

ceremonies and organizations; and title 40, public buildings, property, and works.

Let me be clear that this bill makes no substantive change in existing law. Rather it removes ambiguities, contradictions and other imperfections from existing law and repeals obsolete, superfluous and superseded provisions.

Madam Speaker, H.R. 866 is a simple bill that makes necessary technical updates to existing law. I urge my colleagues to support it.

Madam Speaker, I reserve the balance of my time.

Mr. BERMAN. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, H.R. 866 is a bill introduced by Chairman SENSENBRENNER and Ranking Member CONYERS. The purpose of this bill is to make technical corrections to various provisions of titles 10, 23, 28, 36 and 40 of the U.S. Code. The bill updates cross-references, corrects typographical errors, makes stylistic changes, conforming capitalization, correcting the punctuation of certain words. It is a bill that the Office of Law Revision Counsel has prepared and submitted to the committee for consideration so that those titles of the Code that have been enacted into positive law may be kept current. I urge my colleagues to support this bill.

Madam Speaker, I yield back the balance of my time.

Mr. SENSENBRENNER. Madam Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Wisconsin (Mr. SENSENBRENNER) that the House suspend the rules and pass the bill, H.R. 866.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

**COMPLETING CODIFICATION OF TITLE 46, UNITED STATES CODE, "SHIPPING", AS POSITIVE LAW**

Mr. SENSENBRENNER. Madam Speaker, I move to suspend the rules and pass the bill (H.R. 1442) to complete the codification of title 46, United States Code, "Shipping", as positive law, as amended.

The Clerk read as follows:

H.R. 1442

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

**SECTION 1. TABLE OF CONTENTS.**

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. Recreational boating safety technical amendments.
- Sec. 17. Conforming amendments to other laws.
- Sec. 18. Transitional and savings provisions.
- Sec. 19. Repeals.

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

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

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

**SEC. 3. TITLE ANALYSIS.**

The title analysis of title 46, United States Code, is amended to read as 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"

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

Title 46, United States Code, is amended by inserting after the title analysis the following:

**"Subtitle I—General**

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

**"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.

**"§ 101. Agency**

"In this title, the term 'agency' means a department, agency, or instrumentality of the United States Government.

**"§ 102. Barge**

"In this title, the term 'barge' means a non-self-propelled vessel.

**"§ 103. Boundary Line**

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

**"§ 104. Citizen of the United States**

"In this title, the term 'citizen of the United States', when used in reference to a natural per-

son, means an individual who is a national of the United States as defined in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).

**"§ 105. Consular officer**

"In this title, the term 'consular officer' means an officer or employee of the United States Government designated under regulations to issue visas.

**"§ 106. Documented vessel**

"In this title, the term 'documented vessel' means a vessel for which a certificate of documentation has been issued under chapter 121 of this title.

**"§ 107. Exclusive economic zone**

"In this title, the term 'exclusive economic zone' means the zone established by Presidential Proclamation 5030 of March 10, 1983 (16 U.S.C. 1453 note).

**"§ 108. Fisheries**

"In this title, the term 'fisheries' includes processing, storing, transporting (except in foreign commerce), planting, cultivating, catching, taking, or harvesting fish, shellfish, marine animals, pearls, shells, or marine vegetation in the navigable waters of the United States or in the exclusive economic zone.

**"§ 109. Foreign commerce or trade**

"(a) IN GENERAL.—In this title, the terms 'foreign commerce' and 'foreign trade' mean commerce or trade between a place in the United States and a place in a foreign country.

"(b) CAPITAL CONSTRUCTION FUNDS AND CONSTRUCTION-DIFFERENTIAL SUBSIDIES.—In the context of capital construction funds under chapter 535 of this title, and in the context of construction-differential subsidies under title V of the Merchant Marine Act, 1936, the terms 'foreign commerce' and 'foreign trade' also include, in the case of liquid and dry bulk cargo carrying services, trading between foreign ports in accordance with normal commercial bulk shipping practices in a manner that will permit bulk vessels of the United States to compete freely with foreign bulk vessels in their operation or competition for charters, subject to regulations prescribed by the Secretary of Transportation.

**"§ 110. Foreign vessel**

"In this title, the term 'foreign vessel' means a vessel of foreign registry or operated under the authority of a foreign country.

**"§ 111. Numbered vessel**

"In this title, the term 'numbered vessel' means a vessel for which a number has been issued under chapter 123 of this title.

**"§ 112. State**

"In this title, the term 'State' means a State of the United States, the District of Columbia, Guam, Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands, and any other territory or possession of the United States.

**"§ 113. Undocumented**

"In this title, the term 'undocumented' means not having and not required to have a certificate of documentation issued under chapter 121 of this title.

**"§ 114. United States**

"In this title, the term 'United States', when used in a geographic sense, means the States of the United States, the District of Columbia, Guam, Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands, and any other territory or possession of the United States.

**"§ 115. Vessel**

"In this title, the term 'vessel' has the meaning given that term in section 3 of title 1.

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

“In this title, the term ‘vessel of the United States’ means a vessel documented under chapter 121 of this title (or exempt from documentation under section 12102(c) of this title), numbered under chapter 123 of this title, or titled under the law of a State.

**“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.

**“§ 301. General organization**

“(a) ORGANIZATION.—The Federal Maritime Commission is an independent establishment of the United States Government.

“(b) COMMISSIONERS.—

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

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

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

“(c) CHAIRMAN.—

“(1) DESIGNATION.—The President shall designate one of the Commissioners as Chairman.

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

“(3) PARTICULAR DUTIES.—

“(A) IN GENERAL.—The Chairman shall—

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

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

“(iii) distribute the business of the Commission among personnel and organizational units;

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

“(v) assign Commission personnel, including Commissioners, to perform duties and powers delegated by the Commission under section 304 of this title.

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

“(4) DELEGATION.—The Chairman may designate officers and employees under the Chairman’s jurisdiction to perform duties and powers of the Chairman, subject to the Chairman’s supervision and direction.

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

**“§ 302. Quorum**

“A vacancy or vacancies in the membership of the Federal Maritime Commission do not impair the power of the Commission to execute its functions. The affirmative vote of a majority of the Commissioners serving on the Commission is required to dispose of any matter before the Commission.

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

“The Federal Maritime Commission, through its secretary, shall keep a record of its meetings

and the votes taken on any action, order, contract, or financial transaction of the Commission.

**“§ 304. Delegation of authority**

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

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

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

**“§ 305. Regulations**

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

**“§ 306. Annual report**

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

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

“(1) a list of the 20 foreign countries that generated the largest volume of oceanborne liner cargo for the most recent calendar year in bilateral trade with the United States;

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

“(3) any actions being taken by the Commission to offset those conditions;

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

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

**“§ 307. Expenditures**

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

**“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.

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

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

“(b) BY HEAD OF AGENCY.—When the head of an agency responsible for the administration of

the navigation or vessel-inspection laws considers it necessary in the interest of national defense, the individual may waive compliance with those laws to the extent, in the manner, and on the terms the individual prescribes.

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

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

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

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

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

**“§ 503. Notice of seizure**

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

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

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

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

“(2) it is found that the fee, tax, penalty, or forfeiture was improperly or excessively imposed.

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

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

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

Chapter 121 of title 46, United States Code, is amended to read as follows:

**“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.

"(2) An association, trust, joint venture, or other entity if—

"(A) each of its members is a citizen of the United States; and

"(B) it is capable of holding title to a vessel under the laws of the United States or a State.

"(3) A partnership if—

"(A) each general partner is a citizen of the United States; and

"(B) the controlling interest in the partnership is owned by citizens of the United States.

"(4) A corporation if—

"(A) it is incorporated under the laws of the United States or a State;

"(B) its chief executive officer, by whatever title, and the chairman of its board of directors are citizens of the United States; and

"(C) no more of its directors are noncitizens than a minority of the number necessary to constitute a quorum.

"(5) The United States Government.

"(6) The government of a State.

"(c) TEMPORARY CERTIFICATES PRIOR TO MEASUREMENT.—Notwithstanding subsection (a)(2), the Secretary may issue a temporary certificate of documentation for a vessel before it is measured.

"§ 12104. Applications for documentation

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

"(b) APPLICANT'S IDENTIFYING INFORMATION.—The Secretary shall require the applicant to provide—

"(1) if the applicant is an individual, the individual's social security number; or

"(2) if the applicant is an entity—

"(A) the entity's taxpayer identification number; or

"(B) if the entity does not have a taxpayer identification number, the social security number of an individual who is a corporate officer, general partner, or individual trustee of the entity and who signs the application.

"§ 12105. Issuance of documentation

"(a) IN GENERAL.—Except as provided in section 12152 of this title, the Secretary, on receipt of a proper application, shall issue a certificate of documentation or a temporary certificate of documentation for a vessel satisfying the requirements of section 12103 of this title. The certificate shall contain each endorsement under subchapter II of this chapter for which the owner applies and the vessel is eligible.

"(b) TEMPORARY CERTIFICATES FOR RECREATIONAL VESSELS.—The Secretary may delegate, subject to the supervision and control of the Secretary and under terms prescribed by regulation, to private entities determined and certified by the Secretary to be qualified, the authority to issue a temporary certificate of documentation for a recreational vessel eligible under section 12103 of this title. A temporary certificate issued under this subsection is valid for not more than 30 days.

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

"(1) identify and describe the vessel;

"(2) identify the owner of the vessel; and

"(3) contain additional information prescribed by the Secretary.

"(d) PROCEDURES TO ENSURE INTEGRITY AND ACCURACY.—The Secretary shall prescribe procedures to ensure the integrity of, and the accuracy of information contained in, certificates of documentation.

"§ 12106. Surrender of title and number

"(a) IN GENERAL.—A documented vessel may not be titled by a State or required to display numbers under chapter 123 of this title, and any certificate of title issued by a State for a documented vessel shall be surrendered as provided by regulations prescribed by the Secretary.

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

"§ 12107. Wrecked vessels

"(a) REQUIREMENTS.—A vessel is a wrecked vessel under this chapter if it—

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

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

"(b) APPRAISALS.—The Secretary may appoint a board of three appraisers to determine wheth-

er a vessel satisfies subsection (a)(2). The costs of the appraisal shall be paid by the owner of the vessel.

"SUBCHAPTER II—ENDORSEMENTS AND SPECIAL DOCUMENTATION

"§ 12111. Registry endorsement

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

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

"(c) CERTAIN VESSELS OWNED BY TRUSTS.—

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

"(2) REQUIREMENTS FOR TRUST TO QUALIFY.—

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

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

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

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

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

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

"§ 12112. Coastwise endorsement

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

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

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

"(B) if not built in the United States—

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

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

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

"(3) otherwise qualifies under the laws of the United States to engage in the coastwise trade.

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

**“§ 12113. Fishery endorsement**

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

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

“(2) was built in the United States;

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

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

“(5) otherwise qualifies under the laws of the United States to engage in the fisheries.

“(b) AUTHORIZED ACTIVITY.—

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

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

“(c) OWNERSHIP REQUIREMENTS FOR ENTITIES.—

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

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

“(A) include the right to—

“(i) direct the business of the entity;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“(2) REGULATIONS.—Regulations to implement this subsection shall conform to the extent practicable with the regulations establishing the form of citizenship affidavit set forth in part 355 of title 46, Code of Federal Regulations, as in effect on September 25, 1997, except that the form of the statement shall be written in a manner to allow the owner of the vessel to satisfy any annual renewal requirements for a certificate of documentation for the vessel and to comply with this subsection and subsections (c) and (d), and shall not be required to be notarized.

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

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

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

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

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

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

“(h) REVOCATION OF ENDORSEMENTS.—The Secretary shall revoke the fishery endorsement of any vessel subject to subsection (c) or (d)

whose owner does not comply with those provisions.

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

**“§ 12114. Recreational endorsement**

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

“(b) AUTHORIZED ACTIVITY.—A vessel operating under a recreational endorsement may be operated only for pleasure.

“(c) APPLICATION OF CUSTOMS LAWS.—A vessel for which a recreational endorsement is issued may proceed between a port of the United States and a port of a foreign country without entering or clearing with the Secretary of Homeland Security. However, a recreational vessel is subject to the requirements for reporting arrivals under section 433 of the Tariff Act of 1930 (19 U.S.C. 1433), and individuals on the vessel are subject to applicable customs regulations.

**“§ 12115. Temporary endorsement for vessels procured outside the United States**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“(4) is to be used only for—

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

“(ii) training exercises to prepare to respond to such a discharge.

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

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

“(a) DEFINITIONS.—In this section:

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

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

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

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

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

“(E) the total book value of the vessels owned by the corporation is not more than 10 percent of the total book value of the assets of the corporation; and

“(F) the corporation buys or produces in the United States at least 75 percent of the raw materials used or sold in its operations.

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

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

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

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

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

“(B) has at least 50 percent of its voting stock controlled, directly or indirectly, by a Bowaters corporation or its parent.

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

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

“(1) is owned by a Bowaters corporation;

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

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

“(B) is not self-propelled.

“(d) EFFECTS OF DOCUMENTATION.—

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

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

“(B) the vessel and its owner and master are entitled to the same benefits and are subject to the same requirements and penalties as if the vessel were otherwise documented or exempt from documentation under this chapter.

“(2) TRANSPORTATION OF PASSENGERS OR MERCHANDISE.—A vessel documented under this section may transport passengers or merchandise for hire in the coastwise trade only—

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

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

“(i) is subject to jurisdiction under subchapter II of chapter 135 of title 49;

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

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

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

“(f) PENALTIES.—

“(1) FALSIFYING MATERIAL FACT.—If a corporation knowingly falsifies a material fact in a certificate filed under subsection (a), the vessel (or its value) documented or operated under this section shall be forfeited.

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

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

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

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

“(a) DEFINITIONS.—In this section:

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

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

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

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

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

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

“(5) QUALIFIED PROPRIETARY CARGO.—The term ‘qualified proprietary cargo’ means—

“(A) oil, petroleum products, petrochemicals, or liquefied natural gas cargo that is beneficially owned by the person that submits to the Secretary an application or annual certification

under subsection (c)(3), or by an affiliate of that person, immediately before, during, or immediately after the cargo is carried in coastwise trade on a vessel owned by that person;

“(B) oil, petroleum products, petrochemicals, or liquefied natural gas cargo not beneficially owned by the person that submits to the Secretary an application or an annual certification under subsection (c)(3), or by an affiliate of that person, but which is carried in coastwise trade by a vessel owned by that person and which is part of an arrangement in which vessels owned by that person and at least one other person are operated collectively as one fleet, to the extent that an equal amount of oil, petroleum products, petrochemicals, or liquefied natural gas cargo beneficially owned by that person, or by an affiliate of that person, is carried in coastwise trade on one or more other vessels, not owned by that person, or by an affiliate of that person, if the other vessel or vessels are also part of the same arrangement;

“(C) in the case of a towing vessel associated with a non-self-propelled tank vessel where both vessels function as a single self-propelled vessel, oil, petroleum products, petrochemicals, or liquefied natural gas cargo that is beneficially owned by the person that owns both the towing vessel and the non-self-propelled tank vessel, or any United States affiliate of that person, immediately before, during, or immediately after the cargo is carried in coastwise trade on either of those vessels; or

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

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

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

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

“(b) REQUIREMENTS.—A coastwise endorsement may be issued for a vessel if—

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

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

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

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

“(c) OWNERSHIP CERTIFICATION.—

“(1) IN GENERAL.—A person meets the requirements of this subsection if the person transmits to the Secretary each year the certification required by paragraph (2) or (3) with respect to a vessel.

“(2) INVESTMENT CERTIFICATION.—To meet the certification requirement of this paragraph, a person shall certify that it—

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

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

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

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

“(3) CERTAIN TANK VESSELS.—

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

“(i) the aggregate book value of the vessels owned by the person and United States affiliates of the person does not exceed 10 percent of the aggregate book value of all assets owned by the person and its United States affiliates;

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

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

“(iv) any cargo other than qualified proprietary cargo carried by all vessels owned by the person and its United States affiliates and documented with a coastwise endorsement consists of oil, petroleum products, petrochemicals, or liquified natural gas;

“(v) no vessel owned by the person or any of its United States affiliates and documented with a coastwise endorsement carries molten sulphur; and

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

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

“(i) a tank vessel having a tonnage of at least 6,000 gross tons, as measured under section 14502 of this title (or an alternative tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title); or

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

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

“(e) CONTINUATION OF ENDORSEMENT AFTER TERMINATION OF CHARTER.—When a charter required by subsection (b)(3) is terminated for default by the charterer, the Secretary may continue the coastwise endorsement for not more than 6 months on terms and conditions the Secretary may prescribe.

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

“§ 12120. Liquified gas tankers

“Notwithstanding any agreement with the United States Government, the Secretary may issue a certificate of documentation with a coastwise endorsement for a vessel to transport liquified natural gas or liquified petroleum gas to Puerto Rico from other ports in the United States, if the vessel—

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

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

“§ 12121. Small passenger vessels and uninspected passenger vessels

“(a) DEFINITIONS.—In this section:

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

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

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

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

“(b) ISSUANCE OF CERTIFICATE AND ENDORSEMENT.—Notwithstanding sections 12112, 12113, 55102, and 55103 of this title, the Secretary may issue a certificate of documentation with an appropriate endorsement for employment in the coastwise trade as a small passenger vessel or an uninspected passenger vessel in the case of an eligible vessel authorized to carry no more than 12 passengers for hire if the Secretary of Transportation, after notice and an opportunity for public comment, determines that the employment of the vessel in the coastwise trade will not adversely affect—

“(1) United States vessel builders; or

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

“(c) REVOCATION.—

“(1) FOR FRAUD.—The Secretary shall revoke a certificate or endorsement issued under subsection (b) if the Secretary of Transportation, after notice and an opportunity for a hearing, determines that the certificate or endorsement was obtained by fraud.

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

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

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

“SUBCHAPTER III—MISCELLANEOUS

“§ 12131. Command of documented vessels

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

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

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

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

“§ 12132. Loss of coastwise trade privileges

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

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

“§ 12133. Duty to carry certificate on vessel and allow examination

“(a) DUTY TO CARRY.—The certificate of documentation of a vessel shall be carried on the vessel unless the vessel is exempt by regulation from carrying the certificate.

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

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

“§ 12134. Evidentiary uses of documentation

“A certificate of documentation is—

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

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

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

“§ 12135. Invalidation of certificates of documentation

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

“(1) no longer meets the requirements of this chapter and regulations prescribed under this chapter applicable to the certificate or endorsement; or

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

“§ 12136. Surrender of certificates of documentation

“(a) SURRENDER.—An invalid certificate of documentation, or a certificate with an invalid endorsement, shall be surrendered as provided by regulations prescribed by the Secretary.

“(b) CONDITIONS FOR SURRENDER.—

“(1) VESSELS OVER 1,000 TONS.—The Secretary may condition approval of the surrender of the certificate of documentation for a vessel over 1,000 gross tons.

“(2) VESSELS COVERED BY MORTGAGE.—The Secretary may approve the surrender of the certificate of documentation of a vessel covered by a mortgage filed or recorded under section 31321 of this title only if the mortgage consents.

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

“(c) CONTINUED APPLICATION OF CERTAIN LAWS.—

“(1) IN GENERAL.—Notwithstanding subsection (a), until the certificate of documentation is surrendered with the approval of the Secretary, a documented vessel is deemed to continue to be documented under this chapter for purposes of—

“(A) chapter 313 of this title for an instrument filed or recorded before the date of invalidation and an assignment after that date;

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

“(C) any other law of the United States identified by the Secretary by regulation as a law to which the Secretary applies this subsection.

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

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

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

“§ 12138. List of documented vessels

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

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

“(1) IN GENERAL.—The Secretary of Transportation shall develop, maintain, and periodically update an inventory of vessels that are documented under this chapter, are at least 200 feet in length, and have the capability to lay, maintain, or repair a submarine cable, without regard to whether a particular vessel is classed as a cable ship or cable vessel.

“(2) INFORMATION TO BE INCLUDED.—For each vessel listed in the inventory, the Secretary of Transportation shall include in the inventory—

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

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

“(C) the name and address of the person to whom inquiries regarding the vessel may be made.

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

#### “§ 12139. Reports

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

“(b) VESSELS REBUILT OUTSIDE UNITED STATES.—

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

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

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

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

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

#### “SUBCHAPTER IV—PENALTIES

#### “§ 12151. Penalties

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

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

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

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

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

“(4) the vessel is employed in a trade without an appropriate endorsement;

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

“(6) the vessel is a documented vessel and is placed under the command of a person not a citizen of the United States, except as authorized by section 12131(b) of this title; or

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

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

under section 12113(c) or (d) of this title in applying for or applying to renew the fishery endorsement.

#### “§ 12152. Denial or revocation of endorsement for non-payment of civil penalty

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

#### SEC. 6. SUBTITLE III OF TITLE 46.

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

Chapter	Sec.
“301. General Liability Provisions .....	30101
“303. Death on the High Seas .....	30301
“305. Exoneraton 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”.

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

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

#### “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 maritime action for personal injury or death.

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

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

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

“(c) ACTIONS AGAINST UNITED STATES.—

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

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

#### “§ 30102. Liability to passengers

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

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

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

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

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

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

“(1) negligence or willful misconduct; or

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

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

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

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

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

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

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

“(1) the individual suffering the injury or death was not a citizen or permanent resident alien of the United States at the time of the incident giving rise to the action;

“(2) the incident occurred in the territorial waters or waters overlaying the continental shelf of a country other than the United States; and

“(3) the individual suffering the injury or death was employed at the time of the incident by a person engaged in the exploration, development, or production of offshore mineral or energy resources, including drilling, mapping, surveying, diving, pipelaying, maintaining, repairing, constructing, or transporting supplies, equipment, or personnel, but not including transporting those resources by a vessel constructed or adapted primarily to carry oil in bulk in the cargo spaces.

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

“(1) the country asserting jurisdiction over the area in which the incident occurred; or

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

#### “§ 30106. Time limit on bringing maritime action for personal injury or death

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

#### “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.

#### “§ 30301. Short title

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

**“§ 30302. Cause of action**

“When the death of an individual is caused by wrongful act, neglect, or default occurring on the high seas beyond 3 nautical miles from the shore of the United States, the personal representative of the decedent may bring a civil action in admiralty against the person or vessel responsible. The action shall be for the exclusive benefit of the decedent’s spouse, parent, child, or dependent relative.

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

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

**“§ 30304. Contributory negligence**

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

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

“If a civil action in admiralty is pending in a court of the United States to recover for personal injury caused by wrongful act, neglect, or default described in section 30302 of this title, and the individual dies during the action as a result of the wrongful act, neglect, or default, the personal representative of the decedent may be substituted as the plaintiff and the action may proceed under this chapter for the recovery authorized by this chapter.

**“§ 30306. Foreign cause of action**

“When a cause of action exists under the law of a foreign country for death by wrongful act, neglect, or default on the high seas, a civil action in admiralty may be brought in a court of the United States based on the foreign cause of action, without abatement of the amount for which recovery 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, 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 or waters within the territorial limits of a State.

**“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 with regard to crew.

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

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

**“§ 30504. Loss by fire**

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

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

“(a) IN GENERAL.—Except as provided in section 30506 of this title, the liability of the owner of a vessel for any claim, debt, or liability described in subsection (b) shall not exceed the value of the vessel and pending freight. If the vessel has more than one owner, the proportionate share of the liability of any one owner shall not exceed that owner’s proportionate interest in the vessel and pending freight.

“(b) CLAIMS SUBJECT TO LIMITATION.—Unless otherwise excluded by law, claims, debts, and liabilities subject to limitation under subsection (a) are those arising from any embezzlement, loss, or destruction of any property, goods, or merchandise shipped or put on board the vessel, any loss, damage, or injury by collision, or any act, matter, or thing, loss, damage, or forfeiture, done, occasioned, or incurred, without the privity or knowledge of the owner.

“(c) WAGES.—Subsection (a) does not apply to a claim for wages.

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

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

“(b) MINIMUM LIABILITY.—If the amount of the vessel owner’s liability determined under section 30505 of this title is insufficient to pay all losses in full, and the portion available to pay claims for personal injury or death is less than \$420 times the tonnage of the vessel, that portion shall be increased to \$420 times the tonnage of the vessel. That portion may be used only to pay claims for personal injury or death.

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

“(d) CLAIMS ARISING ON DISTINCT OCCASIONS.—Separate limits of liability apply to

claims for personal injury or death arising on distinct occasions.

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

**“§ 30507. Apportionment of losses**

“If the amounts determined under sections 30505 and 30506 of this title are insufficient to pay all claims—

“(1) all claimants shall be paid in proportion to their respective losses out of the amount determined under section 30505 of this title; and

“(2) personal injury and death claimants, if any, shall be paid an additional amount in proportion to their respective losses out of the additional amount determined under section 30506(b) of this title.

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

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

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

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

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

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

“(1) the court finds that the owner, master, or agent of the vessel had knowledge of the injury or death and the owner has not been prejudiced by the failure;

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

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

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

“(1) the date a legal representative is appointed for the minor, incompetent, or decedent’s estate; or

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

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

“(a) PROHIBITION.—

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

“(A) the liability of the owner, master, or agent for personal injury or death caused by the negligence or fault of the owner or the owner’s employees or agents; or

“(B) the right of a claimant for personal injury or death to a trial by court of competent jurisdiction.

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

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

“(1) IN GENERAL.—Subsection (a) does not prohibit a provision in a contract or in ticket conditions of carriage with a passenger that relieves an owner, master, manager, agent, operator, or crewmember of a vessel from liability for



infliction of emotional distress, mental suffering, or psychological injury so long as the provision does not limit such liability when the emotional distress, mental suffering, or psychological injury is—

“(A) the result of physical injury to the claimant caused by the negligence or fault of a crewmember or the owner, master, manager, agent, or operator;

“(B) the result of the claimant having been at actual risk of physical injury, and the risk was caused by the negligence or fault of a crewmember or the owner, master, manager, agent, or operator; or

“(C) intentionally inflicted by a crewmember or the owner, master, manager, agent, or operator.

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

“§30510. Vicarious liability for medical malpractice with regard to crew

“In a civil action by any person in which the owner or operator of a vessel or employer of a crewmember is claimed to have vicarious liability for medical malpractice with regard to a crewmember occurring at a shoreside facility, and to the extent the damages resulted from the conduct of any shoreside doctor, hospital, medical facility, or other health care provider, the owner, operator, or employer is entitled to rely on any statutory limitations of liability applicable to the doctor, hospital, medical facility, or other health care provider in the State of the United States in which the shoreside medical care was provided.

“§30511. Action by owner for limitation

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

“(b) CREATION OF FUND.—When the action is brought, the owner (at the owner’s option) shall—

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

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

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

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

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

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

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

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

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

“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. Criminal penalty.

“§30701. Definition

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

“§30702. Application

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

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

“§30703. Bills of lading

“(a) ISSUANCE.—On demand of a shipper, the carrier shall issue a bill of lading or shipping document.

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

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

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

“(3) the apparent condition of the goods.

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

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

“A carrier may not insert in a bill of lading or shipping document a provision avoiding its liability for loss or damage arising from negligence or fault in loading, stowage, custody, care, or proper delivery. Any such provision is void.

“§30705. Seaworthiness

“(a) PROHIBITION.—A carrier may not insert in a bill of lading or shipping document a provision lessening or avoiding its obligation to exercise due diligence to—

“(1) make the vessel seaworthy; and

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

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

“§30706. Defenses

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

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

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

“(2) acts of God;

“(3) public enemies;

“(4) seizure under legal process;

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

“(6) insufficiency of package;

“(7) act or omission of the shipper or owner of the goods or their agent; or

“(8) saving or attempting to save life or property at sea, including a deviation in rendering such a service.

“§30707. Criminal penalty

“(a) IN GENERAL.—A carrier that violates this chapter shall be fined under title 18.

“(b) LIEN.—The amount of the fine and costs for the violation constitute a lien on the vessel engaged in the carriage. A civil action in rem to enforce the lien may be brought in the district court of the United States for any district in which the vessel is found.

“(c) DISPOSITION OF FINE.—Half of the fine shall go to the person injured by the violation and half to the United States Government.

“CHAPTER 309—SUITS IN ADMIRALTY AGAINST THE UNITED STATES

“Sec.

“30901. Short title.

“30902. Definition.

“30903. Waiver of immunity.

“30904. Exclusive remedy.

“30905. Period for bringing action.

“30906. Venue.

“30907. Procedure for hearing and determination.

“30908. Exemption from arrest or seizure.

“30909. Security.

“30910. Exoneration and limitation.

“30911. Costs and interest.

“30912. Arbitration, compromise, or settlement.

“30913. Payment of judgment or settlement.

“30914. Release of privately owned vessel after arrest or attachment.

“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.

“§30901. Short title

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

“§30902. Definition

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

“§30903. Waiver of immunity

“(a) IN GENERAL.—In a case in which, if a vessel were privately owned or operated, or if cargo were privately owned or possessed, or if a private person or property were involved, a civil action in admiralty could be maintained, a civil action in admiralty in personam may be brought against the United States or a federally-owned corporation. In a civil action in admiralty brought by the United States or a federally-owned corporation, an admiralty claim in personam may be filed or a setoff claimed against the United States or corporation.

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

“§30904. Exclusive remedy

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

“§30905. Period for bringing action

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

“§30906. Venue

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

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

“(2) the vessel or cargo is found.

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

“§30907. Procedure for hearing and determination

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

“(b) IN REM.—

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

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

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

“(2) EFFECT ON RELIEF IN PERSONAM.—An election under paragraph (1) does not prevent

the plaintiff from seeking relief in personam in the same action.

**“§30908. Exemption from arrest or seizure**

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

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

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

**“§30909. Security**

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

**“§30910. Exoneration and limitation**

“The United States is entitled to the exemptions from and limitations of liability provided by law to an owner, charterer, operator, or agent of a vessel.

**“§30911. Costs and interest**

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

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

**“§30912. Arbitration, compromise, or settlement**

“The Secretary of a department of the United States Government, or the board of trustees of a federally-owned corporation, may arbitrate, compromise, or settle a claim under this chapter.

**“§30913. Payment of judgment or settlement**

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

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

**“§30914. Release of privately owned vessel after arrest or attachment**

“If a privately owned vessel not in the possession of the United States or a federally-owned corporation is arrested or attached in a civil action arising or alleged to have arisen from prior ownership, possession, or operation by the United States or corporation, the vessel shall be released without bond or stipulation on a statement by the United States, through the Attorney General or other authorized law officer, that the United States is interested in the action, desires release of the vessel, and assumes liability for the satisfaction of any judgment obtained by the plaintiff. After the vessel is released, the action shall proceed against the United States in accordance with this chapter.

**“§30915. Seizures and other proceedings in foreign jurisdictions**

“(a) IN GENERAL.—If a vessel or cargo described in section 30908 or 30914 of this title is arrested, attached, or otherwise seized by judicial process in a foreign country, or if an action is brought in a court of a foreign country against the master of such a vessel for a claim arising from the ownership, possession, or operation of the vessel, or the ownership, possession, or carriage of such cargo, the Secretary of State, on request of the Attorney General or another officer authorized by the Attorney General, may direct the United States consul residing at or nearest the place at which the action was brought—

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

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

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

“(1) arrange with a bank, surety company, or other person, whether in the United States or a foreign country, to execute a bond or stipulation; and

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

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

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

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

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

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

“(a) CIVIL ACTION.—The United States, and the crew of a merchant vessel owned or operated by the United States, or a federally-owned corporation, may bring a civil action to recover for salvage services provided by the vessel and crew.

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

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

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

**“§30918. Reports**

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

**“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.

**“§31101. Short title**

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

**“§31102. Waiver of immunity**

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

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

“(2) compensation for towage and salvage services, including contract salvage, rendered to a public vessel of the United States.

“(b) COUNTERCLAIM OR SETOFF.—If the United States brings a civil action in admiralty for damages caused by a privately owned vessel, the owner of the vessel, or the successor in interest, may file a counterclaim in personam, or claim a setoff, against the United States for damages arising out of the same subject matter.

**“§31103. Applicable procedure**

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

**“§31104. Venue**

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

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

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

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

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

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

**“§31106. Exoneration and limitation**

“The United States is entitled to the exemptions from and limitations of liability provided by law to an owner, charterer, operator, or agent of a vessel.

**“§31107. Interest**

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

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

“The Attorney General may arbitrate, compromise, or settle a claim under this chapter if a civil action based on the claim has been commenced.

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

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

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

“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—

“(1) the Secretary of the department or the head of the independent establishment having

control of the vessel at the time the cause of action arose; or

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

“§31111. Claims by nationals of foreign countries

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

“§31112. Lien not recognized or created

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

“§31113. Reports

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

SEC. 7. SUBTITLE IV OF TITLE 46.

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

“Subtitle IV—Regulation of Ocean Shipping

“PART A—OCEAN SHIPPING

Table with 2 columns: Chapter/Section and Sec. Number. Includes 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).

“PART B—ACTIONS TO ADDRESS FOREIGN PRACTICES

Table with 2 columns: Chapter/Section and Sec. Number. Includes 421. Regulations Affecting Shipping in Foreign Trade (42101), 423. Foreign Shipping Practices (42301).

“PART C—MISCELLANEOUS

Table with 2 columns: Chapter/Section and Sec. Number. Includes 441. Evidence of Financial Responsibility for Passenger Transportation (44101).

“PART A—OCEAN SHIPPING

“CHAPTER 401—GENERAL

“Sec.

“40101. Purposes.

“40102. Definitions.

“40103. Administrative exemptions.

“40104. Reports filed with the Commission.

“§40101. Purposes

“The purposes of this part are to— (1) establish a nondiscriminatory regulatory process for the common carriage of goods by water in the foreign commerce of the United States with a minimum of government intervention and regulatory costs;

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

“(3) encourage the development of an economically sound and efficient liner fleet of vessels of the United States capable of meeting national security needs; and

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

“§40102. Definitions

“In this part:

“(1) AGREEMENT.—The term ‘agreement’— (A) means a written or oral understanding, arrangement, or association, and any modification or cancellation thereof; but

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

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

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

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

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

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

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

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

“(G) Acts supplementary to those Acts.

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

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

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

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

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

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

“(B) a valid certificate of fitness under the International Maritime Organization Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk.

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

“(A) means a person that—

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

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

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

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

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

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

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

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

“(B) does not include a joint service, consortium, pooling, sailing, or transshipment agreement.

“(8) CONTROLLED CARRIER.—The term ‘controlled carrier’ means an ocean common carrier that is, or whose operating assets are, directly or indirectly, owned or controlled by a government, with ownership or control by a government being deemed to exist for a carrier if—

“(A) a majority of the interest in the carrier is owned or controlled in any manner by that government, an agency of that government, or a public or private person controlled by that government; or

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

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

“(A) consideration for the shipper giving all or any portion of its shipments to that or any other common carrier over a fixed period of time;

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

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

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

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

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

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

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

“(B) a deferred rebate arrangement.

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

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

“(A) means—

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

“(ii) an agreement preparatory to such a collective bargaining agreement among members of a multi-employer bargaining group; or

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

“(B) does not include an assessment agreement.

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

“(A) does not operate the vessels by which the ocean transportation is provided; and

“(B) is a shipper in its relationship with an ocean common carrier.

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

“(18) OCEAN FREIGHT FORWARDER.—The term ‘ocean freight forwarder’ means a person that—

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

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

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

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

“(A) the shipper or shippers commit to providing a certain volume or portion of cargo over a fixed time period; and

“(B) the ocean common carrier or the agreement commits to a certain rate or rate schedule

and a defined service level, such as assured space, transit time, port rotation, or similar service features.

“(21) SHIPMENT.—The term ‘shipment’ means all of the cargo carried under the terms of a single bill of lading.

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

“(A) a cargo owner;

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

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

“(D) a shippers’ association; or

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

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

“(24) THROUGH RATE.—The term ‘through rate’ means the single amount charged by a common carrier in connection with through transportation.

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

#### “§40103. Administrative exemptions

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

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

#### “§40104. Reports filed with the Commission

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

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

#### “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.

#### “§40301. Application

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

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

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

“(3) allot ports or regulate the number and character of voyages between ports;

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

“(5) engage in an exclusive, preferential, or cooperative working arrangement between themselves or with a marine terminal operator;

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

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

“(b) MARINE TERMINAL OPERATOR AGREEMENTS.—This part applies to an agreement between or among marine terminal operators, or between or among one or more marine terminal operators and one or more ocean common carriers, to—

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

“(2) engage in exclusive, preferential, or cooperative working arrangements, to the extent the agreement involves ocean transportation in the foreign commerce of the United States.

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

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

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

#### “§40302. Filing requirements

“(a) IN GENERAL.—A true copy of every agreement referred to in section 40301(a) or (b) of this title shall be filed with the Federal Maritime Commission. If the agreement is oral, a complete memorandum specifying in detail the substance of the agreement shall be filed.

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

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

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

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

#### “§40303. Content requirements

“(a) OCEAN COMMON CARRIER AGREEMENTS.—

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

“(A) prohibit or restrict a member of the agreement from engaging in negotiations for a service contract with a shipper;

“(B) require a member of the agreement to disclose a negotiation on a service contract, or the terms of a service contract, other than those terms required to be published under section 40502(d) of this title; or

“(C) adopt mandatory rules or requirements affecting the right of an agreement member to negotiate and enter into a service contract.

“(2) VOLUNTARY GUIDELINES.—An ocean common carrier agreement may provide authority to adopt voluntary guidelines relating to the terms and procedures of an agreement member’s service contracts if the guidelines explicitly state the right of members of the agreement not to follow the guidelines. Any guidelines adopted shall be submitted confidentially to the Federal Maritime Commission.

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

“(1) state its purpose;

“(2) provide reasonable and equal terms for admission and readmission to conference membership for any ocean common carrier willing to serve the particular trade or route;

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

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

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

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

“(A) commercial resolution of disputes; and

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

“(7) establish procedures for promptly and fairly considering requests and complaints of shippers; and

“(8) provide that—

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

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

“(c) INTERCONFERENCE AGREEMENTS.—Each agreement between carriers not members of the same conference must provide the right of independent action for each carrier. Each agreement between conferences must provide the right of independent action for each conference.

“(d) VESSEL SHARING AGREEMENTS.—

“(1) IN GENERAL.—An ocean common carrier that is the owner, operator, or bareboat, time, or slot charterer of a liner vessel documented under section 12103 or 12111(c) of this title may agree with an ocean common carrier described in paragraph (2) to which it charters or subcharterers the vessel or space on the vessel that the charterer or subcharterer may not use or make available space on the vessel for the carriage of cargo reserved by law for vessels of the United States.

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

#### “§40304. Commission action

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

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

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

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

“(2) if additional information or documents are requested under subsection (d)—

“(A) on the 45th day after the Commission receives all the additional information and documents; or

“(B) if the request is not fully complied with, on the 45th day after the Commission receives

the information and documents submitted and a statement of the reasons for noncompliance with the request.

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

“(e) MODIFICATION OF REVIEW PERIOD.—

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

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

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

#### “§ 40305. Assessment agreements

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

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

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

#### “§ 40306. Nondisclosure of information

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

#### “§ 40307. Exemption from antitrust laws

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

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

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

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

“(A) pursuant to an agreement on file with the Federal Maritime Commission and in effect when the activity takes place; or

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

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

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

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

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

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

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

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

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

“(4) a loyalty contract.

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

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

#### “CHAPTER 405—TARIFFS, SERVICE CONTRACTS, REFUNDS, AND WAIVERS

“Sec.

“40501. General rate and tariff requirements.

“40502. Service contracts.

“40503. Refunds and waivers.

#### “§ 40501. General rate and tariff requirements

“(a) AUTOMATED TARIFF SYSTEM.—

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

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

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

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

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

“(3) state the level of compensation, if any, of any ocean freight forwarder by a carrier or conference;

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

“(5) include sample copies of any bill of lading, contract of affreightment, or other document evidencing the transportation agreement; and

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

“(c) ELECTRONIC ACCESS.—A tariff under subsection (a) shall be made available electronically to any person, without time, quantity, or other limitation, through appropriate access from re-

mote locations. A reasonable fee may be charged for such access, except that no fee may be charged for access by a Federal agency.

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

“(e) EFFECTIVE DATES.—

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

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

“(f) MARINE TERMINAL OPERATOR SCHEDULES.—A marine terminal operator may make available to the public a schedule of rates, regulations, and practices, including limitations of liability for cargo loss or damage, pertaining to receiving, delivering, handling, or storing property at its marine terminal. Any such schedule made available to the public is enforceable by an appropriate court as an implied contract without proof of actual knowledge of its provisions.

“(g) REGULATIONS.—

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

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

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

#### “§ 40502. Service contracts

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

“(b) FILING REQUIREMENTS.—

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

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

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

“(1) the origin and destination port ranges;

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

“(3) the commodities involved;

“(4) the minimum volume or portion;

“(5) the line-haul rate;

“(6) the duration;

“(7) service commitments; and

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

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

“(e) DISCLOSURE OF CERTAIN TERMS.—

“(1) DEFINITIONS.—In this subsection, the terms ‘dock area’ and ‘within the port area’ have the same meaning and scope as in the applicable collective bargaining agreement between

the requesting labor organization and the carrier.

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

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

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

“(C) The assignment of the carriage of the shipper’s cargo between a container yard on a dock area or within the port area and a rail yard adjacent to the container yard.

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

“(3) **WITHIN REASONABLE TIME.**—The common carrier shall provide the information described in paragraph (2) to the requesting labor organization within a reasonable period of time.

“(4) **EXISTENCE OF COLLECTIVE BARGAINING AGREEMENT.**—This subsection does not require the disclosure of information by an ocean common carrier unless there exists an applicable and otherwise lawful collective bargaining agreement pertaining to that carrier. A disclosure by an ocean common carrier may not be deemed an admission or an agreement that any work is covered by a collective bargaining agreement. A dispute about whether any work is covered by a collective bargaining agreement and the responsibility of an ocean common carrier under a collective bargaining agreement shall be resolved solely in accordance with the dispute resolution procedures contained in the collective bargaining agreement and the National Labor Relations Act (29 U.S.C. 151 et seq.), and without reference to this subsection.

“(5) **EFFECT UNDER OTHER LAWS.**—This subsection does not affect the lawfulness or unlawfulness under this part or any other Federal or State law of any collective bargaining agreement or element thereof, including any element that constitutes an essential term of a service contract.

“(f) **REMEDY FOR BREACH.**—Unless the parties agree otherwise, the exclusive remedy for a breach of a service contract is an action in an appropriate court. The contract dispute resolution forum may not be controlled by or in any way affiliated with a controlled carrier or by the government that owns or controls the carrier.

#### “§40503. Refunds and waivers

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

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

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

“(3) the application for the refund or waiver is filed with the Commission within 180 days from the date of shipment.

#### “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.

#### “§40701. Rates

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

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

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

“(b) **COMMISSION PROHIBITION.**—The Federal Maritime Commission, at any time after notice and opportunity for a hearing, may prohibit the publication or use of a rate, charge, classification, rule, or regulation that a controlled carrier has failed to demonstrate is just and reasonable.

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

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

#### “§40702. Rate standards

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

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

“(1) shall take into account whether the rate or charge that has been published or assessed, or that would result from the pertinent classification, rule, or regulation, is below a level that is fully compensatory to the controlled carrier based on the carrier’s actual costs or constructive costs; and

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

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

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

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

#### “§40703. Effective date of rates

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

#### “§40704. Commission review

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

“(b) **DETERMINATION.**—Within 120 days after receipt of information requested under subsection (a), the Commission shall determine whether the rate, charge, classification, rule, or regulation may be unjust and unreasonable.

“(c) **SHOW CAUSE ORDER.**—Whenever the Commission is of the opinion that a rate, charge, classification, rule, or regulation published or assessed by a controlled carrier may be

unjust and unreasonable, the Commission shall issue an order to the controlled carrier to show cause why the rate, charge, classification, rule, or regulation should not be prohibited.

“(d) **SUSPENSION PENDING DETERMINATION.**—

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

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

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

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

#### “§40705. Presidential review of Commission orders

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

“(b) **PRESIDENTIAL REQUEST AND COMMISSION ACTION.**—Within 10 days after receipt or the effective date of a Commission order referred to in subsection (a), the President, in writing, may request the Commission to stay the effect of the order if the President finds that the stay is required for reasons of national defense or foreign policy. The reasons shall be specified in the request. The Commission shall immediately grant the request by issuing an order in which the President’s request shall be described. During a stay, the President shall, whenever practicable, attempt to resolve the matter by negotiating with representatives of the applicable foreign governments.

#### “§40706. Exceptions

“This chapter does not apply to—

“(1) a controlled carrier of a foreign country whose vessels are entitled by a treaty of the United States to receive national or most-favored-nation treatment; or

“(2) a trade served only by controlled carriers.

#### “CHAPTER 409—OCEAN TRANSPORTATION INTERMEDIARIES

“Sec.

“40901. License requirement.

“40902. Financial responsibility.

“40903. Suspension or revocation of license.

“40904. Compensation by common carriers.

#### “§40901. License requirement

“(a) **IN GENERAL.**—A person in the United States may not act as an ocean transportation intermediary unless the person holds an ocean transportation intermediary’s license issued by the Federal Maritime Commission. The Commission shall issue a license to a person that the Commission determines to be qualified by experience and character to act as an ocean transportation intermediary.

“(b) **EXCEPTION.**—A person whose primary business is the sale of merchandise may forward shipments of the merchandise for its own account without an ocean transportation intermediary’s license.

#### “§40902. Financial responsibility

“(a) **IN GENERAL.**—A person may not act as an ocean transportation intermediary unless the

person furnishes a bond, proof of insurance, or other surety—

“(1) in a form and amount determined by the Federal Maritime Commission to insure financial responsibility; and

“(2) issued by a surety company found acceptable by the Secretary of the Treasury.

“(b) SCOPE OF FINANCIAL RESPONSIBILITY.—A bond, insurance, or other surety obtained under this section—

“(1) shall be available to pay any penalty assessed under section 41109 of this title or any order for reparation issued under section 41305 of this title;

“(2) may be available to pay any claim against an ocean transportation intermediary arising from its transportation-related activities—

“(A) with the consent of the insured ocean transportation intermediary and subject to review by the surety company; or

“(B) when the claim is deemed valid by the surety company after the ocean transportation intermediary has failed to respond to adequate notice to address the validity of the claim; and

“(3) shall be available to pay any judgment for damages against an ocean transportation intermediary arising from its transportation-related activities, if the claimant has first attempted to resolve the claim under paragraph (2) and the claim has not been resolved within a reasonable period of time.

“(c) REGULATIONS ON COURT JUDGMENTS.—The Commission shall prescribe regulations for the purpose of protecting the interests of claimants, ocean transportation intermediaries, and surety companies with respect to the process of pursuing claims against ocean transportation intermediary bonds, insurance, or sureties through court judgments. The regulations shall provide that a judgment for monetary damages may not be enforced except to the extent that the damages claimed arise from the transportation-related activities of the insured ocean transportation intermediary, as defined by the Commission.

“(d) RESIDENT AGENT.—An ocean transportation intermediary not domiciled in the United States shall designate a resident agent in the United States for receipt of service of judicial and administrative process, including subpoenas.

#### “§ 40903. Suspension or revocation of license

“(a) FAILURE TO MAINTAIN QUALIFICATIONS OR TO COMPLY.—The Federal Maritime Commission, after notice and opportunity for a hearing, shall suspend or revoke an ocean transportation intermediary's license if the Commission finds that the ocean transportation intermediary—

“(1) is not qualified to provide intermediary services; or

“(2) willfully failed to comply with a provision of this part or with an order or regulation of the Commission.

“(b) FAILURE TO MAINTAIN BOND, PROOF OF INSURANCE, OR OTHER SURETY.—The Commission may revoke an ocean transportation intermediary's license for failure to maintain a bond, proof of insurance, or other surety as required by section 40902(a) of this title.

#### “§ 40904. Compensation by common carriers

“(a) CERTIFICATION OF LICENSE AND SERVICES.—A common carrier may compensate an ocean freight forwarder for a shipment dispatched for others only when the ocean freight forwarder has certified in writing that it holds an ocean transportation intermediary's license (if required under section 40901 of this title) and has—

“(1) engaged, booked, secured, reserved, or contracted directly with the carrier or its agent for space aboard a vessel or confirmed the availability of the space; and

“(2) prepared and processed the ocean bill of lading, dock receipt, or other similar document for the shipment.

“(b) DUAL COMPENSATION.—A common carrier may not pay compensation for services described

in subsection (a) more than once on the same shipment.

“(c) BENEFICIAL INTEREST SHIPMENTS.—An ocean freight forwarder may not receive compensation from a common carrier for a shipment in which the ocean freight forwarder has a direct or indirect beneficial interest. A common carrier may not knowingly pay compensation on that shipment.

“(d) LIMITS ON AUTHORITY OF CONFERENCE OR GROUP.—A conference or group of two or more ocean common carriers in the foreign commerce of the United States that is authorized to agree on the level of compensation paid to an ocean freight forwarder may not—

“(1) deny a member of the conference or group the right, upon notice of not more than 5 days, to take independent action on any level of compensation paid to an ocean freight forwarder; or

“(2) agree to limit the payment of compensation to an ocean freight forwarder to less than 1.25 percent of the aggregate of all rates and charges applicable under a tariff and assessed against the cargo on which the services of the ocean freight forwarder are provided.

### “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.

#### “§ 41101. Joint ventures and consortiums

“In this chapter, a joint venture or consortium of two or more common carriers operating as a single entity is deemed to be a single common carrier.

#### “§ 41102. General prohibitions

“(a) OBTAINING TRANSPORTATION AT LESS THAN APPLICABLE RATES.—A person may not knowingly and willfully, directly or indirectly, by means of false billing, false classification, false weighing, false report of weight, false measurement, or any other unjust or unfair device or means, obtain or attempt to obtain ocean transportation for property at less than the rates or charges that would otherwise apply.

“(b) OPERATING CONTRARY TO AGREEMENT.—A person may not operate under an agreement required to be filed under section 40302 or 40305 of this title if—

“(1) the agreement has not become effective under section 40304 of this title or has been rejected, disapproved, or canceled; or

“(2) the operation is not in accordance with the terms of the agreement or any modifications to the agreement made by the Federal Maritime Commission.

“(c) PRACTICES IN HANDLING PROPERTY.—A common carrier, marine terminal operator, or ocean transportation intermediary may not fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property.

#### “§ 41103. Disclosure of information

“(a) PROHIBITION.—A common carrier, marine terminal operator, or ocean freight forwarder, either alone or in conjunction with any other person, directly or indirectly, may not knowingly disclose, offer, solicit, or receive any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to a common carrier, without the consent of the shipper or consignee, if the information—

“(1) may be used to the detriment or prejudice of the shipper, the consignee, or any common carrier; or

“(2) may improperly disclose its business transaction to a competitor.

“(b) EXCEPTIONS.—Subsection (a) does not prevent providing the information—

“(1) in response to legal process;

“(2) to the Federal Maritime Commission or an agency of the United States Government; or

“(3) to an independent neutral body operating within the scope of its authority to fulfill the policing obligations of the parties to an agreement effective under this part.

“(c) DISCLOSURE FOR DETERMINING BREACH OR COMPILING STATISTICS.—An ocean common carrier that is a party to a conference agreement approved under this part, a receiver, trustee, lessee, agent, or employee of the carrier, or any other person authorized by the carrier to receive information—

“(1) may give information to the conference or any person or agency designated by the conference, for the purpose of—

“(A) determining whether a shipper or consignee has breached an agreement with the conference or its member lines;

“(B) determining whether a member of the conference has breached the conference agreement; or

“(C) compiling statistics of cargo movement; and

“(2) may not prevent the conference or its designee from soliciting or receiving information for any of those purposes.

#### “§ 41104. Common carriers

“A common carrier, either alone or in conjunction with any other person, directly or indirectly, may not—

“(1) allow a person to obtain transportation for property at less than the rates or charges established by the carrier in its tariff or service contract by means of false billing, false classification, false weighing, false measurement, or any other unjust or unfair device or means;

“(2) provide service in the liner trade that is—

“(A) not in accordance with the rates, charges, classifications, rules, and practices contained in a tariff published or a service contract entered into under chapter 405 of this title, unless excepted or exempted under section 40103 or 40501(a)(2) of this title; or

“(B) under a tariff or service contract that has been suspended or prohibited by the Federal Maritime Commission under chapter 407 or 423 of this title;

“(3) retaliate against a shipper by refusing, or threatening to refuse, cargo space accommodations when available, or resort to other unfair or unjustly discriminatory methods because the shipper has patronized another carrier, or has filed a complaint, or for any other reason;

“(4) for service pursuant to a tariff, engage in any unfair or unjustly discriminatory practice in the matter of—

“(A) rates or charges;

“(B) cargo classifications;

“(C) cargo space accommodations or other facilities, with due regard being given to the proper loading of the vessel and the available tonnage;

“(D) loading and landing of freight; or

“(E) adjustment and settlement of claims;

“(5) for service pursuant to a service contract, engage in any unfair or unjustly discriminatory practice in the matter of rates or charges with respect to any port;

“(6) use a vessel in a particular trade for the purpose of excluding, preventing, or reducing competition by driving another ocean common carrier out of that trade;

“(7) offer or pay any deferred rebates;

“(8) for service pursuant to a tariff, give any undue or unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage;

“(9) for service pursuant to a service contract, give any undue or unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage with respect to any port;

“(10) unreasonably refuse to deal or negotiate;

“(11) knowingly and willfully accept cargo from or transport cargo for the account of an ocean transportation intermediary that does not have a tariff as required by section 40501 of this title and a bond, insurance, or other surety as required by section 40902 of this title; or

“(12) knowingly and willfully enter into a service contract with an ocean transportation intermediary that does not have a tariff as required by section 40501 of this title and a bond, insurance, or other surety as required by section 40902 of this title, or with an affiliate of such an ocean transportation intermediary.

**“§41105. Concerted action**

“A conference or group of two or more common carriers may not—

“(1) boycott or take any other concerted action resulting in an unreasonable refusal to deal;

“(2) engage in conduct that unreasonably restricts the use of intermodal services or technological innovations;

“(3) engage in any predatory practice designed to eliminate the participation, or deny the entry, in a particular trade of a common carrier not a member of the conference, a group of common carriers, an ocean tramp, or a bulk carrier;

“(4) negotiate with a non-ocean carrier or group of non-ocean carriers (such as truck, rail, or air operators) on any matter relating to rates or services provided to ocean common carriers within the United States by those non-ocean carriers, unless the negotiations and any resulting agreements are not in violation of the anti-trust laws and are consistent with the purposes of this part, except that this paragraph does not prohibit the setting and publishing of a joint through rate by a conference, joint venture, or association of ocean common carriers;

“(5) deny in the export foreign commerce of the United States compensation to an ocean freight forwarder or limit that compensation to less than a reasonable amount;

“(6) allocate shippers among specific carriers that are parties to the agreement or prohibit a carrier that is a party to the agreement from soliciting cargo from a particular shipper, except as—

“(A) authorized by section 40303(d) of this title;

“(B) required by the law of the United States or the importing or exporting country; or

“(C) agreed to by a shipper in a service contract;

“(7) for service pursuant to a service contract, engage in any unjustly discriminatory practice in the matter of rates or charges with respect to any locality, port, or person due to the person's status as a shippers' association or ocean transportation intermediary; or

“(8) for service pursuant to a service contract, give any undue or unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage with respect to any locality, port, or person due to the person's status as a shippers' association or ocean transportation intermediary.

**“§41106. Marine terminal operators**

“A marine terminal operator may not—

“(1) agree with another marine terminal operator or with a common carrier to boycott, or unreasonably discriminate in the provision of terminal services to, a common carrier or ocean tramp;

“(2) give any undue or unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage with respect to any person; or

“(3) unreasonably refuse to deal or negotiate.

**“§41107. Monetary penalties**

“(a) IN GENERAL.—A person that violates this part or a regulation or order of the Federal Maritime Commission issued under this part is liable to the United States Government for a civil penalty. Unless otherwise provided in this

part, the amount of the penalty may not exceed \$5,000 for each violation or, if the violation was willfully and knowingly committed, \$25,000 for each violation. Each day of a continuing violation is a separate violation.

“(b) LIEN ON CARRIER'S VESSELS.—The amount of a civil penalty imposed on a common carrier under this section constitutes a lien on the vessels operated by the carrier. Any such vessel is subject to an action in rem to enforce the lien in the district court of the United States for the district in which it is found.

**“§41108. Additional penalties**

“(a) SUSPENSION OF TARIFFS.—For a violation of section 41104(1), (2), or (7) of this title, the Federal Maritime Commission may suspend any or all tariffs of the common carrier, or that common carrier's right to use any or all tariffs of conferences of which it is a member, for a period not to exceed 12 months.

“(b) OPERATING UNDER SUSPENDED TARIFF.—A common carrier that accepts or handles cargo for carriage under a tariff that has been suspended, or after its right to use that tariff has been suspended, is liable to the United States Government for a civil penalty of not more than \$50,000 for each shipment.

“(c) FAILURE TO PROVIDE INFORMATION.—

“(1) PENALTIES.—If the Commission finds, after notice and opportunity for a hearing, that a common carrier has failed to supply information ordered to be produced or compelled by subpoena under section 41303 of this title, the Commission may—

“(A) suspend any or all tariffs of the carrier or the carrier's right to use any or all tariffs of conferences of which it is a member; and

“(B) request the Secretary of Homeland Security to refuse or revoke any clearance required for a vessel operated by the carrier, and when so requested, the Secretary shall refuse or revoke the clearance.

“(2) DEFENSE BASED ON FOREIGN LAW.—If, in defense of its failure to comply with a subpoena or discovery order, a common carrier alleges that information or documents located in a foreign country cannot be produced because of the laws of that country, the Commission shall immediately notify the Secretary of State of the failure to comply and of the allegation relating to foreign laws. On receiving the notification, the Secretary of State shall promptly consult with the government of the nation within which the information or documents are alleged to be located for the purpose of assisting the Commission in obtaining the information or documents.

“(d) IMPAIRING ACCESS TO FOREIGN TRADE.—If the Commission finds, after notice and opportunity for a hearing, that the action of a common carrier, acting alone or in concert with another person, or a foreign government has unduly impaired access of a vessel documented under the laws of the United States to ocean trade between foreign ports, the Commission shall take action that it finds appropriate, including imposing any of the penalties authorized by this section. The Commission also may take any of the actions authorized by sections 42304 and 42305 of this title.

“(e) SUBMISSION OF ORDER TO PRESIDENT.—Before an order under this section becomes effective, it shall be submitted immediately to the President. The President, within 10 days after receiving it, may disapprove it if the President finds that disapproval is required for reasons of national defense or foreign policy.

**“§41109. Assessment of penalties**

“(a) GENERAL AUTHORITY.—Until a matter is referred to the Attorney General, the Federal Maritime Commission may, after notice and opportunity for a hearing, assess a civil penalty provided for in this part. The Commission may compromise, modify, or remit, with or without conditions, a civil penalty.

“(b) FACTORS IN DETERMINING AMOUNT.—In determining the amount of a civil penalty, the Commission shall take into account the nature,

circumstances, extent, and gravity of the violation committed and, with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, and other matters justice may require.

“(c) EXCEPTION.—A civil penalty may not be imposed for conspiracy to violate section 41102(a) or 41104(1) or (2) of this title or to defraud the Commission by concealing such a violation.

“(d) PROHIBITED BASIS OF PENALTY.—The Commission or a court may not order a person to pay the difference between the amount billed and agreed upon in writing with a common carrier or its agent and the amount set forth in a tariff or service contract by that common carrier for the transportation service provided.

“(e) TIME LIMIT.—A proceeding to assess a civil penalty under this section must be commenced within 5 years after the date of the violation.

“(f) REVIEW OF CIVIL PENALTY.—A person against whom a civil penalty is assessed under this section may obtain review under chapter 158 of title 28.

“(g) CIVIL ACTIONS TO COLLECT.—If a person does not pay an assessment of a civil penalty after it has become final or after the appropriate court has entered final judgment in favor of the Commission, the Attorney General at the request of the Commission may seek to collect the amount assessed in an appropriate district court of the United States. The court shall enforce the order of the Commission unless it finds that the order was not regularly made and duly issued.

**“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) the Federal Maritime Commission may subpoena witnesses and evidence; and

“(2) a party may use depositions, written interrogatories, and discovery procedures under regulations prescribed by the Commission that, to the extent practicable, shall conform to the Federal Rules of Civil Procedure (28 App. U.S.C.).

“(b) WITNESS FEES.—Unless otherwise prohibited by law, a witness is entitled to the same fees and mileage as in the courts of the United States.

#### “§41304. Hearings and orders

“(a) OPPORTUNITY FOR HEARING.—The Federal Maritime Commission shall provide an opportunity for a hearing before issuing an order relating to a violation of this part or a regulation prescribed under this part.

“(b) MODIFICATION OF ORDER.—The Commission may reverse, suspend, or modify any of its orders.

“(c) REHEARING.—On application of a party to a proceeding, the Commission may grant a rehearing of the same or any matter determined in the proceeding. Except by order of the Commission, a rehearing does not operate as a stay of an order.

“(d) PERIOD OF EFFECTIVENESS.—An order of the Commission remains in effect for the period specified in the order or until suspended, modified, or set aside by the Commission or a court of competent jurisdiction.

#### “§41305. Award of reparations

“(a) DEFINITION.—In this section, the term ‘actual injury’ includes the loss of interest at commercial rates compounded from the date of injury.

“(b) BASIC AMOUNT.—If the complaint was filed within the period specified in section 41301(a) of this title, the Federal Maritime Commission shall direct the payment of reparations to the complainant for actual injury caused by a violation of this part, plus reasonable attorney fees.

“(c) ADDITIONAL AMOUNTS.—On a showing that the injury was caused by an activity prohibited by section 41102(b), 41104(3) or (6), or 41105(1) or (3) of this title, the Commission may order the payment of additional amounts, but the total recovery of a complainant may not exceed twice the amount of the actual injury.

“(d) DIFFERENCE BETWEEN RATES.—If the injury was caused by an activity prohibited by section 41104(4)(A) or (B) of this title, the amount of the injury shall be the difference between the rate paid by the injured shipper and the most favorable rate paid by another shipper.

#### “§41306. Injunctive relief sought by complainants

“(a) IN GENERAL.—After filing a complaint with the Federal Maritime Commission under section 41301 of this title, the complainant may bring a civil action in a district court of the United States to enjoin conduct in violation of this part.

“(b) VENUE.—The action must be brought in the judicial district in which—

“(1) the Commission has brought a civil action against the defendant under section 41307(a) of this title; or

“(2) the defendant resides or transacts business, if the Commission has not brought such an action.

“(c) REMEDIES BY COURT.—After notice to the defendant, and a showing that the standards for granting injunctive relief by courts of equity are met, the court may grant a temporary restraining order or preliminary injunction for a period not to exceed 10 days after the Commission has issued an order disposing of the complaint.

“(d) ATTORNEY FEES.—A defendant prevailing in a civil action under this section shall be allowed reasonable attorney fees to be assessed and collected as part of the costs of the action.

#### “§41307. Injunctive relief sought by the Commission

“(a) GENERAL VIOLATIONS.—In connection with an investigation under section 41301 or 41302 of this title, the Federal Maritime Commission may bring a civil action to enjoin conduct in violation of this part. The action must be brought in the district court of the United States for any judicial district in which the defendant resides or transacts business. After notice to the defendant, and a showing that the standards for granting injunctive relief by courts of equity are met, the court may grant a temporary restraining order or preliminary injunction for a period not to exceed 10 days after the Commission has issued an order disposing of the issues under investigation.

“(b) REDUCTION IN COMPETITION.—

“(1) ACTION BY COMMISSION.—If, at any time after the filing or effective date of an agreement under chapter 403 of this title, the Commission determines that the agreement is likely, by a reduction in competition, to produce an unreasonable reduction in transportation service or an unreasonable increase in transportation cost, the Commission, after notice to the person filing the agreement, may bring a civil action in the United States District Court for the District of Columbia to enjoin the operation of the agreement. The Commission’s sole remedy with respect to an agreement likely to have such an effect is an action under this subsection.

“(2) REMEDIES BY COURT.—In an action under this subsection, the court may issue—

“(A) a temporary restraining order or a preliminary injunction; and

“(B) a permanent injunction after a showing that the agreement is likely to have the effect described in paragraph (1).

“(3) BURDEN OF PROOF AND THIRD PARTIES.—In an action under this subsection, the burden of proof is on the Commission. The court may not allow a third party to intervene.

“(c) FAILURE TO PROVIDE INFORMATION.—If a person filing an agreement, or an officer, director, partner, agent, or employee of the person, fails substantially to comply with a request for the submission of additional information or documents within the period provided in section 40304(c) of this title, the Commission may bring a civil action in the United States District Court for the District of Columbia. At the request of the Commission, the Court—

“(1) may order compliance;

“(2) shall extend the period specified in section 40304(c)(2) of this title until there has been substantial compliance; and

“(3) may grant other equitable relief that the court decides is appropriate.

“(d) REPRESENTATION.—The Commission may represent itself in a proceeding under this section in—

“(1) a district court of the United States, on notice to the Attorney General; and

“(2) a court of appeals of the United States, with the approval of the Attorney General.

#### “§41308. Enforcement of subpoenas and orders

“(a) CIVIL ACTION.—If a person does not comply with a subpoena or order of the Federal

Maritime Commission, the Attorney General, at the request of the Commission, or an injured party, may seek enforcement in a district court of the United States having jurisdiction over the parties. If, after hearing, the court determines that the subpoena or order was regularly made and duly issued, the court shall enforce the subpoena or order.

“(b) TIME LIMIT ON BRINGING ACTIONS.—An action under this section to enforce an order of the Commission must be brought within 3 years after the date the order was violated.

#### “§41309. Enforcement of reparation orders

“(a) CIVIL ACTION.—If a person does not comply with an order of the Federal Maritime Commission for the payment of reparation, the person to whom the award was made may seek enforcement of the order in a district court of the United States having jurisdiction over the parties.

“(b) PARTIES AND SERVICE OF PROCESS.—All parties in whose favor the Commission has made an award of reparation by a single order may be joined as plaintiffs, and all other parties in the order may be joined as defendants, in a single action in a judicial district in which any one plaintiff could maintain an action against any one defendant. Service of process against a defendant not found in that district may be made in a district in which any office of that defendant is located or in which any port of call on a regular route operated by that defendant is located. Judgment may be entered for any plaintiff against the defendant liable to that plaintiff.

“(c) NATURE OF REVIEW.—In an action under this section, the findings and order of the Commission are prima facie evidence of the facts stated in the findings and order.

“(d) COSTS AND ATTORNEY FEES.—The plaintiff is not liable for costs of the action or for costs of any subsequent stage of the proceedings unless they accrue on the plaintiff’s appeal. A prevailing plaintiff shall be allowed reasonable attorney fees to be assessed and collected as part of the costs of the action.

“(e) TIME LIMIT ON BRINGING ACTIONS.—An action under this section to enforce an order of the Commission must be brought within 3 years after the date the order was violated.

#### “PART B—ACTIONS TO ADDRESS FOREIGN PRACTICES

#### “CHAPTER 421—REGULATIONS AFFECTING SHIPPING IN 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.

#### “§42101. Regulations of the Commission

“(a) UNFAVORABLE CONDITIONS.—To further the objectives and policy set forth in section 50101 of this title, the Federal Maritime Commission shall prescribe regulations affecting shipping in foreign trade, not in conflict with law, to adjust or meet general or special conditions unfavorable to shipping in foreign trade, whether in a particular trade or on a particular route or in commerce generally, including intermodal movements, terminal operations, cargo solicitation, agency services, ocean transportation intermediary services and operations, and other activities and services integral to transportation systems, and which arise out of or result from laws or regulations of a foreign country or competitive methods, pricing practices, or other practices employed by owners, operators, agents, or masters of vessels of a foreign country.

“(b) INITIATION OF REGULATION.—A regulation under subsection (a) may be initiated by the Commission on its own motion or on the petition of any person, including another component of the United States Government.

**“§ 42102. Regulations of other agencies**

“(a) REQUEST TO AGENCY.—To further the objectives and policy set forth in section 50101 of this title, the Federal Maritime Commission shall request the head of a department, agency, or instrumentality of the United States Government to suspend, modify, or annul any existing regulations, or to make new regulations, affecting shipping in the foreign trade, except regulations relating to the Public Health Service, the Consular Service, or the inspection of vessels.

“(b) PRIOR REVIEW AND APPROVAL.—A department, agency, or instrumentality of the Government may not prescribe a regulation affecting shipping in the foreign trade (except a regulation affecting the Public Health Service, the Consular Service, or the inspection of vessels) until the regulation has been submitted to the Commission for its approval and final action has been taken by the Commission or the President.

“(c) SUBMISSION TO PRESIDENT.—If the head of a department, agency, or instrumentality of the Government refuses to comply with a request under subsection (a) or objects to a decision of the Commission under subsection (b), the Commission or the head of the department, agency, or instrumentality may submit the facts to the President. The President may establish, suspend, modify, or annul the regulation.

**“§ 42103. No preference to Government-owned vessels**

“A regulation may not give a vessel owned by the United States Government a preference over a vessel owned by citizens of the United States and documented under the laws of the United States.

**“§ 42104. Information, witnesses, and evidence**

“(a) ORDER TO SUPPLY INFORMATION.—In carrying out section 42101 of this title, the Federal Maritime Commission may order any person (including a common carrier, tramp operator, bulk operator, shipper, shippers' association, ocean transportation intermediary, or marine terminal operator, or an officer, receiver, trustee, lessee, agent, or employee thereof) to file with the Commission a report, answers to questions, documentary material, or other information the Commission considers necessary or appropriate. The Commission may require the response to any such order to be made under oath. The response shall be provided in the form and within the time specified by the Commission.

“(b) SUBPOENAS AND DISCOVERY.—In carrying out section 42101 of this title, the Commission may—

“(1) subpoena witnesses and evidence; and

“(2) authorize a party to use depositions, written interrogatories, and discovery procedures that, to the extent practicable, conform to the Federal Rules of Civil Procedure (28 App. U.S.C.).

“(c) WITNESS FEES.—Unless otherwise prohibited by law, and subject to funds being appropriated, a witness in a proceeding under section 42101 of this title is entitled to the same fees and mileage as in the courts of the United States.

“(d) PENALTIES.—For failure to supply information ordered to be produced or compelled by subpoena under this section, the Commission may—

“(1) after notice and opportunity for a hearing, suspend tariffs and service contracts of a common carrier or the common carrier's right to use tariffs of conferences and service contracts of agreements of which it is a member; or

“(2) assess a civil penalty of not more than \$5,000 for each day that the information is not provided.

“(e) ENFORCEMENT.—If a person does not comply with an order or subpoena of the Commis-

sion under this section, the Commission may seek enforcement in a district court of the United States having jurisdiction over the parties. If, after hearing, the court determines that the order or subpoena was regularly made and duly issued, the court shall enforce the order or subpoena.

**“§ 42105. Disclosure to public**

“Notwithstanding any other provision of law, the Federal Maritime Commission may refuse to disclose to the public a response or other information submitted to it under this chapter.

**“§ 42106. Other actions to remedy unfavorable conditions**

“If the Federal Maritime Commission finds that conditions unfavorable to shipping in foreign trade as described in section 42101 of this title exist, the Commission may—

“(1) limit voyages to and from United States ports or the amount or type of cargo carried;

“(2) suspend, in whole or in part, tariffs and service contracts for carriage to or from United States ports, including a common carrier's right to use tariffs of conferences and service contracts of agreements in United States trades of which it is a member for any period the Commission specifies;

“(3) suspend, in whole or in part, an ocean common carrier's right to operate under any agreement filed with the Commission, including any agreement authorizing preferential treatment at terminals, preferential terminal leases, space chartering, or pooling of cargo or revenue with other ocean common carriers;

“(4) impose a fee not to exceed \$1,000,000 per voyage; or

“(5) take any other action the Commission finds necessary and appropriate to adjust or meet any condition unfavorable to shipping in the foreign trade of the United States.

**“§ 42107. Refusal of clearance and entry**

“At the request of the Federal Maritime Commission—

“(1) the Secretary of Homeland Security shall—

“(A) refuse the clearance required by section 60105 of this title to a vessel of a country that is named in a regulation prescribed by the Commission under section 42101 of this title; and

“(B) collect any fees imposed by the Commission under section 42106(4) 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 country that is named in a regulation prescribed by the Commission under section 42101 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.

**“§ 42108. Penalty for operating under suspended tariff or service contract**

“A common carrier that accepts or handles cargo for carriage under a tariff or service contract that has been suspended under section 42104(d)(1) or 42106(2) of this title, or after its right to use another tariff or service contract has been suspended under those provisions, is liable to the United States Government for a civil penalty of not more than \$50,000 for each day that it is found to be operating under a suspended tariff or service contract.

**“§ 42109. Consultation with other agencies**

“The Federal Maritime 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 this chapter.

**“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.

**“§ 42301. Definitions**

“(a) DEFINED IN PART A.—In this chapter, the terms ‘common carrier’, ‘marine terminal operator’, ‘ocean common carrier’, ‘ocean transportation intermediary’, ‘shipper’, and ‘shippers' association’ have the meaning given those terms in section 40102 of this title.

“(b) OTHER DEFINITIONS.—In this chapter:

“(1) FOREIGN CARRIER.—The term ‘foreign carrier’ means an ocean common carrier a majority of whose vessels are documented under the laws of a foreign country.

“(2) MARITIME SERVICES.—The term ‘maritime services’ means port-to-port transportation of cargo by vessels operated by an ocean common carrier.

“(3) MARITIME-RELATED SERVICES.—The term ‘maritime-related services’ means intermodal operations, terminal operations, cargo solicitation, agency services, ocean transportation intermediary services and operations, and all other activities and services integral to total transportation systems of ocean common carriers and their foreign domiciled affiliates for themselves and others.

“(4) UNITED STATES CARRIER.—The term ‘United States carrier’ means an ocean common carrier operating vessels documented under the laws of the United States.

“(5) UNITED STATES OCEANBORNE TRADE.—The term ‘United States oceanborne trade’ means the carriage of cargo between the United States and a foreign country, whether directly or indirectly, by an ocean common carrier.

**“§ 42302. Investigations**

“(a) IN GENERAL.—The Federal Maritime Commission shall investigate whether any laws, rules, regulations, policies, or practices of a foreign government, or any practices of a foreign carrier or other person providing maritime or maritime-related services in a foreign country, result in the existence of conditions that—

“(1) adversely affect the operations of United States carriers in United States oceanborne trade; and

“(2) do not exist for foreign carriers of that country in the United States under the laws of the United States or as a result of acts of United States carriers or other persons providing maritime or maritime-related services in the United States.

“(b) INITIATION OF INVESTIGATION.—An investigation under subsection (a) may be initiated by the Commission on its own motion or on the petition of any person, including another component of the United States Government.

“(c) TIME FOR DECISION.—The Commission shall complete an investigation under this section and render a decision within 120 days after it is initiated. However, the Commission may extend this 120-day period for an additional 90 days if the Commission is unable to obtain sufficient information to determine whether a condition specified in subsection (a) exists. A notice providing an extension shall state clearly the reasons for the extension.

**“§ 42303. Information requests**

“(a) IN GENERAL.—To further the purposes of section 42302(a) of this title, the Federal Maritime Commission may order any person (including a common carrier, shipper, shippers' association, ocean transportation intermediary, or marine terminal operator, or an officer, receiver, trustee, lessee, agent or employee thereof) to file with the Commission any periodic or special report, answers to questions, documentary material, or other information the Commission considers necessary or appropriate. The Commission may require the response to any such order to be

made under oath. The response shall be provided in the form and within the time specified by the Commission.

“(b) SUBPOENAS.—In an investigation under section 42302 of this title, the Commission may subpoena witnesses and evidence.

“(c) NONDISCLOSURE.—Notwithstanding any other provision of law, the Commission may determine that any information submitted to it in response to a request under this section, or otherwise, shall not be disclosed to the public.

“§ 42304. Action against foreign carriers

“(a) IN GENERAL.—Subject to section 42306 of this title, whenever the Federal Maritime Commission, after notice and opportunity for comment or hearing, determines that the conditions specified in section 42302(a) of this title exist, the Commission shall take such action to offset those conditions as it considers necessary and appropriate against any foreign carrier that is a contributing cause, or whose government is a contributing cause, to those conditions. The action may include—

“(1) limitations on voyages to and from United States ports or on the amount or type of cargo carried;

“(2) suspension, in whole or in part, of any or all tariffs and service contracts, including an ocean common carrier's right to use any or all tariffs and service contracts of conferences in United States trades of which it is a member for any period the Commission specifies;

“(3) suspension, in whole or in part, of an ocean common carrier's right to operate under any agreement filed with the Commission, including 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.

“§ 44101. Application

“This chapter applies to a vessel that—

“(1) has berth or stateroom accommodations for at least 50 passengers; and

“(2) boards passengers at a port in the United States.

“§ 44102. Financial responsibility to indemnify passengers for nonperformance of transportation

“(a) FILING REQUIREMENT.—A person in the United States may not arrange, offer, advertise, or provide transportation on a vessel to which this chapter applies unless the person has filed with the Federal Maritime Commission evidence of financial responsibility to indemnify passengers for nonperformance of the transportation.

“(b) SATISFACTORY EVIDENCE.—To satisfy subsection (a), a person must file—

“(1) information the Commission considers necessary; or

“(2) a copy of a bond or other security, in such form as the Commission by regulation may require.

“(c) AUTHORIZED ISSUER OF BOND.—If a bond is filed, it must be issued by a bonding company authorized to do business in the United States.

“§ 44103. Financial responsibility to pay liability for death or injury

“(a) GENERAL REQUIREMENT.—The owner or charterer of a vessel to which this chapter applies shall establish, under regulations prescribed by the Federal Maritime Commission, financial responsibility to meet liability for death or injury to passengers or other individuals on a voyage to or from a port in the United States.

“(b) AMOUNTS.—

“(1) IN GENERAL.—The amount of financial responsibility required under subsection (a) shall be based on the number of passenger accommodations as follows:

“(A) \$20,000 for each of the first 500 passenger accommodations.

“(B) \$15,000 for each additional passenger accommodation between 501 and 1,000.

“(C) \$10,000 for each additional passenger accommodation between 1,001 and 1,500.

“(D) \$5,000 for each additional passenger accommodation over 1,500.

“(2) MULTIPLE VESSELS.—If the owner or charterer is operating more than one vessel subject to this chapter, the amount of financial responsibility shall be based on the number of passenger accommodations on the vessel with the largest number of passenger accommodations.

“(c) AVAILABILITY TO PAY JUDGMENT.—The amount determined under subsection (b) shall be available to pay a judgment for damages (whether less than or more than \$20,000) for death or injury to a passenger or other individual on a voyage to or from a port in the United States.

“(d) MEANS OF ESTABLISHING.—Financial responsibility under this section may be established by one or more of the following if acceptable to the Commission:

“(1) Insurance.

“(2) Surety bond issued by a bonding company authorized to do business in the United States.

“(3) Qualification as a self-insurer.

“(4) Other evidence of financial responsibility.

“§ 44104. Civil penalty

“A person that violates section 44102 or 44103 of this title is liable to the United States Government for a civil penalty of not more than \$5,000, plus \$200 for each passage sold, to be assessed by the Federal Maritime Commission. The Commission may remit or mitigate the penalty on terms the Commission considers proper.

“§ 44105. Refusal of clearance

“The Secretary of Homeland Security shall refuse the clearance required by section 60105 of this title, at the port or place of departure from the United States, of a vessel that is subject to this chapter and does not have evidence issued by the Federal Maritime Commission of compliance with sections 44102 and 44103 of this title.

“§ 44106. Conduct of proceedings

“Part A of this subtitle applies to proceedings conducted by the Federal Maritime Commission under this chapter.”

SEC. 8. SUBTITLE V OF TITLE 46.

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

“PART A—GENERAL

Table listing chapters: Chapter, Policy, Studies, and Reports (50101); Administrative (50301); Other General Provisions (50501).

“PART B—MERCHANT MARINE SERVICE

Table listing sections: 511. General (51101); 513. United States Merchant Marine Academy (51301); 515. State Maritime Academy Support Program (51501); 517. Other Support for Merchant Marine Training (51701); 519. Merchant Marine Awards (51901); 521. Miscellaneous (52101).

“PART C—FINANCIAL ASSISTANCE PROGRAMS

Table listing sections: 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).

“PART D—PROMOTIONAL PROGRAMS

Table listing sections: 551. Coastwise Trade (55101); 553. Passenger and Cargo Preferences (55301); 555. Miscellaneous (55501).

“PART E—CONTROL OF MERCHANT MARINE CAPABILITIES

Table listing sections: 561. Restrictions on Transfers (56101); 563. Emergency Acquisition of Vessels (56301); 565. Essential Vessels Affected by Neutrality Act (56501).

“PART F—GOVERNMENT-OWNED MERCHANT VESSELS

Table listing sections: 571. General Authority (57101); 573. Vessel Trade-In Program (57301); 575. Construction, Charter, and Sale of Vessels (57501).

“PART G—RESTRICTIONS AND PENALTIES

Table listing sections: 581. Restrictions and Penalties (58101).

(b) CHAPTERS PRECEDING CHAPTER 531.—Subtitle V of title 46, United States Code, is amended by inserting after the subtitle analysis the following:

“PART A—GENERAL

“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.

**“§50101. Objectives and policy**

“(a) OBJECTIVES.—It is necessary for the national defense and the development of the domestic and foreign commerce of the United States that the United States have a merchant marine—

“(1) sufficient to carry the waterborne domestic commerce and a substantial part of the waterborne export and import foreign commerce of the United States and to provide shipping service essential for maintaining the flow of the waterborne domestic and foreign commerce at all times;

“(2) capable of serving as a naval and military auxiliary in time of war or national emergency;

“(3) owned and operated as vessels of the United States by citizens of the United States;

“(4) composed of the best-equipped, safest, and most suitable types of vessels and manned with a trained and efficient citizen personnel; and

“(5) supplemented by efficient facilities for building and repairing vessels.

“(b) POLICY.—It is the policy of the United States to encourage and aid the development and maintenance of a merchant marine satisfying the objectives described in subsection (a).

**“§50102. Survey of merchant marine**

“(a) IN GENERAL.—The Secretary of Transportation shall survey the merchant marine of the United States to determine whether replacements and additions are required to carry out the objectives and policy of section 50101 of this title. The Secretary shall study, perfect, and adopt a long-range program for replacements and additions that will result, as soon as practicable, in—

“(1) an adequate and well-balanced merchant fleet, including vessels of all types, that will provide shipping service essential for maintaining the flow of foreign commerce by vessels designed to be readily and quickly convertible into transport and supply vessels in a time of national emergency;

“(2) ownership and operation of the fleet by citizens of the United States insofar as practicable;

“(3) vessels designed to afford the best and most complete protection for passengers and crew against fire and all marine perils; and

“(4) an efficient capacity for building and repairing vessels in the United States with an adequate number of skilled personnel to provide an adequate mobilization base.

“(b) COOPERATION WITH SECRETARY OF NAVY.—In carrying out subsection (a)(1), the Secretary of Transportation shall cooperate closely with the Secretary of the Navy as to national defense requirements.

**“§50103. Determinations of essential services**

“(a) ESSENTIAL SERVICES, ROUTES, AND LINES.—

“(1) IN GENERAL.—The Secretary of Transportation shall investigate, determine, and keep current records of the ocean services, routes, and lines from ports in the United States, or in the territories and possessions of the United States, to foreign markets, which the Secretary determines to be essential for the promotion, development, expansion, and maintenance of the foreign commerce of the United States. In making such a determination, the Secretary shall consider and give due weight to—

“(A) the cost of maintaining each line;

“(B) the probability that a line cannot be maintained except at a heavy loss disproportionate to the benefit to foreign trade;

“(C) the number of voyages and types of vessels that should be employed in a line;

“(D) the intangible benefit of maintaining a line to the foreign commerce of the United

States, the national defense, and other national requirements; and

“(E) any other facts and conditions a prudent business person would consider when dealing with the person's own business.

“(2) SAINT LAWRENCE SEAWAY.—For purposes of paragraph (1), the Secretary shall establish services, routes, and lines that reflect the seasonal closing of the Saint Lawrence Seaway and provide for alternate routing of vessels through a different range of ports during that closing to maintain continuity of service on a year-round basis.

“(b) BULK CARGO CARRYING SERVICES.—The Secretary shall investigate, determine, and keep current records of the bulk cargo carrying services that should be provided by vessels of the United States (whether or not operating on particular services, routes, or lines) for the promotion, development, expansion, and maintenance of the foreign commerce of the United States and the national defense or other national requirements.

“(c) TYPES OF VESSELS.—The Secretary shall investigate, determine, and keep current records of the type, size, speed, method of propulsion, and other requirements of the vessels, including express-liner or super-liner vessels, that should be employed in—

“(1) the services, routes, or lines described in subsection (a), and the frequency and regularity of the voyages of the vessels, with a view to furnishing adequate, regular, certain, and permanent service; and

“(2) the bulk cargo carrying services described in subsection (b).

**“§50104. Studies of general maritime problems**

“The Secretary of Transportation shall study all maritime problems arising in carrying out the policy in section 50101 of this title.

**“§50105. Studies and cooperation relating to the construction of vessels**

“(a) RELATIVE COSTS AND NEW DESIGNS.—The Secretary of Transportation shall investigate, determine, and keep current records of—

“(1) the relative cost of construction of comparable vessels in the United States and in foreign countries; and

“(2) new designs, new methods of construction, and new types of equipment for vessels.

“(b) RULES, CLASSIFICATIONS, AND RATINGS.—The Secretary shall examine the rules under which vessels are constructed abroad and in the United States and the methods of classifying and rating the vessels.

“(c) COLLABORATION WITH OWNERS AND BUILDERS.—The Secretary shall collaborate with vessel owners and shipbuilders in developing plans for the economical construction of vessels and their propelling machinery, of most modern economical types, giving thorough consideration to all well-recognized means of propulsion and taking into account the benefits from standardized production where practicable and desirable.

“(d) EXPRESS-LINER AND SUPER-LINER VESSELS.—The Secretary shall study and cooperate with vessel owners in devising means by which there may be constructed, by or with the aid of the United States Government, express-liner or super-liner vessels comparable to those of other nations, especially with a view to their use in a national emergency, and the use of transoceanic aircraft service in connection with or in lieu of those vessels.

**“§50106. Studies on the operation of vessels**

“(a) RELATIVE COSTS.—The Secretary of Transportation shall investigate, determine, and keep current records of the relative cost of marine insurance, maintenance, repairs, wages and subsistence of officers and crews, and all other items of expense, in the operation of comparable vessels under the laws and regulations of the United States and those of the foreign countries whose vessels are substantial competitors of American vessels.

“(b) SHIPYARDS.—The Secretary shall investigate, determine, and keep current records of the number, location, and efficiency of shipyards in the United States.

“(c) NAVIGATION LAWS.—The Secretary shall examine the navigation laws and regulations of the United States and make such recommendations to Congress as the Secretary considers proper for the amendment, improvement, and revision of those laws and for the development of the merchant marine of the United States.

**“§50107. Studies on marine insurance**

“The Secretary of Transportation shall—

“(1) examine into the subject of marine insurance, the number of companies in the United States, domestic and foreign, engaging in marine insurance, the extent of the insurance on hulls and cargoes placed or written in the United States, and the extent of reinsurance of American maritime risks in foreign companies; and

“(2) ascertain what steps may be necessary to develop an ample marine insurance system as an aid in the development of the merchant marine of the United States.

**“§50108. Studies on cargo carriage and cargo containers**

“(a) STUDIES.—The Secretary of Transportation shall study—

“(1) the methods of encouraging the development and implementation of new concepts for the carriage of cargo in the domestic and foreign commerce of the United States; and

“(2) the economic and technological aspects of the use of cargo containers as a method of carrying out the policy in section 50101 of this title.

“(b) RESTRICTION.—In carrying out subsection (a) and the policy in section 50101 of this title, the United States Government may not give preference as between carriers based on the length, height, or width of cargo containers or the length, height, or width of cargo container cells. This restriction applies to all existing container vessels and any container vessel to be constructed or rebuilt.

**“§50109. Miscellaneous studies**

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

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

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

“(d) INTERCOASTAL AND INLAND WATER TRANSPORTATION.—The Secretary shall investigate, determine, and keep current records of intercoastal and inland water transportation, including their relation to transportation by land and air.

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

“(1) the scrapping or removal from service of old or obsolete merchant tonnage owned by the

United States Government or in use in the merchant marine; and

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

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

**“§50110. Securing preference to vessels of the United States**

“(a) POSSIBILITIES OF PROMOTING CARRIAGE.—The Secretary of Transportation shall investigate, determine, and keep current records of the possibilities of promoting the carriage of United States foreign trade in vessels of the United States.

“(b) INDUCEMENTS TO IMPORTERS AND EXPORTERS.—The Secretary shall study and cooperate with vessel owners in devising means by which the importers and exporters of the United States can be induced to give preference to vessels of the United States.

“(c) LIAISON WITH AGENCIES AND ORGANIZATIONS.—The Secretary shall establish and maintain liaison with such other agencies of the United States Government, and with such representative trade organizations throughout the United States, as may be concerned, directly or indirectly, with any movement of commodities in the waterborne export and import foreign commerce of the United States, for the purpose of securing preference to vessels of the United States in the shipment of those commodities.

**“§50111. Reports to Congress**

“(a) IN GENERAL.—Not later than April 1 of each year, the Secretary of Transportation shall submit a report to Congress. The report shall include, with respect to activities of the Secretary under this subtitle, the results of investigations, a summary of transactions, a statement of all expenditures and receipts, the purposes for which all expenditures were made, and any recommendations for legislation.

“(b) ADMINISTERED AND OVERSIGHT FUNDS.—The Secretary, in the report under subsection (a) and in the annual budget estimate for the Maritime Administration submitted to Congress, shall state separately the amount, source, intended use, and nature of any funds (other than funds appropriated to the Administration or to the Secretary of Transportation for use by the Administration) administered, or subject to oversight, by the Administration.

“(c) ADDITIONAL RECOMMENDATIONS FOR LEGISLATION.—The Secretary, from time to time, shall make recommendations to Congress for legislation the Secretary considers necessary to better achieve the objectives and policy of section 50101 of this title.

**“§50112. National Maritime Enhancement Institutes**

“(a) DESIGNATION.—The Secretary of Transportation may designate National Maritime Enhancement Institutes.

“(b) ACTIVITIES.—Activities undertaken by an institute may include—

“(1) conducting research about methods to improve the performance of maritime industries;

“(2) enhancing the competitiveness of domestic maritime industries in international trade;

“(3) forecasting trends in maritime trade;

“(4) assessing technological advancements;

“(5) developing management initiatives and training;

“(6) analyzing economic and operational impacts of regulatory policies and international negotiations or agreements pending before international bodies;

“(7) assessing the compatibility of domestic maritime infrastructure systems with overseas transport systems;

“(8) fostering innovations in maritime transportation pricing; and

“(9) improving maritime economics and finance.

“(c) APPLICATION FOR DESIGNATION.—An institution seeking designation as a National Maritime Enhancement Institute shall submit an application under regulations prescribed by the Secretary.

“(d) CRITERIA FOR DESIGNATION.—The Secretary shall designate an institute under this section on the basis of the following criteria:

“(1) The demonstrated research and extension resources available to the applicant for carrying out the activities specified in subsection (b).

“(2) The ability of the applicant to provide leadership in making national and regional contributions to the solution of both long-range and immediate problems of the domestic maritime industry.

“(3) The existence of an established program of the applicant encompassing research and training directed to enhancing maritime industries.

“(4) The demonstrated ability of the applicant to assemble and evaluate pertinent information from national and international sources and to disseminate results of maritime industry research and educational programs through a continuing education program.

“(5) The qualification of the applicant as a nonprofit institution of higher learning.

“(e) FINANCIAL AWARDS.—The Secretary may make awards on an equal matching basis to an institute designated under subsection (a) from amounts appropriated. The aggregate annual amount of the Federal share of the awards by the Secretary may not exceed \$500,000.

“(f) UNIVERSITY TRANSPORTATION RESEARCH FUNDS.—The Secretary may make a grant under section 5505 of title 49 to an institute designated under subsection (a) for maritime and maritime intermodal research under that section as if the institute were a university transportation center. In making a grant, the Secretary, through the Research and Innovative Technology Administration, shall advise the Maritime Administration on the availability of funds for the grants and consult with the Administration on making the grants.

**“§50113. Use and performance reports by operators of vessels**

“(a) FILING REQUIREMENT.—The Secretary of Transportation by regulation may require the operator of a vessel in the waterborne foreign commerce of the United States to file such report, account, record, or memorandum on the use and performance of the vessel as the Secretary considers desirable to assist in carrying out this subtitle. The report, account, record, or memorandum shall be signed and verified, and be filed at the times and in the manner, as provided by regulation.

“(b) CIVIL PENALTY.—An operator not filing a report, account, record, or memorandum required by the Secretary under this section is liable to the United States Government for a civil penalty of \$50 for each day of the violation. A penalty imposed under this section on the operator of a vessel constitutes a lien on the vessel involved in the violation. A civil action in rem to enforce the lien may be brought in the district court of the United States for any district in which the vessel is found. The Secretary may remit or mitigate any penalty imposed under this section.

**“CHAPTER 503—ADMINISTRATIVE**

“Sec.

“50301. Vessel Operations Revolving Fund.

“50302. Port development.

“50303. Operating property and extending term of notes.

“50304. Sale and transfer of property.

“50305. Appointment of trustee or receiver and operation of vessels.

“50306. Requiring testimony and records in investigations.

**“§50301. Vessel Operations Revolving Fund**

“(a) IN GENERAL.—There is a ‘Vessel Operations Revolving Fund’ for use by the Secretary

of Transportation in carrying out duties and powers related to vessel operations, including charter, operation, maintenance, repair, reconditioning, and improvement of merchant vessels under the jurisdiction of the Secretary. The Fund has a working capital of \$20,000,000, to remain available until expended.

“(b) RELATIONSHIP TO OTHER LAWS.—Notwithstanding any other law, rates for shipping services provided under the Fund shall be prescribed by the Secretary and the Fund shall be credited with receipts from vessel operations conducted under the Fund. Sections 1(a) and (c), 3(c), and 4 of the Act of March 24, 1943 (50 App. U.S.C. 1291(a), (c), 1293(c), 1294), apply to those operations and to seamen employed through general agents as employees of the United States Government. Notwithstanding any other law on the employment of persons by the Government, the seamen may be employed in accordance with customary commercial practices in the maritime industry.

“(c) ADVANCEMENTS.—With the approval of the Director of the Office of Management and Budget, the Secretary may advance amounts the Secretary considers necessary, but not more than 2 percent of vessel operating expenses, from the Fund to the appropriation ‘Salaries and Expenses’ in carrying out duties and powers related to vessel operations, without regard to the limitations on amounts stated in that appropriation.

“(d) TRANSFERS.—The unexpended balances of working funds or of allocation accounts established after January 1, 1951, for the activities provided for in subsection (a), and receipts received from those activities, may be transferred to the Fund, which shall be available for the purposes of those working funds or allocation accounts.

“(e) LIMITATION.—

“(1) IN GENERAL.—Amounts made available to the Secretary for maritime activities by this section or any other law may not be used to pay for a vessel described in paragraph (2) unless the compensation to be paid is computed under section 56303 of this title as that section is interpreted by the Comptroller General.

“(2) APPLICABLE VESSELS.—Paragraph (1) applies to a vessel—

“(A) the title to which is acquired by the Government by requisition or purchase;

“(B) the use of which is taken by requisition or agreement; or

“(C) lost while insured by the Government.

“(3) NONAPPLICABLE VESSELS.—Paragraph (1) does not apply to a vessel under a construction-differential subsidy contract.

“(f) AVAILABILITY FOR ADDITIONAL PURPOSES.—The Fund is available for—

“(1) necessary expenses incurred in the protection, preservation, maintenance, acquisition, or use of vessels involved in mortgage foreclosure or forfeiture proceedings instituted by the Government, including payment of prior claims and liens, expenses of sale, or other related charges;

“(2) necessary expenses incident to the redelivery and lay-up, in the United States, of vessels chartered as of June 20, 1956, under agreements not calling for their return to the Government;

“(3) the activation, repair, and deactivation of merchant vessels chartered for limited emergency purposes during fiscal year 1957 under the jurisdiction of the Secretary; and

“(4) payment of expenses of custody and maintenance of Government-owned vessels not in the National Defense Reserve Fleet.

“(g) EXPENSES AND RECEIPTS RELATED TO CHARTER OPERATIONS.—The Fund is available for expenses incurred in activating, repairing, and deactivating merchant vessels chartered under the jurisdiction of the Secretary. Receipts from charter operations of Government-owned vessels under the jurisdiction of the Secretary shall be credited to the Fund.

**“§50302. Port development**

“(a) GENERAL REQUIREMENTS.—With the objective of promoting, encouraging, and developing ports and transportation facilities in connection with water commerce over which the Secretary of Transportation has jurisdiction, the Secretary, in cooperation with the Secretary of the Army, shall—

“(1) investigate territorial regions and zones tributary to ports, taking into consideration the economies of transportation by rail, water, and highway and the natural direction of the flow of commerce;

“(2) investigate the causes of congestion of commerce at ports and applicable remedies;

“(3) investigate the subject of water terminals, including the necessary docks, warehouses, and equipment, to devise and suggest the types most appropriate for different locations and for the most expeditious and economical transfer or interchange of passengers or property between water carriers and rail carriers;

“(4) consult with communities on the appropriate location and plan of construction of wharves, piers, and water terminals;

“(5) investigate the practicability and advantages of harbor, river, and port improvements in connection with foreign and coastwise trade; and

“(6) investigate any other matter that may tend to promote and encourage the use by vessels of ports adequate to care for the freight that naturally would pass through those ports.

“(b) SUBMISSION OF FINDINGS TO SURFACE TRANSPORTATION BOARD.—After an investigation under subsection (a), if the Secretary of Transportation believes that the rates or practices of a rail carrier subject to the jurisdiction of the Surface Transportation Board are detrimental to the objective specified in subsection (a), or that new rates or practices, new or additional port terminal facilities, or affirmative action by a rail carrier is necessary to promote that objective, the Secretary may submit findings to the Board for action the Board considers appropriate under existing law.

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

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

“(1) operate or lease docks, wharves, piers, or real property under the Secretary’s control; and

“(2) make extensions and accept renewals of—

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

“(B) mortgages and other contracts securing the property.

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

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

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

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

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

“(c) TRANSFERS FROM CIVILIAN TO MILITARY CONTROL.—When the President considers it necessary, the President by executive order may transfer to the Secretary of a military depart-

ment possession and control of property described in section 17 of the Merchant Marine Act, 1920 (ch. 250, 41 Stat. 994), as originally enacted, that is possessed and controlled by the Secretary of Transportation. The President’s order shall state the need for the transfer and the period of the need. When the President decides that the need has ended, the possession and control shall revert to the Secretary of Transportation. The property may not be sold except as provided by law.

**“§50305. Appointment of trustee or receiver and operation of vessels**

“(a) APPOINTMENT OF TRUSTEES AND RECEIVERS.—

“(1) APPOINTMENT OF SECRETARY.—In a proceeding in a court of the United States in which a trustee or receiver may be appointed for a corporation operating a vessel of United States registry between the United States and a foreign country, on which the United States Government holds a mortgage, the court may appoint the Secretary of Transportation as the sole trustee or receiver (subject to the direction of the court) if—

“(A) the court finds that the appointment will—

“(i) inure to the advantage of the estate and the parties in interest; and

“(ii) tend to carry out the purposes of this subtitle; and

“(B) the Secretary expressly consents to the appointment.

“(2) APPOINTMENT OF OTHER PERSON.—The appointment of another person as trustee or receiver without a hearing becomes effective when ratified by the Secretary, but the Secretary may demand a hearing.

“(b) OPERATION OF VESSELS.—

“(1) IN GENERAL.—If the court is unwilling to allow the trustee or receiver to operate the vessel in foreign commerce without financial aid from the Government pending termination of the proceeding, and the Secretary certifies to the court that the continued operation of the vessel is essential to the foreign commerce of the United States and is reasonably calculated to carry out the purposes of this subtitle, the court may allow the Secretary to operate the vessel, either directly or through a managing agent or operator employed by the Secretary. The Secretary must agree to comply with terms imposed by the court sufficient to protect the parties in interest. The Secretary also must agree to pay all operating losses resulting from the operation. The operation shall be for the account of the trustee or receiver.

“(2) PAYMENT OF OPERATING LOSSES AND OTHER AMOUNTS.—The Secretary has no claim against the corporation, its estate, or its assets for operating losses paid by the Secretary, but the Secretary may pay amounts for depreciation the Secretary considers reasonable and other amounts the court considers just. The payment of operating losses and the other amounts and compliance with terms imposed by the court shall be in satisfaction of any claim against the Secretary resulting from the operation of the vessel.

“(3) DEEMED OPERATION BY GOVERNMENT.—A vessel operated by the Secretary under this subsection is deemed to be a vessel operated by the United States under chapter 309 of this title.

**“§50306. Requiring testimony and records in investigations**

“(a) IN GENERAL.—In conducting an investigation that the Secretary of Transportation considers necessary and proper to carry out this subtitle, the Secretary may administer oaths, take evidence, and subpoena persons to testify and produce documents relevant to the matter under investigation. Persons may be required to attend or produce documents from any place in the United States at any designated place of hearing.

“(b) FEES AND MILEAGE.—Persons subpoenaed by the Secretary under subsection (a) shall be

paid the same fees and mileage paid to witnesses in the courts of the United States.

“(c) ENFORCEMENT OF SUBPOENAS.—If a person disobeys a subpoena issued under subsection (a), the Secretary may seek an order enforcing the subpoena from the district court of the United States for the district in which the person resides or does business. Process may be served in the judicial district in which the person resides or is found. The court may issue an order to obey the subpoena and punish a refusal to obey as a contempt of court.

**“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.

**“§50501. Entities deemed citizens of the United States**

“(a) IN GENERAL.—In this subtitle, a corporation, partnership, or association is deemed to be a citizen of the United States only if the controlling interest is owned by citizens of the United States. However, if the corporation, partnership, or association is operating a vessel in the coastwise trade, at least 75 percent of the interest must be owned by citizens of the United States.

“(b) ADDITIONAL REQUIREMENTS FOR CORPORATIONS.—In this subtitle, a corporation is deemed to be a citizen of the United States only if, in addition to satisfying the requirements in subsection (a)—

“(1) it is incorporated under the laws of the United States or a State;

“(2) its chief executive officer, by whatever title, and the chairman of its board of directors are citizens of the United States; and

“(3) no more of its directors are noncitizens than a minority of the number necessary to constitute a quorum.

“(c) DETERMINATION OF CONTROLLING CORPORATE INTEREST.—The controlling interest in a corporation is owned by citizens of the United States under subsection (a) only if—

“(1) title to the majority of the stock in the corporation is vested in citizens of the United States free from any trust or fiduciary obligation in favor of a person not a citizen of the United States;

“(2) the majority of the voting power in the corporation is vested in citizens of the United States;

“(3) there is no contract or understanding by which the majority of the voting power in the corporation may be exercised, directly or indirectly, in behalf of a person not a citizen of the United States; and

“(4) there is no other means by which control of the corporation is given to or permitted to be exercised by a person not a citizen of the United States.

“(d) DETERMINATION OF 75 PERCENT CORPORATE INTEREST.—At least 75 percent of the interest in a corporation is owned by citizens of the United States under subsection (a) only if—

“(1) title to at least 75 percent of the stock in the corporation is vested in citizens of the United States free from any trust or fiduciary obligation in favor of a person not a citizen of the United States;

“(2) at least 75 percent of the voting power in the corporation is vested in citizens of the United States;

“(3) there is no contract or understanding by which more than 25 percent of the voting power in the corporation may be exercised, directly or indirectly, in behalf of a person not a citizen of the United States; and

“(4) there is no other means by which control of more than 25 percent of any interest in the corporation is given to or permitted to be exercised by a person not a citizen of the United States.

**“§50502. Applicability to receivers, trustees, successors, and assigns**

“This subtitle applies to receivers, trustees, successors, and assigns of any person to whom this subtitle applies.

**“§50503. Oceanographic research vessels**

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

**“§50504. Sailing school vessels**

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

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

“(1) parts B, F, and G of subtitle II of this title; or

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

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

“(1) a merchant vessel under section 11101(a)–(c) of this title; or

“(2) a vessel engaged in trade or commerce.

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

**“PART B—MERCHANT MARINE SERVICE****“CHAPTER 511—GENERAL**

“Sec.

“51101. Policy.

“51102. Definitions.

“51103. General authority of Secretary of Transportation.

“51104. General authority of Secretary of the Navy.

**“§51101. Policy**

“It is the policy of the United States that merchant marine vessels of the United States should be operated by highly trained and efficient citizens of the United States and that the United States Navy and the merchant marine of the United States should work closely together to promote the maximum integration of the total seapower forces of the United States.

**“§51102. Definitions**

“In this part:

“(1) ACADEMY.—The term ‘Academy’ means the United States Merchant Marine Academy located at Kings Point, New York, and maintained under chapter 513 of this title.

“(2) COST OF EDUCATION PROVIDED.—The term ‘cost of education provided’ means the financial costs incurred by the United States Government for providing training or financial assistance to students at the Academy and the State maritime academies, including direct financial assistance, room, board, classroom academics, and other training activities.

“(3) MERCHANT MARINE OFFICER.—The term ‘merchant marine officer’ means an individual issued a license by the Coast Guard authorizing service as—

“(A) a master, mate, or pilot on a documented vessel that—

“(i) is of at least 1,000 gross tons as measured under section 14502 of this title or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title; and

“(ii) operates on the oceans or the Great Lakes; or

“(B) an engineer officer on a documented vessel propelled by machinery of at least 4,000 horsepower.

“(4) STATE MARITIME ACADEMY.—The term ‘State maritime academy’ means—

“(A) a State maritime academy or college sponsored by a State and assisted under chapter 515 of this title; and

“(B) a regional maritime academy or college sponsored by a group of States and assisted under chapter 515 of this title.

**“§51103. General authority of Secretary of Transportation**

“(a) EDUCATION AND TRAINING.—The Secretary of Transportation may provide for the education and training of citizens of the United States for the safe and efficient operation of the merchant marine of the United States at all times, including operation as a naval and military auxiliary in time of war or national emergency.

“(b) SURPLUS PROPERTY FOR INSTRUCTIONAL PURPOSES.—

“(1) IN GENERAL.—The Secretary may cooperate with and assist the institutions named in paragraph (2) by making vessels, shipboard equipment, and other marine equipment, owned by the United States Government and determined to be excess or surplus, available to those institutions for instructional purposes, by gift, loan, sale, lease, or charter on terms the Secretary considers appropriate.

“(2) INSTITUTIONS.—The institutions referred to in paragraph (1) are—

“(A) the United States Merchant Marine Academy;

“(B) a State maritime academy; and

“(C) a nonprofit training institution jointly approved by the Secretary of Transportation and the Secretary of the department in which the Coast Guard is operating as offering training courses that meet Federal regulations for maritime training.

“(c) ASSISTANCE FROM OTHER AGENCIES.—

“(1) IN GENERAL.—The Secretary of Transportation may secure directly from an agency, on a reimbursable basis, information, facilities, and equipment necessary to carry out this part.

“(2) DETAILING PERSONNEL.—At the request of the Secretary, the head of an agency (including a military department) may detail, on a reimbursable basis, personnel from the agency to the Secretary to assist in carrying out this part.

“(d) ACADEMY PERSONNEL.—To carry out this part, the Secretary may—

“(1) employ an individual as a professor, lecturer, or instructor at the Academy, without regard to the provisions of title 5 governing appointments in the competitive service; and

“(2) pay the individual without regard to chapter 51 and subchapter III of chapter 53 of title 5.

**“§51104. General authority of Secretary of the Navy**

“The Secretary of the Navy, in cooperation with the Maritime Administrator and the head of each State maritime academy, shall ensure that—

“(1) the training of future merchant marine officers at the United States Merchant Marine Academy and at State maritime academies includes programs for naval science training in the operation of merchant vessels as a naval and military auxiliary; and

“(2) naval officer training programs for future officers, insofar as possible, are maintained at designated maritime academies consistent with Navy standards and needs.

**“CHAPTER 513—UNITED STATES MERCHANT MARINE 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.

**“§51301. Maintenance of the Academy**

“The Secretary of Transportation shall maintain the United States Merchant Marine Academy to provide instruction to individuals to prepare them for service in the merchant marine of the United States.

**“§51302. Nomination and competitive appointment of cadets**

“(a) REQUIREMENTS.—An individual may be nominated for a competitive appointment as a cadet at the United States Merchant Marine Academy only if the individual—

“(1) is a citizen or national of the United States; and

“(2) meets the minimum requirements that the Secretary of Transportation shall establish.

“(b) NOMINATORS.—Nominations for competitive appointments for the positions allocated under subsection (c) may be made as follows:

“(1) A Senator may nominate residents of the State represented by that Senator.

“(2) A Member of the House of Representatives may nominate residents of the State in which the congressional district represented by that Member is located.

“(3) A Delegate to the House of Representatives from the District of Columbia, the Virgin Islands, Guam, or American Samoa may nominate residents of the jurisdiction represented by that Delegate.

“(4) The Resident Commissioner to the United States from Puerto Rico may nominate residents of Puerto Rico.

“(5) The Governor of the Northern Mariana Islands may nominate residents of the Northern Mariana Islands.

“(6) The Panama Canal Commission may nominate—

“(A) residents, or sons or daughters of residents, of an area or installation in Panama and made available to the United States under the Panama Canal Treaty of 1977, the agreements relating to and implementing that Treaty, signed September 7, 1977, and the Agreement Between the United States of America and the Republic of Panama Concerning Air Traffic Control and Related Services, concluded January 8, 1979; and

“(B) sons or daughters of personnel of the United States Government and the Panama Canal Commission residing in Panama.

“(c) ALLOCATION OF POSITIONS.—Positions for competitive appointments shall be allocated each year as follows:

“(1) Positions shall be allocated for residents of each State nominated by the Members of Congress from that State in proportion to the representation in Congress from that State.

“(2) Four positions shall be allocated for residents of the District of Columbia nominated by the Delegate to the House of Representatives from the District of Columbia.

“(3) One position each shall be allocated for residents of the Virgin Islands, Guam, and American Samoa nominated by the Delegates to the House of Representatives from the Virgin Islands, Guam, and American Samoa, respectively.

“(4) One position shall be allocated for a resident of Puerto Rico nominated by the Resident Commissioner to the United States from Puerto Rico.

“(5) One position shall be allocated for a resident of the Northern Mariana Islands nominated by the Governor of the Northern Mariana Islands.

“(6) Two positions shall be allocated for individuals nominated by the Panama Canal Commission.

“(d) COMPETITIVE SYSTEM FOR APPOINTMENT.—

“(1) ESTABLISHMENT OF SYSTEM.—The Secretary shall establish a competitive system for selecting individuals nominated under subsection (b) to fill the positions allocated under subsection (c). The system must determine the relative merit of each individual based on competitive examinations, an assessment of the individual’s academic background, and other effective indicators of motivation and probability of successful completion of training at the Academy.

“(2) APPOINTMENTS BY JURISDICTION.—The Secretary shall appoint individuals to fill the positions allocated under subsection (c) for each jurisdiction in the order of merit of the individuals nominated from that jurisdiction.

“(3) REMAINING UNFILLED POSITIONS.—If positions remain unfilled after the appointments are made under paragraph (2), the Secretary shall appoint individuals to fill the positions in the order of merit of the remaining individuals nominated from all jurisdictions.

#### “§51303. Non-competitive appointments

“The Secretary of Transportation may appoint each year without competition as cadets at the United States Merchant Marine Academy not more than 40 qualified individuals with qualities the Secretary considers to be of special value to the Academy. In making these appointments, the Secretary shall try to achieve a national demographic balance at the Academy.

#### “§51304. Additional appointments from particular areas

“(a) OTHER COUNTRIES IN WESTERN HEMISPHERE.—The President may appoint individuals from countries in the Western Hemisphere other than the United States to receive instruction at the United States Merchant Marine Academy. Not more than 12 individuals may receive instruction under this subsection at the same time, and not more than 2 individuals from the same country may receive instruction under this subsection at the same time.

“(b) OTHER COUNTRIES GENERALLY.—

“(1) APPOINTMENT.—The Secretary of Transportation, with the approval of the Secretary of State, may appoint individuals from countries other than the United States to receive instruction at the Academy. Not more than 30 individuals may receive instruction under this subsection at the same time.

“(2) REIMBURSEMENT.—The Secretary of Transportation shall ensure that the country from which an individual comes under this subsection will reimburse the Secretary for the cost (as determined by the Secretary) of the instruction and allowances received by the individual.

“(c) PANAMA.—

“(1) APPOINTMENT.—The Secretary of Transportation, with the approval of the Secretary of State, may appoint individuals from Panama to receive instruction at the Academy. Individuals appointed under this subsection are in addition to those appointed under any other provision of this chapter.

“(2) REIMBURSEMENT.—The Secretary of Transportation shall be reimbursed for the cost (as determined by the Secretary) of the instruction and allowances received by an individual appointed under this subsection.

“(d) ALLOWANCES AND REGULATIONS.—Individuals receiving instruction under this section are entitled to the same allowances and are subject to the same regulations on admission, attendance, discipline, resignation, discharge, dismissal, and graduation, as cadets at the Academy appointed from the United States.

#### “§51305. Prohibited basis for appointment

“Preference may not be given to an individual for appointment as a cadet at the United States Merchant Marine Academy because one or more

members of the individual’s immediate family are alumni of the Academy.

#### “§51306. Cadet commitment agreements

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

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

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

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

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

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

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

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

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

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

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

“(b) FAILURE TO COMPLETE COURSE OF INSTRUCTION.—

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

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

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

“(1) ACTIVE DUTY.—If the Secretary of Transportation determines that an individual has failed to fulfill any part of the agreement described in subsection (a)(2)–(6), the individual may be ordered to serve on active duty for a period of at least 3 years but not more than the unexpired period (as determined by the Sec-

retary) of the service required by subsection (a)(5). The Secretary of Transportation, in consultation with the Secretary of Defense, shall determine in which service the individual shall serve. In cases of hardship as determined by the Secretary of Transportation, the Secretary of Transportation may waive this paragraph in whole or in part.

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

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

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

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

#### “§51307. Places of training

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

“(1) on vessels owned or subsidized by the United States Government;

“(2) on other documented vessels, with the permission of the owner; and

“(3) in shipyards or plants and with industrial or educational organizations.

#### “§51308. Uniforms, textbooks, and transportation allowances

“The Secretary of Transportation shall provide cadets at the United States Merchant Marine Academy—

“(1) all required uniforms and textbooks; and

“(2) allowances for transportation (including reimbursement of traveling expenses) when traveling under orders as a cadet.

#### “§51309. Academic degree

“(a) BACHELOR’S DEGREE.—

“(1) IN GENERAL.—The Superintendent of the United States Merchant Marine Academy may confer the degree of bachelor of science on an individual who—

“(A) has met the conditions prescribed by the Secretary of Transportation; and

“(B) if a citizen of the United States, has passed the examination for a merchant marine officer’s license.

“(2) EFFECT OF PHYSICAL DISQUALIFICATION.—An individual not allowed to take the examination for a merchant marine officer’s license only because of physical disqualification may not be denied a degree for not taking the examination.

“(b) MASTER’S DEGREE.—The Superintendent of the Academy may confer a master’s degree on an individual who has met the conditions prescribed by the Secretary. A master’s degree program may be funded through non-appropriated funds. To maintain the appropriate academic standards, the program shall be accredited by the appropriate accreditation body. The Secretary may prescribe regulations necessary to administer such a program.

“(c) GRADUATION NOT ENTITLEMENT TO HOLD LICENSE.—Graduation from the Academy does not entitle an individual to hold a license authorizing service on a merchant vessel.

#### “§51310. Deferment of service obligation under cadet commitment agreements

“The Secretary of Transportation may defer the service commitment of an individual under section 51306(a)(5) of this title (as specified in the cadet commitment agreement) for not more



than 2 years if the individual is engaged in a graduate course of study approved by the Secretary. However, deferment of service as a commissioned officer under section 51306(a)(5) must be approved by the Secretary of the military department that has jurisdiction over the service or by the Secretary of Commerce for service with the National Oceanic and Atmospheric Administration.

**“§51311. Midshipman status in the Naval Reserve**

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

“(b) APPOINTMENT.—

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

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

“(A) issued an identification card (referred to as a “military ID card”); and

“(B) entitled to all rights and privileges in accordance with the same eligibility criteria as apply to other members of the Ready Reserve of the reserve components of the armed forces.

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

**“§51312. Board of Visitors**

“(a) IN GENERAL.—A Board of Visitors to the United States Merchant Marine Academy shall be established, for a term of 2 years commencing at the beginning of each Congress, to visit the Academy annually on a date determined by the Secretary of Transportation and to make recommendations on the operation of the Academy.

“(b) APPOINTMENT.—

“(1) IN GENERAL.—The Board shall be composed of—

“(A) 2 Senators appointed by the chairman of the Committee on Commerce, Science, and Transportation of the Senate;

“(B) 3 Members of the House of Representatives appointed by the chairman of the Committee on Armed Services of the House of Representatives;

“(C) 1 Senator appointed by the Vice President;

“(D) 2 Members of the House of Representatives appointed by the Speaker of the House of Representatives; and

“(E) the chairmen of the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Armed Services of the House of Representatives, as ex officio members.

“(2) SUBSTITUTE APPOINTMENT.—If an appointed member of the Board is unable to visit the Academy as provided in subsection (a), another individual may be appointed as a substitute in the manner provided in paragraph (1).

“(c) STAFF.—The chairmen of the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Armed Services of the House of Representatives may designate staff members of their committees to serve without reimbursement as staff for the Board.

“(d) TRAVEL EXPENSES.—When serving away from home or regular place of business, a member of the Board or a staff member designated under subsection (c) shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5.

**“§51313. Advisory Board**

“(a) IN GENERAL.—An Advisory Board to the United States Merchant Marine Academy shall be established to visit the Academy at least once

during each academic year, for the purpose of examining the course of instruction and management of the Academy and advising the Maritime Administrator and the Superintendent of the Academy.

“(b) APPOINTMENT AND TERMS.—The Board shall be composed of not more than 7 individuals appointed by the Secretary of Transportation. The individuals must be distinguished in education and other fields related to the Academy. Members of the Board shall be appointed for terms of not more than 3 years and may be reappointed. The Secretary shall designate one of the members as chairman.

“(c) TRAVEL EXPENSES.—When serving away from home or regular place of business, a member of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5.

“(d) RELATIONSHIP TO OTHER LAW.—The Federal Advisory Committee Act (5 App. U.S.C.) does not apply to the Board.

**“§51314. Limitation on charges and fees for attendance**

“(a) PROHIBITION.—Except as provided in subsection (b), no charge or fee for tuition, room, or board for attendance at the United States Merchant Marine Academy may be imposed unless the charge or fee is specifically authorized by a law enacted after October 5, 1994.

“(b) EXCEPTION.—The prohibition specified in subsection (a) does not apply with respect to any item or service provided to cadets for which a charge or fee is imposed as of October 5, 1994. The Secretary of Transportation shall notify Congress of any change made by the Academy in the amount of a charge or fee authorized under this subsection.

**“CHAPTER 515—STATE MARITIME ACADEMY SUPPORT 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.

**“§51501. General support program**

“(a) ASSISTANCE TO STATE MARITIME ACADEMIES.—The Secretary of Transportation shall cooperate with and assist State maritime academies in providing instruction to individuals to prepare them for service in the merchant marine of the United States.

“(b) COURSE DEVELOPMENT.—The Secretary shall provide to each State maritime academy guidance and assistance in developing courses on the operation and maintenance of new vessels, on equipment, and on innovations being introduced to the merchant marine of the United States.

**“§51502. Detailing of personnel**

“At the request of the Governor of a State, the President may detail, without reimbursement, personnel of the Navy, the Coast Guard, and the Maritime Service to a State maritime academy to serve as a superintendent, professor, lecturer, or instructor at the academy.

**“§51503. Regional maritime academies**

“The Governors of the States cooperating to sponsor a regional maritime academy shall designate in writing one of those States to conduct the affairs of that academy. A regional maritime academy is eligible for assistance from the United States Government on the same basis as

a State maritime academy sponsored by a single State.

**“§51504. Use of training vessels**

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

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

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

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

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

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

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

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

“(2) maintained in good repair by the Secretary.

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

“(1) is suitable for training purposes; and

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

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

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

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

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

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

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

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

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

“(b) PAYMENTS.—

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

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

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

“(B) \$200,000 for a regional maritime academy.”

**“§51506. Conditions to receiving payments and use of vessels**

“(a) GENERAL CONDITIONS.—As conditions of receiving an annual payment or the use of a vessel under this chapter, a State maritime academy must—

“(1) provide courses of instruction on navigation, marine engineering (including steam and diesel propulsion), the operation and maintenance of new vessels and equipment, and innovations being introduced to the merchant marine of the United States;

“(2) agree in writing to conform to the standards for courses, training facilities, admissions, and instruction that the Secretary of Transportation may establish after consultation with the superintendents of State maritime academies; and

“(3) agree in writing to require, as a condition for graduation, that each individual who is a citizen of the United States and who is attending the academy in a merchant marine officer preparation program pass the examination required for the issuance of a license under section 7101 of this title.

“(b) ADDITIONAL CONDITION TO PAYMENTS OF MORE THAN \$25,000.—As a condition of receiving an annual payment of more than \$25,000 under section 51505 of this title, a State maritime academy also must agree to admit each year a number of citizens of the United States who meet its admission requirements and reside in a State not supporting that academy. The Secretary shall determine the number of individuals to be admitted by each academy under this subsection. The number may not be more than one-third of the total number of individuals attending the academy at any time.

**“§51507. Places of training**

“The Secretary of Transportation may provide for the training of students attending a State maritime academy—

“(1) on vessels owned or subsidized by the United States Government;

“(2) on other documented vessels, with the permission of the owner; and

“(3) in shipyards or plants and with industrial or educational organizations.

**“§51508. Allowances for students**

“Under regulations prescribed by the Secretary of Transportation, a student at a State maritime academy shall receive from the Secretary allowances for transportation (including reimbursement of traveling expenses) when traveling under orders to receive training under section 51507 of this title.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“(f) FAILURE TO CARRY OUT OTHER REQUIREMENTS.—

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

determine in which service the individual shall serve. In cases of hardship as determined by the Secretary of Transportation, the Secretary of Transportation may waive this paragraph in whole or in part.

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

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

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

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

**“§51510. Deferment of service obligation under student incentive payment agreements**

“The Secretary of Transportation may defer the service commitment of an individual under section 51509(d)(5) of this title (as specified in the agreement under section 51509) for not more than 2 years if the individual is engaged in a graduate course of study approved by the Secretary. However, deferment of service as a commissioned officer on active duty must be approved by the Secretary of the affected military department (or the Secretary of Commerce, for service with the National Oceanic and Atmospheric Administration).

**“§51511. Midshipman status in the Naval Reserve**

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

**“CHAPTER 517—OTHER SUPPORT FOR MERCHANT 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.

“(b) EQUIPMENT, SUPPLIES, AND CONTRACTS.—The Secretary may—

“(1) prepare or buy equipment or supplies required for the additional training; and

“(2) without regard to section 3709 of the Revised Statutes (41 U.S.C. 5), make contracts for services the Secretary considers necessary to prepare the equipment and supplies and to supervise and administer the additional training.

**“§51704. Training for maritime oil pollution prevention, response, and clean-up**

“(a) ASSISTANCE IN ESTABLISHING PROGRAM.—The Secretary of Transportation shall assist maritime training institutions approved by the Secretary in establishing a training program for maritime oil pollution prevention, response, and clean-up.

“(b) PROVIDING TRAINING VESSELS.—Subject to subsection (c), the Secretary may provide, with title free of all liens, to maritime training institutions that have a program established under subsection (a), offshore supply vessels and tug/supply vessels that were built in the United States and are in the possession of the Maritime Administration because of a default on a loan guaranteed under chapter 537 of this title.

“(c) REQUIREMENTS.—In addition to any other requirements the Secretary considers appropriate, the following requirements apply to vessels provided under this section:

“(1) The vessel shall be offered to the institution at a location selected by the Secretary.

“(2) The institution shall use the vessel to train students and appropriate maritime industry personnel in oil spill prevention, response, clean-up, and related skills.

“(3) The institution shall make the vessel and qualified students available to appropriate Federal, State, and local oil spill response authorities when there is a maritime oil spill.

“(4) The institution may not sell, trade, charter, donate, scrap, or in any way alter or dispose of the vessel without prior approval of the Secretary.

“(5) The institution may not use the vessel in competition with a privately-owned vessel documented under chapter 121 of this title or titled under the law of a State, unless necessary to carry out this section.

“(6) When the institution can no longer use the vessel for its training program, the institution shall return the vessel to the Secretary. The Secretary shall take possession at the institution and thereafter may provide the vessel to another institution under this section or dispose of the vessel.

**“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.

**“§51901. Awards for individual acts or service**

“(a) GENERAL AUTHORITY.—The Secretary of Transportation may award decorations and medals of appropriate design (including ribbons, ribbon bars, emblems, rosettes, miniature facsimiles, plaques, citations, or other suitable devices or insignia) for individual acts or service in the merchant marine of the United States. The design may be similar to the design of a decoration or medal authorized for members of the armed forces for similar acts or service.

“(b) SPECIFIC AUTHORITY.—The Secretary may award—

“(1) a Merchant Marine Distinguished Service Medal to an individual for outstanding acts, conduct, or valor beyond the line of duty;

“(2) a Merchant Marine Meritorious Service Medal to an individual for meritorious acts, conduct, or valor in the line of duty, but not of the outstanding character that would warrant the award of the Merchant Marine Distinguished Service Medal;

“(3) a decoration or medal to an individual for service during a war, national emergency proclaimed by the President or Congress, or operations by the armed forces outside the continental United States under conditions of danger to life and property; and

“(4) a decoration or medal to an individual for other acts or service of conspicuous gallantry, intrepidity, and extraordinary heroism under conditions of danger to life and property that would warrant a similar decoration or medal for a member of the armed forces.

**“§51902. Gallant Ship Award**

“(a) AWARDS TO VESSELS.—The Secretary of Transportation may award a Gallant Ship Award and a citation to a vessel (including a foreign vessel) participating in outstanding or gallant action in a marine disaster or other emergency to save life or property at sea. The Secretary may award a plaque to the vessel, and a replica of the plaque may be preserved as a permanent historical record.

“(b) AWARDS TO CREWS.—The Secretary of Transportation may award an appropriate citation ribbon bar to the master and each individual serving, at the time of the action, on a vessel issued an award under subsection (a).

“(c) CONSULTATION.—The Secretary of Transportation shall consult with the Secretary of State before awarding an award or citation to a foreign vessel or its crew under this section.

**“§51903. Multiple awards**

“An individual may not be awarded more than one of any type of decoration or medal under this chapter. For each succeeding act or service justifying the same decoration or medal, a suitable device may be awarded to be worn with the decoration or medal.

**“§51904. Presentation to representatives**

“If an individual to be issued an award under this chapter is unable to accept the award personally, the Secretary of Transportation may present the award to an appropriate representative.

**“§51905. Flags and grave markers**

“Except as authorized under another law, the Secretary of Transportation may issue, at no

cost, a flag of the United States and a grave marker to the family or personal representative of a deceased individual who served in the merchant marine of the United States in support of the armed forces of the United States or its allies during a war or national emergency.

**“§51906. Special certificates for civilian service to armed forces**

“(a) GENERAL AUTHORITY.—The Maritime Administrator may issue a special certificate to an individual, or the personal representative of an individual, in recognition of service of that individual in the merchant marine of the United States, if the service has been determined to be active duty under section 401 of the GI Bill Improvement Act of 1977 (Public Law 95–202; 38 U.S.C. 106 note).

“(b) RELATIONSHIP TO OTHER LAWS.—Issuance of a certificate under subsection (a) does not entitle an individual to any rights, privileges, or benefits under a law of the United States.

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

“The Secretary of Transportation may—

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

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

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

“(a) PROHIBITION.—Except as authorized under this chapter, a person may not manufacture, sell, possess, or display a decoration or medal provided for in this chapter.

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

**“CHAPTER 521—MISCELLANEOUS**

“Sec.

“§52101. Reemployment rights for certain merchant seamen.

**“§52101. Reemployment rights for certain merchant seamen**

“(a) IN GENERAL.—An individual who is certified by the Secretary of Transportation under subsection (c) shall be entitled to reemployment rights and other benefits substantially equivalent to the rights and benefits provided for by chapter 43 of title 38 for any member of a reserve component of the armed forces of the United States who is ordered to active duty.

“(b) TIME FOR APPLICATION.—An individual may submit an application for certification under subsection (c) to the Secretary not later than 45 days after the date the individual completes a period of employment described in subsection (c)(1)(A) with respect to which the application is submitted.

“(c) CERTIFICATION DETERMINATION.—Not later than 20 days after the date the Secretary receives from an individual an application for certification under this subsection, the Secretary shall—

“(1) determine whether the individual—

“(A) was employed in the activation or operation of a vessel—

“(i) in the National Defense Reserve Fleet maintained under section 11 of the Merchant Ship Sales Act of 1946 (50 App. U.S.C. 1744) in a period in which the vessel was in use or being activated for use under subsection (b) of that section;

“(ii) requisitioned or purchased under chapter 563 of this title; or

“(iii) owned, chartered, or controlled by the United States Government and used by the Government for a war, armed conflict, national emergency, or maritime mobilization need (including for training purposes or testing for readiness and suitability for mission performance); and

“(B) during the period of that employment, possessed a valid license, certificate of registry, or merchant mariner’s document issued under chapter 71 or 73 of this title; and

“(2) if the Secretary makes affirmative determinations under subparagraphs (A) and (B) of paragraph (1), certify that individual under this subsection.

“(d) EQUIVALENCE TO MILITARY SELECTIVE SERVICE ACT CERTIFICATE.—For purposes of re-employment rights and benefits provided by this section, a certification under subsection (c) shall be considered to be the equivalent of a certificate described in section 9(a) of the Military Selective Service Act (50 App. U.S.C. 459(a)).

“PART C—FINANCIAL ASSISTANCE PROGRAMS”.

(c) CHAPTERS FOLLOWING CHAPTER 531.—Sub-  
title V of title 46, United States Code, is amended by adding at the end the following:

**“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.

**“§53301. Definitions**

“(a) IN GENERAL.—In this chapter:

“(1) CONSTRUCTION CONTRACT.—The term ‘construction contract’ includes, for a taxpayer constructing a new vessel in a shipyard owned by that taxpayer, an agreement between the taxpayer and the Secretary of Transportation for that construction containing provisions the Secretary considers advisable to carry out this chapter.

“(2) NEW VESSEL.—The term ‘new vessel’ means—

“(A) a vessel—

“(i) constructed in the United States after December 31, 1939, constructed with a construction-differential subsidy under title V of the Merchant Marine Act, 1936, or constructed with financing or a financing guarantee under chapter 537 or 575 of this title;

“(ii) documented or agreed with the Secretary to be documented under the laws of the United States; and

“(iii) (I) of a type, size, and speed that the Secretary determines is suitable for use on the high seas or Great Lakes in carrying out this subtitle, but not less than 2,000 gross tons or less than 12 knots speed unless the Secretary certifies in each case that a vessel of lesser tonnage or speed is desirable for use by the United States Government in case of war or national emergency; or

“(II) constructed to replace a vessel bought or requisitioned by the Government; and

“(B) a vessel reconstructed or reconditioned for use only on the Great Lakes, including the Saint Lawrence River and Gulf, if the Secretary finds that the reconstruction or reconditioning will promote the objectives of this subtitle.

“(b) ADDITIONAL TAX-RELATED TERMS.—Other terms used in this chapter have the same meaning as in chapter 1 of the Internal Revenue Code of 1986 (26 U.S.C. ch. 1).

**“§53302. Authority for construction reserve funds**

“(a) GENERAL AUTHORITY.—An eligible person under section 53303 of this title may establish a

construction reserve fund for the construction, reconstruction, reconditioning, or acquisition of a new vessel or for other purposes authorized by this chapter.

“(b) APPLICATION OF CERTAIN LAWS AND REGULATIONS.—The fund shall be established, maintained, expended, and used as provided by this chapter and regulations prescribed jointly by the Secretary of Transportation and the Secretary of the Treasury.

**“§53303. Persons eligible to establish funds**

“A construction reserve fund may be established by a citizen of the United States that—

“(1) is operating a vessel in the foreign or domestic commerce of the United States or in the fisheries;

“(2) owns, in whole or in part, a vessel being operated in the foreign or domestic commerce of the United States or in the fisheries;

“(3) was operating a vessel in the foreign or domestic commerce of the United States or in the fisheries when it was bought or requisitioned by the United States Government;

“(4) owned, in whole or in part, a vessel being operated in the foreign or domestic commerce of the United States or in the fisheries when it was bought or requisitioned by the Government; or

“(5) had acquired or was having constructed a vessel to operate in the foreign or domestic commerce of the United States or in the fisheries when it was bought or requisitioned by the Government.

**“§53304. Vessel ownership**

“In this chapter, a vessel is deemed to be constructed or acquired by a taxpayer if constructed or acquired by a corporation when the taxpayer owns at least 95 percent of each class of stock of the corporation.

**“§53305. Eligible fund deposits**

“A construction reserve fund may include deposits of—

“(1) the proceeds from the sale of a vessel;

“(2) indemnities for the loss of a vessel;

“(3) earnings from the operation of a documented vessel and from services incident to the operation; and

“(4) interest or other amounts accrued on deposits in the fund.

**“§53306. Recognition of gain for tax purposes**

“(a) DEFINITIONS.—In this section, the terms ‘net proceeds’ and ‘net indemnity’ mean the sum of—

“(1) the adjusted basis of the vessel; and

“(2) the amount of gain the taxpayer would recognize without regard to this section.

“(b) RECOGNITION OF GAIN.—In computing net income under the income or excess profits tax laws of the United States, a taxpayer does not recognize a gain on the sale or the actual or constructive total loss of a vessel if the taxpayer—

“(1) deposits an amount equal to the net proceeds of the sale or the net indemnity for the loss in a construction reserve fund within 60 days after receiving the payment of proceeds or indemnity; and

“(2) elects under this section not to recognize the gain.

“(c) WHEN ELECTION MUST BE MADE.—

“(1) IN GENERAL.—Except as provided in paragraph (2), the taxpayer must make the election referred to in subsection (b) in the taxpayer’s income tax return for the taxable year in which the gain was realized.

“(2) RECEIPT AFTER TAXABLE YEAR.—If the vessel is bought or requisitioned by the United States Government, or is lost, and the taxpayer receives payment for the vessel or indemnity for the loss from the Government after the end of the taxable year in which it was bought, requisitioned, or lost, the taxpayer must make the election referred to in subsection (b) within 60 days after receiving the payment or indemnity, on a form prescribed by the Secretary of the Treasury.

“(d) EFFECT OF STATUTE OF LIMITATION.—If the taxpayer makes an election under subsection

(c)(2), and computation or recomputation under this section is otherwise allowable but is prevented by a statute of limitation on the date the election is made or within 6 months thereafter, the computation or recomputation nevertheless shall be made notwithstanding the statute if the taxpayer files a claim for the computation or recomputation within 6 months after the date of making the election.

**“§53307. Basis for determining gain or loss and for depreciating new vessels**

“Under the income or excess profits tax laws of the United States, the basis for determining a gain or loss and for depreciation of a new vessel constructed, reconstructed, reconditioned, or acquired by the taxpayer, or for which purchase-money indebtedness is liquidated as provided in section 53310 of this title, with amounts from a construction reserve fund, shall be reduced by that part of the deposits in the fund expended in the construction, reconstruction, reconditioning, acquisition, or liquidation of purchase-money indebtedness of the new vessel that represents a gain not recognized for tax purposes under section 53306 of this title.

**“§53308. Order and proportions of deposits and withdrawals**

“In this chapter—

“(1) if the net proceeds of a sale or the net indemnity for a loss is deposited in more than one deposit, the amount consisting of the gain shall be deemed to be deposited first;

“(2) amounts expended, obligated, or otherwise withdrawn shall be applied against the amounts deposited in the fund in the order of deposit; and

“(3) if a deposit consists in part of a gain not recognized under section 53306 of this title, any expenditure, obligation, or withdrawal applied against that deposit shall be deemed to be a gain in the proportion that the part of the deposit consisting of a gain bears to the total amount of the deposit.

**“§53309. Accumulation of deposits**

“For any taxable year, amounts on deposit in a construction reserve fund on the last day of the taxable year, for which the requirements of section 53310 of this title have been satisfied (to the extent they apply on the last day of the taxable year), are deemed to have been retained for the reasonable needs of the business within the meaning of section 537(a) of the Internal Revenue Code of 1986 (26 U.S.C. 537(a)).

**“§53310. Obligation of deposits and period for construction of certain vessels**

“(a) APPLICATION OF SECTIONS 53306 AND 53309.—Sections 53306 and 53309 of this title apply to a deposit in a construction reserve fund only if, within 3 years after the date of the deposit (and any extension under subsection (c))—

“(1)(A) a contract is made for the construction or acquisition of a new vessel or, with the approval of the Secretary of Transportation, for a part interest in a new vessel or for the reconstruction or reconditioning of a new vessel;

“(B) the deposit is expended or obligated for expenditure under that contract;

“(C) at least 12.5 percent of the construction or contract price of the vessel is paid or irrevocably committed for payment; and

“(D) the plans and specifications for the vessel are approved by the Secretary to the extent the Secretary considers necessary; or

“(2) the deposit is expended or obligated for expenditure for the liquidation of existing or subsequently incurred purchase-money indebtedness to a person not a parent company of, or a company affiliated or associated with, the mortgagor on a new vessel.

“(b) ADDITIONAL REQUIREMENTS FOR CERTAIN VESSELS.—In addition to the requirements of subsection (a)(1), for a vessel not constructed under a construction-differential subsidy contract or not bought from the Secretary of Transportation—

“(1) at least 5 percent of the construction (or, if the contract covers more than one vessel, at

least 5 percent of the construction of the first vessel) must be completed within 6 months after the date of the construction contract (or within the period of an extension under subsection (c)), as estimated by the Secretary and certified by the Secretary to the Secretary of the Treasury; and

“(2) construction under the contract must be completed with reasonable dispatch thereafter.

“(c) EXTENSIONS.—The Secretary of Transportation may grant extensions of the period within which the deposits must be expended or obligated or within which the construction must have progressed to the extent of 5 percent completion under this section. However, the extensions may not be for a total of more than 2 years for the expenditure or obligation of deposits or one year for the progress of construction.

**“§53311. Taxation of deposits on failure of conditions**

“A deposited gain, if otherwise taxable income under the law applicable to the taxable year in which the gain was realized, shall be included in gross income for that taxable year, except for purposes of the declared value excess profits tax and the capital stock tax, if—

“(1) the deposited gain is not expended or obligated within the appropriate period under section 53310 of this title;

“(2) the deposited gain is withdrawn before the end of that period;

“(3) the construction related to that deposited gain has not progressed to the extent of 5 percent of completion within the appropriate period under section 53310 of this title; or

“(4) the Secretary of Transportation finds and certifies to the Secretary of the Treasury that, for causes within the control of the taxpayer, the entire construction related to that deposited gain is not completed with reasonable dispatch.

**“§53312. Assessment and collection of deficiency tax**

“Notwithstanding any other provision of law, a deficiency in tax for a taxable year resulting from the inclusion of an amount in gross income as provided by section 53311 of this title, and the amount to be treated as a deficiency under section 53311 instead of as an adjustment for the declared value excess profits tax, may be assessed or a civil action may be brought to collect the deficiency without assessment, at any time. Interest on a deficiency or amount to be treated as a deficiency does not begin until the date the deposited gain or part of the deposited gain in question is required to be included in gross income under section 5111.

**“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.

**“§53501. Definitions**

“In this chapter:

“(1) AGREEMENT VESSEL.—The term ‘agreement vessel’ means—

“(A) an eligible vessel or a qualified vessel that is subject to an agreement under this chapter; and

“(B) a barge or container that is part of the complement of a vessel described in subparagraph (A) if provided for in the agreement.

“(2) ELIGIBLE VESSEL.—The term ‘eligible vessel’ means—

“(A) a vessel—

“(i) constructed in the United States (and, if reconstructed, reconstructed in the United States), constructed outside the United States but documented under the laws of the United States on April 15, 1970, or constructed outside the United States for use in the United States foreign trade pursuant to a contract made before April 15, 1970;

“(ii) documented under the laws of the United States; and

“(iii) operated in the foreign or domestic trade of the United States or in the fisheries of the United States; and

“(B) a commercial fishing vessel—

“(i) constructed in the United States and, if reconstructed, reconstructed in the United States;

“(ii) of at least 2 net tons but less than 5 net tons;

“(iii) owned by a citizen of the United States;

“(iv) having its home port in the United States; and

“(v) operated in the commercial fisheries of the United States.

“(3) JOINT REGULATIONS.—The term ‘joint regulations’ means regulations prescribed jointly by the Secretary and the Secretary of the Treasury under section 53502(b) of this title.

“(4) NONCONTIGUOUS TRADE.—The term ‘noncontiguous trade’ means—

“(A) trade between—

“(i) one of the contiguous 48 States; and

“(ii) Alaska, Hawaii, Puerto Rico, or an insular territory or possession of the United States; and

“(B) trade between—

“(i) a place in Alaska, Hawaii, Puerto Rico, or an insular territory or possession of the United States; and

“(ii) another place in Alaska, Hawaii, Puerto Rico, or an insular territory or possession of the United States.

“(5) QUALIFIED VESSEL.—The term ‘qualified vessel’ means—

“(A) a vessel—

“(i) constructed in the United States (and, if reconstructed, reconstructed in the United States), constructed outside the United States but documented under the laws of the United States on April 15, 1970, or constructed outside the United States for use in the United States foreign trade pursuant to a contract made before April 15, 1970;

“(ii) documented under the laws of the United States; and

“(iii) agreed, between the Secretary and the person maintaining the capital construction fund established under section 53503 of this title, to be operated in the United States foreign, Great Lakes, or noncontiguous domestic trade or in the fisheries of the United States; and

“(B) a commercial fishing vessel—

“(i) constructed in the United States and, if reconstructed, reconstructed in the United States;

“(ii) of at least 2 net tons but less than 5 net tons;

“(iii) owned by a citizen of the United States;

“(iv) having its home port in the United States; and

“(v) operated in the commercial fisheries of the United States.

“(6) SECRETARY.—The term ‘Secretary’ means—

“(A) the Secretary of Commerce with respect to an eligible vessel or a qualified vessel operated or to be operated in the fisheries of the United States; and

“(B) the Secretary of Transportation with respect to other vessels.

“(7) UNITED STATES FOREIGN TRADE.—The term ‘United States foreign trade’ includes those

areas in domestic trade in which a vessel built with a construction-differential subsidy is allowed to operate under the first sentence of section 506 of the Merchant Marine Act, 1936.

“(8) VESSEL.—The term ‘vessel’ includes—

“(A) cargo handling equipment that the Secretary determines is intended for use primarily on the vessel; and

“(B) an ocean-going towing vessel, an ocean-going barge, or a comparable towing vessel or barge operated on the Great Lakes.

**“§53502. Regulations**

“(a) IN GENERAL.—Except as provided in subsection (b), the Secretary shall prescribe regulations to carry out this chapter.

“(b) TAX LIABILITY.—The Secretary and the Secretary of the Treasury shall prescribe joint regulations for the determination of tax liability under this chapter.

**“§53503. Establishing a capital construction fund**

“(a) IN GENERAL.—A citizen of the United States owning or leasing an eligible vessel may make an agreement with the Secretary under this chapter to establish a capital construction fund for the vessel.

“(b) ALLOWABLE PURPOSE.—The purpose of the agreement shall be to provide replacement vessels, additional vessels, or reconstructed vessels, built in the United States and documented under the laws of the United States, for operation in the United States foreign, Great Lakes, or noncontiguous 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) IN GENERAL.—With the approval of the Secretary, an agreed percentage (but not more than 60 percent) of the assets of the fund may be invested in the stock of domestic corporations that—

“(A) is fully listed and registered on an exchange registered with the Securities and Exchange Commission as a national securities exchange; and

“(B) would be acquired by a prudent investor seeking a reasonable income and the preservation of capital.

“(2) PREFERRED STOCK.—The preferred stock of a corporation is deemed to satisfy the requirements of this subsection, even though it may not be registered and listed because it is nonvoting stock, if the common stock of the corporation satisfies the requirements and the preferred stock otherwise would satisfy the requirements.

“(c) MAINTAINING AGREED PERCENTAGE.—If at any time the fair market value of the stock in the fund is more than the agreed percentage of the assets in the fund, any subsequent investment of amounts deposited in the fund, and any subsequent withdrawal from the fund, shall be made in a way that tends to restore the fair market value of the stock to not more than the agreed percentage.

“§53507. Nontaxation of deposits

“(a) TAX TREATMENT.—Subject to subsection (b), under the Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.)—

“(1) taxable income (determined without regard to this chapter and section 7518 of such Code (26 U.S.C. 7518)) for the taxable year shall be reduced by the amount deposited for the taxable year out of amounts referred to in section 53505(a)(1) of this title;

“(2) a gain from a transaction referred to in section 53505(a)(3) of this title shall not be taken into account if an amount equal to the net proceeds (as defined in joint regulations) from the transaction is deposited in the fund;

“(3) the earnings (including gains and losses) from the investment and reinvestment of amounts held in the fund shall not be taken into account;

“(4) the earnings and profits of a corporation (within the meaning of section 316 of such Code (26 U.S.C. 316)) shall be determined without regard to this chapter and section 7518 of such Code (26 U.S.C. 7518); and

“(5) in applying the tax imposed by section 531 of such Code (26 U.S.C. 531), amounts held in the fund shall not be taken into account.

“(b) CONDITION.—This section applies to an amount only if the amount is deposited in the fund under the agreement within the time provided in joint regulations.

“§53508. Separate accounts within a fund

“(a) IN GENERAL.—A capital construction fund shall have three accounts:

“(1) The capital account.

“(2) The capital gain account.

“(3) The ordinary income account.

“(b) CAPITAL ACCOUNT.—The capital account shall consist of—

“(1) amounts referred to in section 53505(a)(2) of this title;

“(2) amounts referred to in section 53505(a)(3) of this title, except that portion representing a gain not taken into account because of section 53507(a)(2) of this title;

“(3) the percentage applicable under section 243(a)(1) of the Internal Revenue Code of 1986 (26 U.S.C. 243(a)(1)) of any dividend received by the fund for which the person maintaining the fund would be allowed (were it not for section 53507(a)(3) of this title) a deduction under section 243 of such Code (26 U.S.C. 243); and

“(4) interest income exempt from taxation under section 103 of such Code (26 U.S.C. 103).

“(c) CAPITAL GAIN ACCOUNT.—The capital gain account shall consist of—

“(1) amounts representing capital gains on assets held for more than 6 months and referred to in section 53505(a)(3) or (4) of this title; minus

“(2) amounts representing capital losses on assets held in the fund for more than 6 months.

“(d) ORDINARY INCOME ACCOUNT.—The ordinary income account shall consist of—

“(1) amounts referred to in section 53505(a)(1) of this title;

“(2)(A) amounts representing capital gains on assets held for not more than 6 months and referred to in section 53505(a)(3) or (4) of this title; minus

“(B) amounts representing capital losses on assets held in the fund for not more than 6 months;

“(3) interest (except tax-exempt interest referred to in subsection (b)(4)) and other ordinary income (except any dividend referred to in paragraph (5)) received on assets held in the fund;

“(4) ordinary income from a transaction described in section 53505(a)(3) of this title; and

“(5) that portion of any dividend referred to in subsection (b)(3) not taken into account under subsection (b)(3).

“(e) WHEN LOSSES ALLOWED.—Except on termination of a fund, capital losses referred to in subsection (c) or (d)(2) shall be allowed only as an offset to gains referred to in subsection (c) or (d)(2), respectively.

“§53509. Qualified withdrawals

“(a) IN GENERAL.—Subject to subsection (b), a withdrawal from a capital construction fund is a qualified withdrawal if it is made under the terms of the agreement and is for—

“(1) the acquisition, construction, or reconstruction of a qualified vessel or a barge or container that is part of the complement of a qualified vessel; or

“(2) the payment of the principal on indebtedness incurred in the acquisition, construction, or reconstruction of a qualified vessel or a barge or container that is part of the complement of a qualified vessel.

“(b) BARGES AND CONTAINERS.—Except as provided in regulations prescribed by the Secretary, subsection (a) applies to a barge or container only if it is constructed in the United States.

“(c) TREATMENT AS NONQUALIFIED WITHDRAWAL.—Under joint regulations, if the Secretary determines that a substantial obligation under an agreement is not being fulfilled, the Secretary, after notice and opportunity for a hearing to the person maintaining the fund, may treat any amount in the fund as an amount withdrawn from the fund in a nonqualified withdrawal.

“§53510. Tax treatment of qualified withdrawals and basis of property

“(a) ORDER OF WITHDRAWALS.—A qualified withdrawal from a capital construction fund shall be treated as made—

“(1) first from the capital account;

“(2) second from the capital gain account; and

“(3) third from the ordinary income account.

“(b) ORDINARY INCOME ACCOUNT WITHDRAWALS.—If a portion of a qualified withdrawal for a vessel, barge, or container is made from the ordinary income account, the basis of the vessel, barge, or container shall be reduced by an amount equal to that portion.

“(c) CAPITAL GAIN ACCOUNT WITHDRAWALS.—If a portion of a qualified withdrawal for a vessel, barge, or container is made from the capital gain account, the basis of the vessel, barge, or container shall be reduced by an amount equal to that portion.

“(d) WITHDRAWALS TO PAY PRINCIPAL.—If a portion of a qualified withdrawal to pay the principal on indebtedness is made from the ordinary income account or the capital gain ac-

count, an amount equal to the total reduction that would be required by subsections (b) and (c) if the withdrawal were a qualified withdrawal for a purpose described in those subsections shall be applied, in the order provided in joint regulations, to reduce the basis of vessels, barges, and containers owned by the person maintaining the fund. The remaining amount of the withdrawal shall be treated as a nonqualified withdrawal.

“(e) GAIN ON PROPERTY WITH REDUCED BASIS.—If property, the basis of which was reduced under subsection (b), (c), or (d), is disposed of, any gain realized on the disposition, to the extent it does not exceed the total reduction in the basis of the property under those subsections, shall be treated as an amount referred to in section 53511(c)(1) of this title withdrawn on the date of disposition of the property. Subject to conditions prescribed in joint regulations, this subsection does not apply to a disposition if there is a redeposit, in an amount determined under joint regulations, that restores the fund as far as practicable to the position it was in before the withdrawal.

“§53511. Tax treatment of nonqualified withdrawals

“(a) IN GENERAL.—Except as provided in section 53513 of this title, a withdrawal from a fund that is not a qualified withdrawal shall be treated as a nonqualified withdrawal.

“(b) ORDER OF WITHDRAWALS.—A nonqualified withdrawal shall be treated as made—

“(1) first from the ordinary income account;

“(2) second from the capital gain account; and

“(3) third from the capital account.

“(c) TAX TREATMENT.—For purposes of the Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.)—

“(1) a nonqualified withdrawal from the ordinary income account shall be included in income as an item of ordinary income for the taxable year in which the withdrawal is made;

“(2) a nonqualified withdrawal from the capital gain account shall be included in income for the taxable year in which the withdrawal is made as an item of gain realized during that year from the disposition of an asset held for more than 6 months; and

“(3) for the period through the last date prescribed for payment of tax for the taxable year in which the withdrawal is made—

“(A) no interest shall be payable under section 6601 of such Code (26 U.S.C. 6601) and no addition to the tax shall be payable under section 6651 of such Code (26 U.S.C. 6651);

“(B) interest on the amount of the additional tax attributable to an amount treated as a nonqualified withdrawal from the ordinary income account or the capital gain account shall be paid at the rate determined under subsection (d) from the last date prescribed for payment of the tax for the taxable year for which the amount was deposited in the fund; and

“(C) no interest shall be payable on amounts treated as withdrawn on a last-in-first-out basis under section 53512 of this title.

“(d) INTEREST RATE.—The rate of interest under subsection (c)(3)(B) for a nonqualified withdrawal made in a taxable year beginning after 1971 shall be determined and published jointly by the Secretary and the Secretary of the Treasury. The rate shall be such that its relationship to 8 percent is comparable, as determined by the Secretaries under joint regulations, to the relationship between—

“(1) the money rates and investment yields for the calendar year immediately before the beginning of the taxable year; and

“(2) the money rates and investment yields for the calendar year 1970.

“(e) NONQUALIFIED WITHDRAWALS.—

“(1) IN GENERAL.—The following applicable percentage of any amount that remains in a capital construction fund at the close of the following specified taxable year following the taxable year for which the amount was deposited shall be treated as a nonqualified withdrawal:

**"If the amount remains in the fund at**

**The applicable percentage is—**

the close of the—	
"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.

"(2) **EARNINGS.**—The earnings of a capital construction fund for any taxable year (except net gains) shall be treated under this subsection as an amount deposited for the taxable year.

"(3) **CONTRACT FOR QUALIFIED WITHDRAWAL.**—Under paragraph (1), an amount shall not be treated as remaining in a capital construction fund at the close of a taxable year to the extent there is a binding contract at the close of the taxable year for a qualified withdrawal of the amount for an identified item for which the withdrawal may be made.

"(4) **EXCESS EARNINGS.**—If the Secretary determines that the balance in a capital construction fund exceeds the amount appropriate to meet the vessel construction program objectives of the person that established the fund, the amount of the excess shall be treated as a nonqualified withdrawal under paragraph (1) unless the person develops appropriate program objectives within 3 years to dissipate the excess.

"(5) **AMOUNTS IN FUND ON JANUARY 1, 1987.**—Under this subsection, amounts in a capital construction fund on January 1, 1987, shall be treated as having been deposited in that fund on that date.

**"(f) TAX DETERMINATIONS.—**

"(1) **IN GENERAL.**—For a taxable year for which there is a nonqualified withdrawal (including an amount treated as a nonqualified withdrawal under subsection (e)), the tax imposed by chapter 1 of the Internal Revenue Code of 1986 (26 U.S.C. ch. 1) shall be determined by—

"(A) excluding the withdrawal from gross income; and

"(B) increasing the tax imposed by chapter 1 of such Code by the product of the amount of the withdrawal and the highest tax rate specified in section 1 (or section 11 for a corporation) of such Code (26 U.S.C. 1, 11).

"(2) **MAXIMUM TAX RATE.**—For that portion of a nonqualified withdrawal made from the capital gain account during a taxable year to which section 1(h) or 1201(a) of such Code (26 U.S.C. 1(h), 1201(a)) applies, the tax rate used under paragraph (1)(B) may not exceed 15 percent (or 34 percent for a corporation).

"(3) **TAX BENEFIT RULE.**—If any portion of a nonqualified withdrawal is properly attributable to deposits (except earnings on deposits) made by the taxpayer in a taxable year that did not reduce the taxpayer's liability for tax under chapter 1 of such Code (26 U.S.C. ch. 1) for a taxable year before the taxable year in which the withdrawal occurs—

"(A) that portion shall not be taken into account under paragraph (1); and

"(B) an amount equal to that portion shall be allowed as a deduction under section 172 of such Code (26 U.S.C. 172) for the taxable year in which the withdrawal occurs.

"(4) **COORDINATION WITH DEDUCTION FOR NET OPERATING LOSSES.**—A nonqualified withdrawal excluded from gross income under paragraph (1) shall be excluded in determining taxable income under section 172(b)(2) of such Code (26 U.S.C. 172(b)(2)).

**"§53512. FIFO and LIFO withdrawals**

"(a) **FIFO.**—Except as provided in subsection (b), an amount withdrawn from an account under this chapter shall be treated as withdrawn on a first-in-first-out basis.

"(b) **LIFO.**—An amount withdrawn from an account under this chapter shall be treated as withdrawn on a last-in-first-out basis if it is—

"(1) a nonqualified withdrawal for research, development, and design expenses incident to new and advanced vessel design, machinery, and equipment; or

"(2) an amount treated as a nonqualified withdrawal under section 53510(d) of this title.

**"§53513. Corporate reorganizations and partnership changes**

"Under joint regulations—

"(1) a transfer of a capital construction fund from one person to another person in a transaction to which section 381 of the Internal Revenue Code of 1986 (26 U.S.C. 381) applies may be treated as if the transaction is not a nonqualified withdrawal; and

"(2) a similar rule shall be applied to a continuation of a partnership (within the meaning of subchapter K of chapter 1 of such Code (26 U.S.C. 701 et seq.)).

**"§53514. Relationship of old fund to new fund**

"(a) **DEFINITION.**—In this section, the term 'old fund' means a capital construction fund maintained before October 21, 1970.

"(b) **ELECTION TO MAINTAIN OLD FUND.**—A person maintaining an old fund may elect to continue the old fund, but may not—

"(1) hold amounts in the old fund beyond the expiration date provided in the agreement under which the old fund is maintained (determined without regard to an extension or renewal made after April 14, 1970); or

"(2) maintain simultaneously the old fund and a new fund established under this chapter.

"(c) **APPLICATION OF NEW FUND AGREEMENT TO OLD FUND AMOUNTS.**—If a person makes an agreement under this chapter to establish a new fund, the person may agree to extend the agreement to some or all of the amounts in an old fund. Each item in the old fund to be transferred shall be transferred in a nontaxable transaction to the appropriate account in the new fund. For purposes of section 53511(c)(3) of this title, the date of the deposit of an item so transferred shall be July 1, 1971, or the date of the deposit in the old fund, whichever is later.

**"§53515. Records and reports**

"A person maintaining a fund under this chapter shall keep records and make reports as required by the Secretary or the Secretary of the Treasury.

**"§53516. Termination of agreement after change in regulations**

"If, after an agreement has been made under this chapter, a change is made either in the joint regulations or in the regulations prescribed by the Secretary under this chapter that could have a substantial effect on the rights or duties of a person maintaining a fund under this chapter, that person may terminate the agreement.

**"§53517. Reports**

"(a) **IN GENERAL.**—Within 120 days after the close of each calendar year, the Secretary of Transportation and the Secretary of Commerce each shall provide the Secretary of the Treasury a written report on the capital construction funds under the particular Secretary's jurisdiction for the calendar year.

"(b) **CONTENTS.**—The report shall state the name and taxpayer identification number of each person—

"(1) establishing a capital construction fund during the calendar year;

"(2) maintaining a capital construction fund on the last day of the calendar year;

"(3) terminating a capital construction fund during the calendar year;

"(4) making a deposit to or withdrawal from a capital construction fund during the calendar year, and the amount of the deposit or withdrawal; or

"(5) having been determined during the calendar year to have failed to fulfill a substantial obligation under a capital construction fund agreement to which the person is a party.

**"CHAPTER 537—LOANS AND GUARANTEES**

**"SUBCHAPTER I—GENERAL**

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"53704. Funding limits.

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**"SUBCHAPTER II—DEFAULT PROVISIONS**

"53721. Rights of obligee.

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**"SUBCHAPTER III—PARTICULAR PROJECTS**

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"53733. Shipyard modernization and improvement.

"53734. Replacement of vessels because of changes in operating standards.

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**"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

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

"(4) **ELIGIBLE EXPORT VESSEL.**—The term 'eligible export vessel' means a vessel that—

“(A) is constructed, reconstructed, or reconditioned in the United States for use in worldwide trade; and

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

“(5) FISHERY FACILITY.—

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

“(i) for operations on land—

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

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

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

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

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

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

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

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

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

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

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

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

“(6) FISHING VESSEL.—The term ‘fishing vessel’ has the meaning given that term in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802), and any reference in this chapter to a vessel designed principally for commercial use in the fishing trade or industry is deemed to be a reference to a fishing vessel.

“(7) MORTGAGE.—The term ‘mortgage’ includes—

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

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

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

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

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

“(9) OBLIGEE.—The term ‘obligee’ means the holder of an obligation.

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

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

“(A) equipment installed on the facility or vessel to use the electricity or other form of en-

ergy to produce, process, refine, or manufacture a product;

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

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

“(12) SECRETARY.—The term ‘Secretary’ means—

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

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

“(13) VESSEL.—The term ‘vessel’ means any type of vessel, whether in existence or under construction, including—

“(A) a cargo vessel;

“(B) a passenger vessel;

“(C) a combination cargo and passenger vessel;

“(D) a tanker;

“(E) a tug or towboat;

“(F) a barge;

“(G) a dredge;

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

“(I) an oceanographic research vessel;

“(J) an instruction vessel;

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

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

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

#### “§53702. General authority

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

“(b) DIRECT LOANS FOR FISHERIES.—

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

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

#### “§53703. Application procedures

“(a) TIME FOR DECISION.—

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

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

“(b) CERTIFICATION OF REVIEW.—The Secretary may not guarantee or make a commit-

ment to guarantee an obligation under this chapter unless the Secretary certifies that a full and fair consideration of all the regulatory requirements, including economic soundness and financial requirements applicable to the obligor and related parties, and a thorough assessment of the technical, economic, and financial aspects of the loan application, has been made.

#### “§53704. Funding limits

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

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

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

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

“(c) LIMITS BASED ON RISK FACTORS.—

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

“(2) SYSTEM OF RISK CATEGORIES.—The Secretary shall—

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

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

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

“(3) USE OF SYSTEM.—

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

#### “§53705. Pledge of United States Government

“(a) FULL FAITH AND CREDIT.—The full faith and credit of the United States Government is pledged to the payment of a guarantee made under this chapter, for both principal and interest, including interest (as may be provided for in the guarantee) accruing between the date of default under a guaranteed obligation and the date of payment in full of the guarantee.

“(b) INCONTESTABILITY.—A guarantee or commitment to guarantee made under this chapter is conclusive evidence of the eligibility of the obligation for the guarantee. The validity of a guarantee or commitment to guarantee made under this chapter is incontestable.

#### “§53706. Eligible purposes of obligations

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

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

“(i) in the coastwise or intercoastal trade;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“(7) Financing or refinancing (including reimbursement of an obligor for expenditures previously made for) the purchase of an individual fishing quota in accordance with section 303(d)(4) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1853(d)(4)).

“(b) NON-VESSELS TREATED AS VESSELS.—An obligation guaranteed under subsection (a)(6) or (7) shall be treated, for purposes of this chapter, in the same manner and to the same extent as an obligation that aids in financing the construction, reconstruction, reconditioning, or purchase of a vessel, except with respect to provisions that by their nature can only be applied to vessels.

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

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

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

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

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

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

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

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

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

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

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

“(1) held liable, or the vessel has been held liable in rem, for a civil penalty under section

308 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1858) and the operator has not paid the penalty;

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

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

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

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

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

“(2) the waiver shall provide for the imposition of other requirements on the obligor designed to compensate for the increased risk associated with the obligor's failure to meet regulatory requirements applicable to financial condition.

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

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

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

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

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

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

“(5) other relevant criteria; and

“(6) for inland waterways, the need for technical improvements, including increased fuel efficiency or improved safety.

“(b) BY SECRETARY OF COMMERCE.—The Secretary of Commerce may not guarantee or make a commitment to guarantee an obligation under this chapter unless the Secretary finds, at or prior to the time the commitment is made or the guarantee becomes effective, that—

“(1) the property or project for which the obligation will be executed will be economically sound; and

“(2) for a fishing vessel, the purpose of the financing or refinancing is consistent with—

“(A) the wise use of the fisheries resources and the development, advancement, management, conservation, and protection of the fisheries resources; or

“(B) the need for technical improvements, including increased fuel efficiency or improved safety.

“(c) USED FISHING VESSELS AND FACILITIES.—The Secretary of Commerce may not guarantee or make a commitment to guarantee an obligation under this chapter for the purchase of a used fishing vessel or used fishery facility unless the vessel or facility will be—

“(1) reconstructed or reconditioned in the United States and will contribute to the development of the United States fishing industry; or

“(2) used—

“(A) in the harvesting of fish from an underused fishery; or

“(B) for a purpose described in the definition of ‘fishery facility’ in section 53701 of this title with respect to an underused fishery.

“(d) INDEPENDENT ANALYSIS.—The Secretary may make a determination that aspects of an application under this chapter require independent analysis to be conducted by third party experts due to risk factors associated with markets, technology, financial structures, or other risk factors identified by the Secretary. Any independent analysis conducted under this subsection shall be performed by a party chosen by the Secretary.

“(e) ADDITIONAL EQUITY BECAUSE OF INCREASED RISKS.—Notwithstanding any other provision of this chapter, the Secretary may make a determination that an application under this title requires additional equity because of increased risk factors associated with markets, technology, financial structures, or other risk factors identified by the Secretary.

**“§53709. Amount of obligations**

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

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

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

“(b) LIMITATIONS ON AMOUNT BORROWED.—

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

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

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

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

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

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

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

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

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

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

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

“(e) PROHIBITION ON MINIMUM PRINCIPAL AMOUNT.—The Secretary may not establish, as a condition of eligibility for a guarantee under this chapter, a minimum principal amount for an obligation covering the reconstruction or reconditioning of a fishing vessel or fishery facility. For purposes of this chapter, the reconstruction or reconditioning of a fishing vessel or fishery facility does not include the routine minor repair or maintenance of the vessel or facility.

**“§53710. Contents of obligations**

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

“(1) provide for payments by the obligor satisfactory to the Secretary;

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

“(3) have a maturity date satisfactory to the Secretary, but—

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

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

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

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

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

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

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

“(b) PROVISIONS FOR CERTAIN PASSENGER VESSELS.—

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

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

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

“(2) SURRENDER OF VESSEL.—

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

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

“(ii) in class; and

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

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

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

**“§53711. Security interest**

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

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

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

“(a) IN GENERAL.—The Secretary shall monitor the financial condition and operations of the obligor on a regular basis during the term of the guarantee. The Secretary shall document the results of the monitoring on an annual or quarterly basis depending on the condition of the obligor. If the Secretary determines that the financial condition of the obligor warrants additional protections to the Secretary, the Secretary shall take appropriate action under subsection (b). If the Secretary determines that the financial condition of the obligor jeopardizes its continued ability to perform its responsibilities in connection with the guarantee of an obligation by the Secretary, the Secretary shall make an immediate determination whether default should take place and whether further measures described in subsection (b) should be taken to protect the interests of the Secretary while ensuring that program objectives are met.

“(b) CONTRACT PROVISIONS TO PROTECT SECRETARY.—The Secretary shall include provisions in a loan agreement with an obligor that provides additional authority to the Secretary to take action to limit potential losses in connection with a defaulted loan or a loan that is in jeopardy due to the deteriorating financial condition of the obligor. These provisions include requirements for additional collateral or greater equity contributions that are effective upon the occurrence of verifiable conditions relating to the obligor’s financial condition or the status of the vessel or shipyard project.

**“§53713. Administrative fees**

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

“(1) investigating an application for a guarantee;

“(2) appraising property offered as security for a guarantee;

“(3) issuing a commitment;

“(4) providing services related to an escrow fund under section 53715 of this title; and

“(5) inspecting property during construction, reconstruction, or reconditioning.

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

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

“(1) be credited as an offsetting collection to the account that finances the administration of the loan guarantee program;

“(2) be available for expenditure only to pay the costs of activities and services for which the fee is imposed; and

“(3) remain available until expended.

#### “§53714. Guarantee fees

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

“(b) COMPUTATION OF FEE.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### “§53715. Escrow fund

“(a) IN GENERAL.—If the proceeds of an obligation guaranteed under this chapter are to be used to finance the construction, reconstruction, or reconditioning of a vessel that will serve as security for a guarantee under this chapter, the Secretary may accept and hold in escrow, under

an escrow agreement with the obligor, a portion of the proceeds of all obligations guaranteed under this chapter whose proceeds are to be so used which is equal to—

“(1) the excess of—

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

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

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

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

“(c) DISBURSEMENT BEFORE TERMINATION OF AGREEMENT.—

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

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

“(i) the construction, reconstruction, or reconditioning of a vessel used as security for the guarantee; and

“(ii) interest on the obligations;

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

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

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

“(d) PAYMENTS REQUIRED BEFORE DISBURSEMENT.—

“(1) IN GENERAL.—No disbursement shall be made under subsection (c) to any person until the total amount paid by or for the account of the obligor from sources other than the proceeds of the obligation equals at least 25 percent or 12.5 percent, whichever is applicable under section 53709(b) of this title, of the aggregate actual cost of the vessel, as previously approved by the Secretary. If the aggregate actual cost of the vessel has increased since the Secretary's initial approval or if it increases after the first disbursement is permitted under this subsection, then no further disbursements shall be made under subsection (c) until the total amount paid by or for the account of the obligor from sources other than the proceeds of the obligation equals at least 25 percent or 12.5 percent, as applicable, of the increase, as determined by the Secretary, in the aggregate actual cost of the vessel. This paragraph does not require the Secretary to consent to finance any increase in actual cost unless the Secretary determines that such an increase in the obligation meets all the terms and conditions of this chapter or other applicable law.

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

an independent party certifying that the requisite progress in construction, reconstruction, or reconditioning has taken place.

“(e) DISBURSEMENT ON TERMINATION OF AGREEMENT.—

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

“(A) prepay the excess of—

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

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

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

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

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

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

#### “§53716. Deposit fund

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

“(b) AGREEMENT.—The Secretary and an obligor shall make a reserve fund or other collateral account agreement to govern the deposit, withdrawal, retention, use, and reinvestment of cash of the obligor held in the fund. The agreement shall contain—

“(1) terms and conditions required by this section;

“(2) terms that grant to the United States Government a security interest in all amounts deposited into the fund; and

“(3) any additional terms considered by the Secretary to be necessary to protect fully the interests of the Government.

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

“(d) WITHDRAWALS.—

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

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

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

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

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

“(b) **LOAN GUARANTEES BY SECRETARY OF TRANSPORTATION.**—

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

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

“(c) **LOAN GUARANTEES BY SECRETARY OF COMMERCE.**—

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

“(2) **WHEN SUBJECT TO FCRA.**—The Secretary of Commerce shall account for payments and disbursements involving obligations guaranteed under this chapter and subject to FCRA in a separate account in the Treasury established for this purpose.

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

“**§53718. Annual report to Congress**

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

“(1) the size, in dollars, of the portfolio of loans guaranteed;

“(2) the size, in dollars, of projects in the portfolio facing financial difficulties;

“(3) the number and type of projects covered;

“(4) a profile of pending loan applications;

“(5) the amount of appropriations available for new guarantees;

“(6) a profile of each project approved since the last report; and

“(7) a profile of any defaults since the last report.

“**SUBCHAPTER II—DEFAULT PROVISIONS**

“**§53721. Rights of obligee**

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

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

“(2) 90 days from the date of the default.

“(b) **PAYMENTS BY SECRETARY.**—

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

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

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

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

“(c) **ASSUMPTION OF RIGHTS AND OBLIGATIONS BEFORE DEMAND.**—An obligee or the obligee’s agent may not demand payment under this section if the Secretary, before the demand and on terms that may be provided in the obligation or a related agreement, has assumed the obligor’s rights and duties under the obligation and any related agreement and made any payment in default. However, the guarantee of the obligation remains in effect after the Secretary’s assumption.

“**§53722. Actions by Secretary**

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

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

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

“(b) **DEMANDS BY OBLIGEEES.**—

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

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

“(B) 60 days from the date of the Secretary’s notice.

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

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

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

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

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

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

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

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

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

“**§53723. Payments by Secretary and issuance of obligations**

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

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

“(c) **PURCHASE OF OBLIGATIONS.**—The Secretary of the Treasury shall purchase the obli-

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

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

“**§53724. Rights to secured property**

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

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

“**§53725. Actions against obligor**

“(a) **IN GENERAL.**—For a default under a guaranteed obligation or related agreement, the Secretary may take any action against the obligor or another liable party that the Secretary considers necessary to protect the interests of the United States Government. A civil action may be brought in the name of the United States or the obligee. The obligee shall make available to the Government all records and evidence necessary to prosecute the action.

“(b) **TITLE, POSSESSION, AND PURCHASE.**—

“(1) **IN GENERAL.**—The Secretary may—

“(A) accept a conveyance of title to and possession of property from the obligor or another party liable to the Secretary; and

“(B) purchase the property for an amount not greater than the unpaid principal amount of the obligation and interest thereon.

“(2) **PAYMENT OF EXCESS.**—If, through the sale of property, the Secretary receives an amount of cash greater than the unpaid principal amount of the obligation, the unpaid interest on the obligation, and the expenses of collecting those amounts, the Secretary shall pay the excess to the obligor.

“**SUBCHAPTER III—PARTICULAR PROJECTS**

“**§53731. Commercial demonstration ocean thermal energy conversion facilities and plantships**

“(a) **IN GENERAL.**—Under subchapter I of this chapter, the Secretary may guarantee or make a commitment to guarantee the payment of the principal of and interest on an obligation that aids in financing (including reimbursement of an obligor for expenditures previously made for) the construction, reconstruction, or reconditioning of a commercial demonstration ocean thermal energy conversion facility or plantship. This section may be used to guarantee obligations for a total of not more than 5 separate facilities and plantships or a demonstrated 400 megawatt capacity, whichever comes first.

“(b) **APPLICABILITY OF OTHER PROVISIONS.**—Except as otherwise provided in this section, a guarantee or commitment to guarantee under this section is subject to all the provisions applicable to a guarantee or commitment to guarantee under subchapter I of this chapter.

“(c) **ECONOMIC SOUNDNESS.**—The required determination of economic soundness under section 53708 of this title applies to a guarantee or commitment to guarantee for that portion of a facility or plantship not to be supported with appropriated Federal funds.

“(d) **REASONABLENESS OF RISK.**—A guarantee or commitment to guarantee may not be made under this section unless the Secretary of Energy, in consultation with the Secretary, certifies to the Secretary that, for the facility or plantship for which the guarantee or commitment to guarantee is sought, there is sufficient guarantee of performance and payment to lower the risk to the United States Government to a reasonable level. In deciding whether to issue such a certification, the Secretary of Energy shall consider—

“(1) the successful demonstration of the technology to be used in the facility at a scale sufficient to establish the likelihood of technical and economic viability in the proposed market; and

“(2) the need of the United States to develop new and renewable sources of energy and the benefits to be realized from the construction and successful operation of the facility or plantship.

“(e) **AMOUNT OF OBLIGATION.**—The total principal amount of an obligation guaranteed under this section may not exceed 87.5 percent of—

“(1) the actual cost or depreciated actual cost of the facility or plantship; or

“(2) if the facility or plantship is supported with appropriated Federal funds, the total principal amount of that portion of the actual cost or depreciated actual cost for which the obligor is obligated to secure financing under the agreement between the obligor and the Department of Energy or other Federal agency.

“(f) **OTEC DEMONSTRATION FUND.**—

“(1) **IN GENERAL.**—There is a special sub-account, known as the OTEC Demonstration Fund, in the account established under section 53717(b)(1) of this title.

“(2) **USE AND OPERATION.**—The OTEC Demonstration Fund shall be used for obligation guarantees authorized under this section that do not qualify under subchapter I of this chapter. Except as otherwise provided in this section, the OTEC Demonstration Fund shall be operated in the same manner as the parent account. However—

“(A) amounts received by the Secretary under subchapter I of this chapter related to guarantees or commitments to guarantee made under this section shall be deposited only in the OTEC Demonstration Fund; and

“(B) when obligations issued by the Secretary under section 53723 of this title related to the OTEC Demonstration Fund are outstanding, any amount received by the Secretary under subchapter I of this chapter related to ocean thermal energy conversion facilities or plantships shall be deposited in the OTEC Demonstration Fund.

“(3) **TRANSFERS.**—Assets in the OTEC Demonstration Fund may be transferred to the parent account when and to the extent the balance in the OTEC Demonstration Fund exceeds the total guarantees or commitments to guarantee made under this section then outstanding, plus obligations issued by the Secretary under section 53723 of this title related to the OTEC Demonstration Fund.

“(4) **LIABILITY.**—The parent account is not liable for a guarantee or commitment to guarantee made under this section.

“(5) **MAXIMUM UNPAID PRINCIPAL AMOUNT.**—The total unpaid principal amount of the obligations guaranteed with the backing of the OTEC Demonstration Fund and outstanding at any one time may not exceed \$1,650,000,000.

“(g) **ISSUANCE AND PAYMENT OF OBLIGATIONS.**—Section 53723 of this title applies to the OTEC Demonstration Fund. However, obligations issued by the Secretary under that section related to the OTEC Demonstration Fund shall be payable only from proceeds realized by the OTEC Demonstration Fund.

“(h) **TAXATION OF INTEREST.**—Interest on an obligation guaranteed under this section shall be included in gross income under chapter 1 of the Internal Revenue Code of 1986 (26 U.S.C. ch. 1).

“**§53732. Eligible export vessels**

“(a) **APPLICABLE TERMS.**—The Secretary may guarantee an obligation for an eligible export vessel in accordance with—

“(1) the terms applicable under this chapter for vessels documented under the laws of the United States; or

“(2) other terms the Secretary determines are more favorable than those terms and compatible with export credit terms offered by foreign governments for the sale of vessels built in foreign shipyards.

“(b) **INTERAGENCY COUNCIL.**—

“(1) **ESTABLISHMENT.**—There is an inter-agency council to carry out this section.

“(2) **COMPOSITION.**—The council is composed of the following individuals or their designees:

“(A) The Secretary of Transportation, who is the chairman of the council.

“(B) The Secretary of the Treasury.

“(C) The Secretary of State.

“(D) The Assistant to the President for Economic Policy.

“(E) The United States Trade Representative.

“(F) The President and Chairman of the Export-Import Bank of the United States.

“(3) **FUNCTIONS.**—The council shall—

“(A) obtain information on shipbuilding loan guarantees, direct and indirect subsidies, and other favorable treatment of shipyards provided by foreign governments to shipyards in competition with United States shipyards;

“(B) consult regularly with United States shipbuilders to obtain the essential information about international shipbuilding competition on which to set terms for loan guarantees under subsection (a)(2); and

“(C) provide guidance to the Secretary in establishing terms for loan guarantees under subsection (a)(2).

“(4) **ANNUAL REPORT.**—Not later than January 31 of each year, the Secretary shall submit to Congress a report on activities of the Secretary under this section during the preceding year. The report shall include—

“(A) documentation of sources of information about assistance by governments of other countries to shipyards in those countries; and

“(B) a summary of recommendations made to the Secretary during the preceding year about applications submitted to the Secretary during that year for loan guarantees to construct eligible export vessels.

“(c) **REQUIRED FINDINGS.**—

“(1) **BENEFIT TO SHIPBUILDING INDUSTRY.**—The Secretary may not guarantee or make a commitment to guarantee an obligation for an eligible export vessel unless the Secretary finds that the construction, reconstruction, or reconditioning of the vessel will aid in the transition of United States shipyards to commercial activities or will preserve shipbuilding assets that would be essential in time of war or national emergency.

“(2) **PRIORITY OF DOCUMENTED VESSELS.**—The Secretary may not make a commitment to guarantee an obligation for an eligible export vessel unless the Secretary determines that making the commitment will not result in denial of an economically sound application for a commitment to guarantee an obligation for a vessel documented under the laws of the United States and operating in the domestic or foreign commerce of the United States. The Secretary has sole discretion in making the determination. In making the determination, the Secretary shall consider—

“(A) the status and economic soundness of pending applications for commitments to guarantee obligations for vessels documented under the laws of the United States that are operating or will be operating in the domestic or foreign commerce of the United States; and

“(B) the amount of guarantee authority available.

“(d) **RESTRICTION ON TRANSFER OF VESSEL.**—The Secretary may not guarantee or make a commitment to guarantee an obligation for an eligible export vessel unless the owner of the vessel agrees with the Secretary that the vessel will not be transferred to a country designated by the Secretary of Defense as a country whose interests are hostile to the interests of the United States.

“(e) **REVIEW BY SECRETARY OF DEFENSE.**—

“(1) **NOTIFICATION.**—The Secretary shall promptly notify the Secretary of Defense of the receipt of an application for a loan guarantee for an eligible export vessel.

“(2) **DISAPPROVAL.**—The Secretary of Defense, within 30 days after receiving the notice, may disapprove the guarantee based on an assessment of the potential use of the vessel in a manner that may harm the national security interests of the United States. The Secretary may not disapprove a guarantee solely because of the type of vessel to be constructed.

“(3) **DELEGATION.**—The authority of the Secretary of Defense to disapprove a guarantee under this subsection may be delegated only to a civilian officer of the Department of Defense appointed by the President by and with the advice and consent of the Senate.

“(4) **PROHIBITION.**—The Secretary may not make a loan guarantee disapproved by the Secretary of Defense under this subsection.

“(f) **EXPIRATION OF AUTHORITY.**—The Secretary may not issue a commitment to guarantee an obligation for an eligible export vessel under this chapter after the last date on which such a commitment may be issued under any treaty or convention entered into after November 30, 1993, that prohibits guarantee of such an obligation.

“**§53733. Shipyard modernization and improvement**

“(a) **DEFINITIONS.**—In this section:

“(1) **ADVANCED SHIPBUILDING TECHNOLOGY.**—The term ‘advanced shipbuilding technology’ includes—

“(A) numerically controlled machine tools, robots, automated process control equipment, computerized flexible manufacturing systems, associated computer software, and other technology for improving shipbuilding and related industrial production that advance the state-of-the-art; and

“(B) novel techniques and processes designed to improve shipbuilding quality, productivity, and practice, and to promote sustainable development, including engineering design, quality assurance, concurrent engineering, continuous process production technology, energy efficiency, waste minimization, design for recyclability or parts reuse, inventory management, upgraded worker skills, and communications with customers and suppliers.

“(2) **GENERAL SHIPYARD FACILITY.**—The term ‘general shipyard facility’ means—

“(A) for operations on land—

“(i) a structure or appurtenance thereto designed for the construction, reconstruction, repair, rehabilitation, or refurbishment of a vessel, including a graving dock, building way, ship lift, wharf, or pier crane;

“(ii) the land necessary for the structure or appurtenance; and

“(iii) equipment that is for use with the structure or appurtenance and that is necessary for performing a function referred to in clause (i); and

“(B) for operations not on land, a vessel, floating drydock, or barge built in the United States and used for, equipped to be used for, or of a type normally used for, performing a function referred to in subparagraph (A)(i).

“(3) **MODERN SHIPBUILDING TECHNOLOGY.**—The term ‘modern shipbuilding technology’ means the best available proven technology, techniques, and processes appropriate to enhancing the productivity of shipyards.

“(b) **GENERAL AUTHORITY.**—Under subchapter I of this chapter, the Secretary may guarantee or make a commitment to guarantee the payment of the principal of and interest on an obligation for advanced shipbuilding technology and modern shipbuilding technology of a general shipyard facility in the United States. Only a private shipyard is eligible to receive a guarantee.

“(c) **APPLICABILITY OF OTHER PROVISIONS.**—Except as otherwise provided in this section, a guarantee or commitment to guarantee under this section is subject to all the provisions applicable to a guarantee or commitment to guarantee under subchapter I of this chapter.

“(d) **AMOUNT OF OBLIGATION.**—The principal amount of an obligation guaranteed under this chapter may not exceed 87.5 percent of the actual cost of the advanced shipbuilding technology or modern shipbuilding technology.

“(e) **TRANSFER OF AMOUNTS.**—The Secretary may accept the transfer of amounts from a department, agency, or instrumentality of the United States Government and may use those amounts to cover the cost (as defined in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a)) of making guarantees or commitments to guarantee under this section.

**“§53734. Replacement of vessels because of changes in operating standards**

“(a) **GENERAL AUTHORITY.**—Notwithstanding any other provision of this chapter, the Secretary, on terms the Secretary may prescribe, may guarantee or make a commitment to guarantee the payment of the principal of and interest on an obligation that aids in financing or refinancing (including reimbursement of an obligor for expenditures previously made for) a contract for the construction or reconstruction of a vessel if—

“(1) the vessel is designed and to be used for commercial use in coastwise, intercoastal, or foreign trade;

“(2) the construction or reconstruction is necessary to replace a vessel that cannot continue to be operated because of a change required by law in the standards for the operation of vessels, and the applicant for the guarantee or commitment would not otherwise legally be able to continue operating vessels in the trades in which the applicant operated vessels before the change;

“(3) the applicant is presently engaged in transporting cargoes in vessels of the type and class that will be constructed or reconstructed under this section and agrees to employ vessels constructed or reconstructed under this section as replacements only for vessels made obsolete by the change in operating standards;

“(4) the capacity of the vessels to be constructed or reconstructed under this section will not increase the cargo carrying capacity of the vessels being replaced;

“(5) the Secretary has not determined that the market demand for the vessel over its useful life will diminish so as to make granting the guarantee fiduciarily imprudent;

“(6) the vessel, if to be reconstructed, will have a useful life of at least 15 years after the reconstruction; and

“(7) the Secretary has considered the criteria specified in section 53708(a)(3)–(5) of this title.

“(b) **TERM AND AMOUNT OF OBLIGATION.**—

“(1) **TERM.**—The term of an obligation guaranteed under this section may not exceed 25 years.

“(2) **AMOUNT.**—The amount of an obligation guaranteed under this section may not exceed 87.5 percent of the actual cost or depreciated actual cost to the applicant for the construction or reconstruction of the vessel. The Secretary may not establish a percentage under this paragraph that is to be applied uniformly to all guarantees or commitments to guarantee made under this section.

“(c) **APPLICABILITY OF OTHER PROVISIONS.**—A guarantee or commitment to guarantee under

this section is also subject to sections 53701, 53702(a), 53704, 53705, 53707(a), 53708(d) and (e), 53709(a), 53710(a)(1), (2), and (4) and (c), 53711(a), 53713, 53714, 53717, and 53721–53725 of this title.

“(d) **SECURITY AGAINST DEFAULT.**—The Secretary shall require by regulation that an applicant under this section provide adequate security against default.

“(e) **GUARANTEE FEES.**—The Secretary may establish a fee for the guarantee of an obligation under this section that is in addition to the fee established under section 53714 of this title. The fee may be—

“(1) an annual fee of not more than an additional 1 percent added to the fee established under section 53714 of this title; or

“(2) a fee based on the amount of the obligation versus the percentage of the obligor’s fleet being replaced by vessels constructed or reconstructed under this section.

**“§53735. Fisheries financing and capacity reduction**

“(a) **DEFINITION.**—In this section, the term ‘program’ means a fishing capacity reduction program established under section 312 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861a).

“(b) **GUARANTEE AUTHORITY.**—The Secretary may guarantee the repayment of debt obligations issued by entities under this section. Debt obligations to be guaranteed may be issued by any entity that has been approved by the Secretary and has agreed with the Secretary to conditions the Secretary considers necessary for this section to achieve the objective of the program and to protect the interest of the United States.

“(c) **REQUIREMENTS OF OBLIGATIONS.**—A debt obligation guaranteed under this section shall—

“(1) be treated in the same manner and to the same extent as other obligations guaranteed under this chapter, except with respect to provisions of this chapter that by their nature cannot be applied to obligations guaranteed under this section;

“(2) have the fishing fees established under the program paid into a separate subaccount of the fishing capacity reduction fund established under this section;

“(3) not exceed \$100,000,000 in an unpaid principal amount outstanding at any one time for a program;

“(4) have such maturity (not to exceed 20 years), take such form, and contain such conditions as the Secretary determines necessary for the program to which they relate;

“(5) have as the exclusive source of repayment (subject to the second sentence of subsection (d)(2)) and as the exclusive payment security, the fishing fees established under the program; and

“(6) at the discretion of the Secretary be issued in the public market or sold to the Federal Financing Bank.

“(d) **FISHING CAPACITY REDUCTION FUND.**—

“(1) **IN GENERAL.**—There is a separate account in the Treasury, known as the Fishing Capacity Reduction Fund. Within the Fund, at least one subaccount shall be established for each program into which shall be paid all fishing fees established under the program and other amounts authorized for the program.

“(2) **AVAILABILITY OF AMOUNTS.**—Amounts in the Fund shall be available, without appropriation or fiscal year limitation, to the Secretary to pay the cost of the program, including payments to financial institutions to pay debt obligations incurred by entities under this section. Funds available for this purpose from other amounts available for the program may also be used to pay those debt obligations.

“(3) **INVESTMENT.**—Amounts in the Fund that are not currently needed for the purpose of this section shall be kept on deposit or invested in obligations of the United States Government.

“(e) **REGULATIONS.**—The Secretary shall prescribe regulations the Secretary considers necessary to carry out this section.

**“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.

**“§53901. Definitions**

“In this chapter:

“(1) **AMERICAN VESSEL.**—The term ‘American vessel’ includes—

“(A) a documented vessel with a registry or coastwise endorsement under chapter 121 of this title;

“(B) an undocumented vessel owned or chartered by or made available to the United States Government; and

“(C) a tug, barge, or other watercraft (whether or not documented) owned by a citizen of the United States and used in essential water transportation or in the fisheries, except only for sport fishing.

“(2) **CARGO.**—The term ‘cargo’ includes a loaded or empty container on a vessel.

“(3) **TRANSPORTATION IN THE WATERBORNE COMMERCE OF THE UNITED STATES.**—The term ‘transportation in the waterborne commerce of the United States’ includes the operation of a vessel in the fisheries, except only for sport fishing.

“(4) **WAR RISKS.**—The term ‘war risks’ includes, to the extent the Secretary of Transportation determines—

“(A) any part of a loss excluded from marine insurance coverage under a ‘free of capture or seizure’ clause or analogous clause; and

“(B) any other loss from a hostile act, including confiscation, expropriation, nationalization, or deprivation.

**“§53902. Authority to provide insurance**

“(a) **IN GENERAL.**—With the approval of the President, and after such consultation with interested agencies of United States Government as the President may require, the Secretary of Transportation may provide insurance and reinsurance against loss or damage from war risks as provided by this chapter whenever it appears to the Secretary that insurance adequate for the needs of the waterborne commerce of the United States cannot be obtained on reasonable terms and conditions from companies authorized to do insurance business in a State of the United States.

“(b) **CONSIDERATION OF RISK.**—Insurance or reinsurance under this chapter shall be based, insofar as practicable, on consideration of the risk involved.

“(c) **AVAILABILITY OF VESSEL DURING WAR OR NATIONAL EMERGENCY.**—Insurance or reinsurance for a vessel may be provided under this chapter only on the condition that the vessel will be available to the Government in time of war or national emergency.

**“§53903. Insurable interests**

“(a) **IN GENERAL.**—The Secretary of Transportation may provide insurance and reinsurance under this chapter for—

“(1) an American vessel, including a vessel under construction;

“(2) a foreign vessel—

“(A) owned by a citizen of the United States; or

“(B) engaged in transportation in the waterborne commerce of the United States or in such other transportation by water or such other services as the Secretary considers to be in the interest of the national defense or national economy of the United States, when so engaged;

“(3) cargo—

“(A) shipped or to be shipped on a vessel insurable under this section, including by express or registered mail;

“(B) owned by a citizen or resident of the United States;

“(C) imported to or exported from the United States, or sold or purchased by a citizen or resident of the United States, under a contract of sale or purchase the terms of which provide that the risk of loss by war risks or the obligation to provide insurance against war risks is on a citizen or resident of the United States; or

“(D) shipped between ports in the United States;

“(4) disbursements, including advances to masters and general average disbursements, and freight and passage money of a vessel insurable under this section;

“(5) personal effects of an individual on a vessel insurable under this section;

“(6) loss of life, injury, or detention by an enemy of the United States after capture, with respect to an individual on a vessel insurable under this section; and

“(7) statutory or contractual obligations or other liabilities of a vessel insurable under this section or of the owner or charterer of such a vessel, of a nature customarily covered by insurance.

“(b) CONSIDERATIONS FOR FOREIGN VESSELS.—In determining whether to provide insurance or reinsurance for a foreign vessel, the Secretary shall consider the characteristics, employment, and general management of the vessel by the owner or charterer.

“(c) NON-WAR RISKS.—Insurance of a risk under subsection (a)(5)–(7), insofar as it involves a liability related to an individual on the vessel, may include risks other than war risks to the extent the Secretary considers advisable.

**“§53904. Liability insurance for persons involved in war or defense efforts**

“(a) IN GENERAL.—The Secretary of Transportation may provide insurance under this chapter against legal liability that a person may incur in providing services or facilities for a vessel if, in the opinion of the Secretary, the insurance—

“(1) is required in prosecuting a war or for national defense; and

“(2) cannot be obtained at reasonable rates or on reasonable terms and conditions from approved companies authorized to do insurance business in a State of the United States.

“(b) LIMITATIONS.—Employer liability insurance and worker compensation insurance against legal liability to employees may not be provided under this section.

**“§53905. Agency insurance**

“(a) IN GENERAL.—With the approval of the President, an agency of the United States Government may obtain insurance provided for by this chapter from the Secretary of Transportation, except as provided in sections 17302 and 17303 of title 40.

“(b) PREMIUM WAIVERS.—With the approval of the President, the Secretary of Transportation may provide insurance under this chapter at the request of the Secretary of Defense and other agencies the President may prescribe, without payment of an insurance premium if the Secretary of Defense or agency agrees to indemnify the Secretary of Transportation against loss covered by the insurance. The Secretary of Defense and agencies may make such an indemnity agreement.

“(c) PRESIDENTIAL APPROVAL.—The signature of the President (or an official designated by the President) on the agreement shall be treated as the approval required by section 53902(a) of this title.

**“§53906. Hull insurance valuation**

“(a) STATED VALUATION.—The valuation in a hull insurance policy for actual or constructive total loss of the insured vessel shall be a stated valuation determined by the Secretary of Transportation. The stated valuation—

“(1) shall exclude national defense features paid for by the United States Government; and

“(2) may not exceed the amount that would be payable if the ownership of the vessel had been requisitioned under chapter 563 of this title at the time the insurance attached under the policy.

“(b) REJECTING STATED VALUATION.—Within 60 days after the insurance attaches under a policy referred to in subsection (a) or within 60 days after the Secretary determines the valuation, whichever is later, the insured may reject the valuation and pay, at the rate provided in the policy, premiums based on the asserted valuation the insured specifies at the time of rejection. However, the asserted valuation is not binding on the Government in any subsequent action on the policy.

“(c) AMOUNT OF CLAIM.—If a vessel is actually or constructively totally lost and the insured under a policy referred to in subsection (a) has not rejected the stated valuation determined by the Secretary, the amount of a claim adjusted, compromised, settled, adjudged, or paid may not exceed the stated valuation. However, if the insured has rejected the valuation, the insured—

“(1) shall be paid, as a tentative advance only, 75 percent of the stated valuation; and

“(2) may bring a civil action against the United States in a court having jurisdiction of the claim to recover a valuation equal to the just compensation the court determines would have been payable if the ownership of the vessel had been requisitioned under chapter 563 of this title at the time the insurance attached under the policy.

“(d) ADJUSTING PREMIUMS.—If a court makes a determination as provided under subsection (c)(2), premiums paid under the policy shall be adjusted based on the court's determination and the rates provided for in the policy.

**“§53907. Reinsurance**

“(a) IN GENERAL.—To the extent the Secretary of Transportation is authorized to provide insurance under this chapter, the Secretary may provide reinsurance to a company authorized to do insurance business in a State of the United States. The Secretary may obtain reinsurance from such a company for any insurance provided by the Secretary under this chapter.

“(b) RATES.—The Secretary may not provide reinsurance at rates less than, nor obtain reinsurance at rates more than, the rates established by the Secretary on the same or similar risks or the rates charged by the insurance company for the insurance reinsured, whichever is more advantageous to the Secretary. However, the Secretary may provide an allowance to the insurance company for the costs of services and facilities the company provides, in an amount the Secretary considers reasonable according to good business practice. The allowance to the company may not include any amount for soliciting or stimulating insurance business.

**“§53908. Additional insurance privately obtained**

“With the approval of the Secretary of Transportation, a person having an insurable interest in a vessel may obtain insurance on the vessel with other underwriting agents in addition to the insurance with the Secretary. The Secretary is not entitled to the benefit of the additional insurance.

**“§53909. War risk insurance revolving fund**

“(a) IN GENERAL.—There is a war risk insurance revolving fund in the Treasury.

“(b) DEPOSITS.—There shall be deposited in the fund amounts appropriated to carry out this chapter and amounts received in carrying out this chapter.

“(c) PAYMENTS.—There shall be paid from the fund amounts for return premiums, losses, settlements, judgments, and all liabilities incurred by the United States Government under this chapter.

“(d) INVESTMENT.—The Secretary of Transportation may request the Secretary of the Treasury to invest such portion of the fund as is not, in the judgment of the Secretary of Transportation, required to meet the current needs of the fund. These investments shall be made by the Secretary of the Treasury in public debt securities of the Government, with maturities suitable to the needs of the fund, and bearing interest rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the Government of comparable maturity. Interest and benefits from the securities shall be deposited in the fund.

**“§53910. Administrative**

“(a) ACCORDANCE WITH COMMERCIAL PRACTICE.—In carrying out this chapter, the Secretary of Transportation may act in accordance with commercial practice in the marine insurance business.

“(b) REGULATIONS.—The Secretary may prescribe regulations the Secretary considers appropriate to carry out this chapter.

“(c) POLICIES, RATES, AND ANNUAL FEES.—The Secretary may prescribe and change forms and policies, and fix and change the amounts insured and rates of premium, under this chapter.

“(d) ANNUAL FEES.—The Secretary may charge and collect an annual fee in an amount calculated to cover the expenses of processing applications for insurance, employing underwriting agents, and appointing experts under this chapter.

“(e) PAYMENT OF CLAIMS AND JUDGMENTS.—The Secretary may settle and pay claims, and pay judgments against the United States, related to insurance under this chapter.

“(f) UNDERWRITING AGENTS.—

“(1) IN GENERAL.—The Secretary may, and when the Secretary finds it practical to do so shall, employ a domestic company or group of domestic companies, authorized to do marine insurance business in a State of the United States, to act as underwriting agent for the Secretary. The services of an underwriting agent may be used in adjusting claims, but a claim may not be paid until approved by the Secretary.

“(2) COMPENSATION.—The Secretary may allow the company or group of companies reasonable compensation for services as the underwriting agent. The compensation may include an allowance for expenses reasonably incurred by the agent, but may not include any amount for soliciting or stimulating business.

“(g) FEES FOR ARRANGING INSURANCE.—Except as provided in subsection (f)(2), the Secretary may not pay an insurance broker or other person acting in a similar intermediary capacity a fee or other consideration for participating in arranging insurance when the Secretary directly insures any of the risk.

“(h) EMPLOYMENT OF MARINE INSURANCE EXPERTS.—The Secretary, without regard to the laws and regulations on the employment of Federal employees, may appoint and prescribe the duties of experts in marine insurance as the Secretary considers necessary to carry out this chapter.

“(i) SERVICES OF OTHER GOVERNMENT AGENCIES.—With the consent of another agency of the United States Government, the Secretary may use information, services, facilities, officers, and employees of the agency in carrying out this chapter.

“(j) VESSEL LOCATION REPORTING.—The Secretary may prescribe by regulation vessel location reporting requirements for a vessel insured under this chapter.

**“§53911. Civil actions for losses**

“(a) IN GENERAL.—If there is a disagreement about a loss insured under this chapter, a civil action in admiralty may be brought against the United States in the district court of the United States for the district in which the plaintiff or the plaintiff's agent resides. If the plaintiff has

no residence in the United States, the action may be brought in the United States District Court for the District of Columbia or in the district court for any district in which the Attorney General agrees to accept service. Any person who may have an interest in the insurance may be made a party, either initially or on the motion of either party.

“(b) **EXCLUSIVE REMEDY.**—A civil action against the United States under this section is exclusive of any other action by reason of the same subject matter against an officer, employee, or agent employed or retained by the Government under this chapter.

“(c) **PROCEDURE.**—A civil action under this section shall be heard and determined under chapter 309 of this title.

“(d) **TOLLING OF LIMITATIONS PERIOD.**—If a claim is filed with the Secretary of Transportation, the running of the limitations period for bringing a civil action is suspended until the Secretary denies the claim, and for 60 days thereafter. The Secretary is deemed to have denied the claim if the Secretary does not act on the claim within 6 months after the claim is filed, unless the Secretary for good cause shown agrees with the claimant on a different period for the Secretary to act on the claim.

“(e) **INTERPLEADER.**—If the Secretary acknowledges the indebtedness of the Government under the insurance and there is a dispute about the persons entitled to receive payment, the Government may bring a civil action interpleading those persons. The action shall be brought in the United States District Court for the District of Columbia or in the district court for the district in which any of those persons resides. A person not residing or found in the district may be made a party by service in any reasonable manner the court directs. If the court is satisfied that unknown persons might make a claim under the insurance, the court may direct service on those unknown persons by publication in the Federal Register. Judgment after service by publication in the Federal Register discharges the Government from further liability to all persons.

#### “§53912. Expiration date

“The authority of the Secretary of Transportation to provide insurance and reinsurance under this chapter expires on December 31, 2010.

#### “PART D—PROMOTIONAL PROGRAMS

#### “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.
- “55121. Transportation of merchandise and passengers on Canadian vessels.

#### “§55101. Application of coastwise laws

“(a) **IN GENERAL.**—Except as provided in subsection (b), the coastwise laws apply to the

United States, including the island territories and possessions of the United States.

“(b) **EXCEPTIONS.**—The coastwise laws do not apply to—

- “(1) American Samoa;
- “(2) the Northern Mariana Islands, except as provided in section 502(b) of the Covenant To Establish a Commonwealth of the Northern Mariana Islands in Political Union With the United States of America (48 U.S.C. 1801 note);
- “(3) Canton Island until the President declares by proclamation that the coastwise laws apply to Canton Island; or
- “(4) the Virgin Islands until the President declares by proclamation that the coastwise laws apply to the Virgin Islands.

#### “§55102. Transportation of merchandise

“(a) **DEFINITION.**—In this section, the term ‘merchandise’ includes—

“(1) merchandise owned by the United States Government, a State, or a subdivision of a State; and

“(2) valueless material.

“(b) **REQUIREMENTS.**—Except as otherwise provided in this chapter or chapter 121 of this title, a vessel may not provide any part of the transportation of merchandise by water, or by land and water, between points in the United States to which the coastwise laws apply, either directly or via a foreign port, unless the vessel—

“(1) is wholly owned by citizens of the United States for purposes of engaging in the coastwise trade; and

“(2) has been issued a certificate of documentation with a coastwise endorsement under chapter 121 or is exempt from documentation but would otherwise be eligible for such a certificate and endorsement.

“(c) **PENALTY.**—Merchandise transported in violation of subsection (b) is liable to seizure by and forfeiture to the Government. Alternatively, an amount equal to the value of the merchandise (as determined by the Secretary of Homeland Security) or the actual cost of the transportation, whichever is greater, may be recovered from any person transporting the merchandise or causing the merchandise to be transported.

#### “§55103. Transportation of passengers

“(a) **IN GENERAL.**—Except as otherwise provided in this chapter or chapter 121 of this title, a vessel may not transport passengers between ports or places in the United States to which the coastwise laws apply, either directly or via a foreign port, unless the vessel—

“(1) is wholly owned by citizens of the United States for purposes of engaging in the coastwise trade; and

“(2) has been issued a certificate of documentation with a coastwise endorsement under chapter 121 or is exempt from documentation but would otherwise be eligible for such a certificate and endorsement.

“(b) **PENALTY.**—The penalty for violating subsection (a) is \$300 for each passenger transported and landed.

#### “§55104. Transportation of passengers between Puerto Rico and other ports in the United States

“(a) **DEFINITIONS.**—In this section:

“(1) **CERTIFICATE.**—The term ‘certificate’ means a certificate of financial responsibility for indemnification of passengers for nonperformance of transportation issued by the Federal Maritime Commission under section 44102 of this title.

“(2) **PASSENGER VESSEL.**—The term ‘passenger vessel’ means a vessel of similar size, or offering similar service, as any other vessel transporting passengers under subsection (b).

“(b) **EXEMPTION.**—Except as otherwise provided in this section, a vessel not qualified to engage in the coastwise trade may transport passengers between a port in Puerto Rico and another port in the United States.

“(c) **EXPIRATION OF EXEMPTION.**—

“(1) **WHEN COASTWISE-QUALIFIED VESSEL OFFERING SERVICE.**—On a showing to the Secretary of the department in which the Coast Guard is operating, by the vessel owner or charterer, that a United States passenger vessel qualified to engage in the coastwise trade is offering or advertising passenger service between a port in Puerto Rico and another port in the United States pursuant to a certificate, the Secretary shall notify the owner or operator of each vessel transporting passengers under subsection (b) to terminate that transportation within 270 days after the Secretary’s notification. Except as provided in subsection (d), the authority to transport passengers under subsection (b) expires at the end of that 270-day period.

“(2) **WHEN NON-COASTWISE-QUALIFIED VESSEL OFFERING SERVICE.**—On a showing to the Secretary, by the vessel owner or charterer, that a United States passenger vessel not qualified to engage in the coastwise trade is offering or advertising passenger service between a port in Puerto Rico and another port in the United States pursuant to a certificate, the Secretary shall notify the owner or operator of each foreign vessel transporting passengers under subsection (b) to terminate that transportation within 270 days after the Secretary’s notification. Except as provided in subsection (d), the authority of a foreign vessel to transport passengers under subsection (b) expires at the end of that 270-day period.

“(d) **DELAYING EXPIRATION.**—If the vessel offering or advertising the service described in subsection (c) has not begun that service within 270 days after the Secretary’s notification, the expiration provided by subsection (c) is delayed until 90 days after the vessel offering or advertising the service begins that service.

“(e) **REINSTATEMENT OF EXEMPTION.**—If the Secretary finds that the service on which an expiration was based is no longer available, the expired authority to transport passengers is reinstated.

#### “§55105. Transportation of hazardous waste

“(a) **IN GENERAL.**—The transportation of hazardous waste, as defined in section 1004(5) of the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6903(5)), from a point in the United States to sea for incineration is deemed to be transportation of merchandise under section 55102 of this title.

“(b) **NONAPPLICATION TO CERTAIN FOREIGN VESSELS.**—

“(1) **IN GENERAL.**—Subsection (a) does not apply to transportation performed by a foreign ocean incineration vessel owned by or under construction on May 1, 1982, for a corporation wholly owned by citizens of the United States under section 50501(a)–(c) of this title.

“(2) **STANDARDS FOR INCINERATION EQUIPMENT.**—Incineration equipment on a vessel described in paragraph (1) must meet standards of the Coast Guard and the Environmental Protection Agency.

“(3) **INSPECTION.**—A vessel described in paragraph (1) shall be inspected by the Coast Guard, regardless of whether inspected by the nation in which it is registered. The inspection shall be the same as would be required of a vessel of the United States, including drydock inspection and internal examination of tanks and void spaces. The inspection may be made concurrently with an inspection by that nation or within one year after the initial issuance or next scheduled issuance of the Safety of Life at Sea Safety Construction Certificate. In making the inspection, the Coast Guard shall refer to the condition of the hull and superstructure established by the initial foreign certification as the basis for evaluating the current condition of the hull and superstructure. The Coast Guard shall allow the substitution of fittings, material, apparatus, equipment, and appliances different from those required for vessels of the United States if satisfied they are equivalent and at least as effective as those required for vessels of the United



States. A satisfactory inspection under this paragraph shall be certified in writing by the Secretary of the department in which the Coast Guard is operating.

“(c) EFFECTIVE DATE.—Subsection (a) is not effective until an appropriate vessel has been built and documented under chapter 121 of this title.

**“§55106. Merchandise transferred between barges**

“(a) IN GENERAL.—On terms and conditions the Secretary of Homeland Security may prescribe by regulation, the Secretary may suspend the application of section 55102 of this title to the transportation of merchandise that is transferred, when moving in the foreign trade of the United States, from a barge certified by the owner or operator as designed specifically for carriage on a vessel and carried regularly on a vessel in foreign trade, to another such barge owned or leased by the same owner or operator. However, this subsection does not apply to transportation between the continental United States and noncontiguous States, territories, or possessions to which the coastwise laws apply.

“(b) 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.

**“§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—

“(A) platform jackets;

“(B) tension leg or SPAR platform superstructures (including the deck, drilling rig and support utilities, and supporting structure);

“(C) hull (including vertical legs and connecting pontoons or vertical cylinder);

“(D) tower and base sections of a platform jacket;

“(E) jacket structures; and

“(F) deck modules (known as ‘topsides’).

“(b) AUTHORIZED TRANSPORTATION.—Section 55102 of this title does not apply to the transportation of a platform jacket in or on a non-coastwise qualified launch barge between two points in the United States, at one of which there is an installation or other device within the meaning of section 4(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1333(a)), if—

“(1) the launch barge was built before December 31, 2000, and has a launch capacity of at least 12,000 long tons; and

“(2) the Secretary of Transportation makes a determination, in accordance with procedures established under subsection (c), that a suitable coastwise qualified vessel is not available for use in the transportation and, if needed, launch or installation of a platform jacket.

“(c) PROCEDURES TO MAXIMIZE USE OF COASTWISE QUALIFIED VESSELS.—The Secretary of Transportation shall adopt procedures implementing this section that are reasonably designed to provide timely information so as to maximize the use of coastwise qualified vessels. The procedures shall, among other things, establish that for purposes of this section, a coastwise qualified vessel shall be deemed to be not available only if—

“(1) on application by an owner or operator for the use of a non-coastwise qualified launch barge for transportation of a platform jacket under this section (which application shall include all relevant information, including engineering details and timing requirements), the Secretary promptly publishes a notice in the Federal Register—

“(A) describing the project and the platform jacket involved;

“(B) advising that all relevant information reasonably needed to assess the transportation requirements for the platform jacket will be made available to interested parties on request; and

“(C) requesting that information on the availability of coastwise qualified vessels be submitted within 30 days after publication of that notice; and

“(2)(A) no information is submitted to the Secretary within that 30 day period; or

“(B) the owner or operator of a coastwise qualified vessel submits information to the Secretary asserting that the owner or operator has a suitable coastwise qualified vessel available for the transportation, but the Secretary determines, within 90 days after the notice is first published, that the coastwise qualified vessel is not suitable or reasonably available for the transportation.

**“§55109. Dredging**

“(a) IN GENERAL.—Except as provided in subsection (b), a vessel may engage in dredging in the navigable waters of the United States only if—

“(1) the vessel is wholly owned by citizens of the United States for purposes of engaging in the coastwise trade;

“(2) the charterer, if any, is a citizen of the United States for purposes of engaging in the coastwise trade; and

“(3) the vessel has been issued a certificate of documentation with a coastwise endorsement under chapter 121 of this title or is exempt from documentation but would otherwise be eligible for such a certificate and endorsement.

“(b) DREDGING OF GOLD IN ALASKA.—A documented vessel with a registry endorsement may engage in the dredging of gold in Alaska.

“(c) PENALTY.—If a vessel is operated in knowing violation of this section, the vessel and its equipment are liable to seizure by and forfeiture to the United States Government.

**“§55110. Transportation of dredged material**

“Section 55102 of this title applies to the transportation of valueless material or dredged

material, regardless of whether it has commercial value, from a point in the United States or on the high seas within the exclusive economic zone, to another point in the United States or on the high seas within the exclusive economic zone.

**“§55111. Towing**

“(a) IN GENERAL.—Except when towing a vessel in distress, a vessel may not do any part of any towing described in subsection (b) unless the towing vessel—

“(1) is wholly owned by citizens of the United States for purposes of engaging in the coastwise trade; and

“(2) has been issued a certificate of documentation with a coastwise endorsement under chapter 121 of this title or is exempt from documentation but would otherwise be eligible for such a certificate and endorsement.

“(b) APPLICABLE TOWING.—Subsection (a) applies to the towing of—

“(1) a vessel between ports or places in the United States to which the coastwise laws apply, either directly or via a foreign port or place;

“(2) a vessel from point to point within the harbors of ports or places to which the coastwise laws apply; or

“(3) a vessel transporting valueless material or dredged material, regardless of whether it has commercial value, from a point in the United States or on the high seas within the exclusive economic zone, to another point in the United States or on the high seas within the exclusive economic zone.

“(c) PENALTIES.—

“(1) OWNER AND MASTER.—The owner and master of a vessel towing another vessel in violation of this section are each liable for a penalty of at least \$350 but not more than \$1,100. A penalty under this paragraph constitutes a lien on the vessel. The lien is enforceable in a district court of the United States for any district in which the vessel is found. Clearance may not be granted to the vessel until the penalties have been paid.

“(2) VESSEL.—In addition to the penalties under paragraph (1), the towing vessel is liable for a penalty of \$60 per ton based on the tonnage of each towed vessel.

**“§55112. Vessel escort operations and towing assistance**

“(a) IN GENERAL.—Except in the case of a vessel in distress, only a vessel of the United States may perform the following escort vessel operations within the navigable waters of the United States:

“(1) Operations that commence or terminate at a port or place in the United States.

“(2) Operations required by United States law or regulation.

“(3) Operations provided in whole or in part within or through navigation facilities owned, maintained, or operated by the United States Government or the approaches to those facilities, other than facilities operated by the St. Lawrence Seaway Development Corporation on the St. Lawrence River portion of the Seaway.

“(b) ESCORT VESSELS.—For purposes of this section, an escort vessel is—

“(1) any vessel that is assigned and dedicated to assist another vessel, whether or not tethered to that vessel, solely as a safety precaution to assist in controlling the speed or course of the assisted vessel in the event of a steering or propulsion equipment failure, or any other similar emergency circumstance, or in restricted waters where additional assistance in maneuvering the vessel is required to ensure its safe operation; and

“(2) in the case of a vessel being towed under section 55111 of this title, any vessel that is assigned and dedicated to the vessel being towed in addition to any towing vessel required under that section.

“(c) RELATIONSHIP TO OTHER LAW.—This section does not affect section 55111 of this title.

“(d) **PENALTY.**—A person violating this section is liable to the Government for a civil penalty of not more than \$10,000 for each day during which the violation occurs.

**“§55113. Use of foreign documented oil spill response vessels**

“Notwithstanding any other provision of law, an oil spill response vessel documented under the laws of a foreign country may operate in waters of the United States on an emergency and temporary basis, for the purpose of recovering, transporting, and unloading in a United States port oil discharged as a result of an oil spill in or near those waters, if—

“(1) an adequate number and type of oil spill response vessels documented under the laws of the United States cannot be engaged to recover oil from an oil spill in or near those waters in a timely manner, as determined by the Federal On-Scene Coordinator for a discharge or threat of a discharge of oil; and

“(2) the foreign country has by its laws accorded to vessels of the United States the same privileges accorded to vessels of the foreign country under this section.

**“§55114. Unloading fish from foreign vessels**

“(a) **PROHIBITIONS.**—Except as otherwise provided by this section or a treaty or convention to which the United States is a party, a foreign vessel may not unload, in a port of the United States—

“(1) its catch of fish taken on board on the high seas or fish products processed from that catch of fish; or

“(2) fish or fish products taken on board that vessel on the high seas from a vessel engaged in fishing operations or the processing of fish or fish products.

“(b) **REGULATIONS ON OBTAINING INFORMATION.**—The Secretary of Commerce may prescribe regulations the Secretary considers necessary to obtain information on the transportation of fish products by vessels of the United States for foreign fish processing vessels to ports in the United States.

“(c) **VIRGIN ISLANDS.**—

“(1) **IN GENERAL.**—A foreign vessel of not more than 50 feet overall in length may unload its catch of fresh fish (whole or with the heads, viscera, or fins removed, but not frozen, otherwise processed, or further advanced) in a port of the Virgin Islands for immediate consumption in those islands. Fish unloaded under this paragraph may be sold or transferred only for immediate consumption. In the absence of satisfactory evidence that a sale or transfer to an agent, representative, or employee of a freezer or cannery is for immediate consumption, the sale or transfer is deemed not to be for immediate consumption. This paragraph does not prohibit the freezing, smoking, or other processing of fresh fish by the ultimate consumer of the fish.

“(2) **SEIZURE, FORFEITURE, AND PENALTY.**—Fish unloaded in the Virgin Islands that are retained, sold, or transferred, except as allowed by paragraph (1), are liable to seizure by and forfeiture to the United States Government. A person retaining, selling, transferring, buying, or receiving the fish is liable to the Government for a civil penalty of not more than \$1,000 for each violation. A penalty or forfeiture under this paragraph may be compromised, modified, or remitted under section 2107(b) of this title.

“(d) **NORTHERN MARIANA ISLANDS.**—Subsection (a) does not apply to the Northern Mariana Islands.

**“§55115. Supplies on fish processing vessels**

“Section 55102 of this title does not apply to supplies aboard a United States documented fish processing vessel that are necessary and used for processing or assembling fishery products aboard such a vessel.

**“§55116. Canadian rail lines**

“Section 55102 of this title does not apply to the transportation of merchandise between points in the continental United States, includ-

ing Alaska, over through routes in part over Canadian rail lines and connecting water facilities if the routes are recognized by the Surface Transportation Board and rate tariffs for the routes have been filed with the Board.

**“§55117. Great Lakes rail route**

“Section 55102 of this title does not apply to the transportation of merchandise loaded on a railroad car or to a motor vehicle with or without a trailer, and with its passengers or contents when accompanied by the operator, when the railroad car or motor vehicle is transported in a railroad car ferry operated between fixed terminals on the Great Lakes as part of a rail route, if—

“(1) the car ferry is owned by a common carrier by water and operated as part of a rail route with the approval of the Surface Transportation Board;

“(2) the stock of the common carrier by water, or its predecessor, was owned or controlled by a common carrier by rail prior to June 5, 1920;

“(3) the stock of the common carrier owning the car ferry is, with the approval of the Board, now owned or controlled by a common carrier by rail; and

“(4) the car ferry is built in and documented under the laws of the United States.

**“§55118. Foreign railroads whose road enters by ferry, tugboat, or towboat**

“A foreign railroad, whose road enters the United States by ferry, tugboat, or towboat, may own and operate a vessel not having a coastwise endorsement in connection with the water transportation of the passenger, freight, express, baggage, and mail cars used by that road, together with the passengers, freight, express matter, baggage, and mails transported in those cars. However, the foreign railroad is subject to the same restrictions imposed by law on a vessel of the United States entering a port of the United States from the same foreign country. Except as otherwise authorized by this chapter, the ferry, tugboat, or towboat may not, under penalty of forfeiture, be used in the transportation of merchandise between ports or places in the United States to which the coastwise laws apply.

**“§55119. Yukon River**

“Section 55102 of this title does not apply to the transportation of merchandise on the Yukon River until the Alaska Railroad is completed and the Secretary of Transportation finds that proper facilities will be available for transportation by citizens of the United States to properly handle the traffic.

**“§55120. Transshipment of imported merchandise intended for immediate exportation**

“The Secretary of Homeland Security may prescribe regulations for the transshipment and transportation of merchandise that is imported into the United States by sea for immediate exportation to a foreign port by sea, or by a river, the right to ascend or descend which for the purposes of commerce is secured by treaty to the citizens of the United States and the subjects of a foreign power.

**“§55121. Transportation of merchandise and passengers on Canadian vessels**

“(a) **BETWEEN ROCHESTER AND ALEXANDRIA BAY.**—Until passenger service is established by vessels of the United States between the port of Rochester, New York, and the port of Alexandria Bay, New York, the Secretary of Homeland Security may issue annually permits to Canadian passenger vessels to transport passengers between those ports. Canadian vessels holding such a permit are not subject to section 55103 of this title.

“(b) **WITHIN ALASKA OR BETWEEN ALASKA AND OTHER POINTS IN THE UNITED STATES.**—Until the Secretary of Transportation determines that service by vessels of the United States is available to provide the transportation described in

paragraph (1) or (2), sections 55102 and 55103 of this title do not apply to the transportation on Canadian vessels of—

“(1) passengers between ports in southeastern Alaska; or

“(2) passengers or merchandise between Hyder, Alaska, and other points in southeastern Alaska or in the United States outside Alaska.

**“CHAPTER 553—PASSENGER AND CARGO PREFERENCES**

**“SUBCHAPTER I—GENERAL**

“Sec.

“55301. Priority loading for coal.

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**“SUBCHAPTER III—AMERICAN GREAT LAKES VESSELS**

“55331. Definitions.

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“55334. Restrictions on operations.

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**“SUBCHAPTER I—GENERAL**

**“§55301. Priority loading for coal**

“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.

**“§55302. Transportation of United States Government personnel**

“(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.

“(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.

**“§55303. Motor vehicles owned by United States Government personnel**

“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.

**“§55304. Exports financed by the United States Government**

“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 number, in sufficient tonnage capacity, on necessary schedules, or at reasonable rates.

**“§55305. Cargoes procured, furnished, or financed by the United States Government**

“(a) DEFINITION.—In this section, the term ‘privately-owned commercial vessel of the United States’ does not include a vessel that, after September 21, 1961, was built or rebuilt outside the United States or documented under the laws of a foreign country, until the vessel has been documented under the laws of the United States for at least 3 years.

“(b) MINIMUM TONNAGE.—When the United States Government procures, contracts for, or otherwise obtains for its own account, or furnishes to or for the account of a foreign country without provision for reimbursement, any equipment, materials, or commodities, within or without the United States, or advances funds or credits, or guarantees the convertibility of foreign currencies in connection with the furnishing of the equipment, materials, or commodities, the appropriate agencies shall take steps necessary and practicable to ensure that at least 50 percent of the gross tonnage of the equipment, materials, or commodities (computed separately for dry bulk carriers, dry cargo liners, and tankers) which may be transported on ocean vessels is transported on privately-owned commercial vessels of the United States, to the extent those vessels are available at fair and reasonable rates for commercial vessels of the United States, in a manner that will ensure a fair and reasonable participation of commercial vessels of the United States in those cargoes by geographic areas.

“(c) WAIVERS.—The President, the Secretary of Defense, or Congress (by concurrent resolution or otherwise) may waive this section temporarily by—

“(1) declaring the existence of an emergency justifying a waiver; and

“(2) notifying the appropriate agencies of the waiver.

“(d) PROGRAMS OF OTHER AGENCIES.—An agency having responsibility under this section shall administer its programs with respect to this section under regulations prescribed by the Secretary of Transportation. The Secretary shall review the administration of those programs and report annually to Congress on their administration.

**“SUBCHAPTER II—EXPORT TRANSPORTATION OF AGRICULTURAL COMMODITIES**

**“§55311. Findings and purposes**

“(a) FINDINGS.—Congress finds that—

“(1) a productive and healthy agricultural industry and a strong and active United States maritime industry are vitally important to the economic well-being and security of the United States;

“(2) both industries must compete in international markets increasingly dominated by foreign trade barriers and the subsidization practices of foreign governments; and

“(3) increased agricultural exports and the use of merchant vessels of the United States contribute positively to the United States balance of trade and generate employment opportunities in the United States.

“(b) PURPOSES.—The purposes of this subchapter are to—

“(1) enable the Secretary of Agriculture to plan export programs effectively, by clarifying the ocean transportation requirements applicable to those programs;

“(2) take immediate and positive steps to promote the growth of the cargo-carrying capacity of the United States merchant marine;

“(3) expand international trade in United States agricultural commodities and products and develop, maintain, and expand markets for United States agricultural exports;

“(4) improve the efficiency of administration of both the commodity purchasing and selling activities and the ocean transportation activities associated with export programs sponsored by the Secretary;

“(5) stimulate and promote the agricultural and maritime industries of the United States and encourage cooperative efforts by both industries to address their common problems; and

“(6) provide for the appropriate disposition of these findings and purposes.

**“§55312. Determining prevailing world market price**

“(a) AGRICULTURAL COMMODITIES AND PRODUCTS.—The prevailing world market price for agricultural commodities or their products shall be determined under this subchapter under procedures prescribed by the Secretary of Agriculture. The Secretary shall prescribe the procedures by regulation, with notice and opportunity for public comment under section 553 of title 5.

“(b) SERVICES AND NON-AGRICULTURAL COMMODITIES AND PRODUCTS.—If a determination of the prevailing world market price of any other type of materials, goods, equipment, or service is required to determine whether a barter or exchange transaction is subject to section 55314(b)(6) or (7) of this title, the determination shall be made by the Secretary of Agriculture in consultation with the heads of other appropriate agencies.

**“§55313. Exemption of certain agricultural exports from cargo preference provisions**

“Sections 55304 and 55305 of this title do not apply to export activities of the Secretary of Agriculture or the Commodity Credit Corporation under which—

“(1) agricultural commodities or their products acquired by the Corporation are made available to United States exporters, users, processors, or foreign purchasers for the purpose of developing, maintaining, or expanding export markets for United States agricultural commodities or their products at prevailing world market prices;

“(2) payments are made available to United States exporters, users, or processors or, except as provided in section 55314 of this title, cash grants are made available to foreign purchasers, for the purpose described in paragraph (1);

“(3) commercial credit guarantees are blended with direct credits from the Corporation to reduce the effective rate of interest on export sales of United States agricultural commodities or their products;

“(4) credit or credit guarantees for not more than 3 years are extended by the Corporation to finance or guarantee export sales of United States agricultural commodities or their products; or

“(5) agricultural commodities or their products owned or controlled by or under loan from the Corporation are exchanged or bartered for materials, goods, equipment, or services at least equal in value to the agricultural commodities or their products for which they are exchanged or bartered (determined on the basis of prevailing world market prices at the time of the exchange or barter), but this paragraph does not exempt from the cargo preference provisions referred to in section 55314(b) of this title any requirement otherwise applicable to the materials, goods, equipment, or services imported under the transaction.

**“§55314. Transportation requirements for certain exports sponsored by the Secretary of Agriculture**

“(a) MINIMUM TONNAGE.—

“(1) IN GENERAL.—In addition to the requirement under section 55305 of this title for the transportation of a percentage of gross tonnage on commercial vessels of the United States, 25 percent of the gross tonnage of agricultural commodities or their products specified in subsection (b) shall be transported each calendar year on commercial vessels of the United States that—

“(A) are necessary for national security; and

“(B) if more than 25 years old, were rebuilt within the last 5 years and certified by the Secretary of Transportation as having a useful life of at least 5 years after that rebuilding.

“(2) CALENDAR YEAR.—To provide for effective and equitable administration of the cargo preference laws, the calendar year for the purpose of compliance with minimum percentage requirements is the 12-month period beginning October 1 of each year.

“(b) APPLICABLE EXPORT ACTIVITY.—This section applies to export activity (except inspection or weighing activities, other activities carried out for health or safety, or technical assistance provided in the handling of commercial transactions) of the Secretary of Agriculture or the Commodity Credit Corporation—

“(1) carried out under the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1691 et seq.);

“(2) carried out under section 416 of the Agricultural Act of 1949 (7 U.S.C. 1431);

“(3) carried out under the Bill Emerson Humanitarian Trust Act (7 U.S.C. 1736f-1);

“(4) under which agricultural commodities or their products are—

“(A) donated through foreign governments or private or public agencies, including intergovernmental organizations; or

“(B) sold for foreign currencies or for dollars on credit terms of more than 10 years;

“(5) under which agricultural commodities or their products are made available for emergency food relief at less than prevailing world market prices;

“(6) under which a cash grant is made directly or through an intermediary to a foreign purchaser to enable the purchaser to obtain United States agricultural commodities or their products in an amount greater than the difference between the prevailing world market price and the United States market price, free along side vessel at a United States port; or

“(7) under which agricultural commodities owned or controlled by or under loan from the Corporation are exchanged or bartered for materials, goods, equipment, or services produced in foreign countries, except export activities described in section 55313(5) of this title.

“(c) ADDITIONAL REQUIREMENTS.—

“(1) APPLICATION OF SECTION 55305.—The requirement for transportation on vessels of the United States under subsection (a) is subject to the same terms and conditions as provided in section 55305 of this title.

“(2) ALLOCATION OF COMMODITIES.—Subject to paragraph (3), in carrying out this section and section 55305 of this title, the Corporation shall take steps necessary and practicable, and consistent with this section and section 55305, without detriment to any port range to allocate, on the principle of lowest landed cost without regard to the country of registry of the vessel, 25 percent of the bagged, processed, or fortified commodities provided under title II of the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1721 et seq.).

“(3) CALCULATIONS.—In carrying out paragraph (2), first there shall be calculated the allocation of 100 percent of the quantity to be procured on an overall lowest landed cost basis without regard to the country of registry of the vessel, and then there shall be allocated to the

Great Lakes port range any cargoes for which it has the lowest landed cost under that calculation. The requirements for transportation on vessels of the United States under this section and section 55305 of this title do not apply to commodities allocated to the Great Lakes port range under paragraph (2). Commodities allocated to the Great Lakes port range under paragraph (2) may not be reallocated or diverted to another port range to meet those requirements to the extent that the total tonnage of commodities to which paragraph (2) applies that is furnished and transported from the Great Lakes port range is less than 25 percent of the total annual tonnage of the commodities furnished.

“(4) **AWARDING CONTRACTS.**—In awarding a contract for the transportation by vessel of commodities from the Great Lakes port range pursuant to an export activity referred to in subsection (b), an agency—

“(A) shall consider expressions of freight interest for any vessel from a vessel operator who meets reasonable requirements for financial and operational integrity; and

“(B) may not deny award of the contract to a person based on the type of vessel on which the transportation would be provided (including on the basis that the transportation would not be provided on a liner vessel, as that term is used in the Shipping Act of 1984, as in effect on November 14, 1995), if the person otherwise satisfies reasonable requirements for financial and operational integrity.

“(5) **NONAVAILABILITY OF VESSELS.**—A determination of nonavailability of vessels of the United States resulting from the application of this subsection may not reduce the gross tonnage of commodities required by this section and section 55305 of this title to be transported on vessels of the United States.

“§55315. **Minimum tonnage**

“(a) **DEFINITION.**—In this section, the term ‘base period’ means the 5-year period running from the sixth through the second prior fiscal years.

“(b) **REQUIREMENT.**—For each fiscal year, the minimum quantity of agricultural commodities to be exported under programs subject to section 55314 of this title is the average of the tonnage exported under those programs during the base period, discarding the high and low years.

“(c) **WAIVERS.**—The President may waive the minimum quantity for a fiscal year under this section if the President determines and reports to Congress, together with reasons, that the quantity cannot be used effectively for the purposes of those programs or, based on a certification by the Secretary of Agriculture, that the commodities are not available for reasons that include the unavailability of funds.

“§55316. **Financing the transportation of agricultural commodities**

“(a) **FINANCING OF INCREASED CHARGES.**—The Secretary of Transportation shall finance any increased ocean freight charges incurred in any fiscal year that result from the application of section 55314 of this title.

“(b) **REIMBURSEMENT OF INCREASED CHARGES.**—

“(1) **IN GENERAL.**—The Secretary of Transportation shall reimburse the Secretary of Agriculture and the Commodity Credit Corporation for the amount by which, in any fiscal year—

“(A) the total cost of ocean freight and ocean freight differential for which obligations are incurred by the Secretary of Agriculture and the Corporation on exports of agricultural commodities and their products under the agricultural export programs specified in section 55314(b) of this title; exceeds

“(B) 20 percent of the value of the commodities and their products and the cost of the ocean freight and ocean freight differential on which obligations are incurred by the Secretary of Agriculture and the Corporation during that fiscal year.

“(2) **COMMODITIES SHIPPED FROM INVENTORY.**—For purposes of this subsection, com-

modities shipped from the inventory of the Corporation shall be valued as provided in section 412(d) of the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1736f(d)).

“(c) **ISSUANCE AND PURCHASE OF OBLIGATIONS.**—

“(1) **ISSUANCE.**—To meet the expenses required to be assumed under subsections (a) and (b), the Secretary of Transportation shall issue obligations to the Secretary of the Treasury. The Secretary of Transportation, with the approval of the Secretary of the Treasury, shall prescribe the form, denomination, maturity, and other terms (except the interest rate) of the obligations. The Secretary of the Treasury shall set the interest rate for the obligations, considering the average market yield on outstanding marketable obligations of the United States Government of comparable maturities during the month before the obligations are issued.

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

“(d) **SOURCE OF FUNDS FOR REIMBURSEMENT.**—Reimbursement of the Secretary of Transportation for costs incurred under this section shall be made with appropriated funds rather than through cancellation of notes.

“(e) **APPROPRIATIONS.**—

“(1) **AUTHORIZATION.**—Each fiscal year, there is authorized to be appropriated an amount sufficient to reimburse the Secretary of Transportation for the costs incurred under this section, including administrative expenses and the principal and interest due on obligations issued to the Secretary of the Treasury.

“(2) **APPROPRIATION FOR ADMINISTRATIVE EXPENSES.**—Each fiscal year, such amounts as may be necessary are hereby appropriated to pay interest and to liquidate debt on obligations issued to the Secretary of the Treasury under this section.

“(f) **NOTIFICATION TO CONGRESS OF INSUFFICIENCY.**—If the Secretary of Transportation is unable to obtain the funds necessary to finance the increased ocean freight charges resulting from the requirements of subsections (a) and (b) and section 55314(a) of this title, the Secretary shall notify Congress within 10 working days of the discovery of the insufficiency.

“§55317. **Termination of subchapter**

“This subchapter terminates 90 days after the date on which a notification is made under section 55316(f) of this title, except for shipments of agricultural commodities and their products subject to contracts made before the end of that 90-day period, unless within that 90-day period the Secretary of Transportation proclaims that funds are available to finance increased freight charges resulting from the requirements of sections 55314(a) and 55316(a) and (b) of this title. On the termination of this subchapter under this section—

“(1) this subchapter does not exempt export activities from, or subject export activities to, the cargo preference laws; and

“(2) the 50-percent requirement in section 55305 of this title remains in effect.

“§55318. **Effect on other law**

“This subchapter does not affect chapter 5 of title 5.

“SUBCHAPTER III—AMERICAN GREAT LAKES VESSELS

“§55331. **Definitions**

“In this subchapter:

“(1) **AMERICAN GREAT LAKES VESSEL.**—The term ‘American Great Lakes vessel’ means a ves-

sel so designated under section 55332 of this title, but only during the period the designation is in effect.

“(2) **GREAT LAKES.**—The term ‘Great Lakes’ means Lake Superior, Lake Michigan, Lake Huron, Lake Erie, Lake Ontario, the Saint Lawrence River west of Saint Regis, New York, and their connecting and tributary waters.

“(3) **GREAT LAKES SHIPPING SEASON.**—The term ‘Great Lakes shipping season’ means the period each year during which the Saint Lawrence Seaway is open for navigation by vessels, as declared by the Saint Lawrence Seaway Development Corporation.

“§55332. **Designating American Great Lakes vessels**

“(a) **DESIGNATIONS.**—The Secretary of Transportation shall designate a vessel as an American Great Lakes vessel if—

“(1) an application for designation is submitted to the Secretary under regulations prescribed by the Secretary;

“(2) the vessel is documented under the laws of the United States;

“(3) the vessel, on the effective date of the designation, is—

“(A) at least 1, but not more than 6, years old; or

“(B) at least 1, but not more than 11, years old if the Secretary finds that suitable vessels are not available to provide the type of service for which the vessel will be used after the designation;

“(4) the vessel has not previously been designated as an American Great Lakes vessel; and

“(5) the owner makes an agreement as provided under subsection (b).

“(b) **AGREEMENTS.**—A vessel may be designated as an American Great Lakes vessel only if the person that will be the owner of the vessel at the time of the designation makes an agreement with the Secretary providing that if the Secretary determines that the vessel is necessary to the defense of the United States, the United States Government will have an exclusive right, during the 120-day period following the date of a revocation of the designation under section 55335 of this title, to purchase the vessel for a price equal to the greater of—

“(1) the approximate world market value of the vessel; or

“(2) the cost of the vessel to the owner less a reasonable amount for depreciation.

“(c) **CERTAIN FOREIGN DOCUMENTATION AND SALE NOT PROHIBITED.**—Notwithstanding any other law, if the Government does not exercise its right of purchase under an agreement under subsection (b), the owner of the vessel is not prohibited from—

“(1) documenting the vessel under the laws of a foreign country; or

“(2) selling the vessel to a person not a citizen of the United States.

“(d) **REGULATIONS.**—The Secretary shall prescribe regulations establishing requirements for submitting applications under this section.

“§55333. **Exemption from restriction on transporting certain cargo**

“The 3-year documentation requirement of section 55305(a) of this title does not apply to a vessel designated as an American Great Lakes vessel during the period of its designation.

“§55334. **Restrictions on operations**

“(a) **PROHIBITIONS.**—Except as provided in subsection (b), an American Great Lakes vessel may not be used to—

“(1) engage in trade—

“(A) from a port in the United States that is not located on the Great Lakes; or

“(B) between ports in the United States;

“(2) transport bulk cargo (as defined in section 40102 of this title) that is subject to section 55305 or 55314 of this title or section 2631 of title 10; or

“(3) provide a service (except ocean freight service) as—

“(A) a contract carrier; or

“(B) a common carrier on a fixed advertised schedule offering frequent sailings at regular intervals in the foreign trade of the United States.

“(b) OFF-SEASON EXCEPTION.—An American Great Lakes vessel may be used for not more than 90 days during any 12-month period to engage in trade prohibited by subsection (a)(1)(A), except during the Great Lakes shipping season.

**“§55335. Revocations and terminations of designations**

“(a) REVOCATIONS.—After notice and an opportunity for a hearing, the Secretary of Transportation may revoke a designation of a vessel as an American Great Lakes vessel if the Secretary finds that—

“(1) the vessel does not meet a requirement for the designation;

“(2) the vessel has been operated in violation of this subchapter; or

“(3) the owner or operator of the vessel has violated an agreement made under section 55332(b) of this title.

“(b) TERMINATIONS.—On petition and a showing of good cause by the owner of a vessel, the Secretary may terminate the designation of a vessel as an American Great Lakes vessel. The Secretary may impose conditions in a termination order to prevent significant adverse effects on other operators of vessels of the United States.

**“§55336. Civil penalty**

“After notice and an opportunity for a hearing, the Secretary of Transportation may impose a civil penalty of not more than \$1,000,000 on the owner of an American Great Lakes vessel for any act for which the designation may be revoked under section 55335 of this title.

**“CHAPTER 555—MISCELLANEOUS**

“Sec.

“55501. Mobile trade fairs.

**“§55501. Mobile trade fairs**

“(a) IN GENERAL.—The Secretary of Commerce shall encourage and promote the development and use of mobile trade fairs designed to show and sell the products of United States business and agriculture at foreign ports and at other commercial centers throughout the world where the operators of the fairs use, insofar as practicable, vessels and aircraft of the United States in transporting their exhibits.

“(b) TECHNICAL AND FINANCIAL ASSISTANCE.—When the Secretary determines that a mobile trade fair provides an economical and effective means of promoting export sales, the Secretary may provide to the operator of the fair—

“(1) technical assistance and support; and

“(2) financial assistance to defray certain expenses incurred outside the United States, except the cost of transportation on foreign vessels and aircraft.

“(c) USE OF FOREIGN CURRENCIES.—To carry out this section, the President may use, in addition to amounts appropriated to carry out trade promotion activities, foreign currencies owned by or owed to the United States Government.

**“PART E—CONTROL OF MERCHANT MARINE CAPABILITIES**

**“CHAPTER 561—RESTRICTIONS ON TRANSFERS**

“Sec.

“56101. Approval required to transfer vessel to noncitizen.

“56102. Additional controls during war or national emergency.

“56103. Conditional approvals.

“56104. Penalty for false statements.

“56105. Forfeiture procedure.

**“§56101. Approval required to transfer vessel to noncitizen**

“(a) RESTRICTIONS.—

“(1) IN GENERAL.—Except as otherwise provided in this section, section 12119 of this title, or section 611 of the Merchant Marine Act, 1936,

a person may not, without the approval of the Secretary of Transportation—

“(A) sell, lease, charter, deliver, or in any other manner transfer, or agree to sell, lease, charter, deliver, or in any other manner transfer, to a person not a citizen of the United States, an interest in or control of—

“(i) a documented vessel owned by a citizen of the United States; or

“(ii) a vessel last documented under the laws of the United States; or

“(B) place under foreign registry, or operate under the authority of a foreign country, a documented vessel or a vessel last documented under the laws of the United States.

“(2) EXCEPTIONS.—Paragraph (1)(A) does not apply to a vessel that has been operated only for pleasure or only as a fishing vessel, fish processing vessel, or fish tender vessel (as defined in section 2101 of this title).

“(b) APPROVAL BEFORE DOCUMENTATION.—To promote financing with respect to a vessel to be documented under chapter 121 of this title, the Secretary may grant approval under subsection (a) before the vessel is documented.

“(c) EXCEPTIONS.—Notwithstanding any other provision of this subtitle, the Merchant Marine Act, 1936, or any contract with the Secretary made under this subtitle or that Act, a person may place a vessel under foreign registry without the approval of the Secretary if—

“(1)(A) the Secretary, in conjunction with the Secretary of Defense, determines that at least one replacement vessel of equal or greater military capability and of a capacity that is equivalent or greater, as measured by deadweight tons, gross tons, or container equivalent units, as appropriate, is documented under chapter 121 of this title by the owner of the vessel placed under foreign registry; and

“(B) the replacement vessel is not more than 10 years old on the date of that documentation; or

“(2) an operating agreement covering the vessel under chapter 531 of this title has expired.

“(d) STATUS OF PROHIBITED TRANSACTION.—A charter, sale, or transfer of a vessel, or of an interest in or control of a vessel, in violation of this section is void.

“(e) PENALTIES.—

“(1) CRIMINAL PENALTY.—A person that knowingly sells, charters, or transfers a vessel, or an interest in or control of a vessel, in violation of this section shall be fined under title 18, imprisoned for not more than 5 years, or both.

“(2) CIVIL PENALTY.—A person that sells, charters, or transfers a vessel, or an interest in or control of a vessel, in violation of this section is liable to the United States Government for a civil penalty of not more than \$10,000 for each violation.

“(3) FORFEITURE.—A documented vessel may be seized by and forfeited to the Government if, in violation of this section, a person—

“(A) knowingly sells, charters, or transfers the vessel or an interest in or control of the vessel; or

“(B) places the vessel under foreign registry or operates the vessel under the authority of a foreign country.

**“§56102. Additional controls during war or national emergency**

“(a) IN GENERAL.—During war, or a national emergency declared by Presidential proclamation, a person may not, without the approval of the Secretary of Transportation—

“(1) place under foreign registry a vessel owned in whole or in part by a citizen of the United States or a corporation incorporated under the laws of the United States or of a State;

“(2) sell, mortgage, lease, charter, deliver, or in any other manner transfer, or agree to sell, mortgage, lease, charter, deliver, or in any other manner transfer, to a person not a citizen of the United States—

“(A) a vessel owned as described in paragraph (1), or an interest therein;

“(B) a vessel documented under the laws of the United States, or an interest therein; or

“(C) a facility for building or repairing vessels, or an interest therein;

“(3) issue, assign, or transfer to a person not a citizen of the United States an instrument of indebtedness secured by a mortgage of a vessel to a trustee, by an assignment of an owner's interest in a vessel under construction to a trustee, or by a mortgage of a facility for building or repairing vessels to a trustee, unless the trustee or a substitute trustee is approved by the Secretary under subsection (b);

“(4) enter into an agreement or understanding to construct a vessel in the United States for, or to be delivered to, a person not a citizen of the United States without expressly stipulating that construction will not begin until after the war or national emergency has ended;

“(5) enter into an agreement or understanding whereby there is vested in, or for the benefit of, a person not a citizen of the United States the controlling interest in a corporation that is incorporated under the laws of the United States or a State and that owns a vessel or facility for building or repairing vessels; or

“(6) cause or procure a vessel, constructed in whole or in part in the United States and never cleared for a foreign port, to depart from a port of the United States before it has been documented under the laws of the United States.

“(b) TRUSTEES.—

“(1) APPROVAL.—The Secretary shall approve a trustee or substitute trustee under subsection (a)(3) if and only if the trustee is a bank or trust company that—

“(A) is organized as a corporation, and is doing business, under the laws of the United States or a State;

“(B) is authorized under those laws to exercise corporate trust powers;

“(C) is a citizen of the United States;

“(D) is subject to supervision or examination by Federal or State authority; and

“(E) has a combined capital and surplus (as set forth in its most recent published report of condition) of at least \$3,000,000.

“(2) DISAPPROVAL.—If a trustee or substitute trustee ceases to meet the conditions in paragraph (1), the Secretary shall disapprove the trustee or substitute trustee. After the disapproval, the restrictions on transfer or assignment without the Secretary's approval in subsection (a)(3) apply.

“(3) OPERATION OF VESSEL.—During a period when subsection (a) applies, a trustee referred to in subsection (a)(3), even though approved as a trustee by the Secretary, may not operate the vessel under the mortgage or assignment without the Secretary's approval.

“(c) STATUS OF PROHIBITED TRANSACTION.—A transaction in violation of this section is void.

“(d) RECOVERY OF CONSIDERATION.—

“(1) IN GENERAL.—A person that deposited or paid consideration in connection with a transaction prohibited by this section may recover the consideration after tender of the vessel, facility, stock, or other security, or interest therein, to the person entitled to it, or the forfeiture thereof to the United States Government.

“(2) EXCEPTION.—Paragraph (1) does not apply if the person in whose interest the consideration was deposited, or to whom it was paid, entered into the transaction in the belief that the person depositing or paying the consideration was a citizen of the United States.

“(e) PENALTIES.—

“(1) CRIMINAL PENALTY.—A person that violates, or attempts or conspires to violate, this section shall be fined under title 18, imprisoned for not more than 5 years, or both.

“(2) FORFEITURE.—The following shall be forfeited to the Government:

“(A) A vessel, a facility for building or repairing vessels, or an interest in a vessel or such a facility, that is sold, mortgaged, leased, chartered, delivered, transferred, or documented, or agreed to be sold, mortgaged, leased, chartered,

delivered, transferred, or documented, in violation of this section.

“(B) Stock and other securities sold or transferred, or agreed to be sold or transferred, in violation of this section.

“(C) A vessel departing in violation of subsection (a)(6).

**“§56103. Conditional approvals**

“(a) IN GENERAL.—In approving an act or transaction under section 56101 or 56102 of this title, the Secretary of Transportation may do so absolutely or upon conditions the Secretary considers advisable. The Secretary shall state the conditions in the notice of approval.

“(b) VIOLATIONS.—A violation of a condition of approval is subject to the same penalties as a violation resulting from an act done without the required approval. The violation occurs at the time the condition is violated.

**“§56104. Penalty for false statements**

“A person that knowingly makes a false statement of a material fact to the Secretary of Transportation or another officer, employee, or agent of the Department of Transportation, to obtain the Secretary’s approval under section 56101 or 56102 of this title, shall be fined under title 18, imprisoned for not more than 5 years, or both.

**“§56105. Forfeiture procedure**

“(a) IN GENERAL.—A forfeiture under this chapter may be enforced in the same way as a forfeiture under the laws on the collection of duties. However, such a forfeiture may be remitted without seizure of the vessel.

“(b) PRIOR CONVICTIONS.—In a proceeding under this chapter to enforce a forfeiture, a prior criminal conviction of a person for a violation of this chapter with respect to the subject matter of the forfeiture is prima facie evidence of the violation against the person convicted.

**“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.

**“§56301. General authority**

“During a national emergency declared by Presidential proclamation, or a period for which the President has proclaimed that the security of the national defense makes it advisable, the Secretary of Transportation may requisition or purchase, or requisition or charter the use of, a vessel owned by citizens of the United States, a documented vessel, or a vessel under construction in the United States.

**“§56302. Charter terms**

“(a) IN GENERAL.—If a vessel is requisitioned for use but not ownership under this chapter, the Secretary of Transportation, at the time of requisition or as soon thereafter as the situation allows, shall offer the person entitled to possession of the vessel a charter containing—

“(1) the terms the Secretary believes should govern the relationship between the United States Government and the person; and

“(2) the rate of hire the Secretary considers just compensation for the use of the vessel and the services required under the charter.

“(b) REFUSAL TO ACCEPT.—If the person does not accept the charter and rate of hire, the parties shall proceed as provided in section 56304 of this title.

**“§56303. Compensation**

“(a) IN GENERAL.—As soon as practicable, the Secretary of Transportation shall determine and pay just compensation for a vessel requisitioned under this chapter.

“(b) FACTORS NOT AFFECTING VALUE.—The value of a vessel may not be considered en-

hanced by the circumstances requiring its requisition. Consequential damages arising from the requisition may not be paid.

“(c) EFFECT OF CONSTRUCTION-DIFFERENTIAL SUBSIDY.—

“(1) IF PAID.—If a construction-differential subsidy has been paid for the vessel, the value of the vessel at the time of requisition shall be determined under section 802 of the Merchant Marine Act, 1936.

“(2) IF NOT PAID.—If a construction-differential subsidy has not been paid for the vessel, the value of any national defense features previously paid for by the United States Government shall be excluded.

“(d) LOSS OR DAMAGE DURING CHARTER.—If a vessel is lost or damaged by a risk assumed by the Government under the charter, but a valuation for the vessel or a means of compensation has not been agreed to, the Secretary shall pay just compensation for the loss or damage, to the 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.

“(4) AS BETWEEN PRIVATE PARTIES.—The action shall proceed and be determined according to the principles of law and the rules of practice applicable in like cases between private parties.

**“§56306. Use and transfer of vessels**

“(a) IN GENERAL.—The Secretary of Transportation may repair, reconstruct, operate, or charter for operation, a vessel acquired under this chapter.

“(b) TRANSFER TO OTHER AGENCIES.—The Secretary may transfer the possession or control of a vessel acquired under this chapter to another department or agency of the United States Gov-

ernment on terms and conditions approved by the President. The department or agency shall promptly reimburse the Secretary for expenditures for just compensation, purchase price, charter hire, repairs, reconditioning, or reconstruction.

**“§56307. Return of vessels**

“When a vessel requisitioned for use but not ownership is returned to the owner, the Secretary of Transportation shall—

“(1) return the vessel in a condition at least as good as when taken, less ordinary wear and tear; or

“(2) pay the owner an amount sufficient to recondition the vessel to that condition, less ordinary wear and tear.

**“CHAPTER 565—ESSENTIAL VESSELS AFFECTED BY NEUTRALITY ACT**

“Sec.

“56501. Definition.

“56502. Adjusting obligations and arranging maintenance.

“56503. Types of adjustments and arrangements.

“56504. Changes in adjustments and arrangements.

**“§56501. Definition**

“In this chapter, the term ‘essential vessel’ means a vessel that is—

“(1)(A) security for a mortgage indebtedness to the United States Government; or

“(B) constructed under this subtitle or required by a contract under this subtitle to be operated on a certain essential foreign trade route; and

“(2) necessary in the interests of commerce and national defense to be maintained in condition for prompt use.

**“§56502. Adjusting obligations and arranging maintenance**

“(a) GENERAL AUTHORITY.—On written application, the Secretary of Transportation may adjust obligations and arrange for maintenance of an essential vessel as provided in this chapter if the Secretary determines, after any investigation or proceeding the Secretary considers desirable, that—

“(1) the operation of the vessel in the service, route, or line to which it is assigned under this subtitle, or in which it otherwise would be operated, is not—

“(A) lawful under the Neutrality Act of 1939 (22 U.S.C. 441 et seq.) or a proclamation issued under that Act; or

“(B) compatible with maintaining the availability of the vessel for national defense and commerce;

“(2) it is not feasible under existing law to employ the vessel in any other service or operation in foreign or domestic trade (except temporary or emergency operation under section 56503(b)(5) of this title); and

“(3) the applicant, because of the restrictions of the Neutrality Act of 1939 (22 U.S.C. 441 et seq.) or the withdrawal of vessels for national defense under paragraph (1), is not earning or will not earn a reasonable return on the capital necessarily employed in its business.

“(b) EFFECTIVE PERIOD.—Adjustments and arrangements under subsection (a) shall continue in effect only as long as the circumstances described in subsection (a) continue to exist.

**“§56503. Types of adjustments and arrangements**

“(a) SUSPENSION REQUIREMENTS.—An adjustment or arrangement under this chapter shall include suspension of—

“(1) the requirement to operate the vessel in foreign trade under the applicable operating-differential or construction-differential subsidy contract or mortgage or other agreement; and

“(2) the right to operating-differential subsidy for the vessel.

“(b) DISCRETIONARY ADJUSTMENTS AND ARRANGEMENTS.—To the extent the Secretary of

Transportation considers appropriate to carry out the purposes of this subtitle, an adjustment or arrangement under this chapter may include any of the following:

“(1) Lay-up of the vessel by the owner or in the custody of the Secretary, with payment or reimbursement by the Secretary of necessary and proper expenses (including reasonable overhead and insurance) or a fixed periodic allowance instead of payment or reimbursement.

“(2) Postponement, for not more than the total period of the lay-up, of the maturity date of each installment of the principal of obligations to the United States Government for the vessel (regardless of whether the maturity date is during a lay-up period), or rearrangement of those maturities.

“(3) Postponement or cancellation of interest accruing on the obligations during a lay-up period.

“(4) Extension, for not more than the total period of the lay-up, of the 20-year life limitation for the vessel and other limitations and provisions of this subtitle based on a 20-year life.

“(5) Provision for temporary or emergency employment of the vessel (instead of lay-up) as may be practicable, with such arrangements for management of the vessel, payment of expenses, and application of the proceeds of the employment, as the Secretary may approve, with any period of operation being included as part of the lay-up period.

“(6) Payment to the Secretary, on termination of the arrangements with the applicant, of the applicant's net profits (earned while the arrangements were in effect) in excess of 10 percent a year on the capital necessarily employed in the applicant's business, as reimbursement for obligations postponed or canceled and expenses incurred or paid by the Secretary under this section.

“(c) LAID-UP VESSELS.—Under subsection (b)(6), capital of the applicant represented by a vessel of the applicant laid-up or operated under this section shall be included in capital necessarily employed in the applicant's business. The Secretary may require a vessel laid-up or operated under this section to be security for reimbursement.

#### “§56504. Changes in adjustments and arrangements

“The Secretary of Transportation may change an adjustment or arrangement made under this chapter as the Secretary considers necessary to carry out this chapter.

#### “PART F—GOVERNMENT-OWNED MERCHANT VESSELS

#### “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 Transportation.

#### “§57101. Placement of vessels in National Defense Reserve Fleet

“(a) IN GENERAL.—Any vessel acquired by the Maritime Administration shall be placed in the National Defense Reserve Fleet maintained under section 11 of the Merchant Ship Sales Act of 1946 (50 App. U.S.C. 1744).

“(b) REMOVAL FROM FLEET.—A vessel placed in the Fleet under subsection (a) may not be

traded out or sold from the Fleet, except as provided in section 57102, 57103, or 57104 or chapter 533, 537, 573, or 575 of this title.

#### “§57102. Disposition of vessels not worth preserving

“(a) IN GENERAL.—If the Secretary of Transportation determines that a vessel owned by the Maritime Administration is of insufficient value for commercial or military operation to warrant its further preservation, the Secretary may scrap the vessel or sell the vessel for cash.

“(b) SELLING PROCEDURE.—The sale of a vessel under subsection (a) shall be made on the basis of competitive sealed bids, after an appraisal and due advertisement. The purchaser does not have to be a citizen of the United States. The purchaser shall provide a surety bond, with a surety approved by the Secretary, to ensure that the vessel will not be operated in the foreign trade of the United States at any time within 10 years after the sale, in competition with a vessel owned by a citizen of the United States and documented under the laws of the United States.

#### “§57103. Sale of obsolete vessels in National Defense Reserve Fleet

“(a) IN GENERAL.—The Secretary of Transportation may convey the right, title, and interest of the United States Government in any vessel of the National Defense Reserve Fleet that has been identified by the Secretary as an obsolete vessel of insufficient value to warrant its further preservation, if the recipient—

“(1) is a non-profit organization, a State, or a municipal corporation or political subdivision of a State;

“(2) agrees not to use, or allow others to use, the vessel for commercial transportation purposes;

“(3) agrees to make the vessel available to the Government whenever the Secretary indicates that it is needed by the Government;

“(4) agrees to hold the Government harmless for any claims arising from exposure to asbestos, polychlorinated biphenyls, lead paint, or other hazardous substances after conveyance of the vessel, except for claims arising from use of the vessel by the Government;

“(5) has a conveyance plan and a business plan that describes the intended use of the vessel, each of which has been submitted to and approved by the Secretary;

“(6) has provided proof, as determined by the Secretary, of resources sufficient to accomplish the transfer, necessary repairs and modifications, and initiation of the intended use of the vessel; and

“(7) agrees that when the recipient no longer requires the vessel for use as described in the business plan required under paragraph (5)—

“(A) the recipient will, at the discretion of the Secretary, reconvey the vessel to the Government in good condition except for ordinary wear and tear; or

“(B) if the Board of Trustees of the recipient has decided to dissolve the recipient according to the laws of the State in which the recipient is incorporated, then—

“(i) the recipient shall distribute the vessel, as an asset of the recipient, to a person that has been determined exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3)), or to the Federal Government or a State or local government for a public purpose; and

“(ii) the vessel shall be disposed of by a court of competent jurisdiction of the county in which the principal office of the recipient is located, for such purposes as the court shall determine, or to such organizations as the court shall determine are organized exclusively for public purposes.

“(b) OTHER EQUIPMENT.—At the Secretary's discretion, additional equipment from other obsolete vessels of the Fleet may be conveyed to assist the recipient with maintenance, repairs, or modifications.

“(c) ADDITIONAL TERMS.—The Secretary may require any additional terms the Secretary considers appropriate.

“(d) DELIVERY OF VESSEL.—If conveyance is made under this section, the vessel shall be delivered to the recipient at a time and place to be determined by the Secretary. The vessel shall be conveyed in an ‘as is’ condition.

“(e) LIMITATIONS.—If at any time prior to delivery of the vessel to the recipient, the Secretary determines that a different disposition of the vessel would better serve the interests of the Government, the Secretary shall pursue the more favorable disposition of the obsolete vessel and shall not be liable for any damages that may result from an intended recipient's reliance upon a proposed transfer.

“(f) REVERSION.—The Secretary shall include in any conveyance under this section terms under which all right, title, and interest conveyed by the Secretary shall revert to the Government if the Secretary determines the vessel has been used other than as described in the business plan required under subsection (a)(5).

#### “§57104. Acquisition of vessels from sale of obsolete vessels

“(a) IN GENERAL.—The Secretary of Transportation may acquire suitable documented vessels with amounts in the Vessel Operations Revolving Fund derived from the sale of obsolete vessels in the National Defense Reserve Fleet.

“(b) VALUATION.—The acquired and obsolete vessels shall be valued at their scrap value in domestic or foreign markets as of the date of the acquisition for or sale from the Fleet. However, the value assigned to those vessels shall be determined on the same basis, with consideration given to the fair value of the cost of moving the vessel sold from the Fleet to the place of scrapping.

“(c) COSTS INCIDENT TO LAY-UP.—Costs incident to the lay-up of the vessel acquired under this section may be paid from amounts in the Fund.

“(d) TRANSFERS TO NON-CITIZENS.—A vessel sold from the Fleet under this section may be scrapped in an approved foreign market without obtaining additional separate approval from the Secretary to transfer the vessel to a person not a citizen of the United States.

#### “§57105. Acquisition of vessels for essential services, routes, or lines

“(a) IN GENERAL.—The Secretary of Transportation may acquire a vessel, by purchase or otherwise, if—

“(1) the Secretary considers the vessel necessary to establish, maintain, improve, or serve as a replacement on an essential service, route, or line in the foreign commerce of the United States, as determined under section 50103 of this title;

“(2) the vessel was constructed in the United States; and

“(3) the Secretary of the Navy has certified to the Secretary of Transportation that the vessel is suitable for economical and speedy conversion into a naval or military auxiliary or otherwise suitable for use by the United States Government in time of war or national emergency.

“(b) PRICE.—The price paid for the vessel shall be based on a fair and reasonable valuation. However, the price may not exceed by more than 5 percent the cost of the vessel to the owner (excluding any construction-differential subsidy and the cost of national defense features paid by the Secretary of Transportation) plus the actual cost previously expended for reconditioning, less depreciation based on a 25-year life for a dry-cargo or passenger vessel and a 20-year life for a tanker or other liquid bulk carrier vessel.

“(c) DOCUMENTATION.—A vessel acquired under this section that is not documented under the laws of the United States at the time of acquisition shall be so documented as soon as practicable.

**“§57106. Maintenance, improvement, and operation of vessels**

“(a) *IN GENERAL.*—The Secretary of Transportation may maintain, repair, recondition, remodel, and improve vessels owned by the United States Government and in the possession or under the control of the Secretary, to equip them adequately for competition in the foreign trade of the United States. The Secretary may operate such a vessel or charter the vessel on terms and conditions the Secretary considers appropriate to carry out the purposes of this subtitle.

“(b) *DOCUMENTATION AND RESTRICTIONS ON OPERATION.*—A vessel reconditioned, remodeled, or improved under subsection (a) shall be documented under the laws of the United States and remain so documented for at least 5 years after completion of the reconditioning, remodeling, or improvement. During that period, it shall be operated on voyages that are not exclusively coastwise.

**“§57107. Vessels for other agencies**

“(a) *IN GENERAL.*—The Secretary of Transportation may construct, reconstruct, repair, equip, and outfit, by contract or otherwise, vessels or parts thereof, for any other department or agency of the United States Government to the extent the other department or agency is authorized by law to do so for its own account.

“(b) *EFFECT ON CONTRACT AUTHORIZATION.*—An obligation incurred or expenditure made by the Secretary under this section does not affect any contract authorization of the Secretary, but instead shall be charged against the existing appropriation or contract authorization of the department or agency.

**“§57108. Consideration of ballast and equipment in determining selling price**

“The Maritime Administration may not sell a vessel until its ballast and equipment have been inventoried and their value considered in determining the selling price of the vessel.

**“§57109. Operation of vessels purchased, chartered, or leased from Secretary of Transportation**

“Unless otherwise authorized by the Secretary of Transportation, a vessel purchased, chartered, or leased from the Secretary may be operated only under a certificate of documentation with a registry or coastwise endorsement. Such a vessel, while employed solely as a merchant vessel, is subject to the laws, regulations, and liabilities governing merchant vessels, whether the United States Government has an interest in the vessel as an owner or holds a mortgage, lien, or other interest.

**“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.

**“§57301. Definitions**

“In this chapter:

“(1) *NEW VESSEL.*—The term ‘new vessel’ means a vessel—

“(A) constructed under this subtitle and acquired within 2 years after the date of completion; or

“(B) constructed in a domestic shipyard on private account and not under this subtitle, and documented under the laws of the United States.

“(2) *OBSOLETE VESSEL.*—The term ‘obsolete vessel’ means a vessel that—

“(A) is of at least 1,350 gross tons;

“(B) the Secretary of Transportation believes should, because of its age, obsolescence, or other reasons, be replaced in the public interest; and

“(C) has been owned by a citizen of the United States for at least 3 years immediately before its acquisition under this chapter.

**“§57302. Authority to acquire vessels**

“To promote the construction of new, safe, and efficient vessels to carry the domestic and foreign waterborne commerce of the United States, the Secretary of Transportation may acquire an obsolete vessel in exchange for an allowance of credit toward the cost of construction or purchase of a new vessel as provided in this chapter.

**“§57303. Utility value and tonnage requirements**

“(a) *UTILITY VALUE.*—The utility value of a new vessel to be acquired under this chapter for operation in the domestic or foreign commerce of the United States may not be substantially less than that of the obsolete vessel acquired in exchange under this chapter.

“(b) *TONNAGE.*—If the Secretary of Transportation finds that the new vessel will have a utility value at least equal to that of the obsolete vessel, the new vessel may be of lesser gross tonnage than the obsolete vessel. However, the gross tonnage of the new vessel must be at least one-third the gross tonnage of the obsolete vessel.

**“§57304. Eligible acquisition dates**

“At the option of the owner, the acquisition of an obsolete vessel under this chapter shall occur—

“(1) when the owner contracts for the construction or purchase of a new vessel; or

“(2) within 5 days of the actual date of delivery of the new vessel 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.

**“§57308. Use of vessels at least 25 years old**

“An obsolete vessel acquired under this chapter that is or becomes at least 25 years old may not be used for commercial operation. However, the vessel may be used—

“(1) during a period in which vessels may be requisitioned under chapter 563 of this title; or

“(2) except as otherwise provided in this subtitle, on trade routes serving only the foreign trade of the United States.

**“CHAPTER 575—CONSTRUCTION, CHARTER, AND SALE 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.

**“SUBCHAPTER I—GENERAL****“§57501. Completion of long-range program**

“Whenever the Secretary of Transportation determines that the objectives and policies declared in sections 50101 and 50102 of this title cannot be fully realized within a reasonable time under titles V and VI of the Merchant Marine Act, 1936, and the President approves the determination, the Secretary, in accordance with this chapter, shall complete the long-range program described in section 50102 of this title.

**“§57502. Construction, reconditioning, and remodeling of vessels**

“(a) *IN GENERAL.*—The Secretary of Transportation may have new vessels constructed, and have old vessels reconditioned or remodeled, as the Secretary determines necessary to carry out the objectives of this subtitle.

“(b) *PLACE OF WORK.*—Construction, reconditioning, and remodeling of vessels under subsection (a) shall take place in shipyards in the continental United States (including Alaska and Hawaii). However, if satisfactory contracts cannot be obtained from private shipbuilders, the Secretary may have the work done in navy yards.

“(c) *APPLICABILITY OF CONSTRUCTION-DIFFERENTIAL SUBSIDY PROVISIONS.*—Contracts for the construction, reconstruction, or reconditioning of a vessel by a private shipbuilder under this chapter are subject to the provisions of title V of the Merchant Marine Act, 1936, applicable to a contract with a private shipbuilder for the construction of a vessel under title V of that Act.



**“§57503. Competitive bidding**

“(a) ADVERTISEMENT AND BIDDING.—The Secretary of Transportation may make a contract with a private shipbuilder for the construction of a new vessel, or for the reconstruction or reconditioning of an existing vessel, only after due advertisement and upon sealed competitive bids.

“(b) OPENING OF BIDS.—Bids required under this section shall be opened at the time and place stated in the advertisement for bids. All interested persons, including representatives of the press, shall be permitted to attend. The results of the bidding shall be publicly announced.

**“§57504. Charter or sale of vessels acquired by Department of Transportation**

“Vessels transferred to or otherwise acquired by the Department of Transportation in any manner may be chartered or sold by the Secretary of Transportation as provided in this chapter.

**“§57505. Employment of vessels on foreign trade routes**

“(a) IN GENERAL.—The Secretary of Transportation shall arrange for the employment of the Department of Transportation’s vessels in steamship lines on such trade routes, exclusively serving the foreign trade of the United States, as the Secretary determines are essential for the development and maintenance of the commerce of the United States and the national defense. However, the Secretary shall first determine that those routes are not being adequately served by existing steamship lines privately owned and operated by citizens of the United States and documented under the laws of the United States.

“(b) POLICY TO ENCOURAGE PRIVATE OPERATION.—The Secretary shall have a policy of encouraging private operation of each essential steamship line now owned by the United States Government by—

“(1) selling the line to a citizen of the United States; or

“(2) demising the Secretary’s vessels on bareboat charter to citizens of the United States who agree to maintain the line in the manner provided 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 interested persons, including representatives of the press, shall be permitted to attend. The results of the bidding shall be publicly announced.

**“§57513. Minimum bid**

“The Secretary of Transportation shall reject any bid for the charter under this subchapter of a vessel constructed under this subtitle or the Merchant Marine Act, 1936, if the charter hire offered is lower than the minimum charter hire would be if the vessel were chartered under section 57531 of this title.

**“§57514. Qualifications of bidders**

“(a) CONSIDERATIONS.—In deciding whether to award a charter to a bidder, the Secretary of Transportation shall consider—

“(1) the bidder’s financial resources, credit standing, and practical experience in operating vessels; and

“(2) other factors a prudent business person would consider in entering into a transaction involving a large capital investment.

“(b) DISQUALIFICATIONS.—The Secretary may not charter a vessel to a person appearing to lack sufficient capital, credit, and experience to operate the vessel successfully over the period covered by the charter.

**“§57515. Awarding of charters**

“(a) IN GENERAL.—The Secretary of Transportation shall award the charter to the bidder proposing to pay the highest monthly charter hire. However, the Secretary may reject the highest or most advantageous or any other bid if the Secretary considers the charter hire offered too low or determines that the bidder lacks the qualifications required by section 57514 of this title.

“(b) HIGHEST BID REJECTED.—If the Secretary rejects the highest bid, the Secretary may—

“(1) award the charter to the next highest bidder; or

“(2) reject all bids and either readvertise the line or operate the line until conditions appear more favorable to reoffer the line for private charter.

“(c) REASON FOR REJECTION.—On request of a bidder, the reason for rejection shall be stated in writing to the bidder.

**“§57516. Operating-differential subsidies**

“If the Secretary of Transportation considers it necessary, the Secretary may make a contract with a charterer of a vessel owned by the Secretary for payment of an operating-differential subsidy, on the same terms and conditions, and subject to the same limitations and restrictions, as otherwise provided with respect to payment of operating-differential subsidies to operators 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 op-

eration 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.

**“§57521. Termination of charter during national emergency**

“A charter under this chapter shall provide that during a national emergency proclaimed by the President or a period for which the President has proclaimed that the security of the national defense makes it advisable, the Secretary of Transportation may terminate the charter without cost to the United States Government on such notice to the charterer as the President determines.

**“SUBCHAPTER III—MISCELLANEOUS****“§57531. Construction and charter of vessels for unsuccessful routes**

“(a) IN GENERAL.—If the Secretary of Transportation finds that a trade route determined to be essential under section 50103 of this title cannot be successfully developed and maintained and the Secretary’s replacement program cannot be achieved under private operation of the trade route by a citizen of the United States with vessels documented under chapter 121 of this title, without further aid by the United States Government in addition to the financial aid authorized under titles V and VI of the Merchant Marine Act, 1936, the Secretary, without advertisement or competition, may—

“(1) have constructed, in private shipyards or in navy yards, vessels of the types necessary for the trade route; and

“(2) demise charter those new vessels to the operator of vessels of the United States established on the trade route.

“(b) AMOUNT OF CHARTER HIRE.—

“(1) IN GENERAL.—The annual charter hire under subsection (a) shall be at least 4 percent of the price (referred to in this section as the ‘foreign cost’) at which the vessel would be sold if constructed under title V of the Merchant Marine Act, 1936, plus—

“(A) a percentage of the depreciated foreign cost computed annually determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the Government with remaining periods to maturity comparable to the term of the charter, adjusted to the nearest one-eighth percent; and

“(B) an allowance adequate in the judgment of the Secretary of Transportation to cover administrative costs.

“(2) DEPRECIATION.—Depreciation under paragraph (1)(A) shall be based on—

“(A) a 25-year life for dry-cargo and passenger vessels; and

“(B) a 20-year life for tankers and other bulk liquid carrier vessels.

“(c) OPTION TO PURCHASE.—The charter may contain an option to the charterer to purchase the vessels from the Secretary of Transportation within 5 years after delivery under the charter, on the same terms and conditions as provided in title V of the Merchant Marine Act, 1936, for the purchase of new vessels from the Secretary. However—

“(1) the purchase price shall be the foreign cost less depreciation to the date of purchase based on the useful life specified in subsection (b)(2);

“(2) the required cash payment payable at the time of the purchase shall be 25 percent of the purchase price;

“(3) the charter may provide that any part of the charter hire paid in excess of the minimum charter hire provided for in this section may be credited against the cash payment payable at the time of the purchase;

“(4) the balance of the purchase price shall be paid within the remaining years of useful life (as specified in subsection (b)(2)) after the date of delivery of the vessel under the charter and in approximately equal annual installments, except that the first installment, which shall be payable on the next ensuing anniversary date of the delivery under the charter, shall be a proportionate part of the annual installment; and

“(5) interest shall be payable on the unpaid balances from the date of purchase, at a rate not less than—

“(A) a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the Government with remaining periods to maturity comparable to the average maturities of the loans, adjusted to the nearest one-eighth percent; plus

“(B) an allowance adequate in the judgment of the Secretary of Transportation to cover administrative costs.

“(d) OPERATION OF VESSEL.—

“(1) PERMISSIBLE VOYAGES.—The charter shall provide for operation of the vessel exclusively—

“(A) in foreign trade;

“(B) on a round-the-world voyage;

“(C) on a round voyage from the west coast of the United States to a European port that includes an intercoastal port of the United States;

“(D) on a round voyage from the Atlantic coast of the United States to the Orient that includes an intercoastal port of the United States; or

“(E) on a voyage in foreign trade on which the vessel may stop at Hawaii or an island territory or possession of the United States.

“(2) DOMESTIC TRADE.—The charter shall provide if the vessel is operated in domestic trade on any of the services specified in paragraph (1), the charterer will pay annually to the Secretary of Transportation that proportion of  $\frac{1}{25}$  of the difference between the domestic and foreign cost of the vessel as the gross revenue de-

rived from the domestic trade bears to the gross revenue derived from the entire voyages completed during the preceding year.

**“§57532. Operation of experimental vessels**

“(a) DEFINITION.—In this section, the term ‘experimental vessel’ means a vessel owned by the United States Government (including a vessel in the National Defense Reserve Fleet) that has been constructed, reconditioned, or remodeled for experimental or testing purposes.

“(b) AUTHORITY TO OPERATE.—The Secretary of Transportation, for the purpose of practical development, trial, and testing, may operate an experimental vessel under a bareboat charter or general agency agreement in the foreign or domestic trade of the United States or for use for the account of a department or agency of the Government, without regard to other provisions of this subtitle and other laws related to chartering and general agency operations. Not more than 10 vessels may be operated and tested under this section in any one year.

“(c) TERMS OF OPERATION.—Operation of a vessel under this section shall be on terms the Secretary considers appropriate to carry out the purposes of this subtitle. A bareboat charter under this section shall be at reasonable rates and include restrictions the Secretary considers appropriate to protect the public interest, including provisions for recapture of profits under section 57517 of this title. A charter or general agency agreement under this section shall be reviewed annually to determine whether conditions exist to justify continuance of the charter or agreement.

“(d) RIGHTS OF SEAMEN.—A seaman engaged in vessel operations of the Secretary under this section and employed through a general agent in connection with a charter or agreement under this section is entitled to all the rights and remedies provided in sections 1(a) and (c), 3(c), and 4 of the Act of March 24, 1943 (50 App. U.S.C. 1291(a), (c), 1293(c), 1294).

**“PART G—RESTRICTIONS AND PENALTIES**

**“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.

**“§58101. Operating in domestic intercoastal or coastwise service**

“(a) PROHIBITION.—A subsidy may not be awarded or paid to a contractor under the operating-differential subsidy program, and a vessel may not be chartered to a person under chapter 575 of this title, if the contractor or charterer, or a holding company, subsidiary, affiliate, or associate of the contractor or charterer, or an officer, director, agent, or executive thereof, directly or indirectly—

“(1) owns, charters, or operates a vessel engaged in the domestic intercoastal or coastwise service; or

“(2) owns a pecuniary interest in a person that owns, charters, or operates a vessel in the domestic intercoastal or coastwise service.

“(b) WAIVER.—A person may apply to the Secretary of Transportation for a waiver of subsection (a). Before deciding on the waiver, the Secretary shall give the applicant and other interested persons an opportunity for a hearing. The Secretary may not grant the waiver if the Secretary finds it would—

“(1) result in unfair competition to a person operating exclusively in the domestic intercoastal or coastwise service; or

“(2) be prejudicial to the objectives and policy of this subtitle.

“(c) CONTINUOUS OPERATION SINCE 1935.—The Secretary shall grant an application under subsection (b) without requiring further proof that the public interest and convenience will be served and without further proceedings as to the competition in the route or trade, if the contractor or other person, or a predecessor in interest, was in bona-fide operation as a common carrier by water in the domestic intercoastal or coastwise trade in 1935 over the route or in the trade for which the application is made and has so operated since that time or, if engaged in furnishing seasonal service only, was in bona-fide operation in 1935 during the season ordinarily covered by its operation, except in either event as to interruptions of service over which the applicant or its predecessor in interest had no control.

“(d) DIVERSION INTO INTERCOASTAL OR COASTWISE OPERATIONS.—If an application under subsection (b) is approved, a person referred to in this section may not divert, directly or indirectly, money, property, or any other thing of value, used in a foreign-trade operation for which a subsidy is paid by the United States Government, into intercoastal or coastwise operations.

**“§58102. Default on payment or maintenance of reserves**

“The Secretary of Transportation may supervise the number and compensation of all officers and employees of a contractor under the operating-differential subsidy program or a charterer under chapter 575 of this title, receiving an operating-differential subsidy, if the contractor or charterer—

“(1) is in default on a mortgage, note, purchase contract, or other obligation to the Secretary; or

“(2) has not maintained, in a manner satisfactory to the Secretary, all of the reserves provided for in this subtitle.

**“§58103. Employing another person as managing or operating agent**

“(a) PROHIBITION.—Except with the written consent of the Secretary of Transportation, a contractor holding a contract under the operating-differential subsidy program or under chapter 575 of this title may not—

“(1) employ another person as the managing or operating agent of the operator; or

“(2) charter a vessel, on which an operating-differential subsidy is to be paid, for operation by another person.

“(b) APPLICABILITY OF PROVISIONS TO CHARTERER.—If a charter prohibited by this section is made, the person operating the chartered vessel is subject to all the provisions of this subtitle and the operating-differential subsidy program, including limitations of profits and salaries.

**“§58104. Willful violation constitutes breach of contract or charter**

“A willful violation of any provision of sections 58101–58103 of this title constitutes a breach of the contract or charter. On determining that a violation has occurred, the Secretary of Transportation may declare the contract or charter rescinded.

**“§58105. Preferences for cargo in which charterer has interest**

“A contractor receiving an operating-differential subsidy, or a charterer under chapter 575 of this title, may not unjustly discriminate in any manner so as to give preference, directly or indirectly, to cargo in which the contractor or charterer has a direct or indirect ownership, purchase, or vending interest.

**“§58106. Concerted discriminatory activities**

“(a) PROHIBITION.—A contractor receiving an operating-differential subsidy, or a charterer

under chapter 575 of this title, may not continue as a party to or conform to an agreement with another carrier by water, or engage in a practice in concert with another carrier by water, that is unjustly discriminatory or unfair to any other citizen of the United States operating a common carrier by water employing only vessels documented under the laws of the United States on an established trade route from and to a United States port.

“(b) GOVERNMENT PAYMENT PROHIBITED.—No payment or subsidy of any kind may be paid, directly or indirectly, out of funds of the United States Government to a contractor or charterer that has violated subsection (a).

“(c) CIVIL ACTION.—A person whose business or property is injured by a violation of subsection (a) may bring a civil action in the district court of the United States for the district in which the defendant resides, is found, or has an agent. If the person prevails, the person shall be awarded—

- “(1) 3 times the damages; and
- “(2) costs, including reasonable attorney fees.

“§58107. Discrimination at ports by water common carriers

“(a) PROHIBITION.—A common carrier by water may not, directly or indirectly, through an agreement, conference, association, understanding, or otherwise, prevent or attempt to prevent any other common carrier by water from serving any port described in subsection (b) at the same rates the first carrier charges at the nearest port already regularly served by it.

“(b) PORTS.—A port referred to in subsection (a) is one that is—

- “(1) designed for the accommodation of ocean-going vessels;
- “(2) located on an improvement project authorized by law or by a Federal agency; and
- “(3) located within the continental limits of the United States.

“(c) OTHER AUTHORITY NOT LIMITED.—This section does not limit the authority otherwise vested in the Secretary of Transportation and the Federal Maritime Commission.

“§58108. Charges for transportation subject to subtitle IV of title 49

“(a) PROHIBITION.—A carrier may not charge, collect, or receive for transportation subject to subtitle IV of title 49 of persons or property, under any joint rate, fare, or charge, or under any export, import, or other proportional rate, fare, or charge, that is based in whole or in part on the fact that the persons or property affected are to be transported to, or have been transported from, a port in a territory or possession of the United States or in a foreign country, by a carrier by water in foreign commerce, any lower rate, fare, or charge than the carrier charges, collects, or receives for the transportation of persons or similar property for the same distance, in the same direction, and over the same route, in commerce wholly within the United States, unless the vessel used for the transportation is or was at the time of the transportation documented under the laws of the United States.

“(b) SUSPENSION OF PROHIBITION.—Whenever the Secretary of Transportation believes that adequate shipping facilities to or from any port in a territory or possession of the United States or a foreign country are not being provided by vessels documented under the laws of the United States, the Secretary shall certify this fact to the Surface Transportation Board. On receiving the certification, the Board may by order suspend the operation of subsection (a) with respect to the rates, fares, and charges for the transportation by rail of persons and property transported from or to be transported to those ports, for such time and under such terms and conditions as the Secretary may specify in the order or in any supplemental order.

“(c) TERMINATION OF SUSPENSION.—Whenever the Secretary believes that adequate shipping facilities are being provided to those ports by

vessels documented under the laws of the United States, and certifies that fact to the Board, the Board may order the termination of the suspension.

“§58109. Penalties

“(a) INDIVIDUALS.—An individual convicted of violating section 58101(d), 58103, or 58105 of this title shall be fined under title 18, imprisoned for at least one year but not more than 5 years, or both.

“(b) ORGANIZATIONS.—An organization convicted of committing an act prohibited by this subtitle shall be fined under title 18.

“(c) INELIGIBILITY TO RECEIVE BENEFITS.—An individual or organization convicted of violating a section referred to in subsection (a) is ineligible, at the discretion of the Secretary of Transportation, to receive any benefit under the construction-differential subsidy or operating-differential subsidy programs, or a charter under chapter 575 of this title, for 5 years after the conviction.”.

SEC. 9. SUBTITLE VI OF TITLE 46.

(a) REDESIGNATION.—Title 46, United States Code, is amended by redesignating subtitle VI as subtitle VII.

(b) NEW SUBTITLE.—Title 46, United States Code, is amended by inserting after subtitle V the following:

“Subtitle VI—Clearance, Tonnage Taxes, and Duties

“Chapter	Sec.
“601. Arrival and Departure Requirements .....	60101
“603. Tonnage Taxes and Light Money ....	60301
“605. Discriminating Duties and Reciprocal Privileges .....	60501

“CHAPTER 601—ARRIVAL AND DEPARTURE 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.

“§ 60101. Boarding arriving vessels before inspection

“(a) REGULATIONS.—The Secretary of Homeland Security shall prescribe and enforce regulations on the boarding of a vessel arriving at a port of the United States before the vessel has been inspected and secured.

“(b) CRIMINAL PENALTY.—A person violating a regulation prescribed under this section shall be fined under title 18, imprisoned for not more than 6 months, or both.

“(c) RELATIONSHIP TO OTHER LAW.—This section shall be construed as supplementary to section 2279 of title 18.

“§ 60102. Production of certificate on entry

“On entry of a vessel documented under chapter 121 of this title, the master or other individual in charge of the vessel shall produce the certificate of documentation to the customs officer at the place where the vessel is entered. If the certificate is not produced, the vessel is not entitled to the privileges of a documented vessel.

“§ 60103. Oath of ownership on entry

“(a) REQUIRED STATEMENT.—On entry of a vessel of the United States from a foreign port, the individual designated under subsection (b) shall state under oath that—

- “(1) the vessel’s certificate of documentation contains the names of all the owners of the vessel; or
- “(2) part of the ownership has been transferred since the certificate was issued and, to the best of the individual’s knowledge and be-

lief, the vessel is still owned only by citizens of the United States.

“(b) PERSON TO MAKE STATEMENT.—The statement under subsection (a) shall be made by—

- “(1) an owner if one resides at the port of entry; or
- “(2) the master if an owner does not reside at the port of entry.

“(c) CONSEQUENCE OF NOT MAKING STATEMENT.—If the appropriate individual does not make the statement required by this section, the vessel is not entitled to the privileges of a vessel of the United States.

“§ 60104. Depositing certificates of documentation with consular officers

“(a) REQUIREMENT OF MASTER.—When a vessel owned by citizens of the United States, on a voyage from a port in the United States, arrives at a foreign port, the master of the vessel shall deposit the vessel’s certificate of documentation with a consular officer at the foreign port if there is a consular officer at that port.

“(b) RETURN OF CERTIFICATE.—When the master produces a clearance from the appropriate officer of the foreign port, the consular officer shall return the certificate of documentation to the master if the master has complied with the provisions of law related to the discharge of seamen in a foreign country and the payment of fees of consular officers.

“(c) CIVIL PENALTY AND COLLECTION.—The master of a vessel failing to deposit the certificate of documentation as required by subsection (a) is liable to the United States Government for a civil penalty of \$500. The consular officer shall bring an action to recover the penalty in any court of competent jurisdiction. The action shall be brought in the name of the consular officer for the benefit of the United States.

“§ 60105. Clearance of vessels

“(a) VESSELS OF THE UNITED STATES.—Except as otherwise provided by law, a vessel of the United States shall obtain clearance from the Secretary of Homeland Security before proceeding from a port or place in the United States—

- “(1) for a foreign port or place;
- “(2) for another port or place in the United States if the vessel has on board foreign merchandise for which entry has not been made; or
- “(3) outside the territorial sea to visit a hovering vessel or to receive merchandise while outside the territorial sea.

“(b) OTHER VESSELS.—Except as otherwise provided by law, a vessel that is not a vessel of the United States shall obtain clearance from the Secretary before proceeding from a port or place in the United States—

- “(1) for a foreign port or place;
- “(2) for another port or place in the United States; or
- “(3) outside the territorial sea to visit a hovering vessel or to receive or deliver merchandise while outside the territorial sea.

“(c) REGULATIONS.—The Secretary may by regulation—

“(1) prescribe the manner in which clearance under this section is to be obtained, including the documents, data, or information which shall be submitted or transmitted, pursuant to an authorized data interchange system, to obtain the clearance;

“(2) permit clearance to be obtained before all requirements for clearance are complied with, but only if the owner or operator of the vessel files a bond in an amount set by the Secretary conditioned on the compliance by the owner or operator with all specified requirements for clearance within a time period (not exceeding 4 business days) established by the Secretary; and

“(3) permit clearance to be obtained at a place other than a designated port of entry, under conditions the Secretary may prescribe.

“§ 60106. State inspection laws

“When State law requires a certificate of inspection for goods carried on a vessel, a vessel

transporting the goods may not be cleared until the certificate is produced.

**“§60107. Payment of fees on departing vessel**

“A departing vessel may be cleared only when all legal fees that have accrued on the vessel are paid and proof of payment is presented to the individual granting the clearance.

**“§60108. Duty to transport tendered cargo**

“Clearance may be refused to a vessel or vehicle transporting cargo destined for a domestic or foreign port when the owner, master, or other individual in charge refuses to accept cargo tendered in good condition, with proper charges, for the same or an intermediate port by a citizen of the United States. This section does not apply if the vessel or vehicle is already fully loaded (giving appropriate consideration to its proper loading) or is not adaptable to transport the tendered cargo.

**“§60109. Duty to transport money and securities of the United States Government**

“Before being given clearance, a vessel owned by a citizen of the United States and bound on a voyage from a port in the United States to another port in the United States or in a foreign country, or on a voyage from a port in a foreign country to a port in the United States, shall receive on board any bullion, coin, notes, bonds, or other securities of the United States Government that an agency, consular officer, or other agent of the Government offers. The vessel shall transport the items securely and deliver them promptly to the proper authorities or consignees on arriving at the port of destination. Compensation shall be paid for services provided under this section that is equal to compensation paid to other carriers in the ordinary transaction of business.

**“CHAPTER 603—TONNAGE TAXES AND LIGHT MONEY**

“Sec.

“60301. Regular tonnage taxes.

“60302. Special tonnage taxes.

“60303. Light money.

“60304. Presidential suspension of tonnage taxes and light money.

“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.

**“§60301. Regular tonnage taxes**

“(a) LOWER RATE.—A tax is imposed at the rate of 2 cents per ton (but not more than a total of 10 cents per ton per year) at each entry in a port of the United States of—

“(1) a vessel entering from a foreign port or place in North America, Central America, the West Indies Islands, the Bahama Islands, the Bermuda Islands, or the coast of South America bordering the Caribbean Sea; or

“(2) a vessel returning to the same port or place in the United States from which it departed, and not entering the United States from another port or place, except—

“(A) a vessel of the United States;

“(B) a recreational vessel (as defined in section 2101 of this title); or

“(C) a barge.

“(b) HIGHER RATE.—A tax is imposed at the rate of 6 cents per ton (but not more than a total of 30 cents per ton per year) on a vessel at each entry in a port of the United States from a foreign port or place not named in subsection (a)(1).

“(c) EXCEPTION FOR VESSELS ENTERING OTHER THAN BY SEA.—Subsection (a) does not apply to a vessel entering other than by sea from a for-

ign port or place at which tonnage, lighthouse, or other equivalent taxes are not imposed on vessels of the United States.

**“§60302. Special tonnage taxes**

“(a) ENTRY FROM FOREIGN PORT OR PLACE.—Regardless of whether a tax is imposed under section 60301 of this title, a tax is imposed on a vessel at each entry in a port of the United States from a foreign port or place at the following rates:

“(1) 30 cents per ton on a vessel built in the United States but owned in any part by a subject of a foreign country.

“(2) 50 cents per ton on other vessels not of the United States.

“(3) 50 cents per ton on a vessel of the United States having an officer who is not a citizen of the United States.

“(4) \$2 per ton on a foreign vessel entering from a foreign port or place at which vessels of the United States are not ordinarily allowed to enter and trade.

“(b) VESSELS NOT OF THE UNITED STATES TRANSPORTING PROPERTY BETWEEN DISTRICTS.—Regardless of whether a tax is imposed under section 60301 of this title, a tax of 50 cents per ton is imposed on a vessel not of the United States at each entry in one customs district from another district when transporting goods loaded in one district to be delivered in another district.

“(c) EXCEPTION FOR VESSELS BECOMING DOCUMENTED.—The tax of 50 cents per ton under this section does not apply to a vessel that—

“(1) is owned only by citizens of the United States; and

“(2) after entering a port of the United States, becomes documented as a vessel of the United States before leaving that port.

**“§60303. Light money**

“(a) IMPOSITION OF TAX.—A tax of 50 cents per ton, to be called ‘light money’, is imposed on a vessel not of the United States at each entry in a port of the United States. This tax shall be imposed and collected under the same regulations that apply to tonnage taxes.

“(b) EXCEPTION FOR VESSELS OWNED BY CITIZENS.—

“(1) IN GENERAL.—Subsection (a) does not apply to a vessel owned only by citizens of the United States if—

“(A) the vessel is carrying a regular document issued by a customhouse of the United States proving the vessel to be owned only by citizens of the United States; and

“(B) on entry of the vessel from a foreign port, the individual designated under paragraph (2) states under oath that—

“(i) the document contains the names of all the owners of the vessel; or

“(ii) part of the ownership has been transferred since the document was issued and, to the best of that individual’s knowledge and belief, the vessel is still owned only by citizens of the United States.

“(2) PERSON TO MAKE STATEMENT.—The statement under paragraph (1)(B) shall be made by—

“(A) an owner if one resides at the port of entry; or

“(B) the master if an owner does not reside at the port of entry.

“(c) EXCEPTION FOR VESSELS BECOMING DOCUMENTED.—Subsection (a) section does not apply to a vessel that—

“(1) is owned only by citizens of the United States; and

“(2) after entering a port of the United States, becomes documented as a vessel of the United States before leaving that port.

**“§60304. Presidential suspension of tonnage taxes and light money**

“If the President is satisfied that the government of a foreign country does not impose discriminating or countervailing duties to the disadvantage of the United States, the President shall suspend the imposition of special tonnage taxes and light money under sections 60302 and 60303 of this title on vessels of that country.

**“§60305. Vessels in distress**

“A vessel is exempt from tonnage taxes and light money when it enters because it is in distress.

**“§60306. Vessels not engaged in trade**

“A vessel is exempt from tonnage taxes and light money when not engaged in trade.

**“§60307. Vessels engaged in coastwise trade or the fisheries**

“A vessel with a registry endorsement or a coastwise endorsement, trading from one port in the United States to another port in the United States or employed in the bank, whale, or other fisheries, is exempt from tonnage taxes and light money.

**“§60308. Vessels engaged in Great Lakes trade**

“A documented vessel with a registry endorsement, engaged in foreign trade on the Great Lakes or their tributary or connecting waters in trade with Canada, does not become subject to tonnage taxes or light money because of that trade.

**“§60309. Passenger vessels making trips between ports of the United States and foreign ports**

“A passenger vessel making at least 3 trips per week between a port of the United States and a foreign port is exempt from tonnage taxes and light money.

**“§60310. Vessels making daily trips on interior waters**

“A vessel making regular daily trips between a port of the United States and a port of Canada only on interior waters not navigable to the ocean is exempt from tonnage taxes and light money, except on its first clearing each year.

**“§60311. Hospital vessels in time of war**

“In time of war, a hospital vessel is exempt from tonnage taxes, light money, and pilotage charges in the ports of the United States if the vessel is one for which the conditions of the international convention for the exemption of hospital ships from taxation in time of war, concluded at The Hague on December 21, 1904, are satisfied. The President by proclamation shall name the vessels for which the conditions are satisfied and state when the exemption begins and ends.

**“§60312. Rights under treaties preserved**

“This chapter and chapter 605 of this title do not affect a right or privilege of a foreign country relating to tonnage taxes or other duties on vessels under a law or treaty of the United States.

**“CHAPTER 605—DISCRIMINATING DUTIES AND RECIPROCAL PRIVILEGES**

“Sec.

“60501. Vessels allowed to import.

“60502. Discriminating duty on goods imported in foreign vessels or from contiguous countries.

“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.

**“§60501. Vessels allowed to import**

s“(a) IN GENERAL.—Except as otherwise provided by treaty, goods may be imported into the United States from a foreign port or place only in—

“(1) a vessel of the United States; or

“(2) a foreign vessel owned only by citizens or subjects of the country—

“(A) in which the goods are grown, produced, or manufactured; or

“(B) from which the goods can only be, or most usually are, first shipped for transportation.

“(b) EXCEPTION FOR VESSELS OF COUNTRIES NOT MAINTAINING SIMILAR RESTRICTIONS.—Subsection (a) does not apply to a vessel of a foreign country that does not maintain a similar restriction against United States documented vessels.

“(c) EXCEPTION FOR VESSELS BECOMING DOCUMENTED.—Subsection (a) does not apply to a vessel that—

“(1) is owned only by citizens of the United States; and

“(2) after entering a port of the United States, becomes documented as a vessel of the United States before leaving that port.

“(d) SEIZURE AND FORFEITURE.—If goods are imported in violation of this section, the goods and the vessel in which they are imported, along with its equipment and other cargo, may be seized by and forfeited to the United States Government.

**“§60502. Discriminating duty on goods imported in foreign vessels or from contiguous countries**

“(a) IMPOSITION OF DUTY.—A discriminating duty of 10 percent ad valorem (in addition to other duties imposed by law) is imposed on goods—

“(1) imported in a vessel not of the United States unless the vessel—

“(A) is entitled by law or treaty to enter the ports of the United States on payment of the same duties as are payable on goods imported in a vessel of the United States; or

“(B)(i) is owned only by citizens of the United States; and

“(ii) after entering a port of the United States, becomes documented as a vessel of the United States before leaving that port; or

“(2) produced or manufactured in a foreign country not contiguous to the United States and imported from a country contiguous to the United States, unless imported in the usual course of strictly retail trade.

“(b) SEIZURE AND FORFEITURE.—If goods are imported without payment of the duty required by this section, the goods and the vessel in which they are imported may be seized by, and forfeited to, the United States Government.

**“§60503. Reciprocal suspension of discriminating duties**

“(a) GENERAL AUTHORITY.—On receiving satisfactory proof from the government of a foreign country that it has suspended, in any part, the imposition of discriminating duties for any class of vessels owned by citizens of the United States or goods imported in those vessels, the President may proclaim a reciprocal suspension of discriminating duties for the same class of vessels owned by citizens of that country or goods imported in those vessels.

“(b) EFFECTIVE AND EXPIRATION DATES.—A suspension under this section takes effect retroactively from the date the President received the proof from the foreign government, and expires when that government stops granting the reciprocal suspension.

**“§60504. Reciprocal privileges for recreational vessels**

“When the President is satisfied that yachts owned by residents of the United States and used only for pleasure are allowed to arrive at, depart from, and cruise in the waters of a foreign port without entering, clearing, or paying any duties or fees (including cruising license fees), the Secretary of Homeland Security may allow yachts from that foreign port used only for pleasure to arrive at and depart from the ports of the United States and to cruise in the waters of the United States without paying any duties or fees. However, the Secretary may require foreign yachts to obtain a license to cruise in the waters of the United States. The license shall be in the form prescribed by the Secretary and contain limitations about length of time, direction, place of cruising and action, and other matters the Secretary considers appropriate. The license shall be issued without cost to the 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 or place in the British dominions of North America, are being or recently have been—

“(A) denied the privilege of entering the port or place in the same manner and under the same regulations applicable to trading vessels of the most-favored-nation;

“(B) prevented from buying supplies allowed to be sold to trading vessels of the most-favored-nation; or

“(C) otherwise harassed; or

“(3) other vessels of the United States or their masters or crews in waters, ports, or places of the British dominions of North America are being or recently have been—

“(A) denied privileges given to vessels of the most-favored-nation or their masters or crews; or

“(B) otherwise harassed.

“(b) COVERAGE AND EXCEPTIONS.—The President may apply a proclamation under this section to any of the subjects named, and may include exceptions for vessels in distress or need of supplies. The President may change, revoke, and renew the proclamation.

“(c) PENALTIES.—A person violating a proclamation issued under this section shall be fined under title 18, imprisoned for not more than 2 years, or both. A vessel or goods found in waters, ports, or places of the United States in violation of the proclamation may be seized by, and forfeited to, the United States Government.

**“§60507. Suspension of free passage through Saint Marys Falls Canal**

“(a) PURPOSE.—The purpose of this section is to secure reciprocal advantages for the citizens, ports, and vessels of the United States.

“(b) GENERAL AUTHORITY.—When the President is satisfied that vessels of the United States, or passengers or cargo being transported to a port of the United States, are prohibited from passing through a canal or lock connected with the navigation of the Saint Lawrence River, the Great Lakes, or their connecting waterways, or burdened in that passage by tolls or other means that are unreasonable in view of the free passage through the Saint Marys Falls Canal allowed to vessels of all countries, the President by proclamation may suspend the right of free passage through the Saint Marys Falls Canal for vessels owned by subjects of the country imposing the prohibition, tolls, or other burdens and for passengers and cargo being transported to the ports of that country, even when carried in vessels of the United States. The suspension shall apply to the extent and for the time the President considers appropriate.

“(c) IMPOSITION OF TOLL.—

“(1) IN GENERAL.—During a suspension under this section, the President shall impose a toll of not more than \$2 per ton on cargo and not more than \$5 on each passenger.

“(2) EXCEPTIONS.—Notwithstanding paragraph (1), a toll may not be imposed on passengers or cargo landed at Ogdensburg, New York, or any port west of Ogdensburg and south of a line drawn from the northern boundary of New York through the Saint Lawrence River, the Great Lakes, and their connecting channels to the northern boundary of Minnesota.

“(d) COLLECTION OF TOLL.—

“(1) IN GENERAL.—A toll imposed under this section shall be collected under regulations prescribed by the Secretary of Homeland Security. The Secretary may require the master of a vessel to provide a sworn statement of the amount and kind of cargo, the number of passengers, and the destination of the passengers and cargo.

“(2) PROOF OF LANDING.—When applicable, the Secretary also may require satisfactory proof that the passengers and cargo were landed at a port described in subsection (c)(2). Until that proof is provided, the Secretary may assume the passengers and cargo were not landed at such a port, and the amount of a toll that otherwise would be imposed is a lien enforceable against the vessel when found in the waters of the United States.”

**SEC. 10. SUBTITLE VII OF TITLE 46.**

Subtitle VII of title 46, United States Code, as redesignated by section 9(a) of this Act, is amended as follows:

(1) The subtitle heading and analysis are amended to read as follows:

<b>“Subtitle VII—Security and Drug Enforcement</b>	
“Chapter	Sec.
“701. Port Security .....	70101
“703. Maritime Security .....	70301
“705. Maritime Drug Law Enforcement ...	70501”.

(2) Add after chapter 701 the following:

**“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.

**“§70301. Definitions**

“In this chapter:

“(1) COMMON CARRIER.—The term ‘common carrier’ has the meaning given that term in section 40102 of this title.

“(2) PASSENGER VESSEL.—The term ‘passenger vessel’ has the meaning given that term in section 2101 of this title.

“(3) SECRETARY.—The term ‘Secretary’ means the Secretary of the department in which the Coast Guard is operating.

**“§70302. International measures for seaport and vessel security**

“Congress encourages the President to continue to seek agreement on international seaport and vessel security through the International Maritime Organization. In developing an agreement, each member country of the International Maritime Organization should consult with appropriate private sector interests in that country. The agreement would establish seaport and vessel security measures and could include—

“(1) seaport screening of cargo and baggage similar to that done at airports;

“(2) security measures to restrict access to cargo, vessels, and dockside property to authorized personnel only;

“(3) additional security on board vessels;

“(4) licensing or certification of compliance with appropriate security standards; and

“(5) other appropriate measures to prevent unlawful acts against passengers and crews on vessels.

**“§70303. Security standards at foreign ports**

“(a) GENERAL REQUIREMENTS.—The Secretary shall develop and implement a plan to assess the effectiveness of the security measures maintained at foreign ports that the Secretary, in consultation with the Secretary of State, determines pose a high risk of acts of terrorism against passenger vessels. In carrying out this subsection, the Secretary shall consult with the Secretary of State about the terrorist threat that exists in each country and poses a high risk of acts of terrorism against passenger vessels.

“(b) NOTICE AND RECOMMENDATIONS TO OTHER COUNTRIES.—If the Secretary, after implementing the plan under subsection (a), determines that a port does not maintain and administer effective security measures, the Secretary of State (after being informed by the Secretary) shall—

“(1) notify the appropriate government authorities of the country in which the port is located of the determination; and

“(2) recommend steps necessary to bring the security measures at that port up to the standard used by the Secretary in making the assessment under subsection (a).

“(c) ANTITERRORISM ASSISTANCE.—The President is encouraged to provide antiterrorism assistance related to maritime security under chapter 8 of part II of the Foreign Assistance Act of 1961 (22 U.S.C. 2349aa et seq.) to foreign countries, especially for a port that the Secretary determines under subsection (b) does not maintain and administer effective security measures.

**“§70304. Travel advisories on security at foreign ports**

“(a) GENERAL REQUIREMENTS.—On being notified by the Secretary that the Secretary has determined that a condition exists that threatens the safety or security of passengers, passenger vessels, or crew traveling to or from a foreign port that the Secretary has determined under section 70303(b) of this title does not maintain and administer effective security measures, the Secretary of State immediately shall issue a travel advisory for that port. The Secretary of State shall take the necessary steps to widely publicize the travel advisory.

“(b) LIFTING ADVISORIES.—A travel advisory issued under subsection (a) may be lifted only if the Secretary, in consultation with the Secretary of State, has determined that effective security measures are maintained and administered at the port.

“(c) NOTICE TO CONGRESS.—The Secretary of State shall notify Congress immediately of any change in the status of a travel advisory issued under this section.

**“§70305. Suspension of passenger services**

“(a) GENERAL AUTHORITY.—Whenever the President determines that a foreign nation per-

mits the use of territory under its jurisdiction as a base of operations or training for, or as a sanctuary for, or in any way arms, aids, or abets, a terrorist or terrorist group that knowingly uses the illegal seizure of passenger vessels or the threat thereof as an instrument of policy, the President may suspend the right of any passenger vessel common carrier to operate to or from, and the right of any passenger vessel of the United States to use, a port in that foreign nation for passenger service. The suspension may be without notice or hearing and for as long as the President determines is necessary to ensure the security of passenger vessels against unlawful seizure.

“(b) PROHIBITION.—A passenger vessel common carrier, or a passenger vessel of the United States, may not operate in violation of a suspension under this section.

“(c) PENALTIES.—

“(1) DENIAL OF ENTRY.—If a person operates a vessel in violation of this section, the Secretary may deny the vessels of that person entry to ports of the United States.

“(2) CIVIL PENALTY.—A person violating this section is liable to the United States Government for a civil penalty of not more than \$50,000. Each day a vessel uses a prohibited port is a separate violation.

**“§70306. Report on terrorist threats**

“(a) CONTENT.—Not later than February 28 of each year, the Secretary shall submit a report to Congress on the threat from acts of terrorism to United States ports and vessels operating from those ports. The Secretary shall include a description of activities undertaken under title I of the Maritime Transportation Security Act of 2002 (Public Law 107–295, 116 Stat. 2066) and an analysis of the effect of those activities on port security against acts of terrorism.

“(b) SUBMISSION.—The report shall be submitted to the Committee on International Relations and the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Foreign Relations and the Committee on Commerce, Science, and Transportation of the Senate. Any classified information in the report shall be submitted separately as an addendum.

**“CHAPTER 705—MARITIME DRUG LAW ENFORCEMENT**

“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.

**“§70501. Findings and declarations**

“Congress finds and declares that trafficking in controlled substances aboard vessels is a serious international problem, is universally condemned, and presents a specific threat to the security and societal well-being of the United States.

**“§70502. Definitions**

“(a) APPLICATION OF OTHER DEFINITIONS.—The definitions in section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802) apply to this chapter.

“(b) VESSEL OF THE UNITED STATES.—In this chapter, the term ‘vessel of the United States’ means—

“(1) a vessel documented under chapter 121 of this title or numbered as provided in chapter 123 of this title;

“(2) a vessel owned in any part by an individual who is a citizen of the United States, the United States Government, the government of a State or political subdivision of a State, or a corporation incorporated under the laws of the United States or of a State, unless—

“(A) the vessel has been granted the nationality of a foreign nation under article 5 of the 1958 Convention on the High Seas; and

“(B) a claim of nationality or registry for the vessel is made by the master or individual in charge at the time of the enforcement action by an officer or employee of the United States who is authorized to enforce applicable provisions of United States law; and

“(3) a vessel that was once documented under the laws of the United States and, in violation of the laws of the United States, was sold to a person not a citizen of the United States, placed under foreign registry, or operated under the authority of a foreign nation, whether or not the vessel has been granted the nationality of a foreign nation.

“(c) VESSEL SUBJECT TO THE JURISDICTION OF THE UNITED STATES.—

“(1) IN GENERAL.—In this chapter, the term ‘vessel subject to the jurisdiction of the United States’ includes—

“(A) a vessel without nationality;

“(B) a vessel assimilated to a vessel without nationality under paragraph (2) of article 6 of the 1958 Convention on the High Seas;

“(C) a vessel registered in a foreign nation if that nation has consented or waived objection to the enforcement of United States law by the United States;

“(D) a vessel in the customs waters of the United States;

“(E) a vessel in the territorial waters of a foreign nation if the nation consents to the enforcement of United States law by the United States; and

“(F) a vessel in the contiguous zone of the United States, as defined in Presidential Proclamation 7219 of September 2, 1999 (43 U.S.C. 1331 note), that—

“(i) is entering the United States;

“(ii) has departed the United States; or

“(iii) is a hovering vessel as defined in section 401 of the Tariff Act of 1930 (19 U.S.C. 1401).

“(2) CONSENT OR WAIVER OF OBJECTION.—Consent or waiver of objection by a foreign nation to the enforcement of United States law by the United States under paragraph (1)(C) or (E)—

“(A) may be obtained by radio, telephone, or similar oral or electronic means; and

“(B) is proved conclusively by certification of the Secretary of State or the Secretary’s designee.

“(d) VESSEL WITHOUT NATIONALITY.—

“(1) IN GENERAL.—In this chapter, the term ‘vessel without nationality’ includes—

“(A) a vessel aboard which the master or individual in charge makes a claim of registry that is denied by the nation whose registry is claimed;

“(B) a vessel aboard which the master or individual in charge fails, on request of an officer of the United States authorized to enforce applicable provisions of United States law, to make a claim of nationality or registry for that vessel; and

“(C) a vessel aboard which the master or individual in charge makes a claim of registry and for which the claimed nation of registry does not affirmatively and unequivocally assert that the vessel is of its nationality.

“(2) VERIFICATION OR DENIAL.—A claim of registry under paragraph (1)(A) or (C) may be verified or denied by radio, telephone, or similar oral or electronic means. The denial of such a claim is proved conclusively by certification of the Secretary of State or the Secretary’s designee.

“(e) CLAIM OF NATIONALITY OR REGISTRY.—A claim of nationality or registry under this section includes only—

“(1) possession on board the vessel and production of documents evidencing the vessel’s nationality as provided in article 5 of the 1958 Convention on the High Seas;

“(2) flying its nation’s ensign or flag; or

“(3) a verbal claim of nationality or registry by the master or individual in charge of the vessel.

“§ 70503. Manufacture, distribution, or possession of controlled substances on vessels

“(a) PROHIBITIONS.—An individual may not knowingly or intentionally manufacture or distribute, or possess with intent to manufacture or distribute, a controlled substance on board—

“(1) a vessel of the United States or a vessel subject to the jurisdiction of the United States; or

“(2) any vessel if the individual is a citizen of the United States or a resident alien of the United States.

“(b) EXTENSION BEYOND TERRITORIAL JURISDICTION.—Subsection (a) applies even though the act is committed outside the territorial jurisdiction of the United States.

“(c) NONAPPLICATION.—

“(1) IN GENERAL.—Subject to paragraph (2), subsection (a) does not apply to—

“(A) a common or contract carrier or an employee of the carrier who possesses or distributes a controlled substance in the lawful and usual course of the carrier’s business; or

“(B) a public vessel of the United States or an individual on board the vessel who possesses or distributes a controlled substance in the lawful course of the individual’s duties.

“(2) ENTERED IN MANIFEST.—Paragraph (1) applies only if the controlled substance is part of the cargo entered in the vessel’s manifest and is intended to be imported lawfully into the country of destination for scientific, medical, or other lawful purposes.

“(d) BURDEN OF PROOF.—The United States Government is not required to negative a defense provided by subsection (c) in a complaint, information, indictment, or other pleading or in a trial or other proceeding. The burden of going forward with the evidence supporting the defense is on the person claiming its benefit.

“§ 70504. Jurisdiction and venue

“(a) JURISDICTION.—Jurisdiction of the United States with respect to a vessel subject to this chapter is not an element of an offense. Jurisdictional issues arising under this chapter are preliminary questions of law to be determined solely by the trial judge.

“(b) VENUE.—A person violating section 70503 of this title shall be tried in the district court of the United States for—

“(1) the district at which the person enters the United States; or

“(2) the District of Columbia.

“§ 70505. Failure to comply with international law as a defense

“A person charged with violating section 70503 of this title does not have standing to raise a claim of failure to comply with international law as a basis for a defense. A claim of failure to comply with international law in the enforcement of this chapter may be made only by a foreign nation. A failure to comply with international law does not divest a court of jurisdiction and is not a defense to a proceeding under this chapter.

“§ 70506. Penalties

“(a) VIOLATIONS.—A person violating section 70503 of this title shall be punished as provided in section 1010 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 960). However, if the offense is a second or subsequent offense as provided in section 1012(b) of that Act (21 U.S.C. 962(b)), the person shall be punished as provided in section 1012 of that Act (21 U.S.C. 962).

“(b) ATTEMPTS AND CONSPIRACIES.—A person attempting or conspiring to violate section 70503 of this title is subject to the same penalties as provided for violating section 70503.

“§ 70507. Forfeitures

“(a) IN GENERAL.—Property described in section 511(a) of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 881(a)) that is used or intended for use to commit, or to facilitate the commission of, an offense under section 70503 of this title may be seized and forfeited in the same manner that similar property may be seized and forfeited under section 511 of that Act (21 U.S.C. 881).

“(b) PRIMA FACIE EVIDENCE OF VIOLATION.—Practices commonly recognized as smuggling tactics may provide prima facie evidence of intent to use a vessel to commit, or to facilitate the commission of, an offense under section 70503 of this title, and may support seizure and forfeiture of the vessel, even in the absence of controlled substances aboard the vessel. The following indicia, among others, may be considered, in the totality of the circumstances, to be prima facie evidence that a vessel is intended to be used to commit, or to facilitate the commission of, such an offense:

“(1) The construction or adaptation of the vessel in a manner that facilitates smuggling, including—

“(A) the configuration of the vessel to ride low in the water or present a low hull profile to avoid being detected visually or by radar;

“(B) the presence of any compartment or equipment that is built or fitted out for smuggling, not including items such as a safe or lockbox reasonably used for the storage of personal valuables;

“(C) the presence of an auxiliary tank not installed in accordance with applicable law or installed in such a manner as to enhance the vessel’s smuggling capability;

“(D) the presence of engines that are excessively over-powered in relation to the design and size of the vessel;

“(E) the presence of materials used to reduce or alter the heat or radar signature of the vessel and avoid detection;

“(F) the presence of a camouflaging paint scheme, or of materials used to camouflage the vessel, to avoid detection; or

“(G) the display of false vessel registration numbers, false indicia of vessel nationality, false vessel name, or false vessel homeport.

“(2) The presence or absence of equipment, personnel, or cargo inconsistent with the type or declared purpose of the vessel.

“(3) The presence of excessive fuel, lube oil, food, water, or spare parts, inconsistent with legitimate vessel operation, inconsistent with the construction or equipment of the vessel, or inconsistent with the character of the vessel’s stated purpose.

“(4) The operation of the vessel without lights during times lights are required to be displayed under applicable law or regulation and in a manner of navigation consistent with smuggling tactics used to avoid detection by law enforcement authorities.

“(5) The failure of the vessel to stop or respond or heave to when hailed by government authority, especially where the vessel conducts evasive maneuvering when hailed.

“(6) The declaration to government authority of apparently false information about the vessel, crew, or voyage or the failure to identify the vessel by name or country of registration when requested to do so by government authority.

“(7) The presence of controlled substance residue on the vessel, on an item aboard the vessel, or on an individual aboard the vessel, of a quantity or other nature that reasonably indicates manufacturing or distribution activity.

“(8) The use of petroleum products or other substances on the vessel to foil the detection of controlled substance residue.

“(9) The presence of a controlled substance in the water in the vicinity of the vessel, where given the currents, weather conditions, and course and speed of the vessel, the quantity or other nature is such that it reasonably indicates manufacturing or distribution activity.”

SEC. 11. SUBTITLE VIII OF TITLE 46.

Title 46, United States Code, is amended by adding after subtitle VII the following:

“Subtitle VIII—Miscellaneous

“Chapter

“Section

“Section

“Section

“Section

“Section

“Section

“Section

“801. Wrecks and Salvage ..... 80101
“803. Ice and Derelicts ..... 80301
“805. Safe Containers for International Cargo ..... 80501

“CHAPTER 801—WRECKS AND SALVAGE

“Sec.

“80101. Vessel stranded on foreign coast.

“80102. License to salvage on Florida coast.

“80103. Property on Florida coast to be taken to port of entry.

“80104. Salvaging operations by foreign vessels.

“80105. Canadian vessels aiding vessels in United States waters.

“80106. International agreement on derelicts.

“80107. Salvors of life to share in remuneration.

“§ 80101. Vessel stranded on foreign coast

“(a) DUTIES OF CONSULAR OFFICER.—When a vessel of the United States is stranded on a coast of a foreign country, the consular officer in that country shall take proper measures, to the extent the laws of that country allow, to—

“(1) save and secure the vessel and property on the vessel; and

“(2) prepare an inventory of the property that is saved.

“(b) DELIVERY TO OWNER.—After deducting the expenses, the consular officer shall deliver the property, with an inventory, to the owner of the property.

“(c) LIMITATION ON TAKING POSSESSION.—A consular officer may not take possession of property under this section when the owner, master, or consignee is present or able to take possession of the property.

“§ 80102. License to salvage on Florida coast

“(a) LICENSING REQUIREMENTS.—To be regularly employed in the business of salvaging on the coast of Florida, a vessel and its master each must have a license issued by a judge of the district court of the United States for a judicial district of Florida.

“(b) JUDICIAL FINDINGS.—Before issuing a license under this section, the judge must be satisfied, when the license is for—

“(1) a vessel, that the vessel is seaworthy and properly equipped for the business of saving property shipwrecked and in distress; or

“(2) a master, that the master is trustworthy and innocent of any fraud or misconduct related to property shipwrecked or saved on the coast.

“§ 80103. Property on Florida coast to be taken to port of entry

“(a) IN GENERAL.—Property taken from a wreck, the sea, or a key or shoal, on the coast of Florida and within the jurisdiction of the United States, shall be brought to a port of entry of the United States.

“(b) SEIZURE AND FORFEITURE.—A vessel transporting property described in subsection (a) to a foreign port may be seized by, and forfeited to, the United States Government. A forfeiture under this subsection accrues half to the informer and half to the Government.

“§ 80104. Salvaging operations by foreign vessels

“(a) PROHIBITION.—Except as provided in this section or section 80105 of this title, a foreign vessel may not, under penalty of forfeiture, engage in salvaging operations on the Atlantic or Pacific coast of the United States, in any portion of the Great Lakes or their connecting or tributary waters, including any portion of the Saint Lawrence River through which the international boundary line extends, or in territorial waters of the United States on the Gulf of Mexico.

“(b) WHEN SUITABLE VESSEL NOT AVAILABLE.—The Secretary of Homeland Security may authorize a foreign vessel to engage in salvaging operations in a particular locality if, on investigation, the Secretary is satisfied that there is not available in that locality a suitable vessel that is—

“(1) owned only by citizens of the United States (including a Bowaters corporation under section 12118 of this title); and

“(2) documented under chapter 121 of this title or numbered under chapter 123 of this title.

“(c) OPERATIONS AUTHORIZED BY TREATY.—This section does not prohibit or restrict assistance to vessels or salvaging operations authorized by treaty, including—

“(1) article II of the Treaty between the United States and Great Britain concerning reciprocal rights for United States and Canada in the conveyance of prisoners and wrecking and salvage, signed at Washington, May 18, 1908 (35 Stat. 2036); or

“(2) the Treaty between the United States of America and Mexico to facilitate assistance to and salvage of vessels in territorial waters, signed at Mexico City, June 13, 1935 (49 Stat. 3359).

**“§80105. Canadian vessels aiding vessels in United States waters**

“(a) IN GENERAL.—Canadian vessels and wrecking equipment may give aid to Canadian or other vessels and property wrecked, disabled, or in distress in the waters of the United States contiguous to Canada, including—

“(1) the canal and improvement of the waters between Lake Erie and Lake Huron; and

“(2) the Saint Marys River and canal.

“(b) RECIPROCITY.—This section does not apply after the President proclaims that privileges reciprocal to those under subsection (a) have been withdrawn or rendered inoperative by the Government of Canada.

**“§80106. International agreement on derelicts**

“The President may make an international agreement with other governments interested in the navigation of the North Atlantic Ocean, providing for the reporting, marking, and removal of dangerous wrecks, derelicts, and other menaces to navigation outside the coast waters of the countries bordering the North Atlantic Ocean.

**“§80107. Salvors of life to share in remuneration**

“(a) ENTITLEMENT OF SALVORS.—A salvor of human life, who gave aid following an accident giving rise to salvage, is entitled to a fair share of the payment awarded to the salvor for salvaging the vessel or other property or preventing or minimizing damage to the environment.

“(b) COMMON OWNERSHIP OF VESSELS.—The right to remuneration for aid or salvage services is not affected by common ownership of the vessels giving and receiving the aid or salvage services.

“(c) TIME LIMIT ON BRINGING ACTIONS.—A civil action to recover remuneration for giving aid or salvage services must be brought within 2 years after the date the aid or salvage services were given, unless the court in which the action is brought is satisfied that during that 2-year period there had not been a reasonable opportunity to seize the aided or salvaged vessel within the jurisdiction of the court or within the territorial waters of the country of the plaintiff's residence or principal place of business.

“(d) NONAPPLICATION.—This section does not apply to a vessel of war or a vessel owned by the United States Government appropriated only to a public service.

**“CHAPTER 803—ICE AND DERELICTS**

“Sec.

“80301. International agreements.

“80302. Patrol services.

“80303. Speed of vessel in ice region.

**“§80301. International agreements**

“(a) GENERAL AUTHORITY.—The President may make agreements with interested maritime countries to—

“(1) maintain in the North Atlantic Ocean a service of ice patrol, of study and observation of ice and current conditions, and of assistance to vessels and their crews requiring assistance within the limits of the patrol;

“(2) maintain a service of study and observation of ice and current conditions in the waters

affecting the set and drift of ice in the North Atlantic Ocean; and

“(3) take all practicable steps to ensure the destruction or removal of derelicts in the northern part of the Atlantic Ocean, east of the line drawn from Cape Sable to a point in latitude 34 degrees north, longitude 70 degrees west, if the destruction or removal is necessary.

“(b) PAYMENT BETWEEN COUNTRIES.—The President may include in an agreement under subsection (a) a provision for—

“(1) payment to the United States Government by other countries for their proportionate share of the expense of maintaining the services; or

“(2) contribution by the Government for its proportionate share if the agreement provides for another country to maintain the services.

**“§80302. Patrol services**

“(a) GENERAL REQUIREMENTS.—Unless the agreements made under section 80301 of this title provide otherwise, an ice patrol shall be maintained during the entire ice season in guarding the southeastern, southern, and southwestern limits of the region of icebergs in the vicinity of the Grand Banks of Newfoundland. The patrol shall inform trans-Atlantic and other passing vessels by radio and other available means of the ice conditions and the extent of the dangerous region. During the ice season, there shall be maintained a service of study of ice and current conditions, a service of providing assistance to vessels and crews requiring assistance, and a service of removing and destroying derelicts. Any of these services may be maintained during the remainder of the year as may be advisable.

“(b) WARNINGS TO VESSELS.—An ice patrol vessel shall warn any vessel known to be approaching a dangerous area and recommend safe routes.

“(c) RECORDING AND REPORTING INCIDENTS.—

“(1) RECORDING.—An ice patrol vessel shall record the name of a vessel and the facts of the case when the patrol observes or knows that the vessel—

“(A) is on other than a regular recognized or advertised route crossing the North Atlantic Ocean;

“(B) has crossed the fishing banks of Newfoundland north of latitude 43 degrees north during the fishing season; or

“(C) has passed through regions known or believed to be endangered by ice when proceeding to and from ports of North America.

“(2) REPORTING.—The name of the vessel and all pertinent information about the incident shall be reported to the government of the country to which the vessel belongs if that government requests.

“(d) ADMINISTRATION.—The Commandant of the Coast Guard, under the direction of the Secretary of the department in which the Coast Guard is operating, shall carry out the services provided for in this section and shall assign necessary vessels, material, and personnel of the Coast Guard. On request of such Secretary, the head of an agency may detail personnel, lend or contribute material or equipment, or otherwise assist in carrying out the services provided for in this section.

“(e) ANNUAL REPORT.—The Commandant shall publish an annual report of the activities of the services provided for in this section. A copy of the report shall be provided to each interested foreign government and to each agency assisting in the work.

**“§80303. Speed of vessel in ice region**

“(a) REQUIREMENT.—The master of a vessel of the United States, when ice is reported on or near the vessel's course, shall proceed at a moderate speed or change the course of the vessel to go well clear of the danger zone.

“(b) CIVIL PENALTY.—A master violating this section is liable to the United States Government for a civil penalty of not more than \$500.

**“CHAPTER 805—SAFE CONTAINERS FOR 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.

**“§80501. Definitions**

“In this chapter:

“(1) CONTAINER.—The term ‘container’ has the meaning given that term in the Convention.

“(2) CONVENTION.—The term ‘Convention’ means the International Convention for Safe Containers, and its annexes, done at Geneva, Switzerland, December 2, 1972.

“(3) INTERNATIONAL TRANSPORT.—The term ‘international transport’ means the transportation of a container between—

“(A) a place in a foreign country and a place in the jurisdiction of the United States; or

“(B) two places outside the United States by United States carriers.

“(4) OWNER.—The term ‘owner’ includes the lessee or bailee of a container if a written lease or bailment provides for the lessee or bailee to exercise the owner's responsibility for maintaining and examining the container.

“(5) SAFETY APPROVAL PLATE.—The term ‘safety approval plate’ has the meaning given that term in annex I of the Convention.

**“§80502. Application of Convention**

“The Convention applies to an owner of a container used in international transport if the owner is domiciled or has its principal office in the United States.

**“§80503. General authority of the Secretary**

“(a) IN GENERAL.—The Secretary of the department in which the Coast Guard is operating shall carry out the Convention and this chapter in the United States.

“(b) REGULATIONS.—The Secretary shall prescribe regulations to carry out this chapter. The regulations shall—

“(1) establish procedures for testing, inspecting, and initially approving containers and designs for containers, including procedures for attaching, invalidating, and removing safety approval plates for containers;

“(2) establish procedures to be followed by the owners of containers for the periodic examination of containers as provided in the Convention; and

“(3) provide a method for developing, collecting, and disseminating information about container safety and the international transport of containers.

“(c) SAFETY APPROVAL PLATES.—If the owner of a container without a safety approval plate establishes that the container satisfies the standards of the Convention, the Secretary may authorize a safety approval plate to be attached to the container.

“(d) SCHEDULE OF FEES.—The Secretary may prescribe a schedule of fees for services performed by the Secretary, or by a person delegated authority under section 80506 of this title, for the testing, inspection, and initial approval of containers and container designs.

“(e) ENCOURAGING INTERMODAL TRANSPORT.—To the maximum extent possible, the Secretary shall encourage the development and use of intermodal transport, using containers built to facilitate economical, safe, and expeditious handling of containerized cargo without intermediate reloading when it is being transported over land, air, and sea areas.

**“§80504. Approval and examination**

“(a) DOMICILE AND PRINCIPAL OFFICE IN UNITED STATES.—A container owner domiciled and having its principal office in the United States shall have the container—

“(1) approved initially under procedures prescribed by the Secretary of the department in which the Coast Guard is operating or by the



government of another country that is a party to the Convention; and

“(2) examined periodically as provided in the Convention under procedures prescribed by the Secretary.

“(b) DOMICILE OR PRINCIPAL OFFICE IN UNITED STATES.—A container owner domiciled or having its principal office in the United States shall have the container—

“(1) approved initially under procedures prescribed by the Secretary or by the government of another country that is a party to the Convention; and

“(2) examined periodically as provided in the Convention, under procedures prescribed by the government of the country in which the owner is domiciled or has its principal office, as long as that country is a party to the Convention.

“(c) NEITHER DOMICILE NOR PRINCIPAL OFFICE IN UNITED STATES.—A container owner neither domiciled nor having its principal office in the United States or another country that is a party to the Convention may submit a container for initial approval and periodic examination under procedures prescribed by the Secretary.

#### “§80505. Enforcement

“(a) IN GENERAL.—To enforce the Convention, this chapter, and regulations prescribed under this chapter, the Secretary of the department in which the Coast Guard is operating may—

“(1) examine, or require to be examined, containers in international transport;

“(2) approve designs for containers;

“(3) inspect and test containers being manufactured;

“(4) issue a detention order removing or excluding a container from service until the container owner satisfies the Secretary that the container meets the standards of the Convention, if the container—

“(A) does not have a safety approval plate attached to it; or

“(B) has a safety approval plate attached but there is significant evidence that the container is in a condition that creates an obvious risk to safety;

“(5) take other appropriate action, including issuing necessary orders, to remove a container from service or restrict its use if the container is not in compliance with the Convention, this chapter, or regulations prescribed under this chapter, but does not present an obvious risk to safety; and

“(6) allow a container found to be unsafe or without a safety approval plate to be moved to another location for repair or other disposition, under restrictions consistent with the intent of the Convention.

“(b) PAYMENT OF EXPENSES.—

“(1) EXAMINATION.—The owner of a container involved in an action by the Secretary under this section related to an examination of the container shall pay or reimburse the Secretary for the expenses arising from that action, except for the costs of routine examinations of the container or a safety approval plate.

“(2) TESTING, INSPECTION, AND INITIAL APPROVAL.—The owner of a container submitted to the procedure established by the Secretary for testing, inspection, and initial approval, and the manufacturer of a container that submits a design to the procedure established by the Secretary for testing, inspection, and initial approval, shall pay or reimburse the Secretary for the expenses arising from the testing, inspection, or approval.

“(3) CREDIT TO APPROPRIATION.—Amounts received by the Secretary as reimbursement shall be credited to the appropriation for operating expenses of the Coast Guard.

“(c) PRESUMPTION BASED ON SAFETY APPROVAL PLATE.—A container bearing a safety approval plate authorized by a country that is a party to the Convention is presumed to be in a safe condition unless there is significant evidence that the container is in a condition that creates an obvious risk to safety.

“(d) NOTICE OF ORDERS.—

“(1) IN GENERAL.—When the Secretary issues a detention or other order under this section, the Secretary promptly shall notify in writing—

“(A) the owner of the container;

“(B) the owner's agent; or

“(C) if the identity of the owner is not apparent from the container or shipping documents, the custodian.

“(2) INFORMATION TO INCLUDE.—The notification shall identify the container involved, give the location of the container, and describe the condition or situation giving rise to the order.

“(e) DURATION OF ORDERS.—An order issued by the Secretary under this section remains in effect until—

“(1) the Secretary declares the container to be in compliance with the standards of the Convention; or

“(2) the container is removed permanently from service.

“(f) NOTICE OF DEFECTIVE CONTAINER TO COUNTRY ISSUING SAFETY APPROVAL PLATE.—If the Secretary has reason to believe that a container bearing a safety approval plate issued by another country was defective at the time of approval, the Secretary shall notify that country.

#### “§80506. Delegation of authority

“(a) IN GENERAL.—The Secretary of the department in which the Coast Guard is operating may delegate to any person, including a public or private agency or nonprofit organization, authority to grant initial approval for containers and designs and to attach safety approval plates.

“(b) REGULATIONS.—Before making a delegation under this section, the Secretary shall prescribe regulations establishing—

“(1) criteria to be followed in selecting a person to whom authority is to be delegated;

“(2) a detailed description of the duties and powers to be carried out by the person to whom authority is delegated, including the records the person shall keep; and

“(3) the review the Secretary will conduct to decide whether the person is carrying out the delegated duties and powers properly.

“(c) INSPECTION OF RECORDS.—A person delegated authority under this section shall make available to the Secretary for inspection, on request, records the person is required to keep.

“(d) PENALTIES AND ORDERS.—A person delegated authority under this section may not—

“(1) assess or collect, or attempt to assess or collect, a penalty for violation of the Convention, this chapter, or an order issued by the Secretary under this chapter; or

“(2) issue or attempt to issue a detention or other order.

“(e) PUBLICATION.—The Secretary shall publish in the Federal Register or other appropriate publication—

“(1) the name and address of each person to whom authority is delegated;

“(2) the duties and powers delegated; and

“(3) the period of the delegation.

“(f) REVOCATION.—The Secretary may revoke a delegation of authority under this section at any time.

#### “§80507. Employee protection

“(a) PROHIBITION.—A person may not discharge or discriminate against an employee because the employee has reported the existence of an unsafe container or a violation of this chapter or a regulation prescribed under this chapter.

“(b) COMPLAINTS.—An employee alleging to have been discharged or discriminated against in violation of subsection (a) may file a complaint with the Secretary of Labor. The complaint must be filed within 60 days after the violation.

“(c) ENFORCEMENT.—The Secretary of Labor may investigate the complaint. If the Secretary of Labor finds there has been a violation, the Secretary of Labor may bring a civil action in an appropriate district court of the United

States. The court has jurisdiction to restrain violations of subsection (a) and order appropriate relief, including reinstatement of the employee to the employee's former position with back pay.

“(d) NOTICE TO COMPLAINANT.—Within 30 days after receiving a complaint under this section, the Secretary of Labor shall notify the complainant of the intended action on the complaint.

#### “§80508. Amendments to Convention

“(a) PROPOSALS BY UNITED STATES.—The Secretary of State, with the concurrence of the Secretary of the department in which the Coast Guard is operating, may propose amendments to the Convention or request a conference for amending the Convention as provided in article IX of the Convention.

“(b) PROPOSALS BY OTHER COUNTRIES.—An amendment communicated to the United States under article IX(2) of the Convention may be accepted for the United States by the President, with the advice and consent of the Senate. The President may declare that the United States does not accept an amendment.

“(c) AMENDMENTS TO ANNEXES.—

“(1) IN GENERAL.—The Secretary of State, with the concurrence of the Secretary of the department in which the Coast Guard is operating—

“(A) may propose amendments to the annexes to the Convention;

“(B) may propose a conference for amending annexes to the Convention; and

“(C) shall consider and act on amendments to the annexes to the Convention adopted by the Maritime Safety Committee of the International Maritime Organization and communicated to the United States under article X(2) of the Convention.

“(2) ACTION FOLLOWING APPROVAL OR OBJECTION.—If a proposed amendment to an annex is approved by the United States, the amendment shall enter into force as provided in article X of the Convention. If a proposed amendment is objected to, the Secretary of State promptly shall communicate the objection as provided in article X(3) of the Convention.

“(d) APPOINTMENT OF ARBITRATOR.—The Secretary of State, with the concurrence of the Secretary of the department in which the Coast Guard is operating, shall appoint an arbitrator when one is required to resolve a dispute within the meaning of article XIII of the Convention.

#### “§80509. Civil penalty

“(a) IN GENERAL.—An owner, agent, or custodian who has been notified of an order issued under section 80505 of this title and fails to take reasonable and prompt action to prevent or stop a container subject to the order from being moved in violation of the order is liable to the United States Government for a civil penalty of not more than \$5,000 for each container moved. Each day the container remains in service while the order is in effect is a separate violation.

“(b) ASSESSMENT AND COLLECTION.—

“(1) IN GENERAL.—After notice and an opportunity for a hearing, the Secretary of the department in which the Coast Guard is operating shall assess and collect any penalty under this section.

“(2) FACTORS TO CONSIDER.—In determining the amount of the penalty, the Secretary shall consider the gravity of the violation, the hazards involved, and the record of the person charged with respect to violations of the Convention, this chapter, or regulations prescribed under this chapter.

“(3) REMISSION, MITIGATION, OR COMPROMISE.—The Secretary may remit, mitigate, or compromise a penalty under this section.

“(4) ENFORCEMENT.—If a person fails to pay a penalty under this section, the Secretary shall refer the matter to the Attorney General for collection in an appropriate district court of the United States.”.

**SEC. 12. MARITIME ADMINISTRATION.**

Section 109 of title 49, United States Code, is amended to read as follows:

**“§ 109. Maritime Administration**

“(a) ORGANIZATION.—The Maritime Administration is an administration in the Department of Transportation.

“(b) MARITIME ADMINISTRATOR.—The head of the Maritime Administration is the Maritime Administrator, who is appointed by the President by and with the advice and consent of the Senate. The Administrator shall report directly to the Secretary of Transportation and carry out the duties prescribed by the Secretary.

“(c) DEPUTY MARITIME ADMINISTRATOR.—The Maritime Administration shall have a Deputy Maritime Administrator, who is appointed in the competitive service by the Secretary, after consultation with the Administrator. The Deputy Administrator shall carry out the duties prescribed by the Administrator. The Deputy Administrator shall be Acting Administrator during the absence or disability of the Administrator and, unless the Secretary designates another individual, during a vacancy in the office of Administrator.

“(d) DUTIES AND POWERS VESTED IN SECRETARY.—All duties and powers of the Maritime Administration are vested in the Secretary.

“(e) REGIONAL OFFICES.—The Maritime Administration shall have regional offices for the Atlantic, Gulf, Great Lakes, and Pacific port ranges, and may have other regional offices as necessary. The Secretary shall appoint a qualified individual as Director of each regional office. The Secretary shall carry out appropriate activities and programs of the Maritime Administration through the regional offices.

“(f) INTERAGENCY AND INDUSTRY RELATIONS.—The Secretary shall establish and maintain liaison with other agencies, and with representative trade organizations throughout the United States, concerned with the transportation of commodities by water in the export and import foreign commerce of the United States, for the purpose of securing preference to vessels of the United States for the transportation of those commodities.

“(g) DETAILING OFFICERS FROM ARMED FORCES.—To assist the Secretary in carrying out duties and powers relating to the Maritime Administration, not more than five officers of the armed forces may be detailed to the Secretary at any one time, in addition to details authorized by any other law. During the period of a detail, the Secretary shall pay the officer an amount that, when added to the officer’s pay and allowances as an officer in the armed forces, makes the officer’s total pay and allowances equal to the amount that would be paid to an individual performing work the Secretary considers to be of similar importance, difficulty, and responsibility as that performed by the officer during the detail.

“(h) CONTRACTS AND AUDITS.—

“(1) CONTRACTS.—In the same manner that a private corporation may make a contract within the scope of its authority under its charter, the Secretary may make contracts for the United States Government and disburse amounts to—

“(A) carry out the Secretary’s duties and powers under this section and subtitle V of title 46; and

“(B) protect, preserve, and improve collateral held by the Secretary to secure indebtedness.

“(2) AUDITS.—The financial transactions of the Secretary under paragraph (1) shall be audited by the Comptroller General. The Comptroller General shall allow credit for an expenditure shown to be necessary because of the nature of the business activities authorized by this section or subtitle V of title 46. At least once a year, the Comptroller General shall report to Congress any departure by the Secretary from this section or subtitle V of title 46.

“(i) AUTHORIZATION OF APPROPRIATIONS.—

“(1) IN GENERAL.—Except as otherwise provided in this subsection, there are authorized to

be appropriated such amounts as may be necessary to carry out the duties and powers of the Secretary relating to the Maritime Administration.

“(2) LIMITATIONS.—Only those amounts specifically authorized by law may be appropriated for the use of the Maritime Administration for—

“(A) acquisition, construction, or reconstruction of vessels;

“(B) construction-differential subsidies incident to the construction, reconstruction, or reconditioning of vessels;

“(C) costs of national defense features;

“(D) payments of obligations incurred for operating-differential subsidies;

“(E) expenses necessary for research and development activities, including reimbursement of the Vessel Operations Revolving Fund for losses resulting from expenses of experimental vessel operations;

“(F) the Vessel Operations Revolving Fund;

“(G) National Defense Reserve Fleet expenses;

“(H) expenses necessary to carry out part B of subtitle V of title 46; and

“(I) other operations and training expenses related to the development of waterborne transportation systems, the use of waterborne transportation systems, and general administration.

“(3) TRAINING VESSELS.—Amounts may not be appropriated for the purchase or construction of training vessels for State maritime academies unless the Secretary has approved a plan for sharing training vessels between State maritime academies.”

“(4) other operations and training expenses related to the development of waterborne transportation systems, and general administration.

“(5) In section 53106—

(A) in subsection (d)(1), strike “section 2631 of title 10, United States Code, the Act of March 26, 1934 (46 U.S.C. App. 1241–1), section 901(a), 901(b), or 901b of the Merchant Marine Act, 1936 (46 U.S.C. App. 1241(a), 1241(b), or 1241f)” and substitute “section 55302(a), 55304, 55305, or 55314 of this title, section 2631 of title 10”;

(B) in subsection (d)(2), strike “section 901(a), 901(b), or 901b of the Merchant Marine Act, 1936 (46 U.S.C. App. 1241(a), 1241(b), or 1241f),” and substitute “section 55302(a), 55305, or 55314 of this title”;

(C) in subsection (e)(2), strike “section 2(c) of the Shipping Act, 1916 (46 U.S.C. App. 802(c))” and substitute “section 50501 of this title, applying the 75 percent ownership requirement of that section”.

(6) In section 53107(f)—

(A) strike “section 2631 of title 10, United States Code, the Act of March 26, 1934 (46 U.S.C. App. 1241–1), section 901(a), 901(b), or 901b of the Merchant Marine Act, 1936 (46 U.S.C. App. 1241(a), 1241(b), or 1241f)” and substitute “section 55302(a), 55304, 55305, or 55314 of this title, section 2631 of title 10”;

(B) strike “section 2631 of title 10, United States Code, the Act of March 26, 1934 (46 U.S.C. App. 1241–1), and sections 901(a), 901(b), and 901b of the Merchant Marine Act, 1936 (46 U.S.C. App. 1241(a), 1241(b), and 1241b)” and substitute “sections 55302(a), 55304, 55305, and 55314 of this title and section 2631 of title 10”.

(7) In section 53108(b), strike “section 901(b)(1) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1241(b)(1))” and substitute “section 55305(a) of this title”.

(8) OTHER CONFORMING PROVISIONS.—If this Act is enacted prior to October 1, 2005, then—

(1) until that date, the reference in section 12111(c)(3) of title 46, United States Code, as enacted by this Act, to “chapter 531 of this title” is deemed instead to be a reference to “subtitle B of title VI of the Merchant Marine Act, 1936”; and

(2) section 3534(b)(1) of the Maritime Security Act of 2003 (Public Law 108–136, 117 Stat. 1818) is repealed.

**SEC. 14. AMENDMENTS TO PARTIALLY RESTATED PROVISIONS.**

(a) Section 2793 of the Revised Statutes (19 U.S.C. 288, 46 App. U.S.C. 111, 123) is amended by striking “or tonnage tax”.

(b) Section 809(a) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1213(a)), is amended by striking “and section 211(a)”.

**SEC. 15. ADDITIONAL AMENDMENTS TO TITLE 46.**

Title 46, United States Code, is amended as follows:

(1) The analysis of subtitle II is amended as follows:

(A) In each chapter item, capitalize the first letter of each word containing 4 or more letters.

(B) Strike the item for chapter 39.

(C) The item for chapter 45 is amended to read as follows:

“45. Uninspected Commercial Fishing Industry Vessels ..... 4501”.

(2) Section 2101 is amended as follows:

(A) Paragraphs (2), (3), (3a), (6), (10), (10a), (12), (17b), (36), (41), (44), (45), and (46) are repealed.

(B) In paragraph (8a), insert “Prevention” after “Abuse”.

(C) In paragraph (18), strike “those”.

(D) In paragraph (34)—

(i) strike “, except in part H.”; and

(ii) strike “head” and substitute “Secretary”.

(3) In section 2102(b), strike “West” and “East” and substitute “west” and “east”, respectively.

(4) In section 2106, strike “a district court of the United States” and substitute “the district court of the United States for any district”.

(5) Section 2108 is repealed.

(6) In section 2110—

(A) in subsection (a)(2), strike “part B of this title” and substitute “part B of this subtitle”;



Act, 1936 (46 U.S.C. App. 1288(a))” and substitute “section 53909(b) of title 46”;

(B) in subsection (h)(1), strike “title XII of the Merchant Marine Act, 1936 (46 U.S.C. App. 1281 et seq.)” and substitute “chapter 539 of title 46”; and

(C) in subsection (h)(2), strike “the first sentence of section 1208(a) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1288(a))” and substitute “section 53909(a) of title 46”.

(5) In section 5985, strike “section 1304 of the Merchant Marine Act, 1936 (46 U.S.C. App. 1295c),” and substitute “chapter 515 of title 46”.

(6) In section 7721(a), strike “the Act of March 3, 1925 (commonly referred to as the ‘Public Vessels Act’) (46 U.S.C. App. 781–790)” and substitute “chapter 311 of title 46”.

(b) TITLE 11.—Title 11, United States Code, is amended as follows:

(1) In section 362(b)—

(A) in paragraph (12), strike “section 207 of title XI of the Merchant Marine Act, 1936” and substitute “chapter 537 of title 46 or section 109(h) of title 49”; and

(B) in paragraph (13), strike “section 207 of title XI of the Merchant Marine Act, 1936” and substitute “chapter 537 of title 46”.

(2) In section 1110(a)(3)(A)(ii), strike “documented vessel (as defined in section 30101(1) of title 46)” and substitute “vessel documented under chapter 121 of title 46”.

(c) TITLE 14.—Sections 821(b) and 823a(b) of title 14, United States Code, are each amended by striking paragraphs (3)–(5) and substituting the following:

“(3) Section 30101 of title 46 (popularly known as the Admiralty Extension Act).

“(4) Chapter 309 of title 46 (known as the Suits in Admiralty Act).

“(5) Chapter 311 of title 46 (known as the Public Vessels Act).”

(d) TITLE 18.—Title 18, United States Code, is amended as follows:

(1) In section 229F(9)(C), strike “section 3(b) of the Maritime Drug Enforcement Act, as amended (46 U.S.C., App. sec. 1903(b))” and substitute “section 70502(b) of title 46, United States Code”.

(2) In section 507—

(A) in the first paragraph, strike “recording, registry, or enrollment of any vessel, in the office of any collector of the customs, or a license to any vessel for carrying on the coasting trade or fisheries of the United States” and substitute “documentation of any vessel”;

(B) in the first paragraph, strike “collector or other”; and

(C) in the second paragraph, strike “license.”.

(3) In section 924—

(A) in subsections (c)(2), (e)(2)(A)(i), (g)(2), and (h)(1), strike “the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.)” and substitute “chapter 705 of title 46”; and

(B) in subsection (g)(2), strike “802 et seq.” and substitute “801 et seq.”.

(4) In section 929(a)(2), strike “the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.)” and substitute “chapter 705 of title 46”.

(5) In section 965(a), strike “section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91)” and substitute “section 60105 of title 46”.

(6) In section 2277(a), strike “registered, enrolled, or licensed” and substitute “documented”.

(7) In section 3142(e) and (f)(1)(C), strike “the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.)” and substitute “chapter 705 of title 46”.

(e) INTERNAL REVENUE CODE OF 1986.—The Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.) is amended as follows:

(1) In section 56(c)(2)—

(A) strike “section 607 of the Merchant Marine Act, 1936 (46 U.S.C. 1177)” and substitute “chapter 535 of title 46, United States Code”; and

(B) in subparagraphs (A) and (B), strike “such section 607” substitute “such chapter 535”.

(2) In section 140(a)(4), strike “section 607(d) of the Merchant Marine Act, 1936 (46 U.S.C. 1177)” and substitute “section 53507 of title 46, United States Code”.

(3) In section 543(a)(1)(B), strike “section 511 or 607 of the Merchant Marine Act, 1936 (46 U.S.C. App. 1161 or 1177)” and substitute “chapter 533 or 535 of title 46, United States Code”.

(4) In section 1023(2), strike “section 511 of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1161)” and substitute “chapter 533 of title 46, United States Code”.

(5) In section 1061—

(A) in paragraph (1), strike “section 510 of the Merchant Marine Act, 1936, see subsection (e) of that section, as amended August 4, 1939 (46 U.S.C. App. 1160)” and substitute “chapter 573 of title 46, United States Code, see section 57307 of title 46”;

(B) in paragraph (2), strike “section 511 of such Act, as amended (46 U.S.C. App. 1161)” and substitute “chapter 533 of title 46, United States Code”; and

(C) strike paragraph (3).

(6) In section 7518—

(A) in subsection (a)(1), strike “section 607 of the Merchant Marine Act, 1936” and substitute “chapter 535 of title 46 of the United States Code”;

(B) in subsections (a)(2) and (c)(1)(A) and (D), strike “section 607 of the Merchant Marine Act, 1936” and substitute “chapter 535 of title 46, United States Code”; and

(C) in subsection (g)(3)(C)(iii), strike “Merchant Marine Act of 1936” and substitute “Merchant Marine Act, 1936.”.

(f) TITLE 28.—Title 28, United States Code, is amended as follows:

(1) In section 994(h)(1)(B) and (2)(B), strike “the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1901 et seq.)” and substitute “chapter 705 of title 46”.

(2) In section 1605(d), strike “the Ship Mortgage Act, 1920 (46 U.S.C. 911 and following)” and “that Act” and substitute “section 31301 of title 46” and “chapter 313 of title 46”, respectively.

(3) In section 2342(3)—

(A) in subparagraph (A), strike “section 2, 9, 37, or 41 of the Shipping Act, 1916 (46 U.S.C. App. 802, 803, 808, 835, 839, and 841a)” and substitute “section 50501, 50502, 56101–56104, or 57109 of title 46”; and

(B) strike subparagraph (B) and substitute the following:

“(B) the Federal Maritime Commission issued pursuant to section 305, 41304, 41308, or 41309 or chapter 421 or 441 of title 46.”.

(4) In section 2680(d), strike “sections 741–752, 781–790 of Title 46,” and substitute “chapter 309 or 311 of title 46”.

(g) TITLE 40.—Title 40, United States Code, is amended as follows:

(1) In section 548, strike “the Merchant Marine Act, 1936 (46 App. U.S.C. 1101 et seq.)” and substitute “part F of subtitle V of title 46”.

(2) In section 3134(b), strike “the Merchant Marine Act, 1936 (46 App. U.S.C. 1101 et seq.)” and substitute “subtitle V of title 46”.

(3) In section 3313(a)—

(A) in the matter before paragraph (1), strike “Except for the authority contained in section 3305(b) of this title, the” and substitute “The”; and

(B) in paragraph (1), strike “shall” and substitute “shall, except for the authority contained in section 3305(b) of this title.”.

(h) TITLE 49.—Title 49, United States Code, is amended as follows:

(1) In section 5122(c)(1), strike “Secretary of the Treasury” and “section 4197 of the Revised Statutes of the United States (46 App. U.S.C. 91)” and substitute “Secretary of Homeland Security” and “section 60105 of title 46”, respectively.

(2) In section 5901(3)(B), strike “section 3 of the Shipping Act of 1984 (46 App. U.S.C. 1702)” and substitute “section 40102 of title 46”.

(i) MISCELLANEOUS.—Section 5501(a) of the Oceans Act of 1992 (Public Law 102–587, 106 Stat. 5084) is amended by adding the following:

“(3) The exceptions provided by paragraph (2) shall apply under section 55109 of title 46, United States Code, to the same extent as under former section 1 of the Act of May 28, 1906, as amended by paragraph (1).”

**SEC. 18. TRANSITIONAL AND SAVINGS PROVISIONS.**

(a) CUTOFF DATE.—This Act replaces certain provisions enacted on or before April 30, 2005. If a law enacted after that date amends or repeals a provision replaced by this Act, that law is deemed to amend or repeal, as the case may be, the corresponding provision enacted by this Act. If a law enacted after that date is otherwise inconsistent with this Act, it supersedes this Act to the extent of the inconsistency.

(b) ORIGINAL DATE OF ENACTMENT UNCHANGED.—For purposes of determining whether one provision supersedes another based on enactment later in time, the date of enactment of a provision enacted by this Act is deemed to be the date of enactment of the provision it replaced.

(c) REFERENCES TO PROVISIONS REPLACED.—A reference to a provision replaced by this Act is deemed to refer to the corresponding provision enacted by this Act.

(d) LAWS GOVERNING APPLICABILITY OF PRIOR AMENDMENTS.—This Act does not affect any law governing the applicability of an amendment to a provision replaced by this Act, notwithstanding the repeal by this Act of the provision that was amended. To the extent that any such law governed the applicability of a provision replaced by this Act, that law governs the applicability of the corresponding provision enacted by this Act.

(e) REGULATIONS, ORDERS, AND OTHER ADMINISTRATIVE ACTIONS.—A regulation, order, or other administrative action in effect under a provision replaced by this Act continues in effect under the corresponding provision enacted by this Act.

(f) ACTIONS TAKEN AND OFFENSES COMMITTED.—An action taken or an offense committed under a provision replaced by this Act is deemed to have been taken or committed under the corresponding provision enacted by this Act.

**SEC. 19. REPEALS.**

The following provisions are repealed, except with respect to rights and duties that matured, penalties that were incurred, or proceedings that were begun before the date of enactment of this Act:

Revised Statutes

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The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from California (Mr. BERMAN) each will control 20 minutes.

The Chair recognizes the gentleman from Wisconsin (Mr. SENSENBRENNER).

Mr. SENSENBRENNER. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, I rise in support of H.R. 1442, which completes the codification of title 46, United States Code, relating to shipping as positive law. The ranking member of the Committee on the Judiciary, Mr. CONYERS, and I

jointly introduced this legislation on March 17, 2005. The bill was prepared by the Office of the Law Revision Counsel as a part of the program required by title 2 United States Code section 285(b) to prepare and submit to the Committee on the Judiciary, one title at a time, a complete compilation, restatement and revision of the general

and permanent laws of the United States.

This bill, as well as any other bill submitted by the Office of Law Revision Counsel under this program, makes no substantive changes in existing law nor is it intended to do so. Thus, Members should understand that because of the nature of this bill, supporting it does not imply support of the underlying provisions that are being reorganized and cleaned up. This is a necessary bill. I urge Members to support it.

Madam Speaker, I reserve the balance of my time.

Mr. BERMAN. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, I rise in support of H.R. 1442, a bill to complete the codification of title 46 of the U.S. Code, the "Shipping" title. It will enhance understanding of and compliance with important shipping and maritime laws. This makes no substantive change in the law. It simply provides clarity and reorganization. I urge its passage.

Madam Speaker, I yield back the balance of my time.

Mr. SENSENBRENNER. Madam Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Wisconsin (Mr. SENSENBRENNER) that the House suspend the rules and pass the bill, H.R. 1442, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

#### EXPRESSING SENSE OF HOUSE THAT NINTH CIRCUIT COURT OF APPEALS INFRINGED ON PARENTAL RIGHTS

Mr. SENSENBRENNER. Madam Speaker, I move to suspend the rules and agree to the resolution (H. Res. 547) expressing the sense of the House of Representatives that the United States Court of Appeals for the Ninth Circuit deplorably infringed on parental rights in *Fields v. Palmdale School District*.

The Clerk read as follows:

H. RES. 547

Whereas the Palmdale School District sent parents of elementary school students at Mesquite Elementary School in Palmdale, California a letter requesting consent to give a psychological assessment questionnaire to their first, third, and fifth grade students;

Whereas without the informed consent of their parents, the young students were instead administered a questionnaire that contained sexually explicit and developmentally inappropriate questions;

Whereas seven parents subsequently filed a complaint against the Palmdale School District in a Federal district court;

Whereas on November 2, 2005, a 3-judge panel of the Ninth Circuit Court of Appeals affirmed the decision of the United States

District Court for the Central District of California in the case (*Fields v. Palmdale School District*) and held that parents "have no constitutional right . . . to prevent a public school from providing its students with whatever information it wishes to provide, sexual or otherwise, when and as the school determines that it is appropriate to do so";

Whereas the Ninth Circuit stated, "once parents make the choice as to which school their children will attend, their fundamental right to control the education of their children is, at the least, substantially diminished";

Whereas in *Meyer v. Nebraska*, 262 U.S. 390, 401 (1923), the Supreme Court recognized that the liberty guaranteed by the 14th amendment to the Constitution encompasses "the power of parents to control the education of their [children]";

Whereas the Supreme Court in *Pierce v. Society of Sisters*, 268 U.S. 510, 534-35 (1925), highlighted the Meyer doctrine that parents and guardians have the liberty "to direct the upbringing and education of children under control" and emphasized that "[t]he child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations";

Whereas in *Wisconsin v. Yoder*, 406 U.S. 205, 232-33 (1972), the Supreme Court acknowledged that "[t]he history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition. . . . The duty to prepare the child for 'additional obligations', referred to by the Court [in *Pierce*] must be read to include the inculcation of moral standards, religious beliefs, and elements of good citizenship";

Whereas a plurality of the Supreme Court has stated, "it cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children" (*Troxel v. Granville*, 530 U.S. 57, 66 (2000) (plurality opinion));

Whereas the Ninth Circuit's decision in *Fields v. Palmdale School District* presupposes that "parents make the choice as to which school their children will attend" when, in fact, many parents do not have such a choice;

Whereas the decision in *Fields* establishes a dangerous precedent for limiting parental involvement in the public education of their children; and

Whereas the rights of parents ought to be strengthened whenever possible as they are the cornerstone of American society: Now, therefore, be it

*Resolved*, That it is the sense of the House of Representatives that—

(1) the fundamental right of parents to direct the education of their children is firmly grounded in the Nation's Constitution and traditions;

(2) the Ninth Circuit's ruling in *Fields v. Palmdale School District* undermines the fundamental right of parents to direct the upbringing of their children; and

(3) the United States Court of Appeals for the Ninth Circuit should agree to rehear the case en banc in order to reverse this constitutionally infirm ruling.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from California (Mr. BERMAN) each will control 20 minutes.

The Chair recognizes the gentleman from Wisconsin (Mr. SENSENBRENNER).

Mr. SENSENBRENNER. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, I rise in strong support of House Resolution 547, expressing the sense of the House of Representatives that the United States Court of Appeals for the Ninth Circuit grossly infringed on established parental rights in *Fields v. Palmdale School District*.

In a decision that startled even veteran observers of the Ninth Circuit, a three-judge Ninth Circuit panel held in *Fields v. Palmdale School District* that parents "have no constitutional right to prevent a public school from providing its students with whatever information it wishes to provide, sexual or otherwise, when and as the school determines that it is appropriate to do so."

This case involved a survey given to 7- to 10-year-old children that contains, among others, 10 specific questions about sex. The Palmdale School District sent parents of first, third and fifth grade students at the Mesquite Elementary School in Palmdale, California, a letter requesting consent to administer a psychological assessment questionnaire to their children. The letter failed to inform the parents that some of the questions expressly involved sexual topics.

Seven parents, including one set of parents that did not return the consent form for their child, were still given the questionnaire, filed suit in Federal court against the school district upon learning from their children of the sexual nature of some of the questions.

A three-judge panel of the Ninth Circuit ruled against the parents concluding that "once parents make the choice as to which school their children will attend, their fundamental right to control the education of their children is, at the least, substantially diminished."

This decision presupposes that the school attended by the children is always a matter of parental choice. As we all know, many parents do not have such a choice, and they should not be forced to forfeit their parental rights when their children enter the schoolhouse gate. Moreover, the flawed logic of this decision has a disproportionate impact on parents who, for financial and other reasons, cannot send their children to schools more responsive to parental rights. Parents should not be required to involuntarily relinquish their right to direct the upbringing and control of their children.

The Ninth Circuit decision compels this outcome by divesting parents of their right to object to their children being exposed to sexual or other information in a school setting. This holding is inconsistent with constitutional precedent and established parental rights.

The Supreme Court recognized in *Meyer v. Nebraska* that the liberty guaranteed by the 14th amendment encompasses "the power of parents to