to interruptions of service
 31 over which the applicant or its predecessor in interest had no control.

32 “(d) DIVERSION INTO INTERCOASTAL OR COASTWISE OPERATIONS.—If
 33 an application under subsection (b) is approved, a person referred to in this
 34 section may not divert, directly or indirectly, money, property, or any other
 35 thing of value, used in a foreign-trade operation for which a subsidy is paid
 36 by the United States Government, into intercoastal or coastwise operations.

1 **“§ 58102. Default on payment or maintenance of reserves**

2 “The Secretary of Transportation may supervise the number and com-
3 pensation of all officers and employees of a contractor under the operating-
4 differential subsidy program or a charterer under chapter 575 of this title,
5 receiving an operating-differential subsidy, if the contractor or charterer—

6 “(1) is in default on a mortgage, note, purchase contract, or other
7 obligation to the Secretary; or

8 “(2) has not maintained, in a manner satisfactory to the Secretary,
9 all of the reserves provided for in this subtitle.

10 **“§ 58103. Employing another person as managing or oper-
11 ating agent**

12 “(a) PROHIBITION.—Except with the written consent of the Secretary of
13 Transportation, a contractor holding a contract under the operating-dif-
14 ferential subsidy program or under chapter 575 of this title may not—

15 “(1) employ another person as the managing or operating agent of
16 the operator; or

17 “(2) charter a vessel, on which an operating-differential subsidy is
18 to be paid, for operation by another person.

19 “(b) APPLICABILITY OF PROVISIONS TO CHARTERER.—If a charter pro-
20 hibited by this section is made, the person operating the chartered vessel
21 is subject to all the provisions of this subtitle and the operating-differential
22 subsidy program, including limitations of profits and salaries.

23 **“§ 58104. Willful violation constitutes breach of contract or
24 charter**

25 “A willful violation of any provision of sections 58101–58103 of this title
26 constitutes a breach of the contract or charter. On determining that a viola-
27 tion has occurred, the Secretary of Transportation may declare the contract
28 or charter rescinded.

29 **“§ 58105. Preferences for cargo in which charterer has inter-
30 est**

31 “A contractor receiving an operating-differential subsidy, or a charterer
32 under chapter 575 of this title, may not unjustly discriminate in any man-
33 ner so as to give preference, directly or indirectly, to cargo in which the con-
34 tractor or charterer has a direct or indirect ownership, purchase, or vending
35 interest.

36 **“§ 58106. Concerted discriminatory activities**

37 “(a) PROHIBITION.—A contractor receiving an operating-differential sub-
38 sidy, or a charterer under chapter 575 of this title, may not continue as
39 a party to or conform to an agreement with another carrier by water, or
40 engage in a practice in concert with another carrier by water, that is un-
41 justly discriminatory or unfair to any other citizen of the United States op-

1 erating a common carrier by water employing only vessels documented
2 under the laws of the United States on an established trade route from and
3 to a United States port.

4 “(b) GOVERNMENT PAYMENT PROHIBITED.—No payment or subsidy of
5 any kind may be paid, directly or indirectly, out of funds of the United
6 States Government to a contractor or charterer that has violated subsection
7 (a).

8 “(c) CIVIL ACTION.—A person whose business or property is injured by
9 a violation of subsection (a) may bring a civil action in the district court
10 of the United States for the district in which the defendant resides, is
11 found, or has an agent. If the person prevails, the person shall be award-
12 ed—

13 “(1) 3 times the damages; and

14 “(2) costs, including reasonable attorney fees.

15 **“§ 58107. Discrimination at ports by water common carriers**

16 “(a) PROHIBITION.—A common carrier by water may not, directly or in-
17 directly, through an agreement, conference, association, understanding, or
18 otherwise, prevent or attempt to prevent any other common carrier by water
19 from serving any port described in subsection (b) at the same rates the first
20 carrier charges at the nearest port already regularly served by it.

21 “(b) PORTS.—A port referred to in subsection (a) is one that is—

22 “(1) designed for the accommodation of ocean-going vessels;

23 “(2) located on an improvement project authorized by law or by a
24 Federal agency; and

25 “(3) located within the continental limits of the United States.

26 “(c) OTHER AUTHORITY NOT LIMITED.—This section does not limit the
27 authority otherwise vested in the Secretary of Transportation and the Fed-
28 eral Maritime Commission.

29 **“§ 58108. Charges for transportation subject to subtitle IV of**
30 **title 49**

31 “(a) PROHIBITION.—A carrier may not charge, collect, or receive for
32 transportation subject to subtitle IV of title 49 of persons or property,
33 under any joint rate, fare, or charge, or under any export, import, or other
34 proportional rate, fare, or charge, that is based in whole or in part on the
35 fact that the persons or property affected are to be transported to, or have
36 been transported from, a port in a territory or possession of the United
37 States or in a foreign country, by a carrier by water in foreign commerce,
38 any lower rate, fare, or charge than the carrier charges, collects, or receives
39 for the transportation of persons or similar property for the same distance,
40 in the same direction, and over the same route, in commerce wholly within
41 the United States, unless the vessel used for the transportation is or was

1 at the time of the transportation documented under the laws of the United
 2 States.

3 “(b) SUSPENSION OF PROHIBITION.—Whenever the Secretary of Trans-
 4 portation believes that adequate shipping facilities to or from any port in
 5 a territory or possession of the United States or a foreign country are not
 6 being provided by vessels documented under the laws of the United States,
 7 the Secretary shall certify this fact to the Surface Transportation Board.
 8 On receiving the certification, the Board may by order suspend the oper-
 9 ation of subsection (a) with respect to the rates, fares, and charges for the
 10 transportation by rail of persons and property transported from or to be
 11 transported to those ports, for such time and under such terms and condi-
 12 tions as the Secretary may specify in the order or in any supplemental
 13 order.

14 “(c) TERMINATION OF SUSPENSION.—Whenever the Secretary believes
 15 that adequate shipping facilities are being provided to those ports by vessels
 16 documented under the laws of the United States, and certifies that fact to
 17 the Board, the Board may order the termination of the suspension.

18 **“§ 58109. Penalties**

19 “(a) INDIVIDUALS.—An individual convicted of violating section
 20 58101(d), 58103, or 58105 of this title shall be fined under title 18, impris-
 21 oned for at least one year but not more than 5 years, or both.

22 “(b) ORGANIZATIONS.—An organization convicted of committing an act
 23 prohibited by this subtitle shall be fined under title 18.

24 “(c) INELIGIBILITY TO RECEIVE BENEFITS.—An individual or organiza-
 25 tion convicted of violating a section referred to in subsection (a) is ineligible,
 26 at the discretion of the Secretary of Transportation, to receive any benefit
 27 under the construction-differential subsidy or operating-differential subsidy
 28 programs, or a charter under chapter 575 of this title, for 5 years after
 29 the conviction.”.

30 **SEC. 9. SUBTITLE VI OF TITLE 46.**

31 (a) REDESIGNATION.—Title 46, United States Code, is amended by re-
 32 designating subtitle VI as subtitle VII.

33 (b) NEW SUBTITLE.—Title 46, United States Code, is amended by insert-
 34 ing after subtitle V the following:

35 **“Subtitle VI—Clearance, Tonnage Taxes, and**
 36 **Duties**

“Chapter	Sec.
“601. Arrival and Departure Requirements	60101
“603. Tonnage Taxes and Light Money	60301
“605. Discriminating Duties and Reciprocal Privileges	60501

1 **“CHAPTER 601—ARRIVAL AND DEPARTURE**
 2 **REQUIREMENTS**

“Sec.

“60101. Boarding arriving vessels before inspection.

“60102. Production of certificate on entry.

“60103. Oath of ownership on entry.

“60104. Depositing certificates of documentation with consular officers.

“60105. Clearance of vessels.

“60106. State inspection laws.

“60107. Payment of fees on departing vessel.

“60108. Duty to transport tendered cargo.

“60109. Duty to transport money and securities of the United States Government.

3 **“§ 60101. Boarding arriving vessels before inspection**

4 “(a) REGULATIONS.—The Secretary of Homeland Security shall prescribe
 5 and enforce regulations on the boarding of a vessel arriving at a port of
 6 the United States before the vessel has been inspected and secured.

7 “(b) CRIMINAL PENALTY.—A person violating a regulation prescribed
 8 under this section shall be fined under title 18, imprisoned for not more
 9 than 6 months, or both.

10 “(c) RELATIONSHIP TO OTHER LAW.—This section shall be construed as
 11 supplementary to section 2279 of title 18.

12 **“§ 60102. Production of certificate on entry**

13 “On entry of a vessel documented under chapter 121 of this title, the
 14 master or other individual in charge of the vessel shall produce the certifi-
 15 cate of documentation to the customs officer at the place where the vessel
 16 is entered. If the certificate is not produced, the vessel is not entitled to
 17 the privileges of a documented vessel.

18 **“§ 60103. Oath of ownership on entry**

19 “(a) REQUIRED STATEMENT.—On entry of a vessel of the United States
 20 from a foreign port, the individual designated under subsection (b) shall
 21 state under oath that—

22 “(1) the vessel’s certificate of documentation contains the names of
 23 all the owners of the vessel; or

24 “(2) part of the ownership has been transferred since the certificate
 25 was issued and, to the best of the individual’s knowledge and belief,
 26 the vessel is still owned only by citizens of the United States.

27 “(b) PERSON TO MAKE STATEMENT.—The statement under subsection
 28 (a) shall be made by—

29 “(1) an owner if one resides at the port of entry; or

30 “(2) the master if an owner does not reside at the port of entry.

31 “(c) CONSEQUENCE OF NOT MAKING STATEMENT.—If the appropriate
 32 individual does not make the statement required by this section, the vessel
 33 is not entitled to the privileges of a vessel of the United States.

1 **“§ 60104. Depositing certificates of documentation with con-**
2 **sular officers**

3 “(a) REQUIREMENT OF MASTER.—When a vessel owned by citizens of the
4 United States, on a voyage from a port in the United States, arrives at a
5 foreign port, the master of the vessel shall deposit the vessel’s certificate
6 of documentation with a consular officer at the foreign port if there is a
7 consular officer at that port.

8 “(b) RETURN OF CERTIFICATE.—When the master produces a clearance
9 from the appropriate officer of the foreign port, the consular officer shall
10 return the certificate of documentation to the master if the master has com-
11 plied with the provisions of law related to the discharge of seamen in a for-
12 eign country and the payment of fees of consular officers.

13 “(c) CIVIL PENALTY AND COLLECTION.—The master of a vessel failing
14 to deposit the certificate of documentation as required by subsection (a) is
15 liable to the United States Government for a civil penalty of \$500. The con-
16 sular officer shall bring an action to recover the penalty in any court of
17 competent jurisdiction. The action shall be brought in the name of the con-
18 sular officer for the benefit of the United States.

19 **“§ 60105. Clearance of vessels**

20 “(a) VESSELS OF THE UNITED STATES.—Except as otherwise provided
21 by law, a vessel of the United States shall obtain clearance from the Sec-
22 retary of Homeland Security before proceeding from a port or place in the
23 United States—

24 “(1) for a foreign port or place;

25 “(2) for another port or place in the United States if the vessel has
26 on board foreign merchandise for which entry has not been made; or

27 “(3) outside the territorial sea to visit a hovering vessel or to receive
28 merchandise while outside the territorial sea.

29 “(b) OTHER VESSELS.—Except as otherwise provided by law, a vessel
30 that is not a vessel of the United States shall obtain clearance from the Sec-
31 retary before proceeding from a port or place in the United States—

32 “(1) for a foreign port or place;

33 “(2) for another port or place in the United States; or

34 “(3) outside the territorial sea to visit a hovering vessel or to receive
35 or deliver merchandise while outside the territorial sea.

36 “(c) REGULATIONS.—The Secretary may by regulation—

37 “(1) prescribe the manner in which clearance under this section is
38 to be obtained, including the documents, data, or information which
39 shall be submitted or transmitted, pursuant to an authorized data
40 interchange system, to obtain the clearance;

- “60305. Vessels in distress.
- “60306. Vessels not engaged in trade.
- “60307. Vessels engaged in coastwise trade or the fisheries.
- “60308. Vessels engaged in Great Lakes trade.
- “60309. Passenger vessels making trips between ports of the United States and foreign ports.
- “60310. Vessels making daily trips on interior waters.
- “60311. Hospital vessels in time of war.
- “60312. Rights under treaties preserved.

1 **“§ 60301. Regular tonnage taxes**

2 “(a) LOWER RATE.—A tax is imposed at the rate of 2 cents per ton (but
3 not more than a total of 10 cents per ton per year) at each entry in a port
4 of the United States of—

5 “(1) a vessel entering from a foreign port or place in North America,
6 Central America, the West Indies Islands, the Bahama Islands, the
7 Bermuda Islands, or the coast of South America bordering the Carib-
8 bean Sea; or

9 “(2) a vessel returning to the same port or place in the United
10 States from which it departed, and not entering the United States from
11 another port or place, except—

12 “(A) a vessel of the United States;

13 “(B) a recreational vessel (as defined in section 2101 of this
14 title); or

15 “(C) a barge.

16 “(b) HIGHER RATE.—A tax is imposed at the rate of 6 cents per ton
17 (but not more than a total of 30 cents per ton per year) on a vessel at each
18 entry in a port of the United States from a foreign port or place not named
19 in subsection (a)(1).

20 “(c) EXCEPTION FOR VESSELS ENTERING OTHER THAN BY SEA.—Sub-
21 section (a) does not apply to a vessel entering other than by sea from a
22 foreign port or place at which tonnage, lighthouse, or other equivalent taxes
23 are not imposed on vessels of the United States.

24 **“§ 60302. Special tonnage taxes**

25 “(a) ENTRY FROM FOREIGN PORT OR PLACE.—Regardless of whether a
26 tax is imposed under section 60301 of this title, a tax is imposed on a vessel
27 at each entry in a port of the United States from a foreign port or place
28 at the following rates:

29 “(1) 30 cents per ton on a vessel built in the United States but
30 owned in any part by a subject of a foreign country.

31 “(2) 50 cents per ton on other vessels not of the United States.

32 “(3) 50 cents per ton on a vessel of the United States having an
33 officer who is not a citizen of the United States.

34 “(4) \$2 per ton on a foreign vessel entering from a foreign port or
35 place at which vessels of the United States are not ordinarily allowed
36 to enter and trade.

1 “(b) VESSELS NOT OF THE UNITED STATES TRANSPORTING PROPERTY
 2 BETWEEN DISTRICTS.—Regardless of whether a tax is imposed under sec-
 3 tion 60301 of this title, a tax of 50 cents per ton is imposed on a vessel
 4 not of the United States at each entry in one customs district from another
 5 district when transporting goods loaded in one district to be delivered in an-
 6 other district.

7 “(c) EXCEPTION FOR VESSELS BECOMING DOCUMENTED.—The tax of 50
 8 cents per ton under this section does not apply to a vessel that—

9 “(1) is owned only by citizens of the United States; and

10 “(2) after entering a port of the United States, becomes documented
 11 as a vessel of the United States before leaving that port.

12 **“§ 60303. Light money**

13 “(a) IMPOSITION OF TAX.—A tax of 50 cents per ton, to be called ‘light
 14 money’, is imposed on a vessel not of the United States at each entry in
 15 a port of the United States. This tax shall be imposed and collected under
 16 the same regulations that apply to tonnage taxes.

17 “(b) EXCEPTION FOR VESSELS OWNED BY CITIZENS.—

18 “(1) IN GENERAL.—Subsection (a) does not apply to a vessel owned
 19 only by citizens of the United States if—

20 “(A) the vessel is carrying a regular document issued by a cus-
 21 tomhouse of the United States proving the vessel to be owned only
 22 by citizens of the United States; and

23 “(B) on entry of the vessel from a foreign port, the individual
 24 designated under paragraph (2) states under oath that—

25 “(i) the document contains the names of all the owners of
 26 the vessel; or

27 “(ii) part of the ownership has been transferred since the
 28 document was issued and, to the best of that individual’s
 29 knowledge and belief, the vessel is still owned only by citizens
 30 of the United States.

31 “(2) PERSON TO MAKE STATEMENT.—The statement under para-
 32 graph (1)(B) shall be made by—

33 “(A) an owner if one resides at the port of entry; or

34 “(B) the master if an owner does not reside at the port of
 35 entry.

36 “(c) EXCEPTION FOR VESSELS BECOMING DOCUMENTED.—Subsection
 37 (a) section does not apply to a vessel that—

38 “(1) is owned only by citizens of the United States; and

39 “(2) after entering a port of the United States, becomes documented
 40 as a vessel of the United States before leaving that port.

1 **“§ 60304. Presidential suspension of tonnage taxes and light**
2 **money**

3 “If the President is satisfied that the government of a foreign country
4 does not impose discriminating or countervailing duties to the disadvantage
5 of the United States, the President shall suspend the imposition of special
6 tonnage taxes and light money under sections 60302 and 60303 of this title
7 on vessels of that country.

8 **“§ 60305. Vessels in distress**

9 “A vessel is exempt from tonnage taxes and light money when it enters
10 because it is in distress.

11 **“§ 60306. Vessels not engaged in trade**

12 “A vessel is exempt from tonnage taxes and light money when not en-
13 gaged in trade.

14 **“§ 60307. Vessels engaged in coastwise trade or the fisheries**

15 “A vessel with a registry endorsement or a coastwise endorsement, trad-
16 ing from one port in the United States to another port in the United States
17 or employed in the bank, whale, or other fisheries, is exempt from tonnage
18 taxes and light money.

19 **“§ 60308. Vessels engaged in Great Lakes trade**

20 “A documented vessel with a registry endorsement, engaged in foreign
21 trade on the Great Lakes or their tributary or connecting waters in trade
22 with Canada, does not become subject to tonnage taxes or light money be-
23 cause of that trade.

24 **“§ 60309. Passenger vessels making trips between ports of**
25 **the United States and foreign ports**

26 “A passenger vessel making at least 3 trips per week between a port of
27 the United States and a foreign port is exempt from tonnage taxes and light
28 money.

29 **“§ 60310. Vessels making daily trips on interior waters**

30 “A vessel making regular daily trips between a port of the United States
31 and a port of Canada only on interior waters not navigable to the ocean
32 is exempt from tonnage taxes and light money, except on its first clearing
33 each year.

34 **“§ 60311. Hospital vessels in time of war**

35 “In time of war, a hospital vessel is exempt from tonnage taxes, light
36 money, and pilotage charges in the ports of the United States if the vessel
37 is one for which the conditions of the international convention for the ex-
38 emption of hospital ships from taxation in time of war, concluded at The
39 Hague on December 21, 1904, are satisfied. The President by proclamation
40 shall name the vessels for which the conditions are satisfied and state when
41 the exemption begins and ends.

1 **“§ 60312. Rights under treaties preserved**

2 “This chapter and chapter 605 of this title do not affect a right or privi-
3 lege of a foreign country relating to tonnage taxes or other duties on vessels
4 under a law or treaty of the United States.

5 **“CHAPTER 605—DISCRIMINATING DUTIES AND**
6 **RECIPROCAL PRIVILEGES**

“Sec.

“60501. Vessels allowed to import.

“60502. Discriminating duty on goods imported in foreign vessels or from contiguous coun-
tries.

“60503. Reciprocal suspension of discriminating duties.

“60504. Reciprocal privileges for recreational vessels.

“60505. Retaliatory suspension of commercial privileges.

“60506. Retaliation against British dominions of North America.

“60507. Suspension of free passage through Saint Marys Falls Canal.

7 **“§ 60501. Vessels allowed to import**

8 “(a) IN GENERAL.—Except as otherwise provided by treaty, goods may
9 be imported into the United States from a foreign port or place only in—

10 “(1) a vessel of the United States; or

11 “(2) a foreign vessel owned only by citizens or subjects of the coun-
12 try—

13 “(A) in which the goods are grown, produced, or manufactured;

14 or

15 “(B) from which the goods can only be, or most usually are,
16 first shipped for transportation.

17 “(b) EXCEPTION FOR VESSELS OF COUNTRIES NOT MAINTAINING SIMI-
18 LAR RESTRICTIONS.—Subsection (a) does not apply to a vessel of a foreign
19 country that does not maintain a similar restriction against United States
20 documented vessels.

21 “(c) EXCEPTION FOR VESSELS BECOMING DOCUMENTED.—Subsection
22 (a) does not apply to a vessel that—

23 “(1) is owned only by citizens of the United States; and

24 “(2) after entering a port of the United States, becomes documented
25 as a vessel of the United States before leaving that port.

26 “(d) SEIZURE AND FORFEITURE.—If goods are imported in violation of
27 this section, the goods and the vessel in which they are imported, along with
28 its equipment and other cargo, may be seized by and forfeited to the United
29 States Government.

30 **“§ 60502. Discriminating duty on goods imported in foreign**
31 **vessels or from contiguous countries**

32 “(a) IMPOSITION OF DUTY.—A discriminating duty of 10 percent ad valo-
33 rem (in addition to other duties imposed by law) is imposed on goods—

34 “(1) imported in a vessel not of the United States unless the ves-
35 sel—

1 “(A) is entitled by law or treaty to enter the ports of the United
2 States on payment of the same duties as are payable on goods im-
3 ported in a vessel of the United States; or

4 “(B)(i) is owned only by citizens of the United States; and

5 “(ii) after entering a port of the United States, becomes docu-
6 mented as a vessel of the United States before leaving that port;

7 or

8 “(2) produced or manufactured in a foreign country not contiguous
9 to the United States and imported from a country contiguous to the
10 United States, unless imported in the usual course of strictly retail
11 trade.

12 “(b) SEIZURE AND FORFEITURE.—If goods are imported without pay-
13 ment of the duty required by this section, the goods and the vessel in which
14 they are imported may be seized by, and forfeited to, the United States Gov-
15 ernment.

16 **“§ 60503. Reciprocal suspension of discriminating duties**

17 “(a) GENERAL AUTHORITY.—On receiving satisfactory proof from the
18 government of a foreign country that it has suspended, in any part, the im-
19 position of discriminating duties for any class of vessels owned by citizens
20 of the United States or goods imported in those vessels, the President may
21 proclaim a reciprocal suspension of discriminating duties for the same class
22 of vessels owned by citizens of that country or goods imported in those ves-
23 sels.

24 “(b) EFFECTIVE AND EXPIRATION DATES.—A suspension under this sec-
25 tion takes effect retroactively from the date the President received the proof
26 from the foreign government, and expires when that government stops
27 granting the reciprocal suspension.

28 **“§ 60504. Reciprocal privileges for recreational vessels**

29 “When the President is satisfied that yachts owned by residents of the
30 United States and used only for pleasure are allowed to arrive at, depart
31 from, and cruise in the waters of a foreign port without entering, clearing,
32 or paying any duties or fees (including cruising license fees), the Secretary
33 of Homeland Security may allow yachts from that foreign port used only
34 for pleasure to arrive at and depart from the ports of the United States
35 and to cruise in the waters of the United States without paying any duties
36 or fees. However, the Secretary may require foreign yachts to obtain a li-
37 cense to cruise in the waters of the United States. The license shall be in
38 the form prescribed by the Secretary and contain limitations about length
39 of time, direction, place of cruising and action, and other matters the Sec-
40 retary considers appropriate. The license shall be issued without cost to the
41 yacht.

“§ 60505. Retaliatory suspension of commercial privileges

“(a) GENERAL AUTHORITY.—The President may proclaim a suspension of commercial privileges to vessels of a foreign country when—

“(1) vessels of that country have been given the same commercial privileges in the ports and waters of the United States given to vessels of the United States (except the privilege of engaging in coastwise commerce); and

“(2) vessels of the United States are denied commercial privileges in the ports or waters of that country given to vessels of that country.

“(b) APPLICATION.—A suspension under this section shall apply to the same commercial privileges denied to vessels of the United States in the ports or waters of the foreign country, and to the same class of vessels of that country as the class of vessels of the United States denied the privileges.

“(c) EFFECTIVE DATE.—The President shall designate the effective date of the suspension in the proclamation.

“(d) PENALTIES.—

“(1) SEIZURE AND FORFEITURE.—If the master, officer, or agent of a vessel of a foreign country does an act for the vessel in the ports or waters of the United States in violation of a proclamation issued under this section, the vessel and the goods on the vessel may be seized by, and forfeited to, the United States Government.

“(2) FINE OR IMPRISONMENT.—A person opposing an official of the Government enforcing this section shall be fined under title 18, imprisoned for not more than 2 years, or both.

“§ 60506. Retaliation against British dominions of North America

“(a) GENERAL AUTHORITY.—The President by proclamation may prohibit vessels of the British dominions of North America, their masters and crews, and products of or coming from those dominions, from entering waters, ports, or places of the United States when the President is satisfied that—

“(1) fishermen or fishing vessels of the United States in waters, ports, or places of the British dominions of North America are being or recently have been—

“(A) denied rights provided by law or treaty;

“(B) subjected to unreasonable restrictions in the exercise of those rights; or

“(C) otherwise harassed;

“(2) fishermen or fishing vessels of the United States, having a permit under the laws of the United States to dock or trade at a port

1 or place in the British dominions of North America, are being or re-
2 cently have been—

3 “(A) denied the privilege of entering the port or place in the
4 same manner and under the same regulations applicable to trading
5 vessels of the most-favored-nation;

6 “(B) prevented from buying supplies allowed to be sold to trad-
7 ing vessels of the most-favored-nation; or

8 “(C) otherwise harassed; or

9 “(3) other vessels of the United States or their masters or crews in
10 waters, ports, or places of the British dominions of North America are
11 being or recently have been—

12 “(A) denied privileges given to vessels of the most-favored-na-
13 tion or their masters or crews; or

14 “(B) otherwise harassed.

15 “(b) COVERAGE AND EXCEPTIONS.—The President may apply a procla-
16 mation under this section to any of the subjects named, and may include
17 exceptions for vessels in distress or need of supplies. The President may
18 change, revoke, and renew the proclamation.

19 “(c) PENALTIES.—A person violating a proclamation issued under this
20 section shall be fined under title 18, imprisoned for not more than 2 years,
21 or both. A vessel or goods found in waters, ports, or places of the United
22 States in violation of the proclamation may be seized by, and forfeited to,
23 the United States Government.

24 **“§ 60507. Suspension of free passage through Saint Marys**
25 **Falls Canal**

26 “(a) PURPOSE.—The purpose of this section is to secure reciprocal ad-
27 vantages for the citizens, ports, and vessels of the United States.

28 “(b) GENERAL AUTHORITY.—When the President is satisfied that vessels
29 of the United States, or passengers or cargo being transported to a port
30 of the United States, are prohibited from passing through a canal or lock
31 connected with the navigation of the Saint Lawrence River, the Great
32 Lakes, or their connecting waterways, or burdened in that passage by tolls
33 or other means that are unreasonable in view of the free passage through
34 the Saint Marys Falls Canal allowed to vessels of all countries, the Presi-
35 dent by proclamation may suspend the right of free passage through the
36 Saint Marys Falls Canal for vessels owned by subjects of the country impos-
37 ing the prohibition, tolls, or other burdens and for passengers and cargo
38 being transported to the ports of that country, even when carried in vessels
39 of the United States. The suspension shall apply to the extent and for the
40 time the President considers appropriate.

41 “(c) IMPOSITION OF TOLL.—

1 “(1) IN GENERAL.—During a suspension under this section, the
 2 President shall impose a toll of not more than \$2 per ton on cargo and
 3 not more than \$5 on each passenger.

4 “(2) EXCEPTIONS.—Notwithstanding paragraph (1), a toll may not
 5 be imposed on passengers or cargo landed at Ogdensburg, New York,
 6 or any port west of Ogdensburg and south of a line drawn from the
 7 northern boundary of New York through the Saint Lawrence River, the
 8 Great Lakes, and their connecting channels to the northern boundary
 9 of Minnesota.

10 “(d) COLLECTION OF TOLL.—

11 “(1) IN GENERAL.—A toll imposed under this section shall be col-
 12 lected under regulations prescribed by the Secretary of Homeland Secu-
 13 rity. The Secretary may require the master of a vessel to provide a
 14 sworn statement of the amount and kind of cargo, the number of pas-
 15 sengers, and the destination of the passengers and cargo.

16 “(2) PROOF OF LANDING.—When applicable, the Secretary also may
 17 require satisfactory proof that the passengers and cargo were landed
 18 at a port described in subsection (c)(2). Until that proof is provided,
 19 the Secretary may assume the passengers and cargo were not landed
 20 at such a port, and the amount of a toll that otherwise would be im-
 21 posed is a lien enforceable against the vessel when found in the waters
 22 of the United States.”.

23 **SEC. 10. SUBTITLE VII OF TITLE 46.**

24 Subtitle VII of title 46, United States Code, as redesignated by section
 25 9(a) of this Act, is amended as follows:

26 (1) The subtitle heading and analysis are amended to read as fol-
 27 lows:

28 **“Subtitle VII—Security and Drug Enforcement**

“Chapter	Sec.
“701. Port Security	70101
“703. Maritime Security	70301
“705. Maritime Drug Law Enforcement	70501”.

29 (2) Add after chapter 701 the following:

30 **“CHAPTER 703—MARITIME SECURITY**

“Sec.

- “70301. Definitions.
- “70302. International measures for seaport and vessel security.
- “70303. Security standards at foreign ports.
- “70304. Travel advisories on security at foreign ports.
- “70305. Suspension of passenger services.
- “70306. Report on terrorist threats.

31 **“§ 70301. Definitions**

32 “In this chapter:

33 “(1) COMMON CARRIER.—The term ‘common carrier’ has the mean-
 34 ing given that term in section 40102 of this title.

1 “(2) PASSENGER VESSEL.—The term ‘passenger vessel’ has the
2 meaning given that term in section 2101 of this title.

3 “(3) SECRETARY.—The term ‘Secretary’ means the Secretary of the
4 department in which the Coast Guard is operating.

5 **“§ 70302. International measures for seaport and vessel se-**
6 **curity**

7 “Congress encourages the President to continue to seek agreement on
8 international seaport and vessel security through the International Maritime
9 Organization. In developing an agreement, each member country of the
10 International Maritime Organization should consult with appropriate private
11 sector interests in that country. The agreement would establish seaport and
12 vessel security measures and could include—

13 “(1) seaport screening of cargo and baggage similar to that done at
14 airports;

15 “(2) security measures to restrict access to cargo, vessels, and dock-
16 side property to authorized personnel only;

17 “(3) additional security on board vessels;

18 “(4) licensing or certification of compliance with appropriate security
19 standards; and

20 “(5) other appropriate measures to prevent unlawful acts against
21 passengers and crews on vessels.

22 **“§ 70303. Security standards at foreign ports**

23 “(a) GENERAL REQUIREMENTS.—The Secretary shall develop and imple-
24 ment a plan to assess the effectiveness of the security measures maintained
25 at foreign ports that the Secretary, in consultation with the Secretary of
26 State, determines pose a high risk of acts of terrorism against passenger
27 vessels. In carrying out this subsection, the Secretary shall consult with the
28 Secretary of State about the terrorist threat that exists in each country and
29 poses a high risk of acts of terrorism against passenger vessels.

30 “(b) NOTICE AND RECOMMENDATIONS TO OTHER COUNTRIES.—If the
31 Secretary, after implementing the plan under subsection (a), determines
32 that a port does not maintain and administer effective security measures,
33 the Secretary of State (after being informed by the Secretary) shall—

34 “(1) notify the appropriate government authorities of the country in
35 which the port is located of the determination; and

36 “(2) recommend steps necessary to bring the security measures at
37 that port up to the standard used by the Secretary in making the as-
38 sessment under subsection (a).

39 “(c) ANTITERRORISM ASSISTANCE.—The President is encouraged to pro-
40 vide antiterrorism assistance related to maritime security under chapter 8
41 of part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2349aa et seq.)

1 to foreign countries, especially for a port that the Secretary determines
2 under subsection (b) does not maintain and administer effective security
3 measures.

4 **“§ 70304. Travel advisories on security at foreign ports**

5 “(a) GENERAL REQUIREMENTS.—On being notified by the Secretary that
6 the Secretary has determined that a condition exists that threatens the safe-
7 ty or security of passengers, passenger vessels, or crew traveling to or from
8 a foreign port that the Secretary has determined under section 70303(b) of
9 this title does not maintain and administer effective security measures, the
10 Secretary of State immediately shall issue a travel advisory for that port.
11 The Secretary of State shall take the necessary steps to widely publicize the
12 travel advisory.

13 “(b) LIFTING ADVISORIES.—A travel advisory issued under subsection (a)
14 may be lifted only if the Secretary, in consultation with the Secretary of
15 State, has determined that effective security measures are maintained and
16 administered at the port.

17 “(c) NOTICE TO CONGRESS.—The Secretary of State shall notify Con-
18 gress immediately of any change in the status of a travel advisory issued
19 under this section.

20 **“§ 70305. Suspension of passenger services**

21 “(a) GENERAL AUTHORITY.—Whenever the President determines that a
22 foreign nation permits the use of territory under its jurisdiction as a base
23 of operations or training for, or as a sanctuary for, or in any way arms,
24 aids, or abets, a terrorist or terrorist group that knowingly uses the illegal
25 seizure of passenger vessels or the threat thereof as an instrument of policy,
26 the President may suspend the right of any passenger vessel common car-
27 rier to operate to or from, and the right of any passenger vessel of the
28 United States to use, a port in that foreign nation for passenger service.
29 The suspension may be without notice or hearing and for as long as the
30 President determines is necessary to ensure the security of passenger vessels
31 against unlawful seizure.

32 “(b) PROHIBITION.—A passenger vessel common carrier, or a passenger
33 vessel of the United States, may not operate in violation of a suspension
34 under this section.

35 “(c) PENALTIES.—

36 “(1) DENIAL OF ENTRY.—If a person operates a vessel in violation
37 of this section, the Secretary may deny the vessels of that person entry
38 to ports of the United States.

39 “(2) CIVIL PENALTY.—A person violating this section is liable to the
40 United States Government for a civil penalty of not more than

1 \$50,000. Each day a vessel uses a prohibited port is a separate viola-
2 tion.

3 **“§ 70306. Report on terrorist threats**

4 “(a) CONTENT.—Not later than February 28 of each year, the Secretary
5 shall submit a report to Congress on the threat from acts of terrorism to
6 United States ports and vessels operating from those ports. The Secretary
7 shall include a description of activities undertaken under title I of the Mari-
8 time Transportation Security Act of 2002 (Public Law 107–295, 116 Stat.
9 2066) and an analysis of the effect of those activities on port security
10 against acts of terrorism.

11 “(b) SUBMISSION.—The report shall be submitted to the Committee on
12 International Relations and the Committee on Transportation and Infra-
13 structure of the House of Representatives and the Committee on Foreign
14 Relations and the Committee on Commerce, Science, and Transportation of
15 the Senate. Any classified information in the report shall be submitted sepa-
16 rately as an addendum.

17 **“CHAPTER 705—MARITIME DRUG LAW ENFORCEMENT**

“Sec.

“70501. Findings and declarations.

“70502. Definitions.

“70503. Manufacture, distribution, or possession of controlled substances on vessels.

“70504. Jurisdiction and venue.

“70505. Failure to comply with international law as a defense.

“70506. Penalties.

“70507. Forfeitures.

18 **“§ 70501. Findings and declarations**

19 “Congress finds and declares that trafficking in controlled substances
20 aboard vessels is a serious international problem, is universally condemned,
21 and presents a specific threat to the security and societal well-being of the
22 United States.

23 **“§ 70502. Definitions**

24 “(a) APPLICATION OF OTHER DEFINITIONS.—The definitions in section
25 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970
26 (21 U.S.C. 802) apply to this chapter.

27 “(b) VESSEL OF THE UNITED STATES.—In this chapter, the term ‘vessel
28 of the United States’ means—

29 “(1) a vessel documented under chapter 121 of this title or num-
30 bered as provided in chapter 123 of this title;

31 “(2) a vessel owned in any part by an individual who is a citizen
32 of the United States, the United States Government, the government
33 of a State or political subdivision of a State, or a corporation incor-
34 porated under the laws of the United States or of a State, unless—

35 “(A) the vessel has been granted the nationality of a foreign na-
36 tion under article 5 of the 1958 Convention on the High Seas; and

1 “(B) a claim of nationality or registry for the vessel is made
2 by the master or individual in charge at the time of the enforce-
3 ment action by an officer or employee of the United States who
4 is authorized to enforce applicable provisions of United States law;
5 and

6 “(3) a vessel that was once documented under the laws of the United
7 States and, in violation of the laws of the United States, was sold to
8 a person not a citizen of the United States, placed under foreign reg-
9 istry, or operated under the authority of a foreign nation, whether or
10 not the vessel has been granted the nationality of a foreign nation.

11 “(c) VESSEL SUBJECT TO THE JURISDICTION OF THE UNITED
12 STATES.—

13 “(1) IN GENERAL.—In this chapter, the term ‘vessel subject to the
14 jurisdiction of the United States’ includes—

15 “(A) a vessel without nationality;

16 “(B) a vessel assimilated to a vessel without nationality under
17 paragraph (2) of article 6 of the 1958 Convention on the High
18 Seas;

19 “(C) a vessel registered in a foreign nation if that nation has
20 consented or waived objection to the enforcement of United States
21 law by the United States;

22 “(D) a vessel in the customs waters of the United States;

23 “(E) a vessel in the territorial waters of a foreign nation if the
24 nation consents to the enforcement of United States law by the
25 United States; and

26 “(F) a vessel in the contiguous zone of the United States, as
27 defined in Presidential Proclamation 7219 of September 2, 1999
28 (43 U.S.C. 1331 note), that—

29 “(i) is entering the United States;

30 “(ii) has departed the United States; or

31 “(iii) is a hovering vessel as defined in section 401 of the
32 Tariff Act of 1930 (19 U.S.C. 1401).

33 “(2) CONSENT OR WAIVER OF OBJECTION.—Consent or waiver of ob-
34 jection by a foreign nation to the enforcement of United States law by
35 the United States under paragraph (1)(C) or (E)—

36 “(A) may be obtained by radio, telephone, or similar oral or
37 electronic means; and

38 “(B) is proved conclusively by certification of the Secretary of
39 State or the Secretary’s designee.

40 “(d) VESSEL WITHOUT NATIONALITY.—

1 “(1) IN GENERAL.—In this chapter, the term ‘vessel without nation-
2 ality’ includes—

3 “(A) a vessel aboard which the master or individual in charge
4 makes a claim of registry that is denied by the nation whose reg-
5 istry is claimed;

6 “(B) a vessel aboard which the master or individual in charge
7 fails, on request of an officer of the United States authorized to
8 enforce applicable provisions of United States law, to make a claim
9 of nationality or registry for that vessel; and

10 “(C) a vessel aboard which the master or individual in charge
11 makes a claim of registry and for which the claimed nation of reg-
12 istry does not affirmatively and unequivocally assert that the ves-
13 sel is of its nationality.

14 “(2) VERIFICATION OR DENIAL.—A claim of registry under para-
15 graph (1)(A) or (C) may be verified or denied by radio, telephone, or
16 similar oral or electronic means. The denial of such a claim is proved
17 conclusively by certification of the Secretary of State or the Secretary’s
18 designee.

19 “(e) CLAIM OF NATIONALITY OR REGISTRY.—A claim of nationality or
20 registry under this section includes only—

21 “(1) possession on board the vessel and production of documents evi-
22 dencing the vessel’s nationality as provided in article 5 of the 1958
23 Convention on the High Seas;

24 “(2) flying its nation’s ensign or flag; or

25 “(3) a verbal claim of nationality or registry by the master or indi-
26 vidual in charge of the vessel.

27 **“§ 70503. Manufacture, distribution, or possession of con-
28 trolled substances on vessels**

29 “(a) PROHIBITIONS.—An individual may not knowingly or intentionally
30 manufacture or distribute, or possess with intent to manufacture or dis-
31 tribute, a controlled substance on board—

32 “(1) a vessel of the United States or a vessel subject to the jurisdic-
33 tion of the United States; or

34 “(2) any vessel if the individual is a citizen of the United States or
35 a resident alien of the United States.

36 “(b) EXTENSION BEYOND TERRITORIAL JURISDICTION.—Subsection (a)
37 applies even though the act is committed outside the territorial jurisdiction
38 of the United States.

39 “(c) NONAPPLICATION.—

40 “(1) IN GENERAL.—Subject to paragraph (2), subsection (a) does
41 not apply to—

1 “(A) a common or contract carrier or an employee of the carrier
2 who possesses or distributes a controlled substance in the lawful
3 and usual course of the carrier’s business; or

4 “(B) a public vessel of the United States or an individual on
5 board the vessel who possesses or distributes a controlled sub-
6 stance in the lawful course of the individual’s duties.

7 “(2) ENTERED IN MANIFEST.—Paragraph (1) applies only if the
8 controlled substance is part of the cargo entered in the vessel’s mani-
9 fest and is intended to be imported lawfully into the country of destina-
10 tion for scientific, medical, or other lawful purposes.

11 “(d) BURDEN OF PROOF.—The United States Government is not re-
12 quired to negative a defense provided by subsection (c) in a complaint, in-
13 formation, indictment, or other pleading or in a trial or other proceeding.
14 The burden of going forward with the evidence supporting the defense is
15 on the person claiming its benefit.

16 **“§ 70504. Jurisdiction and venue**

17 “(a) JURISDICTION.—Jurisdiction of the United States with respect to a
18 vessel subject to this chapter is not an element of an offense. Jurisdictional
19 issues arising under this chapter are preliminary questions of law to be de-
20 termined solely by the trial judge.

21 “(b) VENUE.—A person violating section 70503 of this title shall be tried
22 in the district court of the United States for—

23 “(1) the district at which the person enters the United States; or

24 “(2) the District of Columbia.

25 **“§ 70505. Failure to comply with international law as a de-
26 fense**

27 “‘A person charged with violating section 70503 of this title does not have
28 standing to raise a claim of failure to comply with international law as a
29 basis for a defense. A claim of failure to comply with international law in
30 the enforcement of this chapter may be made only by a foreign nation. A
31 failure to comply with international law does not divest a court of jurisdic-
32 tion and is not a defense to a proceeding under this chapter.

33 **“§ 70506. Penalties**

34 “(a) VIOLATIONS.—A person violating section 70503 of this title shall be
35 punished as provided in section 1010 of the Comprehensive Drug Abuse
36 Prevention and Control Act of 1970 (21 U.S.C. 960). However, if the of-
37 fense is a second or subsequent offense as provided in section 1012(b) of
38 that Act (21 U.S.C. 962(b)), the person shall be punished as provided in
39 section 1012 of that Act (21 U.S.C. 962).

1 “(b) ATTEMPTS AND CONSPIRACIES.—A person attempting or conspiring
2 to violate section 70503 of this title is subject to the same penalties as pro-
3 vided for violating section 70503.

4 **“§ 70507. Forfeitures**

5 “(a) IN GENERAL.—Property described in section 511(a) of the Com-
6 prehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C.
7 881(a)) that is used or intended for use to commit, or to facilitate the com-
8 mission of, an offense under section 70503 of this title may be seized and
9 forfeited in the same manner that similar property may be seized and for-
10 feited under section 511 of that Act (21 U.S.C. 881).

11 “(b) PRIMA FACIE EVIDENCE OF VIOLATION.—Practices commonly rec-
12 ognized as smuggling tactics may provide prima facie evidence of intent to
13 use a vessel to commit, or to facilitate the commission of, an offense under
14 section 70503 of this title, and may support seizure and forfeiture of the
15 vessel, even in the absence of controlled substances aboard the vessel. The
16 following indicia, among others, may be considered, in the totality of the
17 circumstances, to be prima facie evidence that a vessel is intended to be
18 used to commit, or to facilitate the commission of, such an offense:

19 “(1) The construction or adaptation of the vessel in a manner that
20 facilitates smuggling, including—

21 “(A) the configuration of the vessel to ride low in the water or
22 present a low hull profile to avoid being detected visually or by
23 radar;

24 “(B) the presence of any compartment or equipment that is
25 built or fitted out for smuggling, not including items such as a
26 safe or lock-box reasonably used for the storage of personal
27 valuables;

28 “(C) the presence of an auxiliary tank not installed in accord-
29 ance with applicable law or installed in such a manner as to en-
30 hance the vessel’s smuggling capability;

31 “(D) the presence of engines that are excessively over-powered
32 in relation to the design and size of the vessel;

33 “(E) the presence of materials used to reduce or alter the heat
34 or radar signature of the vessel and avoid detection;

35 “(F) the presence of a camouflaging paint scheme, or of mate-
36 rials used to camouflage the vessel, to avoid detection; or

37 “(G) the display of false vessel registration numbers, false indi-
38 cia of vessel nationality, false vessel name, or false vessel home-
39 port.

40 “(2) The presence or absence of equipment, personnel, or cargo in-
41 consistent with the type or declared purpose of the vessel.

1 that country shall take proper measures, to the extent the laws of that coun-
2 try allow, to—

3 “(1) save and secure the vessel and property on the vessel; and

4 “(2) prepare an inventory of the property that is saved.

5 “(b) DELIVERY TO OWNER.—After deducting the expenses, the consular
6 officer shall deliver the property, with an inventory, to the owner of the
7 property.

8 “(c) LIMITATION ON TAKING POSSESSION.—A consular officer may not
9 take possession of property under this section when the owner, master, or
10 consignee is present or able to take possession of the property.

11 **“§ 80102. License to salvage on Florida coast**

12 “(a) LICENSING REQUIREMENTS.—To be regularly employed in the busi-
13 ness of salvaging on the coast of Florida, a vessel and its master each must
14 have a license issued by a judge of the district court of the United States
15 for a judicial district of Florida.

16 “(b) JUDICIAL FINDINGS.—Before issuing a license under this section,
17 the judge must be satisfied, when the license is for—

18 “(1) a vessel, that the vessel is seaworthy and properly equipped for
19 the business of saving property shipwrecked and in distress; or

20 “(2) a master, that the master is trustworthy and innocent of any
21 fraud or misconduct related to property shipwrecked or saved on the
22 coast.

23 **“§ 80103. Property on Florida coast to be taken to port of**
24 **entry**

25 “(a) IN GENERAL.—Property taken from a wreck, the sea, or a key or
26 shoal, on the coast of Florida and within the jurisdiction of the United
27 States, shall be brought to a port of entry of the United States.

28 “(b) SEIZURE AND FORFEITURE.—A vessel transporting property de-
29 scribed in subsection (a) to a foreign port may be seized by, and forfeited
30 to, the United States Government. A forfeiture under this subsection ac-
31 crues half to the informer and half to the Government.

32 **“§ 80104. Salvaging operations by foreign vessels**

33 “(a) PROHIBITION.—Except as provided in this section or section 80105
34 of this title, a foreign vessel may not, under penalty of forfeiture, engage
35 in salvaging operations on the Atlantic or Pacific coast of the United States,
36 in any portion of the Great Lakes or their connecting or tributary waters,
37 including any portion of the Saint Lawrence River through which the inter-
38 national boundary line extends, or in territorial waters of the United States
39 on the Gulf of Mexico.

40 “(b) WHEN SUITABLE VESSEL NOT AVAILABLE.—The Secretary of
41 Homeland Security may authorize a foreign vessel to engage in salvaging

1 operations in a particular locality if, on investigation, the Secretary is satis-
2 fied that there is not available in that locality a suitable vessel that is—

3 “(1) owned only by citizens of the United States (including a
4 Bowaters corporation under section 12118 of this title); and

5 “(2) documented under chapter 121 of this title or numbered under
6 chapter 123 of this title.

7 “(e) OPERATIONS AUTHORIZED BY TREATY.—This section does not pro-
8 hibit or restrict assistance to vessels or salvaging operations authorized by
9 treaty, including—

10 “(1) article II of the Treaty between the United States and Great
11 Britain concerning reciprocal rights for United States and Canada in
12 the conveyance of prisoners and wrecking and salvage, signed at Wash-
13 ington, May 18, 1908 (35 Stat. 2036); or

14 “(2) the Treaty between the United States of America and Mexico
15 to facilitate assistance to and salvage of vessels in territorial waters,
16 signed at Mexico City, June 13, 1935 (49 Stat. 3359).

17 **“§ 80105. Canadian vessels aiding vessels in United States**
18 **waters**

19 “(a) IN GENERAL.—Canadian vessels and wrecking equipment may give
20 aid to Canadian or other vessels and property wrecked, disabled, or in dis-
21 tress in the waters of the United States contiguous to Canada, including—

22 “(1) the canal and improvement of the waters between Lake Erie
23 and Lake Huron; and

24 “(2) the Saint Marys River and canal.

25 “(b) RECIPROCITY.—This section does not apply after the President pro-
26 claims that privileges reciprocal to those under subsection (a) have been
27 withdrawn or rendered inoperative by the Government of Canada.

28 **“§ 80106. International agreement on derelicts**

29 “The President may make an international agreement with other govern-
30 ments interested in the navigation of the North Atlantic Ocean, providing
31 for the reporting, marking, and removal of dangerous wrecks, derelicts, and
32 other menaces to navigation outside the coast waters of the countries bor-
33 dering the North Atlantic Ocean.

34 **“§ 80107. Salvors of life to share in remuneration**

35 “(a) ENTITLEMENT OF SALVORS.—A salvor of human life, who gave aid
36 following an accident giving rise to salvage, is entitled to a fair share of
37 the payment awarded to the salvor for salvaging the vessel or other property
38 or preventing or minimizing damage to the environment.

39 “(b) COMMON OWNERSHIP OF VESSELS.—The right to remuneration for
40 aid or salvage services is not affected by common ownership of the vessels
41 giving and receiving the aid or salvage services.

1 “(c) TIME LIMIT ON BRINGING ACTIONS.—A civil action to recover remuneration for giving aid or salvage services must be brought within 2 years
2 after the date the aid or salvage services were given, unless the court in
3 which the action is brought is satisfied that during that 2-year period there
4 had not been a reasonable opportunity to seize the aided or salvaged vessel
5 within the jurisdiction of the court or within the territorial waters of the
6 country of the plaintiff’s residence or principal place of business.

7 “(d) NONAPPLICATION.—This section does not apply to a vessel of war
8 or a vessel owned by the United States Government appropriated only to
9 a public service.
10

11 “CHAPTER 803—ICE AND DERELICTS

“Sec.

“80301. International agreements.

“80302. Patrol services.

“80303. Speed of vessel in ice region.

12 “§ 80301. International agreements

13 “(a) GENERAL AUTHORITY.—The President may make agreements with
14 interested maritime countries to—

15 “(1) maintain in the North Atlantic Ocean a service of ice patrol,
16 of study and observation of ice and current conditions, and of assist-
17 ance to vessels and their crews requiring assistance within the limits
18 of the patrol;

19 “(2) maintain a service of study and observation of ice and current
20 conditions in the waters affecting the set and drift of ice in the North
21 Atlantic Ocean; and

22 “(3) take all practicable steps to ensure the destruction or removal
23 of derelicts in the northern part of the Atlantic Ocean, east of the line
24 drawn from Cape Sable to a point in latitude 34 degrees north, lon-
25 gitude 70 degrees west, if the destruction or removal is necessary.

26 “(b) PAYMENT BETWEEN COUNTRIES.—The President may include in an
27 agreement under subsection (a) a provision for—

28 “(1) payment to the United States Government by other countries
29 for their proportionate share of the expense of maintaining the services;
30 or

31 “(2) contribution by the Government for its proportionate share if
32 the agreement provides for another country to maintain the services.

33 “§ 80302. Patrol services

34 “(a) GENERAL REQUIREMENTS.—Unless the agreements made under sec-
35 tion 80301 of this title provide otherwise, an ice patrol shall be maintained
36 during the entire ice season in guarding the southeastern, southern, and
37 southwestern limits of the region of icebergs in the vicinity of the Grand
38 Banks of Newfoundland. The patrol shall inform trans-Atlantic and other

1 passing vessels by radio and other available means of the ice conditions and
 2 the extent of the dangerous region. During the ice season, there shall be
 3 maintained a service of study of ice and current conditions, a service of pro-
 4 viding assistance to vessels and crews requiring assistance, and a service of
 5 removing and destroying derelicts. Any of these services may be maintained
 6 during the remainder of the year as may be advisable.

7 “(b) WARNINGS TO VESSELS.—An ice patrol vessel shall warn any vessel
 8 known to be approaching a dangerous area and recommend safe routes.

9 “(c) RECORDING AND REPORTING INCIDENTS.—

10 “(1) RECORDING.—An ice patrol vessel shall record the name of a
 11 vessel and the facts of the case when the patrol observes or knows that
 12 the vessel—

13 “(A) is on other than a regular recognized or advertised route
 14 crossing the North Atlantic Ocean;

15 “(B) has crossed the fishing banks of Newfoundland north of
 16 latitude 43 degrees north during the fishing season; or

17 “(C) has passed through regions known or believed to be endan-
 18 gered by ice when proceeding to and from ports of North America.

19 “(2) REPORTING.—The name of the vessel and all pertinent informa-
 20 tion about the incident shall be reported to the government of the coun-
 21 try to which the vessel belongs if that government requests.

22 “(d) ADMINISTRATION.—The Commandant of the Coast Guard, under
 23 the direction of the Secretary of the department in which the Coast Guard
 24 is operating, shall carry out the services provided for in this section and
 25 shall assign necessary vessels, material, and personnel of the Coast Guard.
 26 On request of such Secretary, the head of an agency may detail personnel,
 27 lend or contribute material or equipment, or otherwise assist in carrying out
 28 the services provided for in this section.

29 “(e) ANNUAL REPORT.—The Commandant shall publish an annual report
 30 of the activities of the services provided for in this section. A copy of the
 31 report shall be provided to each interested foreign government and to each
 32 agency assisting in the work.

33 “§ 80303. Speed of vessel in ice region

34 “(a) REQUIREMENT.—The master of a vessel of the United States, when
 35 ice is reported on or near the vessel’s course, shall proceed at a moderate
 36 speed or change the course of the vessel to go well clear of the danger zone.

37 “(b) CIVIL PENALTY.—A master violating this section is liable to the
 38 United States Government for a civil penalty of not more than \$500.

39 “CHAPTER 805—SAFE CONTAINERS FOR 40 INTERNATIONAL CARGO

“Sec.

“80501. Definitions.

- “80502. Application of Convention.
- “80503. General authority of the Secretary.
- “80504. Approval and examination.
- “80505. Enforcement.
- “80506. Delegation of authority.
- “80507. Employee protection.
- “80508. Amendments to Convention.
- “80509. Civil penalty.

1 **“§ 80501. Definitions**

2 “In this chapter:

3 “(1) CONTAINER.—The term ‘container’ has the meaning given that
4 term in the Convention.

5 “(2) CONVENTION.—The term ‘Convention’ means the International
6 Convention for Safe Containers, and its annexes, done at Geneva, Swit-
7 zerland, December 2, 1972.

8 “(3) INTERNATIONAL TRANSPORT.—The term ‘international trans-
9 port’ means the transportation of a container between—

10 “(A) a place in a foreign country and a place in the jurisdiction
11 of the United States; or

12 “(B) two places outside the United States by United States car-
13 riers.

14 “(4) OWNER.—The term ‘owner’ includes the lessee or bailee of a
15 container if a written lease or bailment provides for the lessee or bailee
16 to exercise the owner’s responsibility for maintaining and examining
17 the container.

18 “(5) SAFETY APPROVAL PLATE.—The term ‘safety approval plate’
19 has the meaning given that term in annex I of the Convention.

20 **“§ 80502. Application of Convention**

21 “The Convention applies to an owner of a container used in international
22 transport if the owner is domiciled or has its principal office in the United
23 States.

24 **“§ 80503. General authority of the Secretary**

25 “(a) IN GENERAL.—The Secretary of the department in which the Coast
26 Guard is operating shall carry out the Convention and this chapter in the
27 United States.

28 “(b) REGULATIONS.—The Secretary shall prescribe regulations to carry
29 out this chapter. The regulations shall—

30 “(1) establish procedures for testing, inspecting, and initially approv-
31 ing containers and designs for containers, including procedures for at-
32 taching, invalidating, and removing safety approval plates for con-
33 tainers;

34 “(2) establish procedures to be followed by the owners of containers
35 for the periodic examination of containers as provided in the Conven-
36 tion; and

1 “(3) provide a method for developing, collecting, and disseminating
2 information about container safety and the international transport of
3 containers.

4 “(e) SAFETY APPROVAL PLATES.—If the owner of a container without a
5 safety approval plate establishes that the container satisfies the standards
6 of the Convention, the Secretary may authorize a safety approval plate to
7 be attached to the container.

8 “(d) SCHEDULE OF FEES.—The Secretary may prescribe a schedule of
9 fees for services performed by the Secretary, or by a person delegated au-
10 thority under section 80506 of this title, for the testing, inspection, and ini-
11 tial approval of containers and container designs.

12 “(e) ENCOURAGING INTERMODAL TRANSPORT.—To the maximum extent
13 possible, the Secretary shall encourage the development and use of inter-
14 modal transport, using containers built to facilitate economical, safe, and
15 expeditious handling of containerized cargo without intermediate reloading
16 when it is being transported over land, air, and sea areas.

17 **“§ 80504. Approval and examination**

18 “(a) DOMICILE AND PRINCIPAL OFFICE IN UNITED STATES.—A con-
19 tainer owner domiciled and having its principal office in the United States
20 shall have the container—

21 “(1) approved initially under procedures prescribed by the Secretary
22 of the department in which the Coast Guard is operating or by the gov-
23 ernment of another country that is a party to the Convention; and

24 “(2) examined periodically as provided in the Convention under pro-
25 cedures prescribed by the Secretary.

26 “(b) DOMICILE OR PRINCIPAL OFFICE IN UNITED STATES.—A container
27 owner domiciled or having its principal office in the United States shall have
28 the container—

29 “(1) approved initially under procedures prescribed by the Secretary
30 or by the government of another country that is a party to the Con-
31 vention; and

32 “(2) examined periodically as provided in the Convention, under pro-
33 cedures prescribed by the government of the country in which the
34 owner is domiciled or has its principal office, as long as that country
35 is a party to the Convention.

36 “(c) NEITHER DOMICILE NOR PRINCIPAL OFFICE IN UNITED STATES.—
37 A container owner neither domiciled nor having its principal office in the
38 United States or another country that is a party to the Convention may
39 submit a container for initial approval and periodic examination under pro-
40 cedures prescribed by the Secretary.

1 **“§ 80505. Enforcement**

2 “(a) IN GENERAL.—To enforce the Convention, this chapter, and regula-
3 tions prescribed under this chapter, the Secretary of the department in
4 which the Coast Guard is operating may—

5 “(1) examine, or require to be examined, containers in international
6 transport;

7 “(2) approve designs for containers;

8 “(3) inspect and test containers being manufactured;

9 “(4) issue a detention order removing or excluding a container from
10 service until the container owner satisfies the Secretary that the con-
11 tainer meets the standards of the Convention, if the container—

12 “(A) does not have a safety approval plate attached to it; or

13 “(B) has a safety approval plate attached but there is signifi-
14 cant evidence that the container is in a condition that creates an
15 obvious risk to safety;

16 “(5) take other appropriate action, including issuing necessary or-
17 ders, to remove a container from service or restrict its use if the con-
18 tainer is not in compliance with the Convention, this chapter, or regula-
19 tions prescribed under this chapter, but does not present an obvious
20 risk to safety; and

21 “(6) allow a container found to be unsafe or without a safety ap-
22 proval plate to be moved to another location for repair or other disposi-
23 tion, under restrictions consistent with the intent of the Convention.

24 “(b) PAYMENT OF EXPENSES.—

25 “(1) EXAMINATION.—The owner of a container involved in an action
26 by the Secretary under this section related to an examination of the
27 container shall pay or reimburse the Secretary for the expenses arising
28 from that action, except for the costs of routine examinations of the
29 container or a safety approval plate.

30 “(2) TESTING, INSPECTION, AND INITIAL APPROVAL.—The owner of
31 a container submitted to the procedure established by the Secretary for
32 testing, inspection, and initial approval, and the manufacturer of a con-
33 tainer that submits a design to the procedure established by the Sec-
34 retary for testing, inspection, and initial approval, shall pay or reim-
35 burse the Secretary for the expenses arising from the testing, inspec-
36 tion, or approval.

37 “(3) CREDIT TO APPROPRIATION.—Amounts received by the Sec-
38 retary as reimbursement shall be credited to the appropriation for oper-
39 ating expenses of the Coast Guard.

40 “(c) PRESUMPTION BASED ON SAFETY APPROVAL PLATE.—A container
41 bearing a safety approval plate authorized by a country that is a party to

1 the Convention is presumed to be in a safe condition unless there is signifi-
2 cant evidence that the container is in a condition that creates an obvious
3 risk to safety.

4 “(d) NOTICE OF ORDERS.—

5 “(1) IN GENERAL.—When the Secretary issues a detention or other
6 order under this section, the Secretary promptly shall notify in writ-
7 ing—

8 “(A) the owner of the container;

9 “(B) the owner’s agent; or

10 “(C) if the identity of the owner is not apparent from the con-
11 tainer or shipping documents, the custodian.

12 “(2) INFORMATION TO INCLUDE.—The notification shall identify the
13 container involved, give the location of the container, and describe the
14 condition or situation giving rise to the order.

15 “(e) DURATION OF ORDERS.—An order issued by the Secretary under
16 this section remains in effect until—

17 “(1) the Secretary declares the container to be in compliance with
18 the standards of the Convention; or

19 “(2) the container is removed permanently from service.

20 “(f) NOTICE OF DEFECTIVE CONTAINER TO COUNTRY ISSUING SAFETY
21 APPROVAL PLATE.—If the Secretary has reason to believe that a container
22 bearing a safety approval plate issued by another country was defective at
23 the time of approval, the Secretary shall notify that country.

24 **“§ 80506. Delegation of authority**

25 “(a) IN GENERAL.—The Secretary of the department in which the Coast
26 Guard is operating may delegate to any person, including a public or private
27 agency or nonprofit organization, authority to grant initial approval for con-
28 tainers and designs and to attach safety approval plates.

29 “(b) REGULATIONS.—Before making a delegation under this section, the
30 Secretary shall prescribe regulations establishing—

31 “(1) criteria to be followed in selecting a person to whom authority
32 is to be delegated;

33 “(2) a detailed description of the duties and powers to be carried out
34 by the person to whom authority is delegated, including the records the
35 person shall keep; and

36 “(3) the review the Secretary will conduct to decide whether the per-
37 son is carrying out the delegated duties and powers properly.

38 “(c) INSPECTION OF RECORDS.—A person delegated authority under this
39 section shall make available to the Secretary for inspection, on request,
40 records the person is required to keep.

1 “(d) PENALTIES AND ORDERS.—A person delegated authority under this
2 section may not—

3 “(1) assess or collect, or attempt to assess or collect, a penalty for
4 violation of the Convention, this chapter, or an order issued by the Sec-
5 retary under this chapter; or

6 “(2) issue or attempt to issue a detention or other order.

7 “(e) PUBLICATION.—The Secretary shall publish in the Federal Register
8 or other appropriate publication—

9 “(1) the name and address of each person to whom authority is dele-
10 gated;

11 “(2) the duties and powers delegated; and

12 “(3) the period of the delegation.

13 “(f) REVOCATION.—The Secretary may revoke a delegation of authority
14 under this section at any time.

15 **“§ 80507. Employee protection**

16 “(a) PROHIBITION.—A person may not discharge or discriminate against
17 an employee because the employee has reported the existence of an unsafe
18 container or a violation of this chapter or a regulation prescribed under this
19 chapter.

20 “(b) COMPLAINTS.—An employee alleging to have been discharged or dis-
21 criminated against in violation of subsection (a) may file a complaint with
22 the Secretary of Labor. The complaint must be filed within 60 days after
23 the violation.

24 “(c) ENFORCEMENT.—The Secretary of Labor may investigate the com-
25 plaint. If the Secretary of Labor finds there has been a violation, the Sec-
26 retary of Labor may bring a civil action in an appropriate district court of
27 the United States. The court has jurisdiction to restrain violations of sub-
28 section (a) and order appropriate relief, including reinstatement of the em-
29 ployee to the employee’s former position with back pay.

30 “(d) NOTICE TO COMPLAINANT.—Within 30 days after receiving a com-
31 plaint under this section, the Secretary of Labor shall notify the complain-
32 ant of the intended action on the complaint.

33 **“§ 80508. Amendments to Convention**

34 “(a) PROPOSALS BY UNITED STATES.—The Secretary of State, with the
35 concurrence of the Secretary of the department in which the Coast Guard
36 is operating, may propose amendments to the Convention or request a con-
37 ference for amending the Convention as provided in article IX of the Con-
38 vention.

39 “(b) PROPOSALS BY OTHER COUNTRIES.—An amendment communicated
40 to the United States under article IX(2) of the Convention may be accepted
41 for the United States by the President, with the advice and consent of the

1 Senate. The President may declare that the United States does not accept
2 an amendment.

3 “(c) AMENDMENTS TO ANNEXES.—

4 “(1) IN GENERAL.—The Secretary of State, with the concurrence of
5 the Secretary of the department in which the Coast Guard is oper-
6 ating—

7 “(A) may propose amendments to the annexes to the Conven-
8 tion;

9 “(B) may propose a conference for amending annexes to the
10 Convention; and

11 “(C) shall consider and act on amendments to the annexes to
12 the Convention adopted by the Maritime Safety Committee of the
13 International Maritime Organization and communicated to the
14 United States under article X(2) of the Convention.

15 “(2) ACTION FOLLOWING APPROVAL OR OBJECTION.—If a proposed
16 amendment to an annex is approved by the United States, the amend-
17 ment shall enter into force as provided in article X of the Convention.
18 If a proposed amendment is objected to, the Secretary of State prompt-
19 ly shall communicate the objection as provided in article X(3) of the
20 Convention.

21 “(d) APPOINTMENT OF ARBITRATOR.—The Secretary of State, with the
22 concurrence of the Secretary of the department in which the Coast Guard
23 is operating, shall appoint an arbitrator when one is required to resolve a
24 dispute within the meaning of article XIII of the Convention.

25 **“§ 80509. Civil penalty**

26 “(a) IN GENERAL.—An owner, agent, or custodian who has been notified
27 of an order issued under section 80505 of this title and fails to take reason-
28 able and prompt action to prevent or stop a container subject to the order
29 from being moved in violation of the order is liable to the United States
30 Government for a civil penalty of not more than \$5,000 for each container
31 moved. Each day the container remains in service while the order is in effect
32 is a separate violation.

33 “(b) ASSESSMENT AND COLLECTION.—

34 “(1) IN GENERAL.—After notice and an opportunity for a hearing,
35 the Secretary of the department in which the Coast Guard is operating
36 shall assess and collect any penalty under this section.

37 “(2) FACTORS TO CONSIDER.—In determining the amount of the
38 penalty, the Secretary shall consider the gravity of the violation, the
39 hazards involved, and the record of the person charged with respect to
40 violations of the Convention, this chapter, or regulations prescribed
41 under this chapter.

1 “(3) REMISSION, MITIGATION, OR COMPROMISE.—The Secretary may
2 remit, mitigate, or compromise a penalty under this section.

3 “(4) ENFORCEMENT.—If a person fails to pay a penalty under this
4 section, the Secretary shall refer the matter to the Attorney General
5 for collection in an appropriate district court of the United States.”.

6 **SEC. 12. MARITIME ADMINISTRATION.**

7 Section 109 of title 49, United States Code, is amended to read as fol-
8 lows:

9 **“§ 109. Maritime Administration**

10 “(a) ORGANIZATION.—The Maritime Administration is an administration
11 in the Department of Transportation.

12 “(b) MARITIME ADMINISTRATOR.—The head of the Maritime Administra-
13 tion is the Maritime Administrator, who is appointed by the President by
14 and with the advice and consent of the Senate. The Administrator shall re-
15 port directly to the Secretary of Transportation and carry out the duties
16 prescribed by the Secretary.

17 “(c) DEPUTY MARITIME ADMINISTRATOR.—The Maritime Administration
18 shall have a Deputy Maritime Administrator, who is appointed in the com-
19 petitive service by the Secretary, after consultation with the Administrator.
20 The Deputy Administrator shall carry out the duties prescribed by the Ad-
21 ministrator. The Deputy Administrator shall be Acting Administrator dur-
22 ing the absence or disability of the Administrator and, unless the Secretary
23 designates another individual, during a vacancy in the office of Adminis-
24 trator.

25 “(d) DUTIES AND POWERS VESTED IN SECRETARY.—All duties and pow-
26 ers of the Maritime Administration are vested in the Secretary.

27 “(e) REGIONAL OFFICES.—The Maritime Administration shall have re-
28 gional offices for the Atlantic, Gulf, Great Lakes, and Pacific port ranges,
29 and may have other regional offices as necessary. The Secretary shall ap-
30 point a qualified individual as Director of each regional office. The Sec-
31 retary shall carry out appropriate activities and programs of the Maritime
32 Administration through the regional offices.

33 “(f) INTERAGENCY AND INDUSTRY RELATIONS.—The Secretary shall es-
34 tablish and maintain liaison with other agencies, and with representative
35 trade organizations throughout the United States, concerned with the trans-
36 portation of commodities by water in the export and import foreign com-
37 merce of the United States, for the purpose of securing preference to vessels
38 of the United States for the transportation of those commodities.

39 “(g) DETAILING OFFICERS FROM ARMED FORCES.—To assist the Sec-
40 retary in carrying out duties and powers relating to the Maritime Adminis-
41 tration, not more than five officers of the armed forces may be detailed to

1 the Secretary at any one time, in addition to details authorized by any other
2 law. During the period of a detail, the Secretary shall pay the officer an
3 amount that, when added to the officer's pay and allowances as an officer
4 in the armed forces, makes the officer's total pay and allowances equal to
5 the amount that would be paid to an individual performing work the Sec-
6 retary considers to be of similar importance, difficulty, and responsibility as
7 that performed by the officer during the detail.

8 “(h) CONTRACTS AND AUDITS.—

9 “(1) CONTRACTS.—In the same manner that a private corporation
10 may make a contract within the scope of its authority under its char-
11 ter, the Secretary may make contracts for the United States Govern-
12 ment and disburse amounts to—

13 “(A) carry out the Secretary's duties and powers under this sec-
14 tion and subtitle V of title 46; and

15 “(B) protect, preserve, and improve collateral held by the Sec-
16 retary to secure indebtedness.

17 “(2) AUDITS.—The financial transactions of the Secretary under
18 paragraph (1) shall be audited by the Comptroller General. The Comp-
19 troller General shall allow credit for an expenditure shown to be nec-
20 essary because of the nature of the business activities authorized by
21 this section or subtitle V of title 46. At least once a year, the Comp-
22 troller General shall report to Congress any departure by the Secretary
23 from this section or subtitle V of title 46.

24 “(i) AUTHORIZATION OF APPROPRIATIONS.—

25 “(1) IN GENERAL.—Except as otherwise provided in this subsection,
26 there are authorized to be appropriated such amounts as may be nec-
27 essary to carry out the duties and powers of the Secretary relating to
28 the Maritime Administration.

29 “(2) LIMITATIONS.—Only those amounts specifically authorized by
30 law may be appropriated for the use of the Maritime Administration
31 for—

32 “(A) acquisition, construction, or reconstruction of vessels;

33 “(B) construction-differential subsidies incident to the construc-
34 tion, reconstruction, or reconditioning of vessels;

35 “(C) costs of national defense features;

36 “(D) payments of obligations incurred for operating-differential
37 subsidies;

38 “(E) expenses necessary for research and development activities,
39 including reimbursement of the Vessel Operations Revolving Fund
40 for losses resulting from expenses of experimental vessel oper-
41 ations;

- 1 “(F) the Vessel Operations Revolving Fund;
 2 “(G) National Defense Reserve Fleet expenses;
 3 “(H) expenses necessary to carry out part B of subtitle V of
 4 title 46; and
 5 “(I) other operations and training expenses related to the devel-
 6 opment of waterborne transportation systems, the use of water-
 7 borne transportation systems, and general administration.

8 “(3) TRAINING VESSELS.—Amounts may not be appropriated for the
 9 purchase or construction of training vessels for State maritime acad-
 10 emies unless the Secretary has approved a plan for sharing training
 11 vessels between State maritime academies.”.

12 **SEC. 13. AMENDMENTS RELATING TO MARITIME SECURITY ACT OF**
 13 **2003.**

14 (a) AMENDMENTS TO CHAPTER 531.—Chapter 531 of title 46, United
 15 States Code, is amended as follows:

- 16 (1) In section 53102—
 17 (A) in the headings of paragraphs (1), (2), and (4) of sub-
 18 section (c), strike “SECTION 2” and substitute “SECTION 50501”;
 19 (B) in subsection (c)(1), (2)(A)(i) and (ii)(II) and (B), and
 20 (4)(B), strike “section 2 of the Shipping Act, 1916 (46 U.S.C.
 21 App. 802)” and substitute “section 50501 of this title”;
 22 (C) in subsection (d), strike “the first section of Public Law
 23 81–891 (64 Stat. 1120; 46 U.S.C. App. note prec. 3)” and sub-
 24 stitute “section 501 of this title”; and
 25 (D) in subsection (e)(1)—
 26 (i) strike “a documented vessel (as that term is defined in
 27 section 12101 of this title)” and substitute “documented
 28 under chapter 121 of this title,”; and
 29 (ii) in subparagraph (B), strike “a documented vessel (as
 30 defined in that section)” and substitute “documented under
 31 chapter 121”.
- 32 (2) In section 53103(e)—
 33 (A) in the heading of paragraph (1)(C), strike “SECTION 2” and
 34 substitute “SECTION 50501”;
 35 (B) in paragraphs (1)(A)(iii) and (C)(i) and (ii), strike “section
 36 2 of the Shipping Act, 1916 (46 U.S.C. App. 802)” and substitute
 37 “section 50501 of this title”;
 38 (C) in paragraph (1)(B), strike “subparagraphs” and substitute
 39 “subparagraph”; and
 40 (D) in paragraph (3)(B), strike “agreement” and substitute
 41 “agreements”.

1 (3) In section 53104—

2 (A) in subsection (e)(3)(B)(ii)(I) and (II), strike “section 2 of
3 the Shipping Act, 1916 (46 U.S.C. App. 802)” and substitute
4 “section 50501 of this title”;

5 (B) in subsection (e)(2), strike “section 9 of the Shipping Act,
6 1916 (46 U.S.C. App. 808)” and substitute “section 56101 of this
7 title”; and

8 (C) in subsection (e)(3), strike “section 902 of the Merchant
9 Marine Act, 1936 (46 U.S.C. App. 1242)” and “section 902 of
10 such Act” and substitute “chapter 563 of this title” and “chapter
11 563”, respectively.

12 (4) In section 53105—

13 (A) in subsection (a)(1)(A), strike “section 12105” and sub-
14 stitute “section 12111”; and

15 (B) in subsection (f), strike “approve” and substitute “ap-
16 proves”.

17 (5) In section 53106—

18 (A) in subsection (d)(1), strike “section 2631 of title 10, United
19 States Code, the Act of March 26, 1934 (46 U.S.C. App. 1241–
20 1), section 901(a), 901(b), or 901b of the Merchant Marine Act,
21 1936 (46 U.S.C. App. 1241(a), 1241(b), or 1241f)” and sub-
22 stitute “section 55302(a), 55304, 55305, or 55314 of this title,
23 section 2631 of title 10”;

24 (B) in subsection (d)(2), strike “section 901(a), 901(b), or 901b
25 of the Merchant Marine Act, 1936 (46 U.S.C. App. 1241(a),
26 1241(b), or 1241f),” and substitute “section 55302(a), 55305, or
27 55314 of this title”; and

28 (C) in subsection (e)(2), strike “section 2(c) of the Shipping
29 Act, 1916 (46 U.S.C. App. 802(e))” and substitute “section
30 50501 of this title, applying the 75 percent ownership requirement
31 of that section”.

32 (6) In section 53107(f)—

33 (A) strike “section 2631 of title 10, United States Code, the Act
34 of March 26, 1934 (46 U.S.C. App. 1241–1), section 901(a),
35 901(b), or 901b of the Merchant Marine Act, 1936 (46 U.S.C.
36 App. 1241(a), 1241(b), or 1241f)” and substitute “section
37 55302(a), 55304, 55305, or 55314 of this title, section 2631 of
38 title 10”; and

39 (B) strike “section 2631 of title 10, United States Code, the
40 Act of March 26, 1934 (46 U.S.C. App. 1241–1), and sections
41 901(a), 901(b), and 901b of the Merchant Marine Act, 1936 (46

1 U.S.C. App. 1241(a), 1241(b), and 1241b)” and substitute “sec-
 2 tions 55302(a), 55304, 55305, and 55314 of this title and section
 3 2631 of title 10”.

4 (7) In section 53108(b), strike “section 901(b)(1) of the Merchant
 5 Marine Act, 1936 (46 U.S.C. App. 1241(b)(1))” and substitute “sec-
 6 tion 55305(a) of this title”.

7 (b) OTHER CONFORMING PROVISIONS.—If this Act is enacted prior to
 8 October 1, 2005, then—

9 (1) until that date, the reference in section 12111(c)(3) of title 46,
 10 United States Code, as enacted by this Act, to “chapter 531 of this
 11 title” is deemed instead to be a reference to “subtitle B of title VI of
 12 the Merchant Marine Act, 1936”; and

13 (2) section 3534(b)(1) of the Maritime Security Act of 2003 (Public
 14 Law 108–136, 117 Stat. 1818) is repealed.

15 **SEC. 14. AMENDMENTS TO PARTIALLY RESTATED PROVISIONS.**

16 (a) Section 2793 of the Revised Statutes (19 U.S.C. 288, 46 App. U.S.C.
 17 111, 123) is amended by striking “or tonnage tax”.

18 (b) Section 809(a) of the Merchant Marine Act, 1936 (46 App. U.S.C.
 19 1213(a)), is amended by striking “and section 211(a)”.

20 **SEC. 15. ADDITIONAL AMENDMENTS TO TITLE 46.**

21 Title 46, United States Code, is amended as follows:

22 (1) The analysis of subtitle II is amended as follows:

23 (A) In each chapter item, capitalize the first letter of each word
 24 containing 4 or more letters.

25 (B) Strike the item for chapter 39.

26 (C) The item for chapter 45 is amended to read as follows:

“45. Uninspected Commercial Fishing Industry Vessels 4501”.

27 (2) Section 2101 is amended as follows:

28 (A) Paragraphs (2), (3), (3a), (6), (10), (10a), (12), (17b),
 29 (36), (41), (44), (45), and (46) are repealed.

30 (B) In paragraph (8a), insert “Prevention” after “Abuse”.

31 (C) In paragraph (18), strike “those”.

32 (D) In paragraph (34)—

33 (i) strike “, except in part H,”; and

34 (ii) strike “head” and substitute “Secretary”.

35 (3) In section 2102—

36 (A) in subsection (a)(2), strike “section 2101(36) and (44)”
 37 and substitute “chapter 1”; and

38 (B) in subsection (b), strike “West” and “East” and substitute
 39 “west” and “east”, respectively.

- 1 (4) In section 2106, strike “a district court of the United States”
2 and substitute “the district court of the United States for any district”.
- 3 (5) Section 2108 is repealed.
- 4 (6) In section 2110—
- 5 (A) in subsection (a)(2), strike “part B of this title” and sub-
6 stitute “part B of this subtitle”;
- 7 (B) in subsection (b)(2)(A)(iii), strike the period at the end and
8 substitute “; and”;
- 9 (C) in subsection (b)(5), strike “fees” and substitute “fee”;
- 10 (D) In subsection (f), strike “Secretary of the Treasury shall
11 deny the clearance required by section 4197 of the Revised Stat-
12 utes of the United States (46 App. U.S.C. 91)” and substitute
13 “Secretary of Homeland Security shall deny the clearance required
14 by section 60105 of this title”; and
- 15 (E) In subsection (j), strike “state” and substitute “State”.
- 16 (7) In section 2301, strike “section” and substitute “sections 2304
17 and”.
- 18 (8) In section 2304—
- 19 (A) insert the paragraph designation “(1)” after “(a)”; and
- 20 (B) insert at the end of subsection (a) the following new para-
21 graph:
- 22 “(2) Paragraph (1) does not apply to a vessel of war or a vessel owned
23 by the United States Government appropriated only to a public service.”.
- 24 (9) In section 2306(a)(2), strike “section 212(A) of the Merchant
25 Marine Act, 1936 (46 App. U.S.C. 1122a),” and substitute “section
26 50113 of this title”.
- 27 (10) In section 3205(d), strike “Secretary of the Treasury shall
28 withhold or revoke the clearance required by section 4197 of the Re-
29 vised Statutes (46 App. U.S.C. 91)” and substitute “Secretary of
30 Homeland Security shall withhold or revoke the clearance required by
31 section 60105 of this title”.
- 32 (11) In section 3302—
- 33 (A) in subsection (b), insert a comma after “fishing vessel”;
- 34 (B) in subsection (j)(2)(B), strike “section 1304 of the Mer-
35 chant Marine Act, 1936 (46 App. U.S.C. 1295c)” and substitute
36 “chapter 515 of this title”; and
- 37 (C) in subsection (l)(1)(C), strike “Inc.” and substitute “Inc.”.
- 38 (12) In section 3306(d), strike “section 1302(3) of the Merchant
39 Marine Act, 1936 (46 App. U.S.C. 1295a(3))” and substitute “section
40 51102 of this title”.
- 41 (13) In section 3318(f), strike the period after “felony”.

1 (14) In the analysis of chapter 37, the item for section 3719 is
2 amended to read as follows:

“3719. Reduction of oil spills from single hull non-self-propelled tank vessels.”.

3 (15) In paragraphs (1)(C), (2), and (3) of section 3703a(e), strike
4 “documentation under section 4136 of the Revised Statutes of the
5 United States (46 App. U.S.C. 14)” and substitute “documentation as
6 a wrecked vessel under section 12112 of this title”.

7 (16) In section 3704, strike “section 27 of the Merchant Marine Act,
8 1920 (46 App. U.S.C. 883),” and substitute “chapter 551 of this
9 title”.

10 (17) In section 3718(e)(1), strike “Secretary of the Treasury” and
11 “section 4197 of the Revised Statutes of the United States (46 App.
12 U.S.C. 91)” and substitute “Secretary of Homeland Security” and
13 “section 60105 of this title”, respectively.

14 (18) In section 4702, strike the subsection “(a)” designation.

15 (19) In section 4705—

16 (A) strike “subcontractor not” and substitute “subcontractor
17 are not”;

18 (B) strike “(a)(1)” and substitute “(a)”;

19 (C) strike “(2) Paragraph (1)” and substitute “(b) Subsection
20 (a)”;

21 (D) strike “(A)” and substitute “(1)”;

22 (E) strike “(B)” and substitute “(2)”.

23 (20) In section 5113(b), strike “section 4197 of the Revised Statutes
24 (46 App. U.S.C. 91)” and substitute “section 60105 of this title”.

25 (21) In section 6101, redesignate the second subsection (g) and sub-
26 section (h) as subsections (h) and (i), respectively.

27 (22) In section 8103(a), strike “Only” and substitute “Except as
28 otherwise provided in this title, only”.

29 (23) In section 9307(b)(2)(A), strike “The” and substitute “the”.

30 (24) In section 12503(a), in the matter before paragraph (1), strike
31 “delegee” and substitute “delegate”.

32 (25) In section 13102(a), insert “(26 U.S.C. 9504)” after “Internal
33 Revenue Code of 1986”.

34 (26) In section 14305(a)—

35 (A) in paragraph (1), strike “and sections 12106(e) and
36 12108(e)” and substitute “of this subtitle and section 12116”;

37 (B) in paragraph (5), strike “section 4283 of the Revised Stat-
38 utes of the United States (46 App. U.S.C. 183)” and substitute
39 “section 30506 of this title”;

1 (C) in paragraph (6), strike “sections 27 and 27A of the Act
2 of June 5, 1920 (46 App. U.S.C. 883 and 883–1)” and substitute
3 “sections 12118 and 12132 of this title”; and

4 (D) in paragraph (7), strike “Act of July 14, 1956 (46 App.
5 U.S.C. 883a)” and substitute “section 12139(b) of this title”.

6 (27) In section 31306(a), strike “section 9 or 37 of the Shipping
7 Act, 1916 (46 App. U.S.C. 808, 835)” and substitute “section 56102
8 or 56103 of this title”.

9 (28) In section 31308, strike “title XI of the Merchant Marine Act,
10 1936 (46 App. U.S.C. 1271 et seq.)” and substitute “chapter 537 of
11 this title”.

12 (29) In section 31322—

13 (A) in subsection (a)(4)(A), strike “section 12102(e)” and sub-
14 stitute “section 12113(c)”;

15 (B) in subsection (a)(4)(E), strike “under section 12102(a)”
16 and substitute “for purposes of documentation under section
17 12103”; and

18 (C) in subsection (f)(2), strike “section 12102(c)” and sub-
19 stitute “section 12113(c)”.

20 (30) In section 31325(b)(3)(B), strike “section 9 or 37 of the Ship-
21 ping Act, 1936 (46 App. U.S.C. 808, 835)” and substitute “section
22 56101 or 56102 of this title”.

23 (31) In section 31326(b)—

24 (A) in paragraph (1), strike “title XI of the Merchant Marine
25 Act, 1936 (46 App. U.S.C. 1101 et seq.)” and substitute “chapter
26 537 of this title,”; and

27 (B) in paragraph (2), strike “title XI of that Act” and sub-
28 stitute “chapter 537 of this title”.

29 (32) In section 31329—

30 (A) in subsection (a)(1), strike “section 12102” and substitute
31 “section 12103”; and

32 (B) in subsection (b)—

33 (i) in paragraph (2), strike “section 902 of the Merchant
34 Marine Act, 1936 (46 App. U.S.C. 1242)” and substitute
35 “chapter 563 of this title”; and

36 (ii) in paragraph (3), strike “sale foreign within the terms
37 of the first proviso of section 27 of the Merchant Marine Act,
38 1920 (46 App. U.S.C. 883)” and substitute “sale to a person
39 not a citizen of the United States under section 12132 of this
40 title”.

1 (33)(A) Sections 70118 and 70119, as added by section 801(a) of
 2 the Coast Guard and Maritime Transportation Act of 2004 (Public
 3 Law 108–293, 118 Stat. 1078), are redesignated as sections 70117
 4 and 70118, respectively, and moved to appear immediately after section
 5 70116 of title 46, United States Code.

6 (B) Sections 70117 and 70118, as added by section 802(a)(2) of
 7 such Act, are redesignated as sections 70120 and 70121, respectively,
 8 and moved to appear immediately after section 70119 of title 46,
 9 United States Code.

10 (C) In section 70120(a) (as redesignated by subparagraph (B)),
 11 strike “section 70120” and substitute “section 70119”.

12 (D) In section 70121(a) (as redesignated by subparagraph (B))—

13 (i) strike “section 70120” and substitute “section 70119”; and

14 (ii) strike “section 4197 of the Revised Statutes of the United
 15 States (46 U.S.C. App. 91)” and substitute “section 60105 of this
 16 title”.

17 (E) In the analysis of chapter 701, strike the items relating to sec-
 18 tions 70117–70119 and substitute the following:

“70117. Firearms, arrests, and seizure of property.

“70118. Enforcement by State and local officers.

“70119. Civil penalty.

“70120. In rem liability for civil penalties and certain costs.

“70121. Withholding of clearance.”.

19 **SEC. 16. CONFORMING AMENDMENTS TO OTHER LAWS.**

20 (a) TITLE 10.—Title 10, United States Code, is amended as follows:

21 (1) In section 374(b)(4)(A)(iv), strike “The Maritime Drug Law En-
 22 forcement Act (46 U.S.C. App. 1901 et seq.)” and substitute “Chapter
 23 705 of title 46”.

24 (2) In section 2218(d)(2), strike “sections 508 and 510 of the Mer-
 25 chant Marine Act of 1936 (46 U.S.C. App. 1158, 1160), shall be de-
 26 posited in the Fund” and substitute “sections 57101–57104 and chap-
 27 ter 573 of title 46”.

28 (3) In section 2350b(g)(2), strike “section 901(b) of the Merchant
 29 Marine Act, 1936 (46 U.S.C. App. 1241(b))” and substitute “section
 30 55305 of title 46”.

31 (4) In section 2645—

32 (A) in subsection (c), strike “the second sentence of section
 33 1208(a) of the Merchant Marine Act, 1936 (46 U.S.C. App.
 34 1288(a))” and substitute “section 53909(b) of title 46”;

35 (B) in subsection (h)(1), strike “title XII of the Merchant Ma-
 36 rine Act, 1936 (46 U.S.C. App. 1281 et seq.)” and substitute
 37 “chapter 539 of title 46”; and

1 (C) in subsection (h)(2), strike “the first sentence of section
2 1208(a) of the Merchant Marine Act, 1936 (46 U.S.C. App.
3 1288(a))” and substitute “section 53909(a) of title 46”.

4 (5) In section 5985, strike “section 1304 of the Merchant Marine
5 Act, 1936 (46 U.S.C. App. 1295c),” and substitute “chapter 515 of
6 title 46”.

7 (6) In section 7721(a), strike “the Act of March 3, 1925 (commonly
8 referred to as the ‘Public Vessels Act’) (46 U.S.C. App. 781–790)” and
9 substitute “chapter 311 of title 46”.

10 (b) TITLE 11.—Title 11, United States Code, is amended as follows:

11 (1) In section 362(b)—

12 (A) in paragraph (12), strike “section 207 or title XI of the
13 Merchant Marine Act, 1936” and substitute “chapter 537 of title
14 46 or section 109(h) of title 49”; and

15 (B) in paragraph (13), strike “section 207 or title XI of the
16 Merchant Marine Act, 1936” and substitute “chapter 537 of title
17 46”.

18 (2) In section 1110(a)(3)(A)(ii), strike “documented vessel (as de-
19 fined in section 30101(1) of title 46)” and substitute “vessel docu-
20 mented under chapter 121 of title 46”.

21 (c) TITLE 14.—Sections 821(b) and 823a(b) of title 14, United States
22 Code, are each amended by striking paragraphs (3)–(5) and substituting the
23 following:

24 “(3) Section 30101 of title 46 (popularly known as the Admiralty
25 Extension Act).

26 “(4) Chapter 309 of title 46 (known as the Suits in Admiralty Act).

27 “(5) Chapter 311 of title 46 (known as the Public Vessels Act).”.

28 (d) TITLE 18.—Title 18, United States Code, is amended as follows:

29 (1) In section 229F(9)(C), strike “section 3(b) of the Maritime Drug
30 Enforcement Act, as amended (46 U.S.C., App. sec. 1903(b))” and
31 substitute “section 70502(b) of title 46, United States Code”.

32 (2) In section 507—

33 (A) in the first paragraph, strike “recording, registry, or enroll-
34 ment of any vessel, in the office of any collector of the customs,
35 or a license to any vessel for carrying on the coasting trade or
36 fisheries of the United States” and substitute “documentation of
37 any vessel”;

38 (B) in the first paragraph, strike “collector or other”; and

39 (C) in the second paragraph, strike “license,”.

40 (3) In section 924—

1 (A) in subsections (e)(2), (e)(2)(A)(i), (g)(2), and (k)(1), strike
2 “the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901
3 et seq.)” and substitute “chapter 705 of title 46”; and

4 (B) in subsection (g)(2), strike “802 et seq.” and substitute
5 “801 et seq.”.

6 (4) In section 929(a)(2), strike “the Maritime Drug Law Enforce-
7 ment Act (46 U.S.C. App. 1901 et seq.)” and substitute “chapter 705
8 of title 46”.

9 (5) In section 965(a), strike “section 4197 of the Revised Statutes
10 of the United States (46 U.S.C. App. 91)” and substitute “section
11 60105 of title 46”.

12 (6) In section 2277(a), strike “registered, enrolled, or licensed” and
13 substitute “documented”.

14 (7) In section 3142(e) and (f)(1)(C), strike “the Maritime Drug Law
15 Enforcement Act (46 U.S.C. App. 1901 et seq.)” and substitute “chap-
16 ter 705 of title 46”.

17 (e) INTERNAL REVENUE CODE OF 1986.—The Internal Revenue Code of
18 1986 (26 U.S.C. 1 et seq.) is amended as follows:

19 (1) In section 56(e)(2)—

20 (A) strike “section 607 of the Merchant Marine Act, 1936 (46
21 U.S.C. 1177)” and substitute “chapter 535 of title 46, United
22 States Code”; and

23 (B) in subparagraphs (A) and (B), strike “such section 607”
24 substitute “such chapter 535”.

25 (2) In section 140(a)(4), strike “section 607(d) of the Merchant Ma-
26 rine Act, 1936 (46 U.S.C. 1177)” and substitute “section 53507 of
27 title 46, United States Code”.

28 (3) In section 543(a)(1)(B), strike “section 511 or 607 of the Mer-
29 chant Marine Act, 1936 (46 U.S.C. App. 1161 or 1177)” and sub-
30 stitute “chapter 533 or 535 of title 46, United States Code”.

31 (4) In section 1023(2), strike “section 511 of the Merchant Marine
32 Act, 1936, as amended (46 U.S.C. 1161)” and substitute “chapter 533
33 of title 46, United States Code”.

34 (5) In section 1061—

35 (A) in paragraph (1), strike “section 510 of the Merchant Ma-
36 rine Act, 1936, see subsection (e) of that section, as amended Au-
37 gust 4, 1939 (46 U.S.C. App. 1160)” and substitute “chapter 573
38 of title 46, United States Code, see section 57307 of title 46”;

39 (B) in paragraph (2), strike “section 511 of such Act, as
40 amended (46 U.S.C. App. 1161)” and substitute “chapter 533 of
41 title 46, United States Code”; and

- 1 (C) strike paragraph (3).
2 (6) In section 7518—
3 (A) in subsection (a)(1), strike “section 607 of the Merchant
4 Marine Act, 1936” and substitute “chapter 535 of title 46 of the
5 United States Code”;
6 (B) in subsections (a)(2) and (c)(1)(A) and (D), strike “section
7 607 of the Merchant Marine Act, 1936” and substitute “chapter
8 535 of title 46, United States Code”; and
9 (C) in subsection (g)(3)(C)(iii), strike “Merchant Marine Act of
10 1936” and substitute “Merchant Marine Act, 1936.”
- 11 (f) TITLE 28.—Title 28, United States Code, is amended as follows:
12 (1) In section 994(h)(1)(B) and (2)(B), strike “the Maritime Drug
13 Law Enforcement Act (46 U.S.C. App. 1901 et seq.)” and substitute
14 “chapter 705 of title 46”.
15 (2) In section 1605(d), strike “the Ship Mortgage Act, 1920 (46
16 U.S.C. 911 and following)” and “that Act” and substitute “section
17 31301 of title 46” and “chapter 313 of title 46”, respectively.
18 (3) In section 2342(3)—
19 (A) in subparagraph (A), strike “section 2, 9, 37, or 41 of the
20 Shipping Act, 1916 (46 U.S.C. App. 802, 803, 808, 835, 839, and
21 841a)” and substitute “section 50501, 50502, 56101–56104, or
22 57109 of title 46”; and
23 (B) strike subparagraph (B) and substitute the following:
24 “(B) the Federal Maritime Commission issued pursuant to sec-
25 tion 305, 41304, 41308, or 41309 or chapter 421 or 441 of title
26 46;”.
- 27 (4) In section 2680(d), strike “sections 741–752, 781–790 of Title
28 46,” and substitute “chapter 309 or 311 of title 46”.
- 29 (g) TITLE 40.—Title 40, United States Code, is amended as follows:
30 (1) In section 548, strike “the Merchant Marine Act, 1936 (46 App.
31 U.S.C. 1101 et seq.)” and substitute “part F of subtitle V of title 46”.
32 (2) In section 3134(b), strike “the Merchant Marine Act, 1936 (46
33 App. U.S.C. 1101 et seq.)” and substitute “subtitle V of title 46”.
- 34 (h) TITLE 49.—Title 49, United States Code, is amended as follows:
35 (1) In section 5122(e)(1), strike “Secretary of the Treasury” and
36 “section 4197 of the Revised Statutes of the United States (46 App.
37 U.S.C. 91)” and substitute “Secretary of Homeland Security” and
38 “section 60105 of title 46”, respectively.
39 (2) In section 5901(3)(B), strike “section 3 of the Shipping Act of
40 1984 (46 App. U.S.C. 1702)” and substitute “section 40102 of title
41 46”.

1 (i) MISCELLANEOUS.—Section 5501(a) of the Oceans Act of 1992 (Public
2 Law 102–587, 106 Stat. 5084) is amended by adding the following:

3 “(3) The exceptions provided by paragraph (2) shall apply under section
4 55109 of title 46, United States Code, to the same extent as under former
5 section 1 of the Act of May 28, 1906, as amended by paragraph (1).”

6 **SEC. 17. TRANSITIONAL AND SAVINGS PROVISIONS.**

7 (a) CUTOFF DATE.—This Act replaces certain provisions of law enacted
8 on or before February 28, 2005. If a law enacted after that date amends
9 or repeals a provision replaced by this Act, that law is deemed to amend
10 or repeal, as the case may be, the corresponding provision enacted by this
11 Act. If a law enacted after that date is otherwise inconsistent with this Act,
12 it supersedes this Act to the extent of the inconsistency.

13 (b) ORIGINAL DATE OF ENACTMENT UNCHANGED.—For purposes of de-
14 termining whether one provision of law supersedes another based on enact-
15 ment later in time, the date of enactment of a provision enacted by this Act
16 is deemed to be the date of enactment of the provision it replaced.

17 (c) REFERENCES TO PROVISIONS REPLACED.—A reference to a provision
18 of law replaced by this Act, including a reference in another law or in a
19 regulation, order, or other administrative action, is deemed to refer to the
20 corresponding provision enacted by this Act.

21 (d) LAWS GOVERNING APPLICABILITY OF PRIOR AMENDMENTS.—This
22 Act does not affect any law governing the applicability of an amendment
23 to a provision of law replaced by this Act, notwithstanding the repeal by
24 this Act of the provision that was amended. To the extent that any such
25 law governed the applicability of a provision replaced by this Act, that law
26 governs the applicability of the corresponding provision enacted by this Act.

27 (e) REGULATIONS, ORDERS, AND OTHER ADMINISTRATIVE ACTIONS.—A
28 regulation, order, or other administrative action in effect under a provision
29 of law replaced by this Act continues in effect under the corresponding pro-
30 vision enacted by this Act.

31 (f) ACTIONS TAKEN AND OFFENSES COMMITTED.—An action taken or an
32 offense committed under a provision of law replaced by this Act is deemed
33 to have been taken or committed under the corresponding provision enacted
34 by this Act.

35 **SEC. 18. REPEALS.**

36 The following laws are repealed, except with respect to rights and duties
37 that matured, penalties that were incurred, or proceedings that were begun
38 before the date of enactment of this Act:

Revised Statutes

Revised Statutes Section	United States Code	
	Title	Section
2792	46 App.	124
4136	46 App.	14
4173	46 App.	42
4184	46 App.	57
4188	46 App.	59
4197	46 App.	91
4202	46 App.	97
4204	46 App.	98
4206	46 App.	100
4219	46 App.	121
4220	46 App.	122
4221	46 App.	125
4225	46 App.	128
4226	46 App.	129
4227	46 App.	135
4228	46 App.	141
4238	46 App.	721
4239	46 App.	722
4240	46 App.	723
4241	46 App.	724
4281	46 App.	181
4282	46 App.	182
4283	46 App.	183
4283A	46 App.	183b
4283B	46 App.	183c
4284	46 App.	184
4285	46 App.	185
4286	46 App.	186
4287	46 App.	187
4289	46 App.	188
4309	46 App.	354
4310	46 App.	355
4311	46 App.	251
4320	46 App.	262
4336	46 App.	277
4370	46 App.	316
4373	46 App.	321
4374	46 App.	322
4375	46 App.	323
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4378	46 App.	326
4379	46 App.	327
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1887 Mar. 3	339	24	475	143
1892 July 26	248	1	27	267	144
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1906	2566	1 (except as may be applicable under section 5501(a)(2) of Pub. L. 102-587).	34	204	292
May 28					
1908	96	1	35	46	133
Mar. 24		2	35	46	134
May 28	212	5	35	425	104
1909	6	36	36	111	121
Aug. 5					
1910	86	36	234	132
Mar. 8					
1912	268	1	37	242	727
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		5	37	242	731
1913	16	IV(J)(1)-(3)	38	195	19 U.S.C. 128, 130, 131; 46 App. 146
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1915	153	20	38	1185	688
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		2(d)	39	729	803
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	Mar. 30	111		1	41
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