



U.S. Department  
of Transportation  
**Maritime  
Administration**



# Compilation of Maritime Laws

**January, 1997**

**THE  
MERCHANT MARINE ACT, 1936,  
THE  
MARITIME SECURITY ACT OF 1996,  
THE  
SHIPPING ACT OF 1984,  
AND  
RELATED ACTS**

**[As amended through the 104th Congress]**

**January, 1997**

Prepared by the Office of Chief Counsel, Maritime Administration,  
400 7th St., SW, Washington, DC 20570.  
Tel. No. (202) 366-5711, Fax. No. (202) 366-7485.

# PREFACE

For many years the Committee on Merchant Marine and Fisheries, U.S. House of Representatives (Committee), prepared a compilation of maritime laws (Compilation) that was published at the beginning of every Congress. With the termination of that Committee at the beginning of the 104th Congress, no organization remained to issue the Compilation.

The Maritime Administration (Marad) determined that the public, including members of the maritime bar and community, still would benefit from an up-to-date compilation of maritime laws. Therefore, using existing technology and in-house capability, Marad printed its own edition of the Compilation. It was well received in the maritime community, and in response to numerous requests, a second edition has been prepared. This volume is for informational purposes only; citation to the law should be made by reference to the United States Code or other official reporter.

Any comments or suggestions with respect to the form or content of the Compilation would be appreciated, and should be directed to Len Sutter, Esq. (202) 366-5177.

Joan M. Bondareff  
*Chief Counsel*  
*Maritime Administration*

# TABLE OF CONTENTS

<i>Subject</i>	<i>Page</i>
<b>1. Merchant Marine Act, 1936.</b>	
Title I. Declaration of Policy. ....	1
Title II. Creation and Functions of Maritime Agencies.....	3
Title III. American Seamen. ....	23
Title V. Construction-Differential Subsidy. ....	27
Title VI. Vessel Operating Assistance Programs.	
Subtitle A. Operating-Differential Subsidy Program. ....	47
Subtitle B. Maritime Security Fleet Program.....	73
Title VII. Private Charter Operation. ....	91
Title VIII. Contract Provisions. ....	99
Title IX. Miscellaneous Provisions. ....	107
Title XI. Federal Ship Financing Guarantee Program. ....	125
Title XII. War Risk Insurance. ....	149
Title XIII. Maritime Education and Training. ....	159
<b>2. Vessel Operations Revolving Fund.</b> .....	177
<b>3. Maritime Liability.</b> .....	179
<b>4. Fast Sealift Program.</b> .....	193
<b>5. National Defense Sealift Fund.</b> .....	197
<b>6. Shipyard Development.</b> .....	201
National Shipbuilding Initiative.	
Shipyard Revitalization.	
Shipyard Reactivation.	
<b>7. National Maritime Enhancement Institute.</b> .....	209
<b>8. Merchant Ship Sales Act, 1946.</b> .....	211
National Defense Reserve Fleet.	
National Maritime Heritage Act.	
<b>9. Merchant Marine Act, 1920.</b> .....	221
<b>10. Merchant Marine Act, 1928.</b> .....	241
<b>11. Cabotage.</b> .....	243
Jones Act—Transportation of Merchandise.	
Transportation of Passengers.	
Bowaters Amendment.	
Puerto Rico Passenger Ship Act.	
Dredging Vessels.	
Foreign Vessels in U.S. Ports.	
Wrecked Vessels Act.	
Foreign Oil Spill Response Vessels.	
LNG Vessel Puerto Rico Trade.	

<i>Subject</i>	<i>Page</i>
Waiver of Navigation and Vessel Inspection Laws. Miscellaneous Provisions.	
<b>12. Cargo Reservation Statutes.....</b>	<b>249</b>
Military Cargo Preference Act of 1904.	
Public Resolution 17.	
Cargo Preference Act of 1954. Public Law 664.	
Food Security Act of 1985.	
Export of Alaskan North Slope Oil.	
<b>13. Shipping Act of 1984. ....</b>	<b>255</b>
<b>14. Shipping Act, 1916.....</b>	<b>283</b>
Section 2 Citizenship.	
Section 9 Foreign Transfer.	
Section 37 Foreign Transfer.	
<b>15. Foreign Shipping Practices Act.....</b>	<b>295</b>
<b>16. Automated Tariff Filing &amp; Information System. ....</b>	<b>299</b>
<b>17. Title 49. Interstate Water Carrier Transportation. ....</b>	<b>301</b>
<b>18. Gambling. ....</b>	<b>331</b>
Gambling Ships.	
Johnson Act.	
<b>19. Merchant Marine Decorations and Medals.....</b>	<b>341</b>
<b>20. Passenger/Cruise Vessels. ....</b>	<b>345</b>
Financial Responsibility.	
Limitation of Vessel Owner s Liability.	
Tax Deduction for Convention on Cruise Ships.	
Sale Foreign of U.S.-Flag Passenger Ships.	
<b>21. Admiralty/Maritime Jurisdiction. ....</b>	<b>355</b>
Extension of Admiralty Jurisdiction.	
Suits in Admiralty Act.	
<b>22. General Definition of Vessel. ....</b>	<b>355</b>
<b>23. Public Vessels Act. ....</b>	<b>357</b>
<b>24. Emergency Foreign Vessels Acquisition Act. ....</b>	<b>359</b>
<b>25. National Emergencies Act. ....</b>	<b>363</b>
<b>26. Civil Procedures. ....</b>	<b>369</b>
Civil Penalty Procedures.	
Hobbs Act.	
<b>27. American Great Lakes Vessels.....</b>	<b>373</b>
<b>28. Documentation of Vessels. ....</b>	<b>377</b>
<b>29. Manning of Vessels.....</b>	<b>387</b>
<b>30. Appendix. Laws of 104th Congress. ....</b>	<b>395</b>

# MERCHANT MARINE ACT, 1936

## TITLE I - DECLARATION OF POLICY

**SEC. 101. FOSTERING DEVELOPMENT AND MAINTENANCE OF MERCHANT MARINE (46 App. U.S.C. 1101 (1996)).** It is necessary for the national defense and development of its foreign and domestic commerce that the United States shall have a merchant marine (a) sufficient to carry its domestic water-borne commerce and a substantial portion of the water-borne export and import foreign commerce of the United States and to provide shipping service essential for maintaining the flow of such domestic and foreign water-borne commerce at all times, (b) capable of serving as a naval and military auxiliary in time of war or national emergency, (c) owned and operated under the United States flag by citizens of the United States insofar as may be practicable, (d) composed of the best-equipped, safest, and most suitable types of vessels, constructed in the United States and manned with a trained and efficient citizen personnel, and (e) supplemented by efficient facilities for shipbuilding and ship repair. It is hereby declared to be the policy of the United States to foster the development and encourage the maintenance of such a merchant marine.<sup>1</sup>

---

<sup>1</sup> Section 14 of Public Law 104-239, approved October 8, 1996 (110 STAT. 3136) provides: **SEC. 14. MARITIME POLICY REPORT.** (a) **Report.**—The Secretary of Transportation shall transmit to the Congress a report setting forth the Department of Transportation’s policies for the 5-year period beginning October 1, 1995, with respect to—(1) fostering and maintaining a United States merchant marine capable of meeting economic and national security requirements; (2) improving the vitality and competitiveness of the United States merchant marine and the maritime industrial base, including ship repairers, shipbuilders, ship manning, ship operators, and ship suppliers; (3) reversing the precipitous decrease in the number of ships in the United States-flag fleet and the Nation’s shipyard and repair capability; (4) stabilizing and eventually increasing the number of mariners available to crew United States merchant vessels; (5) achieving adequate manning of merchant vessels for national security needs during a mobilization; (6) ensuring that sufficient civil maritime resources will be available to meet defense deployment and essential economic requirements in support of our national security strategy; (7) ensuring that the United States maintains the capability to respond unilaterally to security threats in geographic areas not covered by alliance commitments and otherwise meets sealift requirements in the event of crisis or war; (8) ensuring that international agreements and practices do not place United States maritime industries at an unfair competitive disadvantage in world markets; (9) ensuring that Federal agencies promote, through efficient application of laws and regulations, the readiness of the United States merchant marine and supporting industries; and (10) any other relevant maritime policies. (b) **Date of Transmittal.**—The report required under subsection (a) shall be transmitted along with the President’s budget submission, under section 1105 of title 31, United States Code, for fiscal year 1997.

## TITLE II—CREATION AND FUNCTIONS OF MARITIME AGENCIES

### SEC. 201. POWERS AND DUTIES OF AGENCIES (46 App. U.S.C. 1111 (1996)).

(c) **Records of Meetings; Seal; Rules and Regulations.** The Commission shall, through its secretary, keep a true record of all its meetings and the yea-and-nay votes taken therein, on every action, order, contract, or financial transaction approved or disapproved by the Commission. It shall have an official seal which shall be judicially noticed, and shall adopt rules and regulations in regard to its procedure and the conduct of its business.

(d) **Expenditures.** The Commission and the Secretary of Transportation may make such expenditures as are necessary in the performance of their functions from funds made available to them by this Act or hereafter appropriated, which further appropriations are hereby authorized.

(e) **Officers and Employees.** Without regard to the civil-service laws, the Commission and the Secretary of Transportation may appoint and prescribe the duties and fix the salaries of a secretary, a director for each of not to exceed five divisions, a general counsel, a clerk to each member of the Commission, and not more than three assistants, a clerk to the general counsel, not more than a total of twenty naval architects or marine engineers, twenty special experts, twenty-two examiners, twelve attorneys, and two inspectors for each vessel at each shipyard at which vessels are being constructed by it or under its supervision. The Commission and the Secretary of Transportation may, subject to the provisions of the civil-service laws appoint such other officers, engineers, inspectors, attorneys, examiners, and other employees as are necessary in the execution of their functions.

(f) **Traveling and Subsistence Expenses; Pay for Military Officer on Assignment.** Each member, any employee of the Commission or the Secretary of Transportation, and any person detailed to it or the Secretary of Transportation from any other agency of the Government shall receive necessary traveling and subsistence expenses, or per diem allowance in lieu thereof, within the limitations prescribed by law, while away from his official station upon official business of the Commission or the Secretary of Transportation. Whenever any officer (not exceeding five in number at any time) of the Army, Navy, Marine Corps, or Coast Guard is detailed to the Commission or the Secretary of Transportation, he shall receive from the Commission or the Secretary of Transportation, for the period during which he is so detailed, such compensation as added to his pay and allowances as an officer in such

service will make his aggregate compensation equal to the pay and allowances he would receive if he were the incumbent of an office or position in such service (or in the corresponding executive department), which, in the opinion of the Commission or the Secretary of Transportation, involves the performance of work similar in importance, difficulty, and responsibility to that performed by him while detailed to the Commission or the Secretary of Transportation. Expenditures by the Commission or the Secretary of Transportation shall be allowed and paid on the presentation of itemized vouchers therefor approved by the Commission or the Secretary of Transportation or a designated employee thereof.

\* \* \* \* \*

## REORGANIZATION PLAN NO. 6 OF 1949

Effective Aug. 20, 1949, 14 Fed. Reg. 5228, 63 Stat. 1069. Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, June 20, 1949, pursuant to the provisions of the Reorganization Act of 1949, approved June 20, 1949.

**Sec. 1. Administration of Functions of Commission.** The Chairman of the United States Maritime Commission shall be the chief executive and administrative officer of the United States Maritime Commission. In executing and administering on behalf of the Commission its functions (exclusive of functions transferred by the provisions of section 2 of this reorganization plan) the Chairman shall be governed by the policies, regulatory decisions, findings, and determinations of the Commission.

**Sec. 2. Transfer of Functions.** There are hereby transferred from the United States Maritime Commission to the Chairman of the Commission the functions of the Commission with respect to (1) the appointment and supervision of all personnel employed under the Commission, (2) the distribution of business among such personnel and among organizational units of the Commission, and (3) the use and expenditure of funds for administrative purposes: Provided, That the provisions of this section do not extend to personnel employed regularly and full time in the offices of members of the Commission other than the Chairman: Provided further, That the heads of the major administrative units shall be appointed by the Chairman only after consultation with the other members of the Commission.

**Sec. 3. Performance of Transferred Functions.** The functions of the Chairman under the provisions of this reorganization plan shall be performed by him or, subject to his supervision and direction, by such officers and employees under his jurisdiction as he shall designate.

## REORGANIZATION PLAN NO. 21 OF 1950.

Effective May 24, 1950, 15 Fed. Reg. 3178, 64 Stat. 1273. Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, March 13, 1950, pursuant to the provisions of the Reorganization Act of 1949, approved June 20, 1949.

### PART I. FEDERAL MARITIME BOARD

**Sec. 101-106.** [Superseded. Reorg. Plan No. 7 of 1961, sec. 305, eff. Aug. 12, 1961, 26 Fed. Reg. 7315, 75 Stat. 840. Section 101 established the Federal Maritime Board. Section 102 provided for the composition of the Federal Maritime Board. Section 103 transferred certain functions from the Chairman of the United States Maritime Commission to the Chairman of the Federal Maritime Board. Section 104 transferred regulatory functions of the United States Maritime Commission to the Federal Maritime Board. Section 106 provided that the Board was to be an agency within the Department of Commerce, but would be independent of the Secretary of Commerce with respect to functions transferred to it under section 104. Section 105 transferred subsidy award and other functions of the United States Maritime Commission to the Federal Maritime Board, as follows:

**[SEC. 105. Transfer of subsidy award and other functions to the Board.** The following functions of the United States Maritime Commission are hereby transferred to the Board:

[(1) The functions with respect to making, amending, and terminating subsidy contracts, and with respect to conducting hearings and making determinations antecedent to making, amending, and terminating subsidy contracts, under the provisions of Title V, VI, and VIII, and section 301, 708, 805(a), and 805(f) of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1131, 1151-1182, 1198, 1211-1213, 1223(a), and 1223(f), together with the functions with respect to making changes, subsequent to entering into an operating differential subsidy contract, in such determinations under the provisions of section 301 of such Act, as amended (46 U.S.C. 1131), and readjustments in determinations as to operating cost differentials under the provisions of section 606 of such Act, as amended (46 U.S.C. 1176), and with respect to the approval of the sale, assignment, or transfer of any operating subsidy contract under section 608 of such Act (46 U.S.C. 1178), and with respect to the approval of the sale, assignment, or transfer of any operating subsidy contract under section 608 of such Act (46 U.S.C. 1178): Provided, That, for the purposes of this section 105(1) of this reorganization plan, the term "subsidy contract" shall be deemed to include, in the case of a construction differential subsidy, the contract for the construction, reconstruction, or reconditioning of the vessel and the contract for the sale of the vessel to the subsidy applicant or the contract to pay a con-

struction differential subsidy and the cost of national defense features, and, in the case of an operating differential subsidy, the contract with the subsidy applicant for the payment of the subsidy: Provided further, That, except as otherwise hereinbefore provided in respect of functions under sections 301, 606, and 608 of the Merchant Marine Act, 1936, as amended, the functions transferred by the provisions of this section 105(1) shall exclude the making of all determinations and the taking of all actions (other than amending or terminating any subsidy contract), subsequent to entering into any subsidy contract, which are involved in administering such contract: Provided further, That actions of the Board in respect to the functions transferred by the provisions of this section 105(1) shall be final.

(2) The functions with respect to investigating and determining (a) the relative cost of construction of comparable vessels in the United States and foreign countries, (b) the relative cost of operating vessels under the registry of the United States and under foreign registry, and (c) the extent and character of aids and subsidies granted by foreign governments to their merchant marines, under the provisions of subsection (c), (d), and (e) of section 211 of the Merchant Marine Act, 1936 (46 U.S.C. 1121(c), (d), and (e)).

(3) All functions under the provisions of section 12 of the Shipping Act, 1916, as amended (46 U.S.C. 811), including such functions with respect to making investigations and reports on relative costs and on marine insurance.

(4) So much of the functions with respect to requiring the filing of reports, accounts, records, rates, charges, and memoranda, under the provisions of section 21 of the Shipping Act, 1916, as amended (46 U.S.C. 820), as relates to the functions of the Board under the provisions of section 105(1) to 105(3), inclusive, of this reorganization plan.

(5) So much of the functions with respect to adopting rules and regulations, making reports and recommendations to Congress, subpoenaing witnesses, administering oaths, taking evidence, and requiring the production of books, papers, and documents, under the provisions of sections 204, 208, and 214 of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1114, 1118, and 1124), as relates to the functions of the Board under the provisions of this reorganization plan.]

## PART II. MARITIME ADMINISTRATION

**Sec. 201. Creation of Maritime Administration.** There is hereby established in the Department of Commerce a Maritime Administration.<sup>2</sup>

**Sec. 202.** [Superseded. Reorg. Plan No. 7 of 1961, sec. 305, eff. Aug. 12, 1961, 26 Fed. Reg. 7315, 75 Stat. 840. Section provided for a Maritime Administrator to be at the head of the Maritime

---

<sup>2</sup> Public Law 97-31, approved August 6, 1981 (95 STAT.151), transferred the Maritime Administration from the Department of Commerce to the Department of Transportation.

Administration, and that the Chairman of the Federal Maritime Board would be such Administrator and would perform duties prescribed by the Secretary of Commerce.]

**Sec. 203. Deputy Maritime Administrator.** There shall be in the Maritime Administration a Deputy Maritime Administrator, who shall be appointed by the Secretary of Commerce, after consultation with the Administrator, under the classified civil service, and who shall perform such duties as the Administrator shall prescribe. The Deputy Maritime Administrator shall be Acting Maritime Administrator during the absence or disability of the Administrator and, unless the Secretary of Commerce shall designate another person, during a vacancy in the office of Administrator: Provided, That such Deputy Administrator shall at no time sit as a member or acting member of the Federal Maritime Board.

**Sec. 204. Transfer of functions.** Except as otherwise provided in Part I of this reorganization plan, all functions of the United States Maritime Commission and of the Chairman of said Commission are hereby transferred to the Secretary of Commerce. The Secretary of Commerce may from time to time make such provisions as he shall deem appropriate authorizing the performance by the Maritime Administrator of any function transferred to such Secretary by the provisions of this reorganization plan.

### **PART III - GENERAL PROVISIONS**

**Sec. 301. Under Secretary of Commerce for Transportation.** There shall be in the Department of Commerce an additional office of Under Secretary with the title "Under Secretary of Commerce for Transportation." The Under Secretary of Commerce for Transportation shall be appointed by the President, by and with the advice and consent of the Senate, shall receive compensation at the rate prescribed by law for Under Secretaries of Executive departments, and shall perform such duties as the Secretary of Commerce shall prescribe.

**Sec. 302-307.** [Superseded. Reorg. Plan No. 7 of 1961, sec. 305, eff. Aug. 12, 1961, 26 Fed. Reg. 7315, 75 Stat. 840. Section 302 provided that person who was both Administrator and Chairman was to make joint use of the personnel under his supervision. Section 303 made conflict of interest provisions of the Merchant Marine Act, 1936, applicable to members of the Federal Maritime Board and officers and employees of the Board or of the Maritime Administration. Section 304 allowed the President to make interim appointments to the Federal Maritime Board from officers of the Executive Branch. Section 305 transferred to the Department of Commerce all property, personnel, records, and funds of the United States Maritime Commission. Section 306 abolished the United States Maritime Commission. Section 307 provided that the functions transferred by this reorganization plan would not be subject to Reorg. Plan No. 5 of 1950.]

## **REORGANIZATION PLAN NO. 7 OF 1961.**

Eff. Aug. 12, 1961, 26 Fed. Reg. 7315, 75 Stat. 840, as amended Aug. 14, 1964, P.L. 88-426, Title III, sec. 305(19), 78 Stat. 425; Oct. 21, 1970, P.L. 91-469, sec. 38, 84 Stat. 1036. Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, June 12, 1961, pursuant to the provisions of the Reorganization Act of 1949, 63 Stat. 203, as amended.

### **MARITIME FUNCTIONS**

#### **Part I. Federal Maritime Commission**

##### **Sec. 101. Creation of Federal Maritime Commission**

(a) There is hereby established a Federal Maritime Commission, hereinafter referred to as the Commission.

(b) The Commission shall not be a part of any executive department or under the authority of the head of any executive department.

##### **Sec. 102. Composition of the Commission**

(a) The Commission shall be composed of five Commissioners, who shall be appointed by the President by and with the advice and consent of the Senate. Each Commissioner shall be removable by the President for inefficiency, neglect of duty, or malfeasance in office.

(b) The President shall from time to time designate one of the Commissioners to be the Chairman of the Commission.

(c) Of the first five Commissioners appointed hereunder, one shall be appointed for a term expiring on June 30, 1962, one for a term expiring on June 30, 1963, one for a term expiring on June 30, 1964, and two for terms expiring on June 30, 1965. Their successors shall be appointed for terms of four years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the Commissioner whom he succeeds. Not more than three of the Commissioners shall be appointed from the same political party. A vacancy in the office of any such Commissioner shall be filled in the same manner as the original appointment.

(d) A vacancy in the Commission, so long as there shall be three Commissioners in office, shall not impair the power of the Commission to execute its functions. Any three of the Commissioners in office shall constitute a quorum for the transaction of the business of the Commission and the affirmative votes of any three Commissioners shall be sufficient for the disposition of any matter which may come before the Commission.

**Sec. 103. Transfer of Functions to Commission.** The following functions, which are now vested in the Federal Maritime Board under the provisions of Reorganization Plan No. 21 of 1950 (64 Stat. 1273), are hereby transferred from that Board to the Commission:

(a) All functions under the provisions of sections 14—20, inclusive, and sections 22—33, inclusive, of the Shipping Act, 1916, as amended (46 U.S.C. 812—819 and 821—832), including such functions with respect to the regulation and control of rates, services, practices, and agreements of common carriers by water and of other persons.

(b) All functions with respect to the regulation and control of rates, fares, charges, classifications, tariffs, regulations, and practices of common carriers by water under the provisions of the Intercoastal Shipping Act, 1933, as amended (46 U.S.C. 843—848).

(c) The functions with respect to the making of rules and regulations affecting shipping in the foreign trade to adjust or meet conditions unfavorable to such shipping, and with respect to the approval, suspension, modification, or annulment of rules or regulations of other Federal agencies affecting shipping in the foreign trade, under the provisions of section 19 of the Merchant Marine Act, 1920, as amended (46 U.S.C. 876), exclusive of subsection (1)(a) thereof.

(d) The functions with respect to investigating discriminatory rates, charges, classifications, and practices in the foreign trade, and with respect to recommending legislation to correct such discrimination, under the provisions of section 212(e) of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1122(f)).

(e) To the extent that they relate to functions transferred to the Commission by the foregoing provisions of this section:

(1) The functions with respect to requiring the filing of reports, accounts, records, rates, charges, and memoranda, under the provisions of section 21 of the Shipping Act, 1916, as amended (46 U.S.C. 820).

(2) The functions with respect to adopting rules and regulations, making reports and recommendations to Congress, subpoenaing witnesses, administering oaths, taking evidence, and requiring the production of books, papers, and documents, under the provisions of sections 204, 208, and 214 of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1114, 1118 and 1124).

#### **Sec. 104. Transfer of Functions to Chairman.**

THERE ARE HEREBY TRANSFERRED TO THE CHAIRMAN OF THE COMMISSION:

(a) The functions of the Chairman of the Federal Maritime Board, including his functions derived from the provisions of Reorganization Plan No. 6 of 1949, to the extent that they relate to the functions transferred to the Commission by the provisions of section 103 of this reorganization plan.

(b) The functions of the Secretary of Commerce to the extent that they are necessary for, or incidental to, the administration of the functions transferred to the Commission by the provisions of section 103 of this reorganization plan.

**Sec. 105. Authority to Delegate**

(a) The Commission shall have the authority to delegate, by published order or rule, any of its functions to a division of the Commission, an individual Commissioner, a hearing examiner, or an employee or employee board, including functions with respect to hearing, determining, ordering, certifying, reporting or otherwise acting as to any work, business, or matter: Provided, however, That nothing herein contained shall be deemed to supersede the provisions of section 7(a) of the Administrative Procedure Act (60 Stat. 241), as amended.

(b) With respect to the delegation of any of its functions, as provided in subsection (a) of this section, the Commission shall retain a discretionary right to review the action of any such division of the Commission, individual Commissioner, hearing examiner, employee or employee board, upon its own initiative or upon petition of a party to or an intervenor in such action, within such time and in such manner as the Commission shall by rule prescribe: Provided, however, That the vote of a majority of the Commission less one member thereof shall be sufficient to bring any such action before the Commission for review.

(c) Should the right to exercise such discretionary review be declined, or should no such review be sought within the time stated in the rules promulgated by the Commission, then the action of any such division of the Commission, individual Commissioner, hearing examiner, employee or employee board, shall, for all purposes, including appeal or review thereof, be deemed to be the action of the Commission.

(d) There are hereby transferred to the Chairman of the Commission the functions with respect to the assignment of Commission personnel, including Commissioners, to perform such functions as may have been delegated by the Commission to Commission personnel, including Commissioners, pursuant to the foregoing subsections of this section.

**Part II. Department of Commerce.**

**Sec. 201. Maritime Administrator.**

There shall be at the head of the Maritime Administration (established by the provisions of part II of Reorganization Plan No. 21 of 1950) a Maritime Administrator, hereinafter referred to as the Administrator. The Assistant Secretary of Commerce for Maritime Affairs shall, ex officio, be the Administrator. The Administrator shall perform such duties as the Secretary of Commerce shall prescribe.

## **Sec. 202. Functions of Secretary of Commerce.**

(a) Except to the extent inconsistent with the provisions of sections 101(b) or 104(b) of this reorganization plan, there shall remain vested in the Secretary of Commerce all the functions conferred upon the Secretary by the provisions of Reorganization Plan No. 21 of 1950.

(b) There are hereby transferred to the Secretary of Commerce:

(1) All functions of the Federal Maritime Board under the provisions of section 105(1) to 105(3), inclusive, of Reorganization Plan No. 21 of 1950.

(2) Except to the extent transferred to the Commission by the provisions of section 103(e) of this reorganization plan, the functions described in the said section 103(e).

(3) Any other functions of the Federal Maritime Board not otherwise transferred by the provisions of part I of this reorganization plan.

(4) Except to the extent transferred to the Chairman of the Commission by the provisions of part I of this reorganization plan, the functions of the Chairman of the Federal Maritime Board.

## **Sec. 203. Delegation of Functions.**

The provisions of sections 2 and 4 of Reorganization Plan No. 5 of 1950 (64 Stat. 1263) shall be applicable to all functions transferred to the Secretary of Commerce by, or remaining vested in him under, the provisions of this reorganization plan.

## **Part III. General Provisions**

### **Sec. 301. Conflict of Interest.**

The provisions of the last sentence of section 201(b) of the Merchant Marine Act, 1936, as affected by the provisions of Reorganization Plan No. 21 of 1950 (46 U.S.C. 1111(b)) (prohibiting the members of the Federal Maritime Board and all officers and employees of that Board or of the Maritime Administration from being in the employ of any other person, firm, or corporation, or from having any pecuniary interest in or holding any official relationship with any carrier by water, shipbuilder, contractor, or other person, firm, association, or corporation with whom the Federal Maritime Board or the Maritime Administration may have business relations) shall hereafter be applicable to the Commissioners composing the Commission and all officers and employees of the Commission.

### **Sec. 302. Interim Appointments.**

Pending the initial appointment hereunder of the Commissioners composing the Commission and of the Maritime Administrator, but not for a period exceeding 90 days, such officers of the executive branch of the Government (including any person who is a member of the Federal

Maritime Board or Deputy Maritime Administrator immediately prior to the taking effect of the provisions of this reorganization plan) as the President shall designate under the provisions of this section shall be Acting Commissioners of the Federal Maritime Commission or Acting Maritime Administrator. The President may designate one of such Acting Commissioners as Acting Chairman of the Commission. Any person who is not while serving under an interim appointment pursuant to the foregoing provisions of this section receiving compensation attached to another Federal office shall receive the compensation herein provided for the office wherein he serves in an interim capacity.

**Sec. 303. Incidental Transfers.**

(a) So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with the functions transferred to the Commission or to the Chairman of the Commission by the provisions of part I of this reorganization plan as the Director of the Bureau of the Budget shall determine shall be transferred to the Commission at such time or times as the Director shall direct.

(b) Such further measures and dispositions as the Director of the Bureau of the Budget shall deem to be necessary in order to effectuate the transfers provided for in subsection (a) of this section shall be carried out in such manner as he shall direct and by such agencies as he shall designate.

(c) Subject to the foregoing provisions of this section, the Secretary of Commerce may transfer within the Department of Commerce personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with functions which were transferred to the Department of Commerce (including the Federal Maritime Board and the Chairman thereof) by the provisions of Reorganization Plan No. 21 of 1950.

**Sec. 304. Abolition of Federal Maritime Board.**

The Federal Maritime Board, including the offices of the members of the Board, is hereby abolished, and the Secretary of Commerce shall provide for the termination of any outstanding affairs of the said Board not otherwise provided for in this reorganization plan.

**Sec. 305. Status of Prior Plan.**

The following provisions of Reorganization Plan No. 21 of 1950 are hereby superseded:

- (1) Part I.
- (2) Section 202.
- (3) Sections 302 to 307, inclusive.

\* \* \* \* \*

## **Continuation of the Merchant Marine Act, 1936.**

**SEC. 202. OPERATION OF PROPERTY BY SECRETARY (46 App. U.S.C. 1112 (1996)).** Notwithstanding any other provision of law, the Secretary of Transportation may, in accordance with good business methods and on such terms and conditions as he determines to effectuate the policy of this Act, operate or lease any lands, docks, wharves, piers, or real property under his control, and all money heretofore or hereafter received from such operation or lease shall be available for expenditure by the Secretary of Transportation as provided in this Act. The Secretary of Transportation may, upon such terms and conditions as he may prescribe in accordance with sound business practice, make such extensions and accept such renewals of the notes and other evidences of indebtedness hereby transferred, and of mortgages and other contracts securing the same, as he may deem necessary to carry out the objects of this Act.

### **SEC. 204. TRANSFER OF POWERS; RULES AND ORDERS (46 App. U.S.C. 1114 (1996)).**

(a) **Transfer of Functions, Powers and Duties.** All the functions, powers, and duties vested in the former United States Shipping Board by the Shipping Act, 1916, the Merchant Marine Act, 1920, the Merchant Marine Act, 1928, and amendments to those Acts, and now vested in the Department of Commerce pursuant to section 12 of the President's Executive Order of June 10, 1933, are hereby transferred to the Federal Maritime Commission and the Secretary of Transportation: Provided, however, That after the date of the passage of this Act no further construction loans shall be made under the provisions of section 11 of the Merchant Marine Act, 1920, as amended.

(b) **Rules and Regulations.** The Commission and the Secretary of Transportation are hereby authorized to adopt all necessary rules and regulations to carry out the powers, duties, and functions vested in them by this Act.

(c) **Enforcement of Orders; Penalties for Violations.** The orders issued by the Federal Maritime Commission and the Secretary of Transportation in the exercise of the powers transferred to them by this title shall be enforced in the same manner as heretofore provided by law for enforcement of the orders issued by the former United States Shipping Board, and violation of such orders shall subject the person or corporation guilty of such violation to the same penalties or punishment as heretofore provided for violation of the orders of said Board.

**SEC. 205. DISCRIMINATION AT PORTS BY CARRIERS BY WATER AGAINST OTHER CARRIERS (46 App. U.S.C. 1115 (1996)).** Without limiting the power and authority otherwise vested in

the Federal Maritime Commission and the Secretary of Transportation, it shall be unlawful for any common carrier by water, either directly or indirectly, through the medium of an agreement, conference, association, understanding, or otherwise, to prevent or attempt to prevent any other such carrier from serving any port designed for the accommodation of ocean-going vessels located on any improvement project authorized by the Congress or through it by any other agency of the Federal Government, lying within the continental limits of the United States, at the same rates which it charges at the nearest port already regularly served by it.

**SEC. 206. CONSTRUCTION FUND (46 App. U.S.C. 1116 (1996)).** All sums of money now in the construction loan fund created by section 11 of the Merchant Marine Act, 1920, as amended, together with the proceeds of all debts, accounts, choses in action, and the proceeds of all notes, mortgages, and other evidences of indebtedness, hereby transferred to the Department of Transportation, and all of the proceeds of sales of ships and surplus property heretofore or hereafter made, including proceeds of notes or other evidences of debt taken therefor and the interest thereon, and, notwithstanding any other provision of law, all money representing amounts of unclaimed wages, salvage awards and miscellaneous unclaimed items carried as liabilities on the books of the United States Shipping Board Merchant Fleet Corporation and all money heretofore or hereafter received from the operation or leasing of lands, docks, wharves, piers, or real property shall be deposited in the Treasury of the United States and there maintained as a revolving fund, herein designated as the construction fund, and shall be available for expenditure by the Secretary of Transportation in carrying out the provisions of this Act. All moneys received by the Department of Transportation under the provisions of this Act shall be deposited in its construction fund, and all disbursements made by the Secretary of Transportation under authority of this Act shall be paid out of said fund, and, notwithstanding any other provision of law, all disbursements applicable to the money referred to in this section may be made by the Secretary of Transportation out of said fund. Further appropriations by Congress to replenish said fund are hereby authorized.

**APPLICATION TO OBLIGATIONS AGAINST EMERGENCY SHIP CONSTRUCTION FUND (46 App. U.S.C. 1116a (1996)).<sup>3</sup>** Hereafter the United States Maritime Commission construction fund shall be available for the payment of obligations previously incurred against the emergency ship construction fund.

---

<sup>3</sup> Enacted as part of the Act of March 22, 1947 (61 STAT. 1116), and not as part of the Merchant Marine Act, 1936. Applies after March 22, 1947.

**SEC. 207. POWER TO CONTRACT, AUDIT OF ACCOUNTS; REPORTS OF COMPTROLLER GENERAL (46 App. U.S.C. 1117 (1996)).** The Federal Maritime Commission and the Secretary of Transportation may enter into such contracts, upon behalf of the United States, and may make such disbursements as may, in its or his discretion, be necessary to carry on the activities authorized by this Act, or to protect, preserve, or improve the collateral held by the Commission or Secretary to secure indebtedness, in the same manner that a private corporation may contract within the scope of the authority conferred by its charter. All the Commission's and Secretary's financial transactions shall be audited in the General Accounting Office according to approved commercial practice as provided in the Act of March 20, 1922 (42 Stat. 444): Provided, That it shall be recognized that, because of the business activities authorized by this Act, the accounting officers shall allow credit for all expenditures shown to be necessary because of the nature of such authorized activities, notwithstanding any existing statutory provision to the contrary. The Comptroller General shall report annually or oftener to congress any departure by the Commission or Secretary from the provisions of this Act.

**SEC. 208. REPORTS TO CONGRESS (46 App. U.S.C. 1118 (1996)).** The Federal Maritime Commission and the Secretary of Transportation shall, by April 1 each year, make a report to Congress, which shall include the results of its or his investigations, a summary of its or his transactions, its or his recommendations for legislation, a statement of all receipts under this Act, and the purposes for which all expenditures were made.

**SEC. 209. AUTHORIZATION OF APPROPRIATIONS (46 App. U.S.C. 1119 (1996)).**

(a) Except as provided in subsection (b) of this section, there are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

(b) Notwithstanding any other provision of this Act, or any other law, there are authorized to be appropriated after December 31, 1967, for the use of the Maritime Administration for—

- (1) acquisition, construction, or reconstruction of vessels;
- (2) construction-differential subsidy incident to the construction, reconstruction, or reconditioning of ships;
- (3) cost of national defense features;
- (4) payment of obligations incurred for operating-differential subsidy;
- (5) expenses necessary for research and development activities (including reimbursement of the Vessel Operations Revolving Fund for losses resulting from expenses of experimental ship operations);
- (6) reserve fleet expenses;

(7) maritime training at the Merchant Marine Academy at Kings Point, New York;

(8) financial assistance to State maritime academies under section 1304 of this Act;

(9) the Vessel Operations Revolving Fund;

(10) expenses necessary for additional training provided under section 1305 of this Act;

[(11)](10) expenses necessary to carry out title XIII of this Act; and;

[(12)](11) other operations and training expenses related to the development of waterborne transportation systems, the use of waterborne transportation systems, or general administration;

only such sums as the Congress may specifically authorize by law: Provided, however, That the Congress hereby finds and declares that the national policy set forth in section 101 of this Act requires that there should be authorized and appropriated for fiscal years 1971 through 1980 such sums as may be necessary to construct 300 ships of such sizes, types and designs as the Secretary of Transportation may consider best suited to carry out the purposes and policy of this Act.

**SEC. 210. SURVEY OF EXISTING MERCHANT MARINE FOR CREATION OF ADEQUATE AMERICAN-OWNED FLEET (46 App. U.S.C. 1120 (1996)).** It shall be the duty of the Secretary of Transportation to make a survey of the American merchant marine, as it now exists, to determine what additions and replacements are required to carry forward the national policy declared in section 101 of this Act, and the Secretary of Transportation is directed to study, perfect, and adopt a long-range program for replacements and additions to the American merchant marine so that as soon as practicable the following objectives may be accomplished:

First, the creation of an adequate and well-balanced merchant fleet, including vessels of all types, to provide shipping service essential for maintaining the flow of the foreign commerce of the United States, the vessels in such fleet to be so designed as to be readily and quickly convertible into transport and supply vessels in a time of national emergency. In planning the development of such a fleet the Secretary of Transportation is directed to cooperate closely with the Navy Department as to national-defense needs and the possible speedy adaptation of the merchant fleet to national-defense requirements.

Second, the ownership and the operation of such a merchant fleet by citizens of the United States insofar as may be practicable.

Third, the planning of vessels designed to afford the best and most complete protection for passengers and crew against fire and all marine perils.

Fourth, the creation and maintenance of efficient shipbuilding and repair capacity in the United States with adequate numbers of skilled personnel to provide an adequate mobilization base.

**SEC. 211. INVESTIGATIONS, STUDIES, AND RECORDS, ETC. (46 App. U.S.C. 1121 (1996)).**

The Secretary of Transportation is authorized and directed to investigate, determine, and keep current records of—

(a) **Suitable Ocean Routes and Lines to Foreign Ports; Vessels and Costs of Operation.** The ocean services, routes, and lines from ports in the United States, or in a Territory, district, or possession thereof, to foreign markets, which are, or may be, determined by the Secretary of Transportation to be essential for the promotion, development, expansion, and maintenance of the foreign commerce of the United States, and in reaching his determination the Secretary of Transportation shall consider and give due weight to the cost of maintaining each of such steamship lines, the probability that any such line cannot be maintained except at a heavy loss disproportionate to the benefit accruing to foreign trade, the number of sailings and types of vessels that should be employed in such lines, and any other facts and conditions that a prudent business man would consider when dealing with his own business, with the added consideration, however, of the intangible benefit the maintenance of any such line may afford to the foreign commerce of the United States, to the national defense, and to other national requirements;

(b) **Bulk Cargo Carrying Services.** The bulk cargo carrying services that should, for the promotion, development, expansion, and maintenance of the foreign commerce of the United States and for the national defense or other national requirements be provided by United States- flag vessels whether or not operating on particular services, routes, or lines;

(c) **Vessels Required in Proposed Routes.** The type, size, speed, method of propulsion, and other requirements of the vessels, including express-liner or super-liner vessels, which should be employed in such services or on such routes or lines, and the frequency and regularity of the sailings of such vessels, with a view to furnishing adequate, regular, certain, and permanent service, or which should be employed to provide the bulk cargo carrying services necessary to the promotion, maintenance, and expansion of the foreign commerce of the United States and its national defense or other national requirements whether or not such vessels operate on a particular service, route, or line;

(d) **Cost of Construction in United States and Abroad.** The relative cost of construction of comparable vessels in the United States and in foreign countries;

(e) **Relative Cost of Operation under laws of United States and Foreign Countries.** 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, rules, and regulations of the United States and under those of the foreign countries whose vessels are substantial competitors of any such American vessel;

(f) **Foreign Subsidies.** The extent and character of the governmental aid and subsidies granted by foreign governments to their merchant marine;

(g) **Shipyards.** The number, location, and efficiency of the shipyards existing on the date of the enactment of this Act or thereafter built in the United States;

(h) **Laws applicable to Aircraft.** To investigate and determine what provisions of this Act and other Acts relating to shipping should be made applicable to aircraft engaged in foreign commerce in order to further the policy expressed in this Act, and to recommend appropriate legislation to this end;

(i) **Transportation to Foreign Ports of cotton, coal, lumber, and cement.** The advisability of enactment of suitable legislation authorizing the Secretary of Transportation, in an economic or commercial emergency, to aid the farmers and cotton, coal, lumber, and cement producers 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 of Transportation, until such time as the Secretary of Transportation shall deem such special rate reduction and operation unnecessary for the benefit of the American farmers and such producers; and

(j) **New Designs of Vessels; Intercoastal and Inland Water Transportation.** New designs, new methods of construction, and new types of equipment for vessels; the possibilities of promoting the carrying of American foreign trade in American vessels; and intercoastal and inland water transportation, including their relation to transportation by land and air.

**SEC. 212. MARITIME PROBLEMS; COOPERATION WITH OTHERS; CARGO CARRIAGE; RECOMMENDATIONS (46 App. U.S.C. 1122 (1996)).**

The Secretary of Transportation is authorized and directed—

(a) **Study of Maritime Problems.** To study all maritime problems arising in the carrying out of the policy set forth in title I of this Act;

(b) **Inducing Preferences for American Vessels; Construction of super-liners.** To study, and to cooperate with vessel owners in devising means by which—

(1) the importers and exporters of the United States can be induced to give preference to vessels under United States registry; and

(2) there may be constructed by or with the aid of the United States express-liner or super-liner vessels comparable with those of other nations, especially with a view to their use in national emergency, and the use in connection with or in lieu of such vessels of transoceanic aircraft service;

(c) **Collaboration with Owners and Builders.** To 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 accruing from standardized production where practicable and desirable;

(d) **Liaison with other Agencies and Trade Organizations.** To establish and maintain liaison with such other boards, commissions, independent establishments, and departments 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 water-borne export and import foreign commerce of the United States, for the purpose of securing preference to vessels of United States registry in the shipment of such commodities;

(f) **Development and Implementation of new methods of Cargo Carriage; preferences for cargo containers.** To study means and 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 to study the economic and technological aspects of the use of cargo containers as a method of carrying out the declaration of policy set forth in title I of this Act, and in carrying out the provisions of this clause and such policy the United States shall not give preference as between carriers upon the basis of length, height, or width of cargo containers or length, height, or width of cargo container cells and this requirement shall be applicable to all existing container vessels and any container vessel to be constructed or rebuilt.

(g) **Recommendations for further Legislation.** To make recommendations to Congress, from time to time, for such further legislation as he deems necessary better to effectuate the purpose and policy of this Act.

**SEC. 212(A). VESSEL UTILIZATION AND PERFORMANCE REPORTS; FILING; CIVIL PENALTY; LIEN UPON VESSEL; REMISSION OR MITIGATION OF PENALTY (46 App. U.S.C. 1122a (1996)).** The operator of a vessel in waterborne foreign commerce of the United States shall file at such times and in such manner as the Secretary of Transportation may prescribe by regulations, such report, account, record, or memorandum relating to the utilization and performance of such vessel in commerce of the United States, as the Secretary may determine to be necessary or desirable in order to carry out the purposes and provisions of this Act, as amended. Such report, account, record, or memorandum shall be signed and verified in accordance with regulations prescribed by the Secretary. An operator who does not file the report, account, record, or memorandum as required by this section and the regulations issued hereunder, shall be liable to the United States in a penalty of \$50 for each day of such violation. The amount of any penalty imposed for any violation of this section upon the operator of any vessel shall constitute a lien upon the vessel involved in the violation, and such vessel may be libeled therefor in the district court of the United States for the district in which it may be found. The Secretary of Transportation may, in his discretion, remit or mitigate any penalty imposed under this section on such terms as he may deem proper.

**SEC. 212(B). MOBIL TRADE FAIRS (46 App. U.S.C. 1122b (1996)).**

(a) **Use of United States flag vessels and aircraft insofar as practicable.** The Secretary of Commerce shall encourage and promote the development and use of mobile trade fairs which are 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 operator or operators of the mobile trade fairs use insofar as practicable United States flag vessels and aircraft in the transportation of their exhibits.

(b) **Technical and financial assistance; exceptions.** The Secretary of Commerce is authorized to provide to the operator or operators of such mobile trade fairs technical assistance and support as well as financial assistance for the purpose of defraying certain expenses incurred abroad (other than the cost of transportation on foreign-flag vessels and aircraft), when the Secretary determines that such operations provide an economical and effective means of promoting export sales.

(c) **Use of foreign currencies.** In addition to any amounts appropriated to carry out trade promotion activities, the President may use foreign currencies owned by or owed to the United States to carry out this section.

(d) **Report to Congress.** The Secretary of Commerce shall submit annually to the Congress a report on his activities under this Act.

**SEC. 213. OBSOLETE TONNAGE; TRAMP SERVICE; RELATIVE COSTS AT YARDS (46 App. U.S.C. 1123 (1996)).**

The Secretary of Transportation shall make studies of and make reports to Congress on—

(a) **Removal of obsolete tonnage.** The scrapping or removal from service of old or obsolete merchant tonnage owned by the United States or in use in the merchant marine;

(b) **Tramp shipping; participation in by Americans.** Tramp shipping service and the advisability of citizens of the United States participating in such service with vessels under United States registry.

(c) **Relative cost of construction at different yards; equalization.** The relative cost of construction or reconditioning of comparable ocean vessels in shipyards in the various coastal districts of the United States, together with recommendations as to how such shipyards may compete for work on an equalized basis; reports under this paragraph shall be made annually on the first day of October of each year.

**SEC. 214. WITNESSES (46 App. U.S.C. 1124 (1996)).**

(a) **Summoning; oaths; production of books and papers; fees.** For the purpose of any investigation which, in the opinion of the Secretary of Transportation, is necessary and proper in carrying out this Act, the Secretary may subpoena witnesses, administer oaths and affirmations, take evidence, and require the production of books, papers, or other documents that are relevant to the matter under investigation. The attendance of witnesses and the production of books, papers, or other documents may be required from any place in the United States or any territory, district, or possession thereof at any designated place of hearing. Witnesses summoned before the Secretary shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(b) **Refusal to obey subpoena; court orders; contempt.** Upon failure of any person to obey a subpoena issued by the Secretary, the Secretary may invoke the aid of any district court of the United States within the jurisdiction in which the person resides or carries on business in requiring the attendance and testimony of witnesses and the production of books, papers, or other documents. Any such court may issue an order requiring the person to appear before the Secretary, or an employee designated by the Secretary, there to produce books, papers, or other documents, if so ordered, or to give testimony relevant to the matter under investigation. A failure to obey an order of the court may be punished by the court as a contempt thereof. Process in such a case may be served in the judicial district in which the person resides or may be found.

**SEC. 215. ACQUISITION OF VESSELS (46 App. U.S.C. 1125 (1996)).** The Secretary of Transportation is authorized to acquire by purchase or otherwise such vessels constructed in the United States as he may deem necessary to establish, maintain, improve, or effect replacements upon any service, route, or line in the foreign commerce of the United States determined to be essential under section 211 of this Act, and to pay for the same out of his construction fund: Provided, That the price paid therefor shall be based upon a fair and reasonable valuation, but it shall not exceed by more than 5 per centum the cost of such 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 thereon for reconditioning less depreciation based upon a twenty-five year<sup>4</sup> life expectancy of the vessel. No such vessel shall be acquired by the Secretary of Transportation unless the Secretary of the Navy has certified to the Secretary of Transportation that such vessel is suitable for economical and speedy conversion into a naval or military auxiliary, or otherwise suitable for the use of the United States in time of war or national emergency. Every vessel acquired under authority of this section that is not documented under the laws of the United States at the time of its acquisition shall be so documented as soon as practicable.

**CONSTRUCTION, REPAIR, ETC., OF VESSELS FOR GOVERNMENT AGENCIES (46 App. U.S.C. 1125a (1996)).** The Secretary of Transportation is authorized to construct, reconstruct, repair, equip, and outfit, by contract or otherwise, vessels or parts thereof, for any other department or agency of the Government, to the extent that such other department or agency is authorized by law to do so for its own account, and any obligations heretofore or hereafter incurred by the Secretary for any of the aforesaid purposes shall not diminish or otherwise affect any contract authorization granted to the Secretary: Provided, The obligations incurred or the expenditures made are charged against and, to the amount of such obligation or expenditure, diminish the existing appropriation or contract authorization of such department or agency.<sup>5</sup>

---

<sup>4</sup> Public Law 86-518, approved June 12, 1960 (74 STAT. 216), as amended by Public Law 88-225, approved December 23, 1963 (77 STAT. 469), generally extended the statutory life of vessels to 25 years, and provided for this period's application to certain vessels and contracts existing on the date. However, the Act retained a 20 year statutory life for tankers and other liquid bulk carriers and for vessels delivered prior to January 1, 1946. See Section 8 of Public Law 88-225, for the application to vessels delivered prior to January 1, 1960. It should also be noted that Title XI of the Merchant Marine Act, 1936, generally provides a twenty-five year life for Title XI guaranteed vessels.

<sup>5</sup> Enacted as section 4 of the Act of February 6, 1941 (55 STAT. 5), as amended, and not as part of the Merchant Marine Act, 1936.

## TITLE III—AMERICAN SEAMEN

### SEC. 301. MANNING AND WAGE SCALES; SUBSIDY CONTRACTS (46 App. U.S.C. 1131 (1996)).

(a) **Investigation of Wages and Working Conditions; Establishment of Wage and Manning Scales; Incorporation in Subsidy Contracts.** The Secretary of Transportation is authorized and directed to investigate the employment and wage conditions in ocean-going shipping and, after making such investigation and after appropriate hearings, to incorporate in the contracts authorized under Titles VI and VII of this Act minimum manning scales and minimum wage scales, and minimum working conditions for all officers and crews employed on all types of vessels receiving an operating-differential subsidy. After such minimum manning and wage scales, and working conditions shall have been adopted by the Secretary of Transportation, no change shall be made therein by the Secretary of Transportation except upon public notice of the hearing to be had, and a hearing by the Secretary of Transportation of all interested parties, under such rules as the Secretary of Transportation shall prescribe. The duly elected representatives of the organizations certified as the proper collective bargaining agencies shall have the right to represent the employees who are members of their organizations at any such hearings. Every contractor receiving an operating-differential subsidy shall post and keep posted in a conspicuous place on each such vessel operated by such contractor a printed copy of the minimum manning and wage scales, and working conditions prescribed by his contract and applicable to such vessel: Provided, however, That any increase in the operating expenses of the subsidized vessel occasioned by any change in the wage or manning scales or working conditions as provided in this section shall be added to the operating-differential subsidy previously authorized for the vessel.

(b) **Subsidy Contracts; Provisions Relative to Officers and Crew.** Every contract executed under authority of Titles VI and VII of this Act shall require—

- (1) Insofar as is practicable, officers' living quarters shall be kept separate and apart from those furnished for members of the crew;
- (2) Licensed officers and unlicensed members of the crew shall be entitled to make complaints or recommendations to the Secretary of Transportation providing they file such complaint or recommendation directly with the Secretary of Transportation, or with their immediate superior officer who shall be required to forward such complaint or recommendation with his remarks to the Secretary of Transportation, or with the authorized representatives of the respective collective bargaining agencies;

(3) Licensed officers who are members of the United States Naval Reserve shall wear on their uniforms such special distinguishing insignia as may be approved by the Secretary of the Navy; officers being those men serving under licenses issued by the Bureau of Marine Inspection and Navigation;

(4) The uniform stripes, decoration, or other insignia shall be of gold braid or woven gold or silver material, to be worn by officers, and no member of the ship's crew other than licensed officers shall be allowed to wear any uniform with such officer's identifying insignia;

(5) No discrimination shall be practiced against licensed officers, who are otherwise qualified, because of their failure to qualify as members of the United States Naval Reserve.

### **SEC. 302. REEMPLOYMENT RIGHTS FOR CERTAIN MERCHANT SEAMEN (46 App. U.S.C. 1132 (1996)).<sup>6</sup>**

(a) 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, United States Code, for any member of a Reserve component of the Armed Forces of the United States who is ordered to active duty.

(b) An individual may submit an application for certification under subsection (c) to the Secretary of Transportation 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) Not later than 20 days after the date the Secretary of Transportation receives from an individual an application for certification under this subsection, the Secretary shall—

(1) determine whether or not 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, in a period in which that vessel was in use or being activated for use under subsection (b) of that section;

---

<sup>6</sup> Section 302 was added by Section 10(a) of Public Law 104-239, approved October 8, 1996 (110 STAT. 3133), the Maritime Security Act of 1996. Section 10(b) and (c) provide: "(b) **Application.**—The amendment made by subsection (a) shall apply to employment described in section 302(c)(1)(A) of the Merchant Marine Act, 1936, as amended by subsection (a), occurring after the date of enactment of this Act. (c) **Regulation.**—Not later than 120 days after the date of the enactment of this Act, the Secretary of Transportation shall issue regulations implementing this section.

(ii) that is requisitioned or purchased under section 902 of this Act; or

(iii) that is owned, chartered, or controlled by the United States and used by the United States 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 chapter 73 (as applicable) of title 46, United States Code; and

(2) if the Secretary makes affirmative determinations under paragraph (1) (A) and (B), certify that individual under this subsection.

(d) For purposes of reemployment rights and benefits provided by this section, a certification under subsection (c) shall be considered to be the equivalent of a certificate referred to in paragraph (1) of section 4301(a) of title 38, United States Code.

# TITLE V—CONSTRUCTION-DIFFERENTIAL SUBSIDY<sup>7</sup>

## SEC. 501. SUBSIDY AUTHORIZED FOR VESSELS TO BE OPERATED IN FOREIGN TRADE (46 App. U.S.C. 1151 (1996)).

### (a) **Application for Subsidy for Construction; Conditions**

**Precedent to Granting.** Any proposed ship purchaser who is a citizen of the United States or any shipyard of the United States may make application to the Secretary of Transportation for a construction-differential subsidy to aid in the construction of a new vessel to be used in the foreign commerce of the United States. No such application shall be approved by the Secretary of Transportation unless he determines that (1) the plans and specifications call for a new vessel which will meet the requirements of the foreign commerce of the United States, will aid in the promotion and development of such commerce, and be suitable for use by the United States for national defense or military purposes in time of war or national emergency; (2) if the applicant is the proposed ship purchaser, the applicant possesses the ability, experience, financial resources, and other qualifications necessary for the operation and maintenance of the proposed new vessel, and (3) the granting of the aid applied for is reasonably calculated to carry out effectively the purposes and policy of this Act. The contract of sale, and the mortgage given to secure the payment of the unpaid balance of the purchase price shall not restrict the lawful or proper use or operation of the vessel except to the extent expressly required by law. The Secretary of Transportation may give preferred consideration to applications that will tend to reduce construction-differential subsidies and that propose the construction of ships of high transport capability and productivity.

(b) **Submission of Plans to Navy Department; Certification of Approval.** The Secretary of Transportation shall submit the plans and specifications for the proposed vessel to the Navy Department for examination thereof and suggestions for such changes therein as may be deemed necessary or proper in order that such vessel shall be suitable for economical and speedy conversion into a naval or military auxiliary, or otherwise suitable for the use of the United States Government in time of war or national emergency. If the Secretary of the Navy approves such plans and specifications as submitted, or as modified, in accordance with the provisions of this subsection, he shall certify such approval to the Secretary of Transportation.

(c) **Application for Subsidy for Reconstruction or Reconditioning; Conditions Precedent to Granting; Contracts.** Any citizen of the

---

<sup>7</sup> Throughout Title V, the statutory life of vessels is generally provided as 25 years. But see footnote 4, page 22, *supra*.

United States or any shipyard of the United States may make application to the Secretary of Transportation for a construction- differential subsidy to aid in reconstructing or reconditioning any vessel that is to be used in the foreign commerce of the United States. If the Secretary of Transportation, in the exercise of his discretion, shall determine that the granting of the financial aid applied for is reasonably calculated to carry out effectively the purposes and policy of this Act, the Secretary of Transportation may approve such application and enter into a contract or contracts with the applicant therefor providing for the payment by the United States of a construction-differential subsidy that is to be ascertained, determined, controlled, granted, and paid, subject to all the applicable conditions and limitations of this title and under such further conditions and limitations as may be prescribed in the rules and regulations the Secretary of Transportation has adopted as provided in section 204(b) of this Act; but the financial aid authorized by this subsection shall be extended to reconstruction or reconditioning only in exceptional cases and after a thorough study and a formal determination by the Secretary of Transportation that the proposed reconstruction or reconditioning is consistent with the purposes and policy of this Act.

**SEC. 502. CONSTRUCTION OF VESSELS; BIDS; SUBSIDIES (46 App. U.S.C. 1152 (1996)).**

(a) **Approval of Bids; Contract with Bidder; Acceptance of Negotiated Price; Shipyard Records, Availability; Contract with Applicant or Qualified Citizen for Purchase of Vessel.** If the Secretary of the Navy certifies his approval under section 501(b) of this Act, and the Secretary of Transportation approves the application, he may secure bids for the construction of the proposed vessel according to the approved plans and specifications. If the bid of the shipbuilder who is the lowest responsible bidder is determined by the Secretary of Transportation to be fair and reasonable, the Secretary of Transportation may approve such bid, and if such approved bid is accepted by the proposed ship purchaser, the Secretary of Transportation is authorized to enter into a contract with the successful bidder for the construction, outfitting, and equipment of the proposed vessel, and for the payment by the Secretary of Transportation to the shipbuilder, on terms to be agreed upon in the contract, of the contract price of the vessel, out of the construction fund hereinbefore referred to, or out of other available funds. Notwithstanding the provisions of the first sentence of section 505 of this Act with respect to competitive bidding, the Secretary of Transportation is authorized to accept a price for the construction of the ship which has been negotiated between a shipyard and a proposed ship purchaser if (1) the proposed ship purchaser and the shipyard submit backup cost details and evidence that the negotiated price is fair and reasonable; (2) the Secretary of Transportation finds that the negotiated

price is fair and reasonable; and (3) the shipyard agrees that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment have access to and the right to examine any pertinent books, documents, papers, and records of the shipyard or any of its subcontractors related to the negotiation or performance of any contract or subcontract negotiated under this subsection and will include in its subcontracts a provision to that effect. Concurrently with entering into such contract with the shipbuilder, the Secretary of Transportation is authorized to enter into a contract for the sale of such vessel upon its completion, to the applicant if he is the proposed ship purchaser and if not to another citizen of the United States, if the Secretary of Transportation determines that such citizen possesses the ability, experience, financial resources, and other qualifications necessary for the operation and maintenance of the vessel, at a price corresponding to the estimated cost, as determined by the Secretary of Transportation pursuant to the provisions of this Act, of building such vessel in a foreign shipyard.

**(b) Basis for Fixing Subsidy; Cost of Construction in Foreign Yards; Annual Recomputation and Publication of Foreign Cost; Limitation on Construction Differential; Report on American Shipbuilding Industry.** The amount of the reduction in selling price which is herein termed “construction differential subsidy” shall equal, but not exceed, the excess of the bid of the shipbuilder constructing the proposed vessel (excluding the cost of any features incorporated in the vessel for national defense uses, which shall be paid by the Secretary in addition to the subsidy), over the fair and reasonable estimate of cost, as determined by the Secretary, of the construction of the type vessel if it were constructed under similar plans and specifications (excluding national defense features as above provided) in a foreign shipbuilding center which is deemed by the Secretary to furnish a fair and representative example for the determination of the estimated foreign cost of construction of vessels of the type proposed to be constructed. The Secretary of Transportation shall recompute such estimated foreign cost annually unless, in the opinion of the Secretary, there has been a significant change in shipbuilding market conditions. The Secretary shall publish notice of his intention to compute or recompute such estimated foreign cost and shall give interested persons, including but not limited to shipyards and shipowners and associations thereof, an opportunity to file written statements. The Secretary’s consideration shall include, but not be limited to, all relevant matter so filed, and his determination shall include or be accompanied by a concise explanation of the basis of his determination. The construction differential approved and paid by the Secretary shall not exceed 50 per centum of the cost of constructing, reconstructing, or reconditioning the vessel (excluding the cost of

national defense features). If the Secretary finds that the construction differential exceeds, in any case, the foregoing percentage of such cost, the Secretary may negotiate with any bidder (whether or not such person is the lowest bidder) and may contract with such bidder (notwithstanding the first sentence of section 505) for the construction, reconstruction, or reconditioning of the vessel involved in a domestic shipyard at a cost which will reduce the construction differential to such percentage or less. In the event that the Secretary has reason to believe that the bidding in any instance is collusive, he shall report all of the evidence on which he acted (1) to the Attorney General of the United States, and (2) to the President of the Senate and to the Speaker of the House of Representatives if the Congress shall be in session or if the Congress shall not be in session, then to the Secretary of the Senate and Clerk of the House, respectively.

(c) **Terms of Sale of Vessel to Purchaser.** In such contract of sale between the purchaser and the Secretary of Transportation, the purchaser shall be required to make cash payments to the Secretary of Transportation of not less than 25 per centum of the price at which the vessel is sold to the purchaser. The cash payments shall be made at the time and in the same proportion as provided for the payments on account of the construction cost in the contract between the shipbuilder and the Secretary of Transportation. The purchaser shall pay, not less frequently than annually, interest on those portions of the Secretary of Transportation's payments as made to the shipbuilder which are chargeable to the purchaser's portion of the price of the vessel (after deduction of the purchaser's cash payments) at a rate not less than (i) a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans, adjusted to the nearest one-eighth of 1 per centum, plus (ii) an allowance adequate in the judgment of the Secretary of Transportation to cover administrative costs. The balance of such purchase price shall be paid by the purchaser, within twenty-five years after delivery of the vessel and in not to exceed twenty-five equal annual installments, the first of which shall be payable one year after the delivery of the vessel by the Secretary of Transportation to the purchaser. Interest at the rate per annum applicable to payments that are chargeable to the purchaser's portion of the price of the vessel shall be paid on all such installments of the purchase price remaining unpaid.

(e) **Construction in Navy Yards; Sales to Citizens; Terms.** If no bids are received for the construction, outfitting, or equipping of such vessel, or if it appears to the Secretary of Transportation that the bids received from privately owned shipyards of the United States are collusive, excessive, or unreasonable, and if a citizen of the United States

agrees to purchase said vessel as provided in this section, then, to provide employment for citizens of the United States, the Secretary of Transportation may have such vessel constructed, outfitted, or equipped at not in excess of the actual cost thereof in a navy yard of the United States under such regulations as may be promulgated by the Secretary of the Navy and the Secretary of Transportation. In such event the Secretary of Transportation is authorized to pay for any such vessel so constructed from his construction fund. The Secretary of Transportation is authorized to sell any vessel so constructed, outfitted, or equipped in a navy yard to a citizen of the United States for the fair and reasonable value thereof, but at not less than the cost thereof less the equivalent to the construction differential subsidy determined as provided by subsection (b), such sale to be in accordance with all the provisions of this title.

**(f) Survey of Shipbuilding Capability; Correction of Inadequacies; Reimbursement of Certain Vessel Construction and Delivery Expenses.** The Secretary of Transportation, with the advice of and in coordination with the Secretary of the Navy, shall at least once each year, as required for purposes of this Act, survey the existing privately owned shipyards capable of merchant ship construction, or review available data on such shipyards if deemed adequate, to determine whether their capabilities for merchant ship construction, including facilities and skilled personnel, provide an adequate mobilization base at strategic points for purposes of national defense and national emergency. The Secretary of Transportation, in connection with ship construction, reconstruction, reconditioning, or remodeling under titles V and VII, upon a basis of a finding that the award of the proposed construction, reconstruction, reconditioning, or remodeling work will remedy an existing or impending inadequacy in such mobilization base as to the capabilities and capacities of a shipyard or shipyards at a strategic point, and after taking into consideration the benefits accruing from standardized construction, the conditions of unemployment, and the needs and reasonable requirements of all shipyards, may allocate such construction, reconstruction, reconditioning, or remodeling to such yard or yards in such manner as he may determine to be fair, just, and reasonable to all sections of the country, subject to the provisions of this subsection. In the allocation of construction work to such yards as herein provided, the Secretary of Transportation may, after first obtaining competitive bids for such work in compliance with the provisions of this Act, negotiate with the bidders and with other shipbuilders concerning the terms and conditions of any contract for such work, and is authorized to enter into such contract at a price deemed by the Secretary of Transportation to be fair and reasonable. Any contract entered into by the Secretary of Transportation under the provisions of this subsection shall be subject to all of the terms and conditions of this Act,

excepting those pertaining to the awarding of contracts to the lowest bidder which are inconsistent with the provisions of this subsection. In the event that a contract is made providing for a price in excess of the lowest responsible bid which otherwise would be accepted, such excess shall be paid by the Secretary of Transportation as a part of the cost of national defense, and shall not be considered as a part of the construction-differential subsidy. In the event that a contract is made providing for a price lower than the lowest responsible bid which otherwise would be accepted, the construction-differential subsidy shall be computed on the contract price in lieu of such bid.

If, as a result of allocation under this subsection, the purchaser incurs expenses for inspection and supervision of the vessel during construction and for the delivery voyage of the vessel in excess of the estimated expenses for the same services that he would have incurred if the vessel had been constructed by the lowest responsible bidder the Secretary of Transportation (with respect to construction under title V, except section 509) shall reimburse the purchaser for such excess, less one-half of any gross income the purchaser receives that is allocable to the delivery voyage minus one-half of the extra expenses incurred to produce such gross income, and such reimbursement shall not be considered part of the construction-differential subsidy: Provided, That no interest shall be paid on any refund authorized under this Act. If the vessel is constructed under section 509 the Secretary of Transportation shall reduce the price of the vessel by such excess, less one-half of any gross income (minus one-half of the extra expenses incurred to produce such gross income) the purchaser receives that is allocable to the delivery voyage. In the case of a vessel that is not to receive operating-differential subsidy, the delivery voyage shall be deemed terminated at the port where the vessel begins loading. In the case of a vessel that is to receive operating-differential subsidy, the delivery voyage shall be deemed terminated when the vessel begins loading at a United States port in an essential service. In either case, however, the vessel owner shall not be compensated for excess vessel delivery costs in an amount greater than the expenses that would have been incurred in delivering the vessel from the shipyard at which it was built to the shipyard of the lowest responsible bidder. If as a result of such allocation, the expenses the purchaser incurs with respect to such services are less than the expenses he would have incurred for such services if the vessel had been constructed by the lowest responsible bidder, the purchaser shall pay to the Secretary of Transportation an amount equal to such reduction and, if the vessel was built with the aid of construction-differential subsidy, such payment shall not be considered a reduction of the construction-differential subsidy.

(g) **Sale of Vessels Acquired by Secretary.** Upon the application of any citizen of the United States to purchase any vessel acquired by the Secretary of Transportation under the provisions of section 215, the Secretary of Transportation is authorized to sell such vessel to the applicant for the fair and reasonable value thereof, but at not less than the cost thereof to the Secretary of Transportation, less depreciation at the rate of 4 per centum per annum from the date of completion, excluding the cost of national-defense features added by the Secretary of Transportation, less the equivalent of any applicable construction-differential subsidy as provided by subsection (b), such sale to be in accordance with all the provisions of this title. Such vessel shall thereupon be eligible for an operating-differential subsidy under title VI of this Act, notwithstanding the provisions of section 601(a)(1), and section 610(1), or any other provision of law.

(h) **Installation or Removal of National Defense Features; Title to Such Features.** The Secretary of Transportation is authorized to construct, purchase, lease, acquire, store, maintain, sell, or otherwise dispose of national defense features intended for installation on vessels. The Secretary of Transportation is authorized to install or remove such national defense features on any vessel (1) which is in the National Defense Reserve Fleet as defined by section 11(a) of the Merchant Ship Sales Act of 1946, (2) which is requisitioned, purchased, or chartered under section 902 of the Merchant Marine Act, 1936, (3) which serves as security for the guarantee of an obligation by the Secretary of Transportation under title XI of this Act, or (4) which is the subject of an agreement between the owner of such vessel and the Secretary of Transportation to install or remove such national defense features. Title to such national defense features which the Secretary of Transportation determines are not to be permanently incorporated in a vessel shall not be affected by such installation or removal unless otherwise transferred in accordance with the provisions of this title V.

(i) **Plans, Specifications, and Proposals for National Defense Features; Certification of Approval.** The Secretary of Transportation shall submit the plans and specifications for such national defense features and the proposals for their acquisition, storage, utilization, or disposition to the Navy Department for examination thereof and suggestion for such changes therein as may be deemed necessary or proper in order that such features shall be suitable for the use of the United States Government in time of war or national emergency. If the Secretary of the Navy approves such plans, specifications, or proposals as submitted, or as modified in accordance with the provisions of this subsection, he shall certify such approval to the Secretary of Transportation.

**SEC. 503. DOCUMENTATION OF COMPLETED VESSEL UNDER LAWS OF UNITED STATES; DELIVERY TO PURCHASER, FIRST MORTGAGE TO SECURE DEFERRED PAYMENT (46 App. U.S.C. 1153 (1996)).** Upon completion of the construction of any vessel in respect to which a construction-differential subsidy is to be allowed under this title and its delivery by the ship-builder to the Secretary of Transportation, the vessel shall be documented under the laws of the United States and concurrently therewith, or as soon thereafter as practicable, the vessel shall be delivered with a bill of sale to the purchaser with warranty against liens, pursuant to the contract of sale between the purchaser and the Secretary of Transportation. The vessel shall remain documented under the laws of the United States for not less than twenty-five years, or so long as there remains due the United States any principal or interest on account of the purchase price, whichever is the longer period. At the time of delivery of the vessel the purchaser shall execute and deliver a first-preferred mortgage to the United States to secure payment of any sums due from the purchaser in respect to said vessel: Provided, That, notwithstanding any other provisions of law, the payment of any sums due in respect to a passenger vessel purchased under section 4(b) of the Merchant Ship Sales Act of 1946, reconverted or restored for normal operation in commercial services, or in respect to a passenger vessel purchased under title V of this Act, which is delivered subsequent to March 8, 1946, and which (i) is of not less than ten thousand gross tons, (ii) has a designed speed approved by the Secretary of Transportation but not less than eighteen knots, (iii) has accommodations for not less than two hundred passengers, and, (iv) is approved by the Secretary of Defense as being desirable for national defense purposes, may, with the approval of the Secretary of Transportation, be secured only by a first-preferred mortgage on said vessel. With the approval of the Secretary of Transportation such preferred mortgage may provide that the sole recourse against the purchaser of such a passenger vessel under such mortgage, and any of the notes secured thereby, shall be limited to repossession of the vessel by the United States and the assignment of insurance claims, if the purchaser shall have complied with all provisions of the mortgage other than those relating to the payment of principal and interest when due, and the obligation of the purchaser shall be satisfied and discharged by the surrender of the vessel, and all right, title, and interest therein to the United States. Such vessel upon surrender shall be (i) free and clear of all liens and encumbrances whatsoever, except the lien of the preferred mortgage, (ii) in class, and (iii) in as good order and condition, ordinary wear and tear excepted, as when acquired by the purchaser, except that any deficiencies with respect to freedom from encumbrances, condition, and class, may, to the extent covered by valid policies of insurance, be satisfied by the assignment to the United States of claims of the pur-

chaser under such policies of insurance. The purchaser shall also comply with all the provisions of section 9 of the Merchant Marine Act, 1920.

**SEC. 504. PURCHASE OF VESSEL CONSTRUCTED IN ACCORDANCE WITH APPLICATION FOR SUBSIDY; BID OR NEGOTIATED PRICE BASIS FOR SUBSIDY AND PAYMENTS FOR COST OF NATIONAL DEFENSE FEATURES; DOCUMENTATION (46 App. U.S.C. 1154 (1996)).** If a qualified purchaser under the terms of this title desires to purchase a vessel to be constructed in accordance with an application for construction-differential subsidy under this title, the Secretary of Transportation may, in lieu of contracting to pay the entire cost of the vessel under section 502, contract to pay only construction-differential subsidy and the cost of national defense features to the shipyard constructing such vessel. The construction-differential subsidy and payments for the cost of national defense features shall be based upon the lowest responsible domestic bid unless the vessel is constructed at a negotiated price as provided by section 502(a) or under a contract negotiated by the Secretary of Transportation as provided in section 502(b) in which event the construction-differential subsidy and payments for the cost of national defense features shall be based upon such negotiated price. No construction-differential subsidy, as provided in this section, shall be paid unless the said contract or contracts or other arrangements contain such provisions as are provided in this title to protect the interests of the United States as the Secretary of Transportation deems necessary. Such vessel shall be documented under the laws of the United States as provided in section 503 of this title. The contract of sale, and the mortgage given to secure the payment of the unpaid balance of the purchase price, shall not restrict the lawful or proper use or operation of the vessel, except to the extent expressly required by law.

**SEC. 506. OPERATION OF SUBSIDY CONSTRUCTED VESSEL LIMITED TO FOREIGN TRADE; REPAYMENTS TO SECRETARY FOR DEVIATIONS (46 App. U.S.C. 1156 (1996)).** Every owner of a vessel for which a construction-differential subsidy has been paid shall agree that the vessel shall be operated exclusively in foreign trade, or on a round-the-world voyage, or on a round voyage from the west coast of the United States to a European port or ports which includes intercoastal ports of the United States, or a round voyage from the Atlantic coast of the United States to the Orient which includes intercoastal ports of the United States, or on a voyage in foreign trade on which the vessel may stop at the state of Hawaii, or an island possession or island territory of the United States, and that if the vessel is operated in the domestic trade on any of the above-enumerated services,

he will pay annually to the Secretary of Transportation that proportion of one-twenty-fifth of the construction-differential subsidy paid for such vessel as the gross revenue derived from the domestic trade bears to the gross revenue derived from the entire voyages completed during the preceding year. The Secretary may consent in writing to the temporary transfer of such vessel to service other than the service covered by such agreement for periods not exceeding six months in any year, whenever the Secretary may determine that such transfer is necessary or appropriate to carry out the purposes of this Act. Such consent shall be conditioned upon the agreement by the owner to pay to the Secretary upon such terms and conditions as it may prescribe, an amount which bears the same proportion to the construction-differential subsidy paid by the Secretary as such temporary period bears to the entire economic life of the vessel. No operating-differential subsidy shall be paid for the operation of such vessel for such temporary period.

**SEC. 507. CONSTRUCTION OF NEW VESSEL TO REPLACE OBSOLETE; PURCHASE OF OLD VESSEL BY SECRETARY; BOND OF SELLER AGAINST LIENS (46 App. U.S.C. 1157 (1996)).** If a contract is made by the Secretary of Transportation under authority of this title for the construction and sale of a new vessel to replace a vessel then operated in foreign trade or domestic trade, which in the judgment of the Secretary of Transportation should be replaced because it is obsolete or inadequate for successful operation in such trade, the Secretary of Transportation is authorized, in his discretion, to buy such replaced vessel from the owner at a fair and reasonable valuation, which valuation shall not exceed the cost to the owner or any former owner plus the actual cost previously expended thereon for reconditioning and less a reasonable and proper depreciation, based upon not more than a twenty-five-year life of the vessel, and apply the purchase price agreed upon to that portion of the construction cost of such new vessel which is to be borne by the purchaser thereof: Provided, That the owner of such replaced vessel shall execute a bond, with one or more approved sureties, conditioned upon indemnifying the United States from all loss resulting from any existing lien against such vessel: And provided further, That such vessel has been documented under the laws of the United States for a period of at least ten years prior to the date of its purchase by the United States.

**SEC. 508.<sup>8</sup> DISPOSITION OF VESSELS TRANSFERRED TO MARITIME ADMINISTRATION OF THE DEPARTMENT OF TRANSPORTATION (46 App. U.S.C. 1158 (1996)).** If the Secretary

---

<sup>8</sup> Note the effect of the National Maritime Heritage Act, page 215, *infra*.

of Transportation shall determine that any vessel transferred to the Maritime Administration of the Department of Transportation by section 202 of this Act, or hereafter acquired, is of insufficient value for commercial or military operation to warrant its further preservation, the Secretary of Transportation is authorized (1) to scrap said vessel, or (2) to sell such vessel for cash, after appraisalment and due advertisement, and upon competitive sealed bids, either to citizens of the United States or to aliens: Provided, That the purchaser thereof shall enter into an undertaking with sureties approved by the Secretary of Transportation that such vessel shall not be operated in the foreign commerce of the United States at any time within the period of ten years after the date of the sale, in competition with any other vessel owned by a citizen or citizens of the United States and registered under the laws thereof.

**SEC. 509. VESSELS TO BE OPERATED IN DOMESTIC TRADE, TERMS AND CONDITIONS OF CONSTRUCTION AID AND SALE TO PURCHASER (46 App. U.S.C. 1159 (1996)).** Any citizen of the United States may make application to the Secretary of Transportation for aid in the construction of a new vessel to be operated in the foreign or domestic trade (excepting vessels engaged solely in the transportation of property on inland rivers and canals exclusively). If such application is approved by the Secretary of Transportation, the vessel may be constructed under the terms and conditions of this title, but no construction-differential subsidy shall be allowed. The Secretary of Transportation shall pay for the cost of national-defense features incorporated in such vessels. In case the vessel is designed to be of not less than three thousand five hundred gross tons and to be capable of sustained speed of not less than ten knots, or in the case of a passenger vessel operating solely on the inland rivers and waterways which is designed to be of not less than one thousand gross tons and to be capable of sustained speed of not less than eight knots, or in the case of a ferry operating solely in point-to-point transportation which is designed to be of not less than seventy-five gross tons and to be capable of a sustained speed of not less than eight knots, or in the case of an oceangoing tug of more than two thousand five hundred horsepower or oceangoing barge of more than two thousand five hundred gross tons, or in the case of a vessel of more than two thousand five hundred horsepower designed to be capable of sustained speed of not less than forty knots, the purchaser shall be required to pay the Secretary of Transportation not less than 12 1/2 per centum of the cost of such vessel, and in the case of any other vessel the purchaser shall be required to pay the Secretary of Transportation not less than 25 per centum of the cost of such vessel (excluding from such cost, in either case, the cost of national defense features); and the balance of such purchase price shall be paid by the purchaser within twenty-five years in not to exceed twenty-

five equal annual installments, with interest at a rate not less than (i) a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans, adjusted to the nearest one-eighth of 1 per centum, plus (ii) an allowance adequate in the judgment of the Secretary of Transportation to cover administrative costs, the balance of such purchase price being secured by a preferred mortgage on the vessel sold and otherwise secured as the Secretary of Transportation may determine: Provided, That, notwithstanding any other provision of law, the balance of the purchase price of a passenger vessel constructed under this section which is delivered subsequent to March 8, 1946, and which has the tonnage, speed, passenger accommodations, and other characteristics set forth in section 503 of this Act, may, with the approval of the Secretary of Transportation, be secured as provided in such section, and the obligation of the purchaser of such a vessel shall be satisfied and discharged as provided in such section.

**SEC. 510. ACQUISITION OF OBSOLETE VESSELS (46 App. U.S.C. 1160 (1996)).**

(a) **Definitions.** When used in this section—

(1) The term “obsolete vessel” means a vessel or vessels, each of which (A) is of not less than one thousand three hundred and fifty gross tons, (B) in the judgment of the Secretary of Transportation, should, by reason of age, obsolescence, or otherwise, be replaced in the public interest and (C) has been owned by a citizen or citizens of the United States for at least three years immediately prior to the date of acquisition hereunder.

(2) The term “new vessel” means a vessel or vessels, each of which (A) is constructed under the provisions of this Act, and is acquired within two years from the date of completion of such vessel, or is purchased under section 714, as amended, by the person turning in an obsolete vessel under this section, or (B) is hereafter constructed in a domestic shipyard on private account and not under the provisions of this Act, and documented under the laws of the United States.

(b) **Promotion of Construction of New Vessels; Allowance on Obsolete Vessels.** In order to promote the construction of new, safe, and efficient vessels to carry the domestic and foreign water-borne commerce of the United States, the Secretary of Transportation is authorized, subject to the provisions of this section, to acquire any obsolete vessel in exchange for an allowance of credit. The obsolete vessel shall be acquired by the Secretary of Transportation, if the owner so requests, either at the time the owner contracts for the construction or purchase of a new vessel or within five days of the actual date of delivery of the new vessel to the owner. The amount of the allowance shall be deter-

mined at the time of the acquisition of the obsolete vessel by the Secretary of Transportation. In the event the obsolete vessel is acquired by the Secretary of Transportation at the time the owner contracts for the construction or purchase of the new vessel, the allowance shall not be paid to the owner of the obsolete vessel, but shall be applied upon the purchase price of a new vessel. In the case of a new vessel constructed under the provisions of this Act, such allowance may, under such terms and conditions as the Secretary of Transportation may prescribe, be applied upon the cash payments required under this Act. In case the new vessel is not constructed under the provisions of this Act, the allowance shall, upon acquisition of the obsolete vessel by the Secretary of Transportation be paid, for the account of the owner, to the shipbuilder constructing such new vessel. In the event that title to the obsolete vessel is acquired by the Secretary of Transportation at the time of delivery of the new vessel, the allowance shall be deposited in the owner's capital construction fund. This subsection shall apply to obsolete vessels exchanged for new vessels hereafter contracted to be built, or eligible for such exchange but not exchanged in connection with a contract for new vessels executed prior to October 1, 1960.

(c) **Utility Value of New Vessel; Gross Tonnage.** The utility value of the new vessel for operation in the domestic or foreign commerce of the United States shall not be substantially less than that of the obsolete vessel. The gross tonnage of the obsolete vessel may exceed the gross tonnage of the new vessel in a ratio not in excess of three to one, if the Secretary of Transportation finds that the new vessel, although of lesser tonnage, will provide utility value equivalent to or greater than that of the obsolete vessel.

(d) **Amount of Allowance on Obsolete Vessel; Determination of Amount.** The allowance for an obsolete vessel shall be the fair and reasonable value of such vessel as determined by the Secretary of Transportation. In making such determination the Secretary of Transportation shall consider: (1) the scrap value of the obsolete vessel both in American and foreign markets, (2) the depreciated value based on a twenty or twenty-five year life, whichever is applicable to the obsolete vessel, and (3) the market value thereof for operation in the world trade or in the foreign or domestic trade of the United States. In the event the obsolete vessel is acquired by the Secretary of Transportation at the time the owner contracts for the construction of the new vessel, and the owner uses such vessel during the period of construction of the new vessel, the allowance shall be reduced by an amount representing the fair value of such use. The rate for the use of the obsolete vessel shall be fixed by the Secretary of Transportation for the entire period of such use at the time of execution of the contract for the construction of the new vessel.

(e) **Recognition of Gain for Income Tax Purposes; Basis for Gain or Loss.** No gain shall be recognized to the owner for the purpose of Federal income taxes in the case of a transfer of an obsolete vessel to the Secretary of Transportation under the provisions of this section. The basis for gain or loss upon a sale or exchange and for depreciation under the applicable Federal income-tax laws of a new vessel acquired as contemplated in this section shall be the same as the basis of the obsolete vessel or vessels exchanged for credit upon the acquisition of such new vessel, increased in the amount of the cost of such vessel (other than the cost represented by such obsolete vessel or vessels) and decreased in the amount of loss recognized upon such transfer.

(f) **Report to Congress.** The Secretary of Transportation shall include in his annual report to Congress a detailed statement of all transactions consummated under the provisions of the preceding subsections during the period covered by such report.

(g) **Use of Vessels 25 Years Old or More.** An obsolete vessel acquired by the Secretary of Transportation under this section which is or becomes twenty-five years old or more, and vessels presently in the Secretary's laid-up fleet which are or become twenty-five years old or more, shall in no case be used for commercial operation, except that any such obsolete vessel, or any such vessel in the laid-up fleet may be used during any period in which vessels may be requisitioned under section 902 of this Act, as amended, and except as otherwise provided in this Act for the employment of the Secretary's vessels in steamship lines on trade routes exclusively serving the foreign trade of the United States.

(i)<sup>9</sup> **Exchange of Vessels; Valuation; Scrapping of Traded-Out Vessels.** The Secretary of Transportation is authorized to acquire suitable documented vessels, as defined in section 2101 of title 46, United States Code, with funds in the Vessel Operations Revolving Fund derived from the sale of obsolete vessels in the National Defense Reserve Fleet. For purposes of this subsection, 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 National Defense Reserve Fleet; except that, in a transaction subject to this section, the value assigned to those vessels will be determined on the same basis, with consideration given to the fair value of the cost of positioning the traded-out vessel to the place of scrapping. All costs incident to the lay-up of the vessel acquired under this subsection may be paid from balances in the Fund. Notwithstanding the provisions of sections 9 and 37 of the Shipping Act, 1916, vessels sold from the National Defense Reserve Fleet under this subsection may be scrapped in approved foreign markets.

---

<sup>9</sup> Note the reference to Section 510(i) in section 6(c)(1)(C) of the National Maritime Heritage Act, page 217, *infra*.

(j) **Placement in National Defense Reserve Fleet of Acquired Vessels.** Any vessel heretofore or hereafter acquired under this section, or otherwise acquired by the Maritime Administration of the Department of Transportation under any other authority shall be placed in the national defense reserve fleet established under authority of section 11 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1744), and shall not be traded out or sold from such reserve fleet, except as provided for in subsections (g) and (i) of this section. This limitation shall not affect the rights of the Secretary of Transportation to dispose of a vessel as provided in other sections of this title or in titles VII or XI of this Act.

**SEC. 511. RESERVE FUNDS FOR CONSTRUCTION OR ACQUISITION OF VESSELS, TAXATION (46 App. U.S.C. 1161 (1996)).**

(a) **“New Vessel” Defined.** When used in this section the term “new vessel” means any vessel (1) documented or agreed with the Secretary of Transportation to be documented under the laws of the United States; (2) constructed in the United States after December 31, 1939, or the construction of which has been financed under Titles V or VII of this Act, as amended, or the construction of which has been aided by a mortgage insured under Title XI of this Act as amended; and (3) either (A) of such type, size, and speed as the Secretary of Transportation shall determine to be suitable for use on the high seas or Great Lakes in carrying out the purposes of this Act, but not of less than two thousand gross tons or of less speed than twelve knots, unless the Secretary of Transportation shall determine and certify in each case that a vessel of a specified lesser tonnage or speed is desirable for use by the United States in case of war or national emergency, or (B) constructed to replace a vessel or vessels requisitioned or purchased by the United States.

(b) **Establishment of Construction Reserve Funds.** For the purposes of promoting the construction, reconstruction, reconditioning, or acquisition of vessels, or for other purposes authorized in this section, necessary to carrying out the policy set forth in title I of this Act, any citizen of the United States who is operating a vessel or vessels in the foreign or domestic commerce of the United States or in the fisheries or owns in whole or in part a vessel or vessels being so operated, or who, at the time of purchase or requisition of the vessel by the Government, was operating a vessel or vessels so engaged or owned in whole or in part a vessel or vessels being so operated or had acquired or was having constructed a vessel or vessels for the purpose of operation in such commerce or in the fisheries, may establish a construction reserve fund, for the construction, reconstruction, reconditioning, or acquisition of new vessels, or for other purposes authorized in this section, to be composed of deposits of proceeds from sales of vessels, indemnities on

account of losses of vessels, earnings from the operation of vessels documented under the laws of the United States and from services incident thereto, and receipts, in the form of interest or otherwise, with respect to amounts previously deposited. Such construction reserve fund shall be established, maintained, expended, and used in accordance with the provisions of this section and rules or regulations to be prescribed jointly by the Secretary of Transportation and the Secretary of the Treasury.

**(c) Recognition of Gain for Taxation Where Proceeds of Sale or Indemnity for Loss Deposited in Fund.** In the case of the sale or actual or constructive total loss of a vessel, if the taxpayer deposits an amount equal to the net proceeds of the sale or to the net indemnity with respect to the loss in a construction reserve fund established under subsection (b), then—

(1) if the taxpayer so elects in his income-tax return for the taxable year in which the gain was realized, or

(2) in case a vessel is purchased or requisitioned by the United States, or is lost, in any taxable year beginning after December 31, 1939, and the taxpayer receives payment for the vessel so purchased or requisitioned, or receives from the United States indemnity on account of such loss, subsequent to the end of such taxable year, if the taxpayer so elects prior to the expiration of sixty days after the receipt of the payment or indemnity, and in accordance with a form of election to be prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, no gain shall be recognized to the taxpayer in respect of such sale or indemnification in the computation of net income for the purposes of Federal income or excess-profits taxes. If an election is made under subdivision (2) and if computation or recomputation in accordance with this subsection is otherwise allowable but is prevented, on the date of making such election or within six months thereafter, by any statute of limitation, such computation or recomputation nevertheless shall be made notwithstanding such statute if a claim therefor is filed within six months after the date of making such election.

For the purposes of this subsection no amount shall be considered as deposited in a construction reserve fund unless it is deposited within sixty days after it is received by the taxpayer.

As used in this subsection the term “net proceeds” and the term “net indemnity” mean the sum of (1) the adjusted basis of the vessel and (2) the amount of gain which would be recognized to the taxpayer without regard to this subsection.

**(d) Basis for Determining Gain or Loss and for Depreciation of New Vessels.** The basis for determining gain or loss and for depreciation, for the purposes of Federal income or excess profits taxes, of any new vessel constructed, reconstructed, reconditioned, or acquired by the

taxpayer, or with respect to which purchase-money indebtedness is liquidated as provided in subsection (g), in whole or in part out of the construction reserve fund shall be reduced by that portion of the deposits in the fund expended in the construction, reconstruction, reconditioning, acquisition, or liquidation of purchase-money indebtedness of the new vessel which represents gain not recognized for tax purposes under subsection (c).

(e) **Order, Proportions, etc., of Deposits and Withdrawals.** For the purposes of this section, (1) if the net proceeds of a sale or the net indemnity in respect of a loss are deposited in more than one deposit, the amount consisting of the gain shall be considered as first deposited; (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 any deposit consists in part of gain not recognized under subsection (c), any expenditure, obligation, or withdrawal applied against such deposit shall be considered to consist of gain in the proportion that the part of the deposit consisting of gain bears to the total amount of the deposit.

(f) **Amounts in Fund as Accumulation of Earnings or Profits.** With respect to any taxable year, amounts on deposit on the last day of such year in a construction reserve fund in accordance with this section and with respect to which all the requirements of subsection (g) of this section have been satisfied, to the extent that such requirements are applicable as of the last day of said taxable year, shall not constitute an accumulation of earnings or profits within the meaning of section 102 of the Internal Revenue Code.

(g) **Benefits of Section Conditioned upon Manner and Time of Expenditure of Deposits.** The provisions of subsections (c) and (f) shall apply to any deposit in the construction reserve fund only to the extent that such deposit is expended or obligated for expenditure, in accordance with rules and regulations to be prescribed jointly by the Secretary of Transportation and the Secretary of the Treasury—

(1) under a contract for the construction or acquisition of a new vessel or vessels (or in the discretion of the Secretary of Transportation, for a part interest therein), or, with the approval of the Secretary of Transportation for the reconstruction or reconditioning of a new vessel or vessels, entered into within (i) two years from the date of deposit or the date of any extension thereof which may be granted by the Secretary of Transportation pursuant to the provisions of section 511(h), in the case of deposits made prior to the date on which these amendatory provisions become effective, or (ii) three years from the date of such deposit in the case of a deposit made after such effective date, only if under such rules and regulations—

(A) within such period not less than 12 1/2 per centum of the construction or contract price of the vessel or vessels is paid or irrevocably committed on account thereof and the plans and specifications therefor are approved by the Secretary of Transportation to the extent by him deemed necessary; and

(B) in case of a vessel or vessels not constructed under the provisions of this title or not purchased from the Secretary of Transportation, (i) said construction is completed, within six months from the date of the construction contract, to the extent of not less than 5 per centum thereof (or in case the contract covers more than one vessel, the construction of the first vessel so contracted for is so completed to the extent of not less than 5 per centum) as estimated by the Secretary of Transportation and certified by him to the Secretary of the Treasury, and (ii) all construction under such contract is completed with reasonable dispatch thereafter;

(2) for the liquidation of existing or subsequently incurred purchase-money indebtedness to persons other than a parent company of, or a company affiliated or associated with, the mortgagor on a new vessel or vessels within (i) two years from the date of deposit or the date of any extension thereof which may be granted by the Secretary of Transportation pursuant to the provisions of section 511(h), in the case of deposits made prior to the date on which these amendatory provisions become effective, or (ii) three years from the date of such deposit in the case of a deposit made after such effective date.

(h) **Authorizations of Extensions of Time.** The Secretary of Transportation is authorized under rules and regulations to be prescribed jointly by the Secretary of the Treasury and the Secretary of Transportation to grant extension of the period within which the deposits shall be expended or obligated or within which construction shall have progressed to the extent of 5 per centum of completion as provided herein, but such extension shall not be for an aggregate additional period in excess of two years with respect to the expenditure or obligation of such deposits or more than one year with respect to the progress of such construction: Provided, That until January 1, 1965, in addition to the extensions hereinbefore permitted, further extensions may be granted ending not later than December 31, 1965.

(i) **Taxation of Deposits upon Failure of Conditions.** Any such deposited gain or portion thereof which is not so expended or obligated within the period provided, or which is otherwise withdrawn before the expiration of such period, or with respect to which the construction has not progressed to the extent of 5 per centum of completion within the period provided, or with respect to which 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 is

not completed with reasonable dispatch, if otherwise taxable income under the law applicable to the taxable year in which such gain was realized, shall be included in the gross income for such taxable year, except for the purpose of the declared value excess-profits tax and the capital stock tax. If any such deposited gain or portion thereof with respect to a deposit made in any taxable year ending on or before June 30, 1945 is so included in gross income for such taxable year, there shall (in addition to any other deficiency) be assessed, collected, and paid in the same manner as if it were a deficiency, an amount equal to 1.1 per centum of the amount of gain so included, such amount being in lieu of any adjustment with respect to the declared value excess-profits tax for such taxable year.

(j) **Assessment and Collection of Deficiency Tax.** Notwithstanding any other provision of law, any deficiency in tax for any taxable year resulting from the inclusion of any amount in gross income as provided by subsection (i) of this section, and the amount to be treated as a deficiency under such subsection in lieu of any adjustment with respect to the declared value excess-profits tax, may be assessed or a proceeding in court for the collection thereof may be begun without assessment, at any time: Provided, however, That interest on any such deficiency or amount to be treated as a deficiency shall not begin until the date the deposited gain or portion thereof in question is required under subsection (i) to be included in gross income.

(k) **Taxable Years Governed by this Section.** This section shall be applicable to a taxpayer only in respect of sales or indemnifications for losses occurring within a taxable year beginning after December 31, 1939, and only in respect of earnings derived during a taxable year beginning after December 31, 1939.

(l) **Vessels Deemed Constructed or Acquired by Taxpayers Owning Stock in Corporations Constructing or Acquiring Vessels.** For the purposes of this section a vessel shall be considered as constructed or acquired by the taxpayer if constructed or acquired by a corporation at a time when the taxpayer owns at least 95 per centum of the total number of shares of each class of stock of the corporation.

(m) **Definitions.** The terms used in this section shall have the same meaning as in chapter 1 of Title 26.

(n) **“Contract for the construction” and “construction contract” defined.** The terms “contract for the construction” and “construction contract”, as used in this section, shall include, in the case of a taxpayer who constructs a new vessel in a shipyard owned by such taxpayer, an agreement between such taxpayer and the Secretary of Transportation with respect to such construction and containing provisions deemed

necessary or advisable by the Secretary of Transportation to carry out the purposes and policy of this section.

(o) **“Reconstruction and reconditioning” defined.** The terms “reconstruction and reconditioning”, as used in this section, shall include the reconstruction, reconditioning, or modernization of a vessel for exclusive use on the Great Lakes, including the Saint Lawrence River and Gulf, if the Secretary of Transportation determines that the objectives of this Act will be promoted by such reconstruction, reconditioning, or modernization, and, notwithstanding any other provisions of law, such vessel shall be deemed to be a “new vessel” within the meaning of this section for such reconstruction, reconditioning, or modernization.

**SEC. 512.<sup>10</sup> LIMITATION ON RESTRICTIONS (46 App. U.S.C. 1162 (1996)).**

Notwithstanding any other provision of law or contract, all restrictions and requirements under sections 503, 506, and 802 applicable to a liner vessel constructed, reconstructed, or reconditioned with the aid of construction-differential subsidy shall terminate upon the expiration of the

---

<sup>10</sup> Section 512 was added by Section 7 of Public Law 104-239, approved October 8, 1996 (110 STAT. 3133), the Maritime Security Act of 1996.

# **TITLE VI - VESSEL OPERATING ASSISTANCE PROGRAMS**

## **SUBTITLE A - OPERATING DIFFERENTIAL SUBSIDY PROGRAM**

### **SEC. 601. SUBSIDY AUTHORIZED FOR OPERATION OF VESSELS IN FOREIGN TRADE OR IN OFF-SEASON CRUISES (46 App. U.S.C. 1171 (1996)).**

#### **(a) Application for subsidy; conditions precedent to granting.**

The Secretary of Transportation is authorized and directed to consider the application of any citizen of the United States for financial aid in the operation of a vessel or vessels, which are to be used in an essential service in the foreign commerce of the United States or in such service and in cruises authorized under section 613 of this title. In this title VI the term "essential service" means the operation of a vessel on a service, route, or line described in section 211(a) or in bulk cargo carrying service described in section 211(b). No such application shall be approved by the Secretary of Transportation unless he determines that (1) the operation of such vessel or vessels in an essential service is required to meet foreign-flag competition and to promote the foreign commerce of the United States except to the extent such vessels are to be operated on cruises authorized under section 613 of this title, and that such vessel or vessels were built in the United States, or have been documented under the laws of the United States not later than February 1, 1928, or actually ordered and under construction for the account of citizens of the United States prior to such date; (2) the applicant owns or leases, or can and will build or purchase or lease, a vessel or vessels of the size, type, speed, and number, and with the proper equipment required to enable him to operate in an essential service, in such manner as may be necessary to meet competitive conditions, and to promote foreign commerce; (3) the applicant possesses the ability, experience, financial resources, and other qualifications necessary to enable him to conduct the proposed operations of the vessel or vessels as to meet competitive conditions and promote foreign commerce; (4) the granting of the aid applied for is necessary to place the proposed operations of the vessel or vessels on a parity with those of foreign competitors, and is reasonably calculated to carry out effectively the purposes and policy of this Act. To the extent the application covers cruises, as authorized under section 613 of this title, the Secretary of Transportation may make the portion of this last determination relating to parity on the basis that any foreign flag cruise from the United States competes with any American flag cruise from the United States.

(b) **Statements as to financial interests to accompany application; penalty for false statements.** Every application for an operating-differential subsidy under the provisions of this title shall be accompanied by statements disclosing the names of all persons having any pecuniary interest, direct or indirect, in such application, or in the ownership or use of the vessel or vessels, routes, or lines covered thereby, and the nature and extent of any such interest, together with such financial and other statements as may be required by the Secretary of Transportation. All such statements shall be under oath or affirmation and in such form as the Secretary of Transportation shall prescribe. Any person who, in an application for financial aid under this title or in any statement required to be filed therewith, willfully makes any untrue statement of a material fact, shall be guilty of misdemeanor.

**SEC. 602. DETERMINATIONS OF NECESSITY OF SUBSIDY TO MEET COMPETITION (46 App. U.S.C. 1172 (1996)).**

Except with respect to cruises authorized under section 613 of this title, no contract for an operating-differential subsidy shall be made by the Secretary of Transportation for the operation of a vessel or vessels to meet foreign competition, except direct foreign-flag competition, until and unless the Secretary of Transportation, after a full and complete investigation and hearing, shall determine that an operating-differential subsidy is necessary to meet competition of foreign-flag ships.

**SEC. 603. CONTRACTS FOR PAYMENT OF SUBSIDY (46 App. U.S.C. 1173 (1996)).**

(a) **Authorization of contracts.** If the Secretary of Transportation approves the application, he may enter into a contract with the applicant for the payment of an operating-differential subsidy determined in accordance with the provisions of subsection (b) of this section, for the operation of such vessel or vessels in an essential service and in cruises authorized under section 613 of this title for a period not exceeding twenty years, and subject to such reasonable terms and conditions, consistent with this Act, as the Secretary of Transportation shall require to effectuate the purposes and policy of this Act, including a performance bond with approved sureties, if such bond is required by the Secretary of Transportation.

(b) **Amount of subsidy.** Such contract shall provide, except as the parties should agree upon a lesser amount, that the amount of the operating-differential subsidy for the operation of vessels in an essential service shall equal the excess of the subsidizable wage costs of the United States officers and crews, the fair and reasonable cost of insurance, subsistence of officers and crews on passenger vessels, as defined in section 613 of this Act, maintenance, and repairs not compensated by insurance, incurred in the operation under United States registry of the

vessel or vessels covered by the contract, over the estimated fair and reasonable cost of the same items of expense (after deducting therefrom any estimated increase in such items necessitated by features incorporated pursuant to the provisions of section 501(b)) if such vessel or vessels were operated under the registry of a foreign country whose vessels are substantial competitors of the vessel or vessels covered by the contract: Provided, however, That the Secretary of Transportation may, with respect to any vessel in an essential bulk cargo carrying service as described in section 211(b), pay, in lieu of the operating-differential subsidy provided by this subsection (b), such sums as he shall determine to be necessary to make the cost of operating such vessel competitive with the cost of operating similar vessels under the registry of a foreign country. For any period during which a vessel cruises as authorized by section 613 of this Act, operating-differential subsidy shall be computed as though the vessel were operating on the essential service to which the vessel is assigned: Provided, however, That if the cruise vessel calls at a port or ports outside of its assigned service, but which is served with passenger vessels (as defined in section 613 of this Act) by another subsidized operator at an operating-differential subsidy rate for wages lower than the cruise vessel has on its assigned essential service, the operating-differential subsidy rates for each of the subsidizable items for each day (a fraction of a day to count as a day) that the vessel stops at such port shall be at the respective rates applicable to the subsidized operator regularly serving the area.

**(c) “Collective bargaining costs”, “base period costs”, “base period”, and “subsidizable wage costs of United States officers and crews” defined; determination of collective bargaining costs and establishment of new base periods; wage change index..**

(1) When used in this section—

(A) The term “collective bargaining costs” means the annual cost, calculated on the basis of the per diem rate of expense as of any date, of all items of expense required of the applicant through collective bargaining or other agreement, covering the employ of United States officers and crew of a vessel, including payments required by law to assure old-age pensions, unemployment benefits, or similar benefits and taxes or other governmental assessments on crew payrolls, but excluding subsistence of officers and crews on vessels other than passenger vessels as defined in section 613 of this Act and costs relating to:

(i) the officers or members of the crew that the Secretary of Transportation has found, prior to the award of a contract for the construction or reconstruction of a vessel, to be unnecessary for the efficient and economical operation of such vessel: Provided, That the Secretary of Transportation shall afford representatives of the

collective-bargaining unit or units responsible for the manning of the vessel an opportunity to comment on such finding prior to the effective date of such finding: And provided further, That in determining whether officers or members of the crew are necessary for the efficient and economical operation of such vessel, the Secretary of Transportation shall give due consideration to, but shall not be bound by, wage and manning scales and working conditions required by a bona fide collective-bargaining agreement, or

(ii) those officers or members of the crew that the Secretary of Transportation has found, prior to ninety days following the date of enactment of this subsection, to be unnecessary for the efficient and economical operation of the vessel.

(B) The term “base period costs” means for the base period beginning July 1, 1970, and ending June 30, 1971, the collective-bargaining costs as of January 1, 1971, less all other items of cost that have been disallowed by the Secretary of Transportation prior to ninety days following the date of enactment of this subsection, and not already excluded from collective-bargaining costs under subparagraph (A)(i) or (A)(ii) of this subsection. In any subsequent base period the term “base period costs” means the average of the subsidizable wage cost of United States officers and crews for the preceding annual period ending June 30 (calculated without regard to the limitation of the last sentence of paragraph (D) of this subdivision but increased or decreased by the increase or decrease in the index described in subdivision (3) of this subsection from January 1 of such annual period to January 1 of the base period), and the collective-bargaining costs as of January 1 of the base period: Provided, That in no event shall the base period costs be such that the difference between the base period cost and the collective-bargaining costs as of January 1 of any base period subsequent to the first base period exceeds five-fourths of 1 per centum of the collective-bargaining costs as of such January 1 multiplied by the number of years that have elapsed since the most recent base period

(C) The term “base period” means any annual period beginning July 1, and ending June 30 with respect to which a base period cost is established.

(D) The term “subsidizable wage costs of United States officers and crews” in any period other than a base period means the most recent base period costs increased or decreased by the increase or decrease from January 1 of such base period to January 1 of such period in the index described in subdivision (3) hereof, and with respect to a base period means the base period cost. The subsidizable wage costs of United States officers and crews in any period other than a base

period shall not be less than 90 per centum of the collective-bargaining costs as of January 1 of such period nor greater than 110 per centum of such collective-bargaining costs.

(2) The Secretary of Transportation shall determine the collective-bargaining costs on ships in subsidized operation as of January 1, 1971, and as of each January 1 thereafter, and shall as of intervals of not less than two years nor more than four years, establish a new base period cost, except that the Secretary shall not establish a new base period unless he announces his intention to do so prior to the December 31 that would be included in the new base period.

(3) The Bureau of Labor Statistics shall compile the index referred to in subdivision (1). Such index shall consist of the average annual change in wages and benefits placed into effect for employees covered by collective-bargaining agreements with equal weight to be given to changes affecting employees in the transportation industry (excluding the offshore maritime industry) and to changes affecting employees in private nonagricultural industries other than transportation. Such index shall be based on the materials regularly used by the Bureau of Labor Statistics in compiling its regularly published statistical series on wage and benefit changes arrived at through collective bargaining. Such materials shall remain confidential and not be subject to disclosure.

(d) **Foreign wage computation; foreign manning.** Each foreign wage cost computation shall be made after an opportunity is given to the contractor to submit in writing and in timely fashion all relevant data within his possession. In making the computation, the Secretary shall consider all relevant matter so presented and all foreign wage cost data collected at his request or on his behalf. Such foreign cost data shall be made available to an interested contractor, unless the Secretary shall find that disclosure of the data will prevent him from obtaining such data in the future. In determining foreign manning for purposes of this section, the foreign manning determined for any ship type with respect to any base period shall not be redetermined until the beginning of a new base period.

(e) **Monthly payment of wage subsidy; procedures for calculation and payment of subsidy on certain expenses.** The wage subsidy shall be payable monthly for the voyages completed during the month, upon the contractor's certification that the subsidized vessels were in authorized service during the month. The Secretary of Transportation shall prescribe procedures for the calculation and payment of subsidy on items of expense which are included in "collective-bargaining costs" but are not included in the daily rate because they are unpredictably timed.

(f) **Monthly percentage payment of other than wage subsidy; security for refund of overpayments; payment of remainder after audit of voyage accounts.** Ninety percent of the amount of the insurance and maintenance and repair and subsistence of officers and crews subsidy shall be payable monthly for the voyages completed during the month on the basis of the subsidy estimated to have accrued with respect to such voyages. Any such payment shall be made only after there has been furnished to the Secretary of Transportation such security as he deems to be reasonable and necessary to assure refund of any overpayment. The contractor and the Secretary of Transportation shall audit the voyage accounts as soon as practicable after such payment. The remaining 10 percent of such subsidy shall be payable after such audit.

**SEC. 604. ADDITIONAL SUBSIDY; WHEN AUTHORIZED (46 App. U.S.C. 1174 (1996)).** If in the case of any particular foreign-trade route the Secretary of Transportation shall find after consultation with the Secretary of State, that the subsidy provided for in this title is in any respect inadequate to offset the effect of governmental aid paid to foreign competitors, he may grant such additional subsidy as he determines to be necessary for that purpose.

**SEC. 605. VESSELS EXCLUDED FROM SUBSIDY (46 App. U.S.C. 1175 (1996)).**

(a) **Vessels engaged in coastwise or intercoastal trade; vessels on inland waterways.** No operating-differential subsidy shall be paid for the operation of any vessel on a voyage on which it engages in coastwise or intercoastal trade: Provided, however, That such subsidy may be paid on a round-the-world voyage or a round voyage from the west coast of the United States to a European port or ports or a round voyage from the Atlantic coast to the Orient which includes intercoastal ports of the United States or a voyage in foreign trade on which the vessel may stop at the State of Hawaii, or an island possession or island territory of the United States, and if the subsidized vessel earns any gross revenue on the carriage of mail, passengers, or cargo by reason of such coastal or intercoastal trade the subsidy payment for the entire voyage shall be reduced by an amount which bears the same ratio to the subsidy otherwise payable as such gross revenue bears to the gross revenue derived from the entire voyage. No vessel operating on the inland waterways of the United States shall be considered for the purposes of this Act to be operating in foreign trade.

(b) **Vessels more than 25 years old.** No operating-differential subsidy shall be paid for the operation of a vessel after the calendar year

the vessel becomes 25 years of age, unless the Secretary of Transportation has determined, before the date of enactment of the Maritime Security Act of 1996,<sup>11</sup> that it is in the public interest to grant such financial aid for the operation of such vessel.

(c) **Vessels to be operated in an essential service served by citizens of the United States.** No contract shall be made under this title with respect to a vessel to be operated in an essential service served by citizens of the United States which would be in addition to the existing service, or services, unless the Secretary of Transportation shall determine after proper hearing of all parties that the service already provided by vessels of United States registry is inadequate, and that in the accomplishment of the purposes and policy of this Act additional vessels should be operated thereon; and no contract shall be made with respect to a vessel operated or to be operated in an essential service served by two or more citizens of the United States with vessels of United States registry, if the Secretary of Transportation shall determine the effect of such a contract would be to give undue advantage or be unduly prejudicial, as between citizens of the United States, in the operation of vessels in such essential service, unless following public hearing, due notice of which shall be given to each operator serving such essential service, the Secretary of Transportation shall find that it is necessary to enter into such contract in order to provide adequate service by vessels of United States registry. The Secretary of Transportation, in determining for the purposes of this section whether services are competitive, shall take into consideration the type, size, and speed of the vessels employed, whether passenger or cargo, or combination passenger and cargo, vessels, the ports or ranges between which they run, the character of cargo carried, and such other facts as he may deem proper.

**SEC. 606. READJUSTMENTS, CHANGE IN SERVICE, WITHDRAWAL FROM SERVICE; PAYMENT OF EXCESS PROFITS; WAGES, ETC.; AMERICAN MATERIALS (46 App. U.S.C. 1176 (1996)).** Every contract for an operating-differential subsidy under this title shall provide (1) that the amount of the future payments to the contractor shall be subject to review and readjustment from time to time, but not more frequently than once a year, at the instance of the Secretary of Transportation or of the contractor. If any such readjustment cannot be reached by mutual agreement, the Secretary of Transportation, on his own motion or on the application of the contrac-

---

<sup>11</sup> The Maritime Security Act of 1996, was enacted on October 8, 1996.

tor, shall, after a proper hearing, determine the facts and make such readjustment in the amount of such future payments as he may determine to be fair and reasonable and in the public interest. The testimony in every such proceeding shall be reduced to writing and filed in the office of the Secretary of Transportation. His decision shall be based upon and governed by the changes which may have occurred since the date of the said contract, with respect to the items theretofore considered and on which such contract was based, and other conditions affecting shipping, and shall be promulgated in a formal order, which shall be accompanied by a report in writing in which the Secretary of Transportation shall state his findings of fact; (2) that the compensation to be paid under it shall be reduced, under such terms and in such amounts as the Secretary of Transportation shall determine, for any periods in which the vessel or vessels are laid up; (3) that if the Secretary of Transportation shall determine that a change in an essential service, which is receiving an operating-differential subsidy under this title, is necessary in the accomplishment of the purposes of this Act, he may make such change upon such readjustment of payments to the contractor as shall be arrived at by the method prescribed in clause (1) of these conditions; (4) that if at any time the contractor receiving an operating-differential subsidy claims that he cannot maintain and operate his vessels in such an essential service, with a reasonable profit upon his investment, and applies to the Secretary of Transportation for a modification or rescission of his contract to maintain such essential service, and the Secretary of Transportation determines that such claim is proved, the Secretary of Transportation shall modify or rescind such contract and permit the contractor to withdraw such vessels from such essential service, upon a date fixed by the Secretary of Transportation, and upon the date of such withdrawal the further payment of the operating-differential subsidy shall cease and the contractor be discharged from any further obligation under such contract; (5) that the contractor shall conduct his operations with respect to essential service, and any services authorized under section 613 of this title, covered by his contract in an economical and efficient manner; and (6) that whenever practicable, an operator who receives subsidy with respect to subsistence of officers and crews shall use as such subsistence items only articles, materials, and supplies of the growth, production, and manufacture of the United States, as defined in section 505 herein, except when it is necessary to purchase supplies outside the United States to enable such vessel to continue and complete her voyage, and an operator who receives subsidy with respect to repairs shall perform such repairs within any of the United States or the Commonwealth of Puerto Rico, except in an emergency.

**SEC. 607. CAPITAL CONSTRUCTION FUND (46 App. U.S.C. 1177 (1996)).<sup>12</sup>**

(a) **Agreement rules; persons eligible; replacement, additional, or reconstructed vessels for prescribed trade and fishery operations; amount of deposits, annual limitation; conditions and requirements for deposits and withdrawals.** Any citizen of the United States owning or leasing one or more eligible vessels (as defined in subsection (k)(1)) may enter into an agreement with the Secretary under, and as provided in, this section to establish a capital construction fund (hereinafter in this section referred to as the “fund”) with respect to any or all of such vessels. Any agreement entered into under this section shall be for the purpose of providing 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 and shall provide for the deposit in the fund of the amounts agreed upon as necessary or appropriate to provide for qualified withdrawals under subsection (f). The deposits in the fund, and all withdrawals from the fund, whether qualified or nonqualified, shall be subject to such conditions and requirements as the Secretary may by regulations prescribe or are set forth in such agreement; except that the Secretary may not require any person to deposit in the fund for any taxable year more than 50 percent of that portion of such person’s taxable income for such year (computed in the manner provided in subsection (b)(1)(A)) which is attributable to the operation of the agreement vessels.

(b) **Ceiling on deposits; lessees; “agreement vessel” defined.**

(1) The amount deposited under subsection (a) in the fund for any taxable year shall not exceed the sum of;

(A) that portion of the taxable income of the owner or lessee for such year (computed as provided in chapter 1 of the Internal Revenue Code of 1954 but without regard to the carryback of any net operating loss or net capital loss and without regard to this section) which is attributable to the operation of the agreement vessels in the foreign or domestic commerce of the United States or in the fisheries of the United States,

---

<sup>12</sup> Section 261 of Public Law 99-514, approved October 22, 1986 (100 STAT. 2085), the Tax Reform Act of 1986, coordinated the application of the Internal Revenue Code of 1986 (Code) with the Capital Construction Fund program. Section 261 of Public Law 99-514 amended section 26(b)(2) of the Code and section 607 of the Merchant Marine act, 1936, and added a new section 7518 to Chapter 77 of the Code. These amendments apply to taxable years beginning after December 31, 1986.

(B) the amount allowable as a deduction under section 167 of the Internal Revenue Code of 1954 for such year with respect to the agreement vessels,

(C) if the transaction is not taken into account for purposes of subparagraph (A), the net proceeds (as defined in joint regulations) from (i) the sale or other disposition of any agreement vessel, or (ii) insurance or indemnity attributable to any agreement vessel, and

(D) the receipts from the investment or reinvestment of amounts held in such fund.

(2) In the case of a lessee, the maximum amount which may be deposited with respect to an agreement vessel by reason of paragraph (1)(B) for any period shall be reduced by any amount which, under an agreement entered into under this section, the owner is required or permitted to deposit for such period with respect to such vessel by reason of paragraph (1)(B).

(3) For purposes of paragraph (1), the term “agreement vessel” includes barges and containers which are part of the complement of such vessel and which are provided for in the agreement.

**(c) Investment requirements; depositories; fiduciary requirements; interest-bearing securities; stock: percentage for domestic issues, listing and registration, prudent acquisitions, value and percentage equilibrium, and treatment of preferred issues.** Amounts in any fund established under this section shall be kept in the depository or depositories specified in the agreement and shall be subject to such trustee and other fiduciary requirements as may be specified by the Secretary. They may be invested only in interest-bearing securities approved by the Secretary; except that, if the Secretary consents thereto, an agreed percentage (not in excess of 60 percent) of the assets of the fund may be invested in the stock of domestic corporations. Such stock must be currently fully listed and registered on an exchange registered with the Securities and Exchange Commission as a national securities exchange, and must be stock which would be acquired by prudent men of discretion and intelligence in such matters who are seeking a reasonable income and the preservation of their capital. 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 such a way as to tend to restore the fund to a situation in which the fair market value of the stock does not exceed such agreed percentage. For purposes of this subsection, if the common stock of a corporation meets the requirements of this subsection and if the preferred stock of such corporation would meet such requirements but for the fact that it cannot be listed and registered as required because it is nonvoting stock, such preferred stock shall be treated as meeting the requirements of this subsection.

**(d) Nontaxability of deposits; eligible deposits.**

(1) For purposes of the Internal Revenue Code of 1954—

(A) taxable income (determined without regard to this section and section 7518 of such Code) for the taxable year shall be reduced by an amount equal to the amount deposited for the taxable year out of amounts referred to in subsection (b)(1)(A),

(B) gain from a transaction referred to in subsection (b)(1)(C) shall not be taken into account if an amount equal to the net proceeds (as defined in joint regulations) from such transaction is deposited in the fund,

(C) the earnings (including gains and losses) from the investment and reinvestment of amounts held in the fund shall not be taken into account,

(D) the earnings and profits of any corporation (within the meaning of section 316 of such Code) shall be determined without regard to this section and section 7518 of such Code, and

(E) in applying the tax imposed by section 531 of such Code (relating to the accumulated earnings tax), amounts while held in the fund shall not be taken into account.

(2) Paragraph (1) shall apply with respect to any amount only if such amount is deposited in the fund pursuant to the agreement and not later than the time provided in joint regulations.

**(e) Accounts within fund: capital account, capital gain account, and ordinary income account; limitation on capital losses.** For purposes of this section—

(1) Within the fund established pursuant to this section three accounts shall be maintained:

- (A) the capital account,
- (B) the capital gain account, and
- (C) the ordinary income account.

(2) The capital account shall consist of—

- (A) amounts referred to in subsection (b)(1)(B),
- (B) amounts referred to in subsection (b)(1)(C) other than that portion thereof which represents gain not taken into account by reason of subsection (d)(1)(B),
- (C) the percentage applicable under section 243(a)(1) of the Internal Revenue Code of 1986 of any dividend received by the fund with respect to which the person maintaining the fund would (but for subsection (d)(1)(C)) be allowed a deduction under section 243 of the Internal Revenue Code of 1954, and

(D) interest income exempt from taxation under section 103 of such Code .

(3) The capital gain account shall consist of—

(A) amounts representing capital gains on assets held for more than 6 months and referred to in subsection (b)(1)(C) or (b)(1)(D) reduced by

(B) amounts representing capital losses on assets held in the fund for more than 6 months.

(4) The ordinary income account shall consist of—

(A) amounts referred to in subsection (b)(1)(A),

(B) (i) amounts representing capital gains on assets held for 6 months or less and referred to in subsection (b)(1)(C) or (b)(1)(D), reduced by—

(ii) amounts representing capital losses on assets held in the fund for 6 months or less,

(C) interest (not including any tax-exempt interest referred to in paragraph (2)(D)) and other ordinary income (not including any dividend referred to in subparagraph (E)) received on assets held in the fund,

(D) ordinary income from a transaction described in subsection (b)(1)(C), and

(E) the portion of any dividend referred to in paragraph (2)(C) not taken into account under such paragraph.

(5) Except on termination of a fund, capital losses referred to in paragraph (3)(B) or in paragraph (4)(B)(ii) shall be allowed only as an offset to gains referred to in paragraph (3)(A) or (4)(B)(i), respectively.

**(f) Purposes of qualified withdrawals; nonqualified withdrawal treatment for nonfulfillment of substantial obligations.**

(1) A qualified withdrawal from the fund is one made in accordance with the terms of the agreement but only if it is for:

(A) the acquisition, construction, or reconstruction of a qualified vessel,

(B) the acquisition, construction, or reconstruction of barges and containers which are part of the complement of a qualified vessel, or

(C) the payment of the principal on indebtedness incurred in connection with the acquisition, construction or reconstruction of a qualified vessel or a barge or container which is part of the complement of a qualified vessel.

Except to the extent provided in regulations prescribed by the Secretary subparagraph (B), and so much of subparagraph (C) as relates only to barges and containers, shall apply only with respect to barges and containers constructed in the United States.

(2) Under joint regulations, if the Secretary determines that any substantial obligation under or any agreement is not being fulfilled, he may, after notice and opportunity for hearing to the person maintaining the fund, treat the entire fund or any portion thereof as an amount withdrawn from the fund in a nonqualified withdrawal.

**(g) Tax treatment of qualified withdrawals; basis: reduction.**

(1) Any qualified withdrawal from a fund shall be treated—

- (A) first as made out of the capital account,
- (B) second as made out of the capital gain account, and
- (C) third as made out of the ordinary income account.

(2) If any portion of a qualified withdrawal for a vessel, barge, or container is made out of the ordinary income account, the basis of such vessel, barge, or container shall be reduced by an amount equal to such portion.

(3) If any portion of a qualified withdrawal for a vessel, barge, or container is made out of the capital gain account, the basis of such vessel, barge, or container shall be reduced by an amount equal to such portion.

(4) If any portion of a qualified withdrawal to pay the principal on any indebtedness is made out of the ordinary income account or the capital gain account, then an amount equal to the aggregate reduction which would be required by paragraphs (2) and (3) if this were a qualified withdrawal for a purpose described in such paragraphs 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. Any amount of a withdrawal remaining after the application of the preceding sentence shall be treated as a nonqualified withdrawal.

(5) If any property the basis of which was reduced under paragraph (2), (3), or (4) is disposed of, any gain realized on such disposition, to the extent it does not exceed the aggregate reduction in the basis of such property under such paragraphs, shall be treated as an amount referred to in subsection (h)(3)(A) which was withdrawn on the date of such disposition. Subject to such conditions and requirements as may be provided in joint regulations, the preceding sentence shall not apply to a disposition where there is a redeposit in an amount determined under joint regulations which will, insofar as practicable, restore the fund to the position it was in before the withdrawal.

**(h) Tax treatment of nonqualified withdrawals; FIFO and LIFO bases; interest rate.**

(1) Except as provided in subsection (i), any withdrawal from a fund which is not a qualified withdrawal shall be treated as a nonqualified withdrawal.

(2) Any nonqualified withdrawal from a fund shall be treated—

- (A) first as made out of the ordinary income account,
- (B) second as made out of the capital gain account, and
- (C) third as made out of the capital account.

For purposes of this section, items withdrawn from any account shall be treated as withdrawn on a first-in-first-out basis; except that (i) any nonqualified withdrawal for research, development, and design expenses incident to new and advanced ship design, machinery and equipment, and (ii) any amount treated as a nonqualified withdrawal under the second sentence of subsection (g)(4), shall be treated as withdrawn on a last-in-first-out basis.

(3) For purposes of the Internal Revenue Code of 1954—

(A) any amount referred to in paragraph (2)(A) shall be included in income as an item of ordinary income for the taxable year in which the withdrawal is made,

(B) any amount referred to in paragraph (2)(B) shall be included in income for the taxable year in which the withdrawal is made as an item of gain realized during such year from the disposition of an asset held for more than 6 months, and

(C) for the period on or before the last date prescribed for payment of tax for the taxable year in which this withdrawal is made—

(i) no interest shall be payable under section 6601 of such Code and no addition to the tax shall be payable under section 6651 of such Code,

(ii) interest on the amount of the additional tax attributable to any item referred to in subparagraph (A) or (B) shall be paid at the applicable rate (as defined in paragraph (4)) from the last date prescribed for payment of the tax for the taxable year for which such item was deposited in the fund, and

(iii) no interest shall be payable on amounts referred to in clauses (i) and (ii) of paragraph (2) or in the case of any nonqualified withdrawal arising from the application of the recapture provision of section 606(5) of the Merchant Marine Act of 1936 as in effect on December 31, 1969.

(4) For purposes of paragraph (3)(C)(ii), the applicable rate of interest for any nonqualified withdrawal—

(A) made in a taxable year beginning in 1970 or 1971 is 8 percent, or

(B) made in a taxable year beginning after 1971, shall be determined and published jointly by the Secretary of the Treasury and the Secretary and shall bear a relationship to 8 percent which the Secretaries determine under joint regulations to be comparable to the

relationship which the money rates and investment yields for the calendar year immediately preceding the beginning of the taxable year bear to the money rates and investment yields for the calendar year 1970.

**(5) Amount not withdrawn from fund after 25 years from deposit taxed as nonqualified withdrawal.**

(A) **In general.** The applicable percentage of any amount which remains in a capital construction fund as the close of the 26th, 27th, 28th, 29th, or 30th taxable year following the taxable year for which such amount was deposited shall be treated as a nonqualified withdrawal in accordance with the following table:

<i>If the amount remains in the fund at the close of the—</i>	<i>The applicable percentage is—</i>
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.

(B) **Earnings treated as deposits.** The earnings of any capital construction fund for any taxable year (other than net gains) shall be treated for purposes of this paragraph as an amount deposited for such taxable year.

(C) **Amounts committed treated as withdrawn.** For purposes of subparagraph (A), an amount shall not be treated as remaining in a capital construction fund at the close of any taxable year to the extent there is a binding contract at the close of such year for a qualified withdrawal of such amount with respect to an identified item for which such withdrawal may be made.

(D) **Authority to treat excess funds as withdrawn.** If the Secretary determines that the balance in any capital construction fund exceeds the amount which is appropriate to meet the vessel construction program objectives of the person who established such fund, the amount of such excess shall be treated as a nonqualified withdrawal under subparagraph (A) unless such person develops appropriate program objectives within 3 years to dissipate such excess.

(E) **Amounts in fund on January 1, 1987.** For purposes of this paragraph, all amounts in a capital construction fund on January 1, 1987, shall be treated as deposited in such fund on such date.

**(6) Nonqualified withdrawals taxed at highest marginal rate.**

(A) **In general.** In the case of any taxable year for which there is a nonqualified withdrawal (including any amount so treated under paragraph (5)), the tax imposed by chapter 1 of the Internal Revenue Code

of 1986 shall be determined— (i) by excluding such withdrawal from gross income, and (ii) by increasing the tax imposed by chapter 1 of such Code by the product of the amount of such withdrawal and the highest rate of tax specified in section 1 (section 11 in the case of a corporation) of such Code.

With respect to the portion of any nonqualified withdrawal made out of the capital gain account during a taxable year to which section 1(h) or 1201(a) of such Code applies, the rate of tax taken into account under the preceding sentence shall not exceed 28 percent (34 percent in the case of a corporation).

**(B) Tax benefit rule.** If any portion of a nonqualified withdrawal is properly attributable to deposits (other than earnings on deposits) made by the taxpayer in any taxable year which did not reduce the taxpayer's liability for tax under chapter 1 for any taxable year preceding the taxable year in which such withdrawal occurs—

(i) such portion shall not be taken into account under subparagraph (A), and

(ii) an amount equal to such portion shall be treated as allowed as a deduction under section 172 of such Code for the taxable year in which such withdrawal occurs.

**(i) Corporate reorganizations and partnership changes.** Under joint regulations—

(1) a transfer of a fund from one person to another person in a transaction to which section 381 of the Internal Revenue Code of 1954 applies may be treated as if such transaction did not constitute a non-qualified withdrawal, and

(2) a similar rule shall be applied in the case of a continuation of a partnership (within the meaning of subchapter K of such Code).

**(j) Treatment of existing funds; relation of old to new fund.**

(1) Any person who was maintaining a fund or funds (hereinafter in this subsection referred to as “old fund”) under this section (as in effect before the enactment of this subsection) may elect to continue such old fund but—

(A) may not hold moneys in the old fund beyond the expiration date provided in the agreement under which such old fund is maintained (determined without regard to any extension or renewal entered into after April 14, 1970),

(B) may not simultaneously maintain such old fund and a new fund established under this section, and

(C) if he enters into an agreement under this section to establish a new fund, may agree to the extension of such agreement to some or all of the amounts in the old fund.

(2) In the case of any extension of an agreement pursuant to paragraph (1)(C), each item in the old fund to be transferred shall be transferred in a nontaxable transaction to the appropriate account in the new fund established under this section. For purposes of subsection (h)(3)(C), the date of the deposit of any item so transferred shall be July 1, 1971, or the date of the deposit in the old fund, whichever is the later.

(k) **Definitions.** <sup>13</sup>For the purposes of this section—

(1) The term “eligible vessel” means any vessel—

(A) constructed in the United States and, if reconstructed, reconstructed in the United States,

(B) documented under the laws of the United States, and

(C) operated in the foreign or domestic commerce of the United States or in the fisheries of the United States.

Any vessel which (i) was constructed outside of the United States but documented under the laws of the United States on April 15, 1970, or (ii) constructed outside the United States for use in the United States foreign trade pursuant to a contract entered into before April 15, 1970, shall be treated as satisfying the requirements of subparagraph (A) of this paragraph and the requirements of subparagraph (A) of paragraph (2).

(2) The term “qualified vessel” means any vessel—

(A) constructed in the United States and, if reconstructed, reconstructed in the United States,

(B) documented under the laws of the United States, and

(C) which the person maintaining the fund agrees with the Secretary of Commerce will be operated in the United States foreign, Great Lakes, or noncontiguous domestic trade or in the fisheries of the United States.

(3) The term “agreement vessel” means any eligible vessel or qualified vessel which is subject to an agreement entered into under this section.

(4) The term “United States”, when used in a geographical sense, means the continental United States including Alaska, Hawaii, and Puerto Rico.

(5) The term “United States foreign trade” includes (but is not limited to) those areas in domestic trade in which a vessel built with construction-differential subsidy is permitted to operate under the first sentence of section 506 of this Act.

---

<sup>13</sup> See also 46 U.S.C. 1177-1 for certain commercial fishing vessels that also qualify as an “eligible vessel” and a “qualified vessel” under the Capital Construction Fund.

(6) The term “joint regulations” means regulations prescribed under subsection (l)

(7) The term “vessel” includes cargo handling equipment which the Secretary of Commerce determines is intended for use primarily on the vessel. The term “vessel” also includes an ocean-going towing vessel or an ocean-going barge or comparable towing vessel or barge operated on the Great Lakes.

(8) The term “noncontiguous trade” means (i) trade between the contiguous forty-eight States on the one hand and Alaska, Hawaii, Puerto Rico and the insular territories and possessions of the United States on the other hand, and (ii) trade from any point in Alaska, Hawaii, Puerto Rico, and such territories and possessions to any other point in Alaska, Hawaii, Puerto Rico, and such territories and possessions.

(9) The term “Secretary” means the Secretary of Commerce with respect to eligible or qualified vessels operated or to be operated in the fisheries of the United States, and the Secretary of Transportation with respect to all other vessels.

(l) **Records; reports; rules and regulations; termination of agreement upon changes in regulations with substantial effect on rights or obligations.** Each person maintaining a fund under this section shall keep such records and shall make such reports as the Secretary or the Secretary of the Treasury shall require. The Secretary of the Treasury and the Secretary shall jointly prescribe all rules and regulations, not inconsistent with the foregoing provisions of this section, as may be necessary or appropriate to the determination of tax liability under this section. If, after an agreement has been entered into under this section, a change is made either in the joint regulations or in the regulations prescribed by the Secretary under this section which could have a substantial effect on the rights or obligations of any person maintaining a fund under this section, such person may terminate such agreement.

(m) **Departmental reports and certification.**

(1) ***In general.*** For each calendar year, the Secretaries shall each provide the Secretary of the Treasury, within 120 days after the close of such calendar year, a written report with respect to those capital construction funds that are under their jurisdiction.

(2) ***Contents of reports.*** Each report shall set forth the name and taxpayer identification number of each person—

(A) establishing a capital construction fund during such calendar year;

(B) maintaining a capital construction fund as of the last day of such calendar year;

(C) terminating a capital construction fund during such calendar year;

(D) making any withdrawal from or deposit into (and the amounts thereof) a capital construction fund during such calendar year; or

(E) with respect to which a determination has been made during such calendar year that such person has failed to fulfill a substantial obligation under any capital construction fund agreement to which such person is a party.

**SEC. 608. SALE OR ASSIGNMENT OF CONTRACT; CONSENT OF SECRETARY; PURCHASER SUBJECT TO TERMS OF CONTRACT; RESCINDING CONTRACT ON TRANSFER WITHOUT CONSENT (46 App. U.S.C. 1178 (1996)).** No contract executed under this title or any interest therein shall be sold, assigned, or transferred, either directly or indirectly, or through any reorganization, merger, or consolidation, nor shall any agreement or arrangement be made by the holder whereby the maintenance, management, or operation of the service, route, line, vessel, or vessels is to be performed by any other person, without the written consent of the Secretary of Transportation. If he consents to such agreement or arrangement, the agreement or arrangement shall make provision whereby the person undertaking such maintenance, management, or operation agrees to be bound by all of the provisions of the contract and of this Act applicable thereto, and the rules and regulations prescribed pursuant to this Act. If the holder of any such contract shall voluntarily sell such contract or any interest therein, or make such assignment, transfer, agreement, or arrangement whereby the maintenance, management, or operation of the service route, line, vessel, or vessels is to be performed by any other person, without the consent of the Secretary of Transportation, or if the operation of the service route, line, or vessel, shall pass out of the direct control of the holder of such contract by reason of any voluntary or involuntary receivership or bankruptcy proceedings, the Secretary of Transportation shall have the right to modify or rescind such contract, without further liability thereon by the United States, and is hereby vested with exclusive jurisdiction to determine the purposes for which any payments made by him under such contract shall be expended.

**SEC. 609. WITHHOLDING PAYMENT TO DEFAULTING CONTRACTOR (46 App. U.S.C. 1179 (1996)).** The Secretary of Transportation shall withhold the payment of operating-differential subsidy while any contractor therefor is in default in any payments due on account of construction-loan, ship-sales mortgage notes, or any other obligation due the United States, and shall apply the amount so withheld to the satisfaction of such debt.

**SEC. 610. VESSELS ELIGIBLE FOR SUBSIDY (46 App. U.S.C. 1180 (1996)).** An operating-differential subsidy shall not be paid under authority of this title on account of the operation of any vessel which does not meet the following requirements: (1) The vessel shall be of steel or other acceptable metal, shall be propelled by steam or motor, shall be as nearly fireproof as practicable, shall be built in a domestic yard or shall have been documented under the laws of the United States not later than February 1, 1928, or actually ordered and under construction for the account of citizens of the United States prior to such date, and shall be documented under the laws of the United States, during the entire life of the subsidy contract; and (2) if the vessel shall be constructed after the passage of this Act it shall be either a vessel constructed according to plans and specifications approved by the Secretary of Transportation and the Secretary of the Navy, with particular reference to economical conversion into an auxiliary naval vessel, or a vessel approved by the Secretary of Transportation and the Navy Department as otherwise useful to the United States in time of national emergency.

**SEC. 611. TRANSFER OF VESSELS TO FOREIGN REGISTRY ON DEFAULT OF UNITED STATES (46 App. U.S.C. 1181 (1996)).**

(a) **Application; hearing; grant or denial.** The contractor, upon compliance with the provisions of this section, may transfer to foreign registry the vessels covered by any operating-differential subsidy contract held by him, in the event that the United States defaults upon such contract or cancels it without just cause. Any contractor desiring to transfer any such vessel to foreign registry upon such default or cancellation shall file an application in writing with the Secretary of Transportation setting forth its contentions with respect to the lack of just cause or lawful grounds for such default or cancellation. The Secretary of Transportation shall afford the contractor an opportunity for a hearing within twenty days after such contractor files written application therefor, and after the testimony, if any, in such hearing has been reduced to writing and filed with the Secretary of Transportation, he shall, within a reasonable time, grant or deny the application by order.

(b) **Appeal from denial of application.** If any such application is denied, the contractor may obtain a review of the order of denial in the United States Court of Appeals for the District of Columbia, by filing in such court, within twenty days after the entry of such order, a written petition praying that the order of the Secretary of Transportation be set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Secretary of Transportation or any officer designated by him for that purpose, and thereupon the Secretary of Transportation shall file in the court the record upon which the order complained of was entered, as provided in section 2112 of Title 28, United States

Code. Upon the filing of such petition such court shall have exclusive jurisdiction to determine whether such cancellation or default was without just cause, and to affirm or set aside such order. The judgment and decree of the court affirming or setting aside any such order of the Secretary of Transportation shall be final.

(c) **Effectiveness of transfer.** No transfer of vessels to foreign registry under this section shall become effective until any indebtedness to the government or to any citizen of the United States, secured by such vessels, has been paid or discharged, and until after the expiration of ninety days from the date of final determination of the application or the appeal, if any. Within such ninety-day period the Secretary of Transportation may (1) with the consent of the contractor purchase the vessels at cost to the contractor plus cost of capital improvements thereon, less 4 per centum annual depreciation upon such vessel, and the actual depreciated costs of capital improvements thereon, or (2) reinstate the contract and adjust or settle the default found by the Secretary of Transportation or the court to exist.

### **SEC. 613. OFF-SEASON CRUISES BY PASSENGER VESSELS (46 App. U.S.C. 1183 (1996)).**

(a) **“Passenger vessel” defined.** In this section, “passenger vessel” means a vessel which

(1) is of not less than ten thousand gross tons, and (2) has accommodations for not less than one hundred passengers.

(b) **Authorization for payment of subsidy.** If the Secretary of Transportation finds that the operation of any passenger vessel with respect to which a contract for the payment of an operating-differential subsidy has been entered into under section 603 of this title effective before January 2, 1960, is not required for all of each year, in order to furnish adequate service on the service, route, or line covered by such contract, he may amend such contract to agree to pay an operating-differential subsidy for operation of the vessel (1) on such service, route, or line for some part or no part of each year, and (2) on cruises for all or part of each year if such specific cruise is approved by the Secretary of Transportation under subsection (e) of this section: Provided, however, That no such vessel may cruise for more than seven months of each year to ports which are regularly served by another United States-flag passenger vessel pursuant to an operating-differential subsidy contract.

(c) **Authorization for payment of subsidy to passenger vessels providing domestic service.** The Secretary of Transportation may authorize passenger vessels under operating-differential subsidy contracts to provide domestic service between specified ports while the vessels are on voyages in an essential service in the foreign commerce of the

United States without reduction of operating-differential subsidy and the partial payback of construction-differential subsidy for operating in the domestic trades, if he finds that such domestic service will not result in a substantial deviation from the service, route, or line for which operating-differential subsidy is paid and will not adversely affect service on such service, route, or line.

**(d) Conditions for cruises or domestic service while on voyages in an essential service in foreign commerce.** When a vessel is being operated on cruises or has been authorized under this section to provide domestic passenger services while on voyages in an essential service in foreign commerce of the United States—

(1) except as provided in subdivision (4) of this subsection, it shall carry no mail unless required by law, or cargo except passengers' luggage, except between those ports between which it may carry mail and cargo on its regular service assigned by contract;

(2) it may not carry one-way passengers between those ports served by another United States carrier on its regular service assigned by contract, without the consent of such carrier, except between those ports between which it may carry one-way passengers on its own regular service assigned by contract;

(3) it shall stop at other domestic ports only for the same time and the same purpose as is permitted with respect to a foreign-flag vessel which is carrying passengers who embarked at a domestic port, except that a cruise may end at a different port or coast from that where it began and may embark or disembark passengers at other domestic ports, either when not involving transportation in the domestic offshore trade in competition with a United States-flag passenger vessel offering berth service therein, or, if involving such transportation, with the consent of such carrier: Provided, however, That nothing herein shall be construed to repeal or modify section 805(a) of this Act.

(4) Any other provisions of the Merchant Marine Act, 1936, or of the Shipping Act, 1916, to the contrary notwithstanding, with the approval of the Secretary of Transportation, it may carry cargo and mail between ports to the extent such carriage is not in direct competition with a carrier offering United States-flag berth service between those ports, or, if such carriage is in direct competition with one or more carriers offering United States-flag berth service between such ports, with the consent of the next scheduled United States-flag carrier, which consent shall not be unreasonably withheld in the judgment of the Maritime Administrator.

Section 605(c) of this Act shall not apply to cruises authorized under this section. Notwithstanding the applicable provisions of section 605(a) and section 506 of this Act requiring the reduction of operating differential subsidy and the partial payback of construction differential subsidy

for operating in the domestic trades, such reduction of operating subsidy and partial payback of construction subsidy under sections 605(a) and 506, respectively, shall not apply to cruises or domestic services authorized under this section.

(e) **Application for approval of cruise; notice to other American flag operators.** Upon the application of any operator for approval of a specific cruise, the Secretary of Transportation, after notice to all other American flag operators who may be affected and after affording all such operators an opportunity to submit written data, views or arguments, with or without opportunity to present the same orally in any manner, and after consideration of all relevant matter presented, shall approve the proposed cruise, if he determines that the proposed cruise will not substantially adversely affect an existing operator's service performed with passenger vessels of United States registry. Such approval shall not be given more than two years in advance of the beginning of the cruise.

**OFF-SEASON CRUISES ADDITIONAL TO RIGHT OF OPERATOR TO MAKE VOYAGES ON REGULAR SERVICE, ROUTE, OR LINE, INCLUDING APPROVED DEVIATIONS (46 App.**

**U.S.C. 1183a (1996)).**<sup>14</sup> The cruises authorized by section 613 shall be in addition to and not in derogation of the right of an operator to make voyages on his regular service, route or line, including approved deviations within the general area of his essential service. There shall be no adjustment of subsidy in the event of such deviations if they are without prejudice to the adequacy of service.

**SEC. 614. SUSPENSION OF OPERATING DIFFERENTIAL SUBSIDY CONTRACTS BY OPERATOR RECIPIENTS (46 App. U.S.C. 1184 (1996)).**

(a) Any operator receiving operating differential subsidy funds may elect, for all or a portion of its ships, to suspend its operating differential subsidy contract with all attendant statutory and contractual restrictions, except as to those pertaining to the domestic intercoastal or coastwise service, including any agreement providing for the replacement of vessels, if—

- (1) the vessel is less than ten years of age;
- (2) the suspension period is not less than twelve months;
- (3) the operator's financial condition is maintained at a level acceptable to the Secretary of Commerce; and

---

<sup>14</sup> Enacted as section 7 of Public Law 87-45, approved May 27, 1961 (75 STAT. 91), and not as part of the Merchant Marine Act, 1936.

(4) the owner agrees to pay to the Secretary, upon such terms and conditions as he may prescribe, an amount which bears the same proportion to the construction differential subsidy paid by the Secretary as the portion of the suspension period during which the vessel is operated in any preference trade from which a subsidized vessel would otherwise be excluded by law or contract bears to the entire economic life of the vessel.

(b) Any operator making an election under this section is entitled to full reinstatement of the suspended contract on request. The Secretary of Commerce may prescribe rules and regulations consistent with the purpose of this section.

**SEC. 615.<sup>15</sup> CONSTRUCTION, RECONSTRUCTION, OR ACQUISITION OF VESSELS OVER FIVE THOUSAND DEADWEIGHT TONS IN FOREIGN SHIPYARDS; PRECONDITIONS (46 App. U.S.C. 1185 (1996)).**

(a) The Secretary of Commerce may, until September 30, 1983, authorize an operator receiving or applying for operating differential subsidy under this title to construct, reconstruct, or acquire its vessels of over five thousand deadweight tons in a foreign shipyard if the Secretary finds and certifies in writing that such operator's application for construction differential subsidy cannot be approved due to the unavailability of funds in the construction differential subsidy account. Vessels constructed, reconstructed, or modified pursuant to this section shall be deemed to have been United States build for the purposes of this title, section 901(b) of this Act, and section 5(7) of the Port and Tanker Safety Act of 1978 (46 U.S.C. 391(a)(7)): Provided, That the provisions of section 607 of this Act shall not apply to vessels constructed, reconstructed, modified, or acquired pursuant to this section.

(b) The provisions of this section shall be effective for fiscal year 1983 only if the President in his annual budget message for that year requests at least \$100,000,000 in construction differential subsidy or proposes an alternate program that would create equivalent merchant shipbuilding activity in privately owned United States shipyards and the Secretary reports to Congress on the effect such action will have on the shipyard mobilization base at least thirty days prior to making the certification referred to in subsection (a).

---

<sup>15</sup> See also section 134 of Public Law 98-151, approved November 14, 1983 (97 STAT. 981), providing certain foreign construction authority.

**SEC. 616.<sup>16</sup> WIND-UP OF SUBTITLE A PROGRAM (46 App. U.S.C. 1185a (1996)).**

(a) After the date of enactment of the Maritime Security Act of 1996, the Secretary of Transportation shall not enter into any new contract for operating-differential subsidy under this subtitle.

(b) Notwithstanding any other provision of this Act, any operating-differential subsidy contract in effect under this title on the day before the date of enactment of the Maritime Security Act of 1996 shall continue in effect and terminate as set forth in the contract, unless voluntarily terminated at an earlier date by the parties (other than the United States Government) to the contract.

(c) The essential service requirements of section 601(a) and 603(b), and the provisions of sections 605(c) and 809(a), shall not apply to the operating-differential subsidy program under this subtitle effective upon the earlier of—

(1) the date that a payment is made, under the Maritime Security Program established by subtitle B to a contractor under that subtitle who is not party to an operating-differential subsidy contract under this subtitle, with the Secretary to cause notice of the date of such payment to be published in the Federal Register as soon as possible; or

(2) with respect to a particular contractor under the operating-differential subsidy program, the date that contractor enters into a contract with the Secretary under the Maritime Security Program established by subtitle B.

(d)(1) Notwithstanding any other provision of law, a vessel may be transferred and registered under an effective United States-controlled foreign flag if—

(A) the operator of the vessel receives an operating-differential subsidy pursuant to a contract under this subtitle which is in force on October 1, 1994, and the Secretary approves the replacement of such vessel with a comparable vessel, or

(B) the vessel is covered by an operating agreement under subtitle B, and the Secretary approves the replacement of such vessel with a comparable vessel for inclusion in the Maritime Security Fleet established under subtitle B.

(2) Any such vessel may be requisitioned by the Secretary of Transportation pursuant to section 902.

---

<sup>16</sup> Section 616 was added by Section 3(b) of Public Law 104-239, approved October 8, 1996, the Maritime Security Act of 1996.

## SUBTITLE B - MARITIME SECURITY FLEET PROGRAM<sup>17</sup>

### ESTABLISHMENT OF FLEET

#### SEC. 651. ESTABLISHMENT OF FLEET<sup>18</sup> (46 App. U.S.C. 1187 (1996)).

(a) **In General.** The Secretary of Transportation shall establish a fleet of active, militarily useful, privately-owned vessels to meet national defense and other security requirements and maintain a United States presence in international commercial shipping. The Fleet shall consist of privately owned, United States-flag vessels for which there are in effect operating agreements under this subtitle, and shall be known as the Maritime Security Fleet.

(b) **Vessel Eligibility.** A vessel is eligible to be included in the Fleet if the vessel is self-propelled and—

(1)(A) is operated by a person as an ocean common carrier;

(B) whether in commercial service, on charter to the Department of Defense, or in other employment, is either—

(i) a roll-on/roll-off vessel with a carrying capacity of at least 80,000 square feet or 500 twenty-foot equivalent units; or

(ii) a lighter aboard ship vessel with a barge capacity of at least 75 barges; or

(C) any other type of vessel that is determined by the Secretary to be suitable for use by the United States for national defense or military purposes in time of war or national emergency;

(2)(A)(i) is a United States-documented vessel; and

(ii) on the date an operating agreement covering the vessel is entered into under this subtitle, is—

(I) a LASH vessel that is 25 years of age or less; or

---

<sup>17</sup> Public Law 104-239, approved October 8, 1996 (104 STAT. 3118), the Maritime Security Act of 1996, added Subtitle B to Title VI of the Merchant Marine Act, 1936, and made comprehensive amendments to the Act and other provisions of law. Section 8 of Public Law 104-239, provides:

“(a) **In General.** The Secretary of Transportation may prescribe rules as necessary to carry out this Act and the amendments made by this Act.

“(b) **Interim Rules.**—The Secretary of Transportation may prescribe interim rules necessary to carry out this Act and the amendments made by this Act. For this purpose, the Secretary of Transportation is excepted from compliance with the notice and comment requirements of section 553 of title 5, United States Code. All rules prescribed under the authority of this subsection that are not earlier superseded by final rules shall expire not later than 270 days after the date of enactment of this Act.”

<sup>18</sup> Note the provisions of law appearing at the end of Section 651 that affect the establishment of the Maritime Security Fleet.

(II) any other type of vessel that is 15 years of age or less; except that the Secretary of Transportation may waive the application of clause (ii) if the Secretary, in consultation with the Secretary of Defense, determines that the waiver is in the national interest; or

(B) it is not a United States-documented vessel, but the owner of the vessel has demonstrated an intent to have the vessel documented under chapter 121 of title 46, United States Code, if it is included in the Fleet, and the vessel will be less than 10 years of age on the date of that documentation;

(3) the Secretary of Transportation determines that the vessel is necessary to maintain United States presence in international commercial shipping or, after consultation with the Secretary of Defense, determines that the vessel is militarily useful for meeting the sealift needs of the United States with respect to national emergencies; and

(4) at the time an operating agreement for the vessel is entered into under this subtitle, the vessel will be eligible for documentation under chapter 121 of title 46, United States Code.

\* \* \* \* \*

## **PROVISIONS OF LAW THAT AFFECT THE MARITIME SECURITY PROGRAM**

Section 1136(c) and (d) and Section 1137 of Public Law 104 -324, approved October 19, 1997 (110 STAT. 3987) provide:

**Sec. 1136 (c). Trust Charterers.**—Notwithstanding section 12102(d)(4) of title 46, United States Code, as amended by this section, for purposes of subtitle B of title VI of the Merchant Marine Act, 1936 a vessel is deemed to be owned and operated by a citizen of the United States (as that term is used in that subtitle) if—

(1) the person chartering the vessel from a trust under section 12102(d)(2) of that title is a citizen of the United States under section 2 of the Shipping Act, 1916 (46 App. U.S.C. 802); and

(2)(A) the vessel—

(i) is delivered by a shipbuilder, following completion of construction, on or after May 1, 1995 and before January 31, 1996; or

(ii) is owned by a citizen of the United States under section 2 of the Shipping Act, 1916 on September 1, 1996, or is a replacement for such a vessel; or

(B) payments have been made with respect to the vessel under subtitle B of title VI of the Merchant Marine Act, 1936 for at least 1 year.

**Sec. 1136 (d). Indirect Vessel Owners.**—Notwithstanding any other provision of law, for purposes of subtitle B of title VI of the Merchant Marine Act, 1936 the following vessels are deemed to be owned and operated by a citizen of the United States (as that term is used in that subtitle) if the vessels are owned, directly or indirectly, by a person that is a citizen of the United States under section 2 of the Shipping Act, 1916 (46 App. U.S.C. 802):

(1) Any vessel constructed under a shipbuilding contract signed on December 21, 1995, and having hull number 3077, 3078, 3079, or 3080.

(2) Any vessel delivered by a shipbuilder, following completion of construction, on or after May 1, 1995, and before January 31, 1996.

(3) Any vessel owned on September 1, 1996, by a person that is a citizen of the United States under section 2 of the Shipping Act, 1916, or a replacement for such a vessel.

(4) Any vessel with respect to which payments have been made under subtitle B of title VI of the Merchant Marine Act, 1936 for at least 1 year.

**Sec. 1137. Vessel Standards.**

(a) **Certificate of Inspection.**—A vessel used to provide transportation service as a common carrier which the Secretary of Transportation determines meets the criteria of section 651(b) of the Merchant Marine Act, 1936, but which on the date of enactment of this Act is not a documented vessel (as that term is defined in section 2101 of title 46, United States Code), shall be eligible for a certificate of inspection if the Secretary determines that—

(1) the vessel is classed by and designed in accordance with the rules of the American Bureau of Shipping or another classification society accepted by the Secretary;

(2) the vessel complies with applicable international agreements and associated guidelines, as determined by the country in which the vessel was documented immediately before becoming a documented vessel (as defined in that section); and

(3) that country has not been identified by the Secretary as inadequately enforcing international vessel regulations as to that vessel.

(b) **Continued Eligibility for Certificate.**—Subsection (a) does not apply to a vessel after any date on which the vessel fails to comply with the applicable international agreements and associated guidelines referred to in subsection (a)(2).

(c) **Reliance on Classification Society.**—

(1) **In General.**—The Secretary may rely on a certification from the American Bureau of Shipping or, subject to paragraph (2), another classification society accepted by the Secretary to establish that a vessel is in compliance with the requirements of subsections (a) and (b).

(2) **Foreign Classification Society.**—The Secretary may accept certification from a foreign classification society under paragraph (1) only—

(A) to the extent that the government of the foreign country in which the society is headquartered provides access on a reciprocal basis to the American Bureau of Shipping; and

(B) if the foreign classification society has offices and maintains records in the United States.

\* \* \* \* \*

## CONTINUATION OF THE MERCHANT MARINE ACT, 1936

### SEC. 652. OPERATING AGREEMENTS (46 App. U.S.C. 1187a (1996)).

(a) **In General.** The Secretary of Transportation shall require, as a condition of including any vessel in the Fleet, that the owner or operator of the vessel enter into an operating agreement with the Secretary under this section. Notwithstanding subsection (g), the Secretary may enter into an operating agreement for, among other vessels that are eligible to be included in the Fleet, any vessel which continues to operate under an operating-differential subsidy contract under subtitle A or which is under charter to the Department of Defense.

(b) **Requirements for Operation.** An operating agreement under this section shall require that, during the period a vessel is operating under the agreement—

(1) the vessel—

(A) shall be operated exclusively in the foreign trade or in mixed foreign and domestic trade allowed under a registry endorsement issued under section 12105 of title 46, United States Code, and

(B) shall not otherwise be operated in the coastwise trade; and

(2) the vessel shall be documented under chapter 121 of title 46, United States Code.

(c) **Regulatory Relief.** A contractor of a vessel included in an operating agreement under this subtitle may operate the vessel in the foreign commerce of the United States without restriction, and shall not be subject to any requirement under section 801, 808, 809, or 810.

Participation in the program established by this subtitle shall not subject a contractor to section 805 or to any provision of subtitle A.

(d) **Effectiveness and Annual Payment Requirements of Operating Agreements.**

(1) **Effectiveness.** The Secretary of Transportation may enter into an operating agreement under this subtitle for fiscal year 1996. The agree-

ment shall be effective only for 1 fiscal year, but shall be renewable, subject to the availability of appropriations, for each subsequent fiscal year through the end of fiscal year 2005.

(2) **Annual Payment.** An operating agreement under this subtitle shall require, subject to the availability of appropriations and the other provisions of this section, that the Secretary of Transportation pay each fiscal year to the contractor, for each vessel that is covered by the operating agreement, an amount equal to \$2,300,000 for fiscal year 1996 and \$2,100,000 for each fiscal year thereafter in which the agreement is in effect. The amount shall be paid in equal monthly installments at the end of each month. The amount shall not be reduced except as provided by this section.

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

(f) **Operating Agreement is Obligation of United States Government.** An operating agreement under this subtitle constitutes a contractual obligation of the United States Government to pay the amounts provided for in the agreement to the extent of actual appropriations.

(g) **Limitations.** The Secretary of Transportation shall not make any payment under this subtitle for a vessel with respect to any days for which the vessel is—

(1) subject to an operating-differential subsidy contract under subtitle A or under a charter to the United States Government, other than a charter pursuant to section 653;

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

(3) more than 25 years of age, except that the Secretary may make such payments for a LASH vessel for any day for which the vessel is more than 25 years of age if that vessel—

(A) is modernized after January 1, 1994,

(B) is modernized before it is 25 years of age, and

(C) is not more than 30 years of age.

(h) **Payments.** With respect to payments under this subtitle for a vessel covered by an operating agreement, the Secretary of Transportation—

(1) except as provided in paragraph (2), shall not reduce any payment for the operation of a vessel to carry military or other preference cargoes under 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 this Act, or any other cargo preference law of the United States;

(2) shall not make any payment for any day that a vessel is engaged in transporting more than 7,500 tons of civilian bulk preference cargoes pursuant to section 901(a), 901(b), or 901b that is bulk cargo; and

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

(i) **Priority for Awarding Agreements.** Subject to the availability of appropriations, the Secretary shall enter into operating agreements according to the following priority:

(1) ***Vessels Owned by Citizens.***

(A) *Priority.*—First, for any vessel that is—

(i) owned and operated by persons who are citizens of the United States under section 2 of the Shipping Act, 1916;<sup>19</sup> or

(ii) less than 10 years of age and owned and operated by a corporation that is—

(I) eligible to document a vessel under chapter 121 of title 46, United States Code; and

(II) affiliated with a corporation operating or managing for the Secretary of Defense other vessels documented under that chapter, or chartering other vessels to the Secretary of Defense.

(B) *Limitation on Number of Operating Agreements.*—The total number of operating agreements that may be entered into by a person under the priority in subparagraph (A)—

(i) for vessels described in subparagraph (A)(i), may not exceed the sum of—

(I) the number of United States-documented vessels the person operated in the foreign commerce of the United States (except mixed coastwise and foreign commerce) on May 17, 1995; and

(II) the number of United States-documented vessels the person chartered to the Secretary of Defense on that date; and

---

<sup>19</sup> Note the various exceptions to this requirement set forth in the provisions of law following Section 2 of the Shipping Act, 1916, page 286, *infra*.

(ii) for vessels described in subparagraph (A)(ii), may not exceed 5 vessels.

(C) *Treatment of Related Parties.*—For purposes of subparagraph (B), a related party with respect to a person shall be treated as the person.

(2) ***Other Vessels Owned by Citizens and Government Contractors.*** To the extent that amounts are available after applying paragraph (1), any vessel that is owned and operated by a person who is—

(A) a citizen of the United States under section 2 of the Shipping Act, 1916<sup>20</sup>, that has not been awarded an operating agreement under the priority established under paragraph (1); or

(B)(i) eligible to document a vessel under chapter 121 of title 46, United States Code; and

(ii) affiliated with a corporation operating or managing other United States-documented vessels for the Secretary of Defense or chartering other vessels to the Secretary of Defense.

(3) ***Other Vessels.*** To the extent that amounts are available after applying paragraphs (1) and (2), any other eligible vessel.

(j) **Transfer of Operating Agreements.** A contractor under an operating agreement may transfer the agreement (including all rights and obligations under the agreement) to any person eligible to enter into that operating agreement under this subtitle after notification of the Secretary in accordance with regulations prescribed by the Secretary, unless the transfer is disapproved by the Secretary within 90 days after the date of that notification. A person to whom an operating agreement is transferred may receive payments from the Secretary under the agreement only if each vessel to be covered by the agreement after the transfer is an eligible vessel under section 651(b).

(k) **Reversion of Unused Authority.** The obligation of the Secretary to make payments under an operating agreement under this subtitle shall terminate with respect to a vessel if the contractor fails to engage in operation of the vessel for which such payment is required—

(1) within one year after the effective date of the operating agreement, in the case of a vessel in existence on the effective date of the agreement, or

(2) within 30 months after the effective date of the operating agreement, in the case of a vessel to be constructed after that effective date.

(l) **Procedure for Considering Application; Effective Date for Certain Vessels.**

(1) **Procedures.** No later than 30 days after the date of the enactment of the Maritime Security Act of 1996, the Secretary shall accept applica-

---

<sup>20</sup> See footnote 19, *supra*.

tions for enrollment of vessels in the Fleet, and within 90 days after receipt of an application for enrollment of a vessel in the Fleet, the Secretary shall enter into an operating agreement with the applicant or provide in writing the reason for denial of that application.

(2) **Effective Date.** Unless an earlier date is requested by the applicant, the effective date for an operating agreement with respect to a vessel which is, on the date of entry into an operating agreement, either subject to a contract under subtitle A or on charter to the United States Government, other than a charter under section 653, shall be the expiration or termination date of the contract under subtitle A or of the Government charter covering the vessel, respectively, or any earlier date the vessel is withdrawn from that contract or charter.

(m) **Early Termination.** An operating agreement under this subtitle shall terminate on a date specified by the contractor if the contractor notifies the Secretary, by not later than 60 days before the effective date of the termination, that the contractor intends to terminate the agreement. Vessels covered by an operating agreement terminated under this subsection shall remain documented under chapter 121 of title 46, United States Code, until the date the operating agreement would have terminated according to its terms. A contractor who terminates an operating agreement pursuant to this subsection shall continue to be bound by the provisions of section 653 until the date the operating agreement would have terminated according to its terms. All terms and conditions of an Emergency Preparedness Agreement entered into under section 653 shall remain in effect until the date the operating agreement would have terminated according to its terms, except that the terms of such Emergency Preparedness Agreement may be modified by the mutual consent of the contractor and the Secretary of Transportation and the Secretary of Defense.

(n) **Nonrenewal for Lack of Funds.** If, by the first day of a fiscal year, sufficient funds have not been appropriated under the authority provided by section 655 for that fiscal year, the Secretary of Transportation shall notify the Congress that operating agreements authorized under this subtitle for which sufficient funds are not available will not be renewed for that fiscal year if sufficient funds are not appropriated by the 60th day of that fiscal year. If funds are not appropriated under the authority provided by section 655 for any fiscal year by the 60th day of that fiscal year, then each vessel covered by an operating agreement under this subtitle for which funds are not available is thereby released from any further obligation under the operating agreement, and the vessel owner or operator may transfer and register such vessel under a foreign registry deemed acceptable by the Secretary of Transportation, notwithstanding any other provision of law. If section

902 is applicable to such vessel after registration of the vessel under such a registry, the vessel is available to be requisitioned by the Secretary of Transportation pursuant to section 902.

**(o) Award of Operating Agreements.—**

(1) ***In General.*** The Secretary of Transportation, subject to paragraph (4), shall award operating agreements within each priority under subsection (i) (1), (2), and (3) under regulations prescribed by the Secretary.

(2) ***Number of Agreements Awarded.*** Regulations under paragraph (1) shall provide that if appropriated amounts are not sufficient for operating agreements for all vessels within a priority under subsection (i) (1), (2), or (3), the Secretary shall award to each person submitting a request a number of operating agreements that bears approximately the same ratio to the total number of vessels in the priority, as the amount of appropriations available for operating agreements for vessels in the priority bears to the amount of appropriations necessary for operating agreements for all vessels in the priority.

(3) ***Treatment of Related Parties.*** For purposes of paragraph (2), a related party with respect to a person shall be treated as the person.

(4) ***Preference for United States-Built Vessels.*** In awarding operating agreements for vessels within a priority under subsection (i) (1), (2), or (3), the Secretary shall give preference to a vessel that was constructed in the United States, to the extent such preference is consistent with establishment of a fleet described in the first sentence of section 651(a) (taking into account the age of the vessel, the nature of service provided by the vessel, and the commercial viability of the vessel).

(p) ***Notice to United States Shipbuilders Required.*** The Secretary shall include in any operating agreement under this subtitle a requirement that the contractor under the agreement shall, by not later than 30 days after soliciting any bid or offer for the construction of any vessel in a foreign shipyard and before entering into a contract for construction of a vessel in a foreign shipyard, provide notice of the intent of the contractor to enter into such a contract to each shipyard in the United States that is capable of constructing the vessel.

## NATIONAL SECURITY REQUIREMENTS

### SEC. 653. EMERGENCY PREPAREDNESS AGREEMENT (46 App. U.S.C. 1187b (1996)).

(1) ***Requirement to Enter Agreement.*** The Secretary of Transportation shall establish an Emergency Preparedness Program under this section that is approved by the Secretary of Defense. Under the program, the Secretary of Transportation shall include in each operating agree-

ment under this subtitle a requirement that the contractor enter into an Emergency Preparedness Agreement under this section with the Secretary. The Secretary shall negotiate and enter into an Emergency Preparedness Agreement with each contractor as promptly as practicable after the contractor has entered into an operating agreement under this subtitle.

(2) **Terms of Agreement.** An Emergency Preparedness Agreement under this section shall require that upon a request by the Secretary of Defense during time of war or national emergency, or whenever determined by the Secretary of Defense to be necessary for national security (including any natural disaster, international peace operation, or contingency operation (as that term is defined in section 101 of title 10, United States Code)), a contractor for a vessel covered by an operating agreement under this subtitle shall make available commercial transportation resources (including services). The basic terms of the Emergency Preparedness Agreements shall be established pursuant to consultations among the Secretary, the Secretary of Defense, and Maritime Security Program contractors. In any Emergency Preparedness Agreement, the Secretary and a contractor may agree to additional or modifying terms appropriate to the contractor's circumstances if those terms have been approved by the Secretary of Defense.

(3) **Participation After Expiration of Operating Agreement.** Except as provided by section 652(m), the Secretary may not require, through an Emergency Preparedness Agreement or operating agreement, that a contractor continue to participate in an Emergency Preparedness Agreement when the operating agreement with the contractor has expired according to its terms or is otherwise no longer in effect. After expiration of an Emergency Preparedness Agreement, a contractor may volunteer to continue to participate in such an agreement.

(b) **Resources Made Available.** The commercial transportation resources to be made available under an Emergency Preparedness Agreement shall include vessels or capacity in vessels, intermodal systems and equipment, terminal facilities, intermodal and management services, and other related services, or any agreed portion of such non-vessel resources for activation as the Secretary may determine to be necessary, seeking to minimize disruption of the contractor's service to commercial shippers.

(c) **Compensation.—**

(1) **In General.** The Secretary of Transportation shall provide in each Emergency Preparedness Agreement for fair and reasonable compensation for all commercial transportation resources provided pursuant to this section.

(2) **Specific Requirements.** Compensation under this subsection—

(A) shall not be less than the contractor’s commercial market charges for like transportation resources;

(B) shall include all the contractor’s costs associated with provision and use of the contractor’s commercial resources to meet emergency requirements;

(C) in the case of a charter of an entire vessel, shall be fair and reasonable;

(D) shall be in addition to and shall not in any way reflect amounts payable under section 652; and

(E) shall be provided from the time that a vessel or resource is diverted from commercial service until the time that it reenters commercial service.

(3) **Approval of Amount by Secretary of Defense.** No compensation may be provided for a vessel under this subsection unless the amount of the compensation is approved by the Secretary of Defense.

(d) **Temporary Replacement Vessels.** Notwithstanding any other provision of this subtitle or of other law to the contrary—

(1) a contractor may operate or employ in foreign commerce a foreign-flag vessel or foreign-flag vessel capacity, as a temporary replacement for a United States-documented vessel or United States-documented vessel capacity that is activated under an Emergency Preparedness Agreement; and

(2) such replacement vessel or vessel capacity shall be eligible during the replacement period to transport preference cargoes subject to 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 this Act to the same extent as the eligibility of the vessel or vessel capacity replaced.

(e) **Redelivery and Liability of United States for Damages.—**

(1) **In General.** All commercial transportation resources activated under an Emergency Preparedness Agreement shall, upon termination of the period of activation, be redelivered to the contractor in the same good order and condition as when received, less ordinary wear and tear, or the Government shall fully compensate the contractor for any necessary repair or replacement.

(2) **Limitation on Liability of United States.** Except as may be expressly agreed to in an Emergency Preparedness Agreement, or as otherwise provided by law, the Government shall not be liable for disruption of a contractor’s commercial business or other consequential damages to a contractor arising from activation of commercial transportation resources under an Emergency Preparedness Agreement.

(3) **Limitation on Application of Other Requirements.** Sections 902 and 909 of this Act shall not apply to a vessel while it is covered by an Emergency Preparedness Agreement under this subtitle. Any Emergency Preparedness Agreement entered into by a contractor shall supersede any other agreement between that contractor and the Government for vessel availability in time of war or national emergency.

**SEC. 654. DEFINITIONS (46 App. U.S.C. 1187c (1996)).** In this subtitle:

(1) **Bulk Cargo.** The term “bulk cargo” means cargo that is loaded and carried in bulk without mark or count.

(2) **Contractor.** The term “contractor” means an owner or operator of a vessel that enters into an operating agreement for the vessel with the Secretary of Transportation under section 652.

(3) **Ocean Common Carrier.** The term “ocean common carrier” means a person holding itself out to the general public to operate vessels to provide transportation by water of passengers or cargo between the United States and a foreign country for compensation, that—

(A) assumes responsibility for the transportation from the port or point of receipt to the port or point of destination, and

(B) utilizes, 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, except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, or chemical parcel-tanker. As used in this paragraph, “chemical parcel-tanker” means a vessel whose cargo-carrying capability consists of individual cargo tanks for bulk chemicals that are a permanent part of the vessel, that have segregation capability with piping systems to permit simultaneous carriage of several bulk chemical cargoes with minimum risk of cross-contamination, and that has a valid certificate of fitness under the International Maritime Organization Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk.

(4) **Fleet.** The term “Fleet” means the Maritime Security Fleet established pursuant to section 651(a).

(5) **LASH Vessel.** The term “LASH vessel” means a lighter aboard ship vessel.

(6) **United States-Documented Vessel.** The term “United States-documented vessel” means a vessel documented under chapter 121 of title 46, United States Code.

**SEC. 655. AUTHORIZATION OF APPROPRIATIONS (46 App. U.S.C. 1187d (1996)).**

There are authorized to be appropriated for operating agreements under this subtitle, to remain available until expended, \$100,000,000 for fiscal year 1996 and such sums as may be necessary, not to exceed \$100,000,000, for each fiscal year thereafter through fiscal year 2005.

**SEC. 656. NONCONTIGUOUS DOMESTIC TRADES (46 App. U.S.C. 1187e (1996)).**

(a) (1) Except as otherwise provided in this section, no contractor or related party shall receive payments pursuant to this subtitle during a period when it participates in a noncontiguous domestic trade, except upon written permission of the Secretary of Transportation. Such written permission shall also be required for any material change in the number or frequency of sailings, the capacity offered, or the domestic ports called by a contractor or related party in a noncontiguous domestic trade. The Secretary may grant such written permission pursuant to written application of such contractor or related party unless the Secretary finds that—

(A) existing service in that trade is adequate; or

(B) the service sought to be provided by the contractor or related party—

(i) would result in unfair competition to any other person operating vessels in such noncontiguous domestic trade, or

(ii) would be contrary to the objects and policy of this Act.

(2) For purposes of this subsection, written permission of the Secretary means permission which states the capacity offered, the number and frequency of sailings, and the domestic ports called, and which is granted following—

(A) written application containing the information required by paragraph (e)(1) by a person seeking such written permission, notice of which application shall be published in the Federal Register within 15 days of filing of such application with the Secretary;

(B) holding of a hearing on the application under section 554 of title 5, United States Code, in which every person, firm or corporation having any interest in the application shall be permitted to intervene and be heard; and

(C) final decision on the application by the Secretary within 120 days following conclusion of such hearing.

(b) Subsection (a) shall not apply in any way to provision by a contractor of service within the level of service provided by that contractor as of the date established by subsection (c) or to provision of service permitted by subsection (d).

(c) The date referred to in subsection (b) shall be August 9, 1995: Provided however, That with respect to tug and barge service to Alaska the date referred to in subsection (b) shall be July 1, 1992.

(d) A contractor may provide service in a trade in addition to the level of service provided as of the applicable date established by subsection (c) in proportion to the annual increase in real gross product of the non-contiguous State or Commonwealth served since the applicable date established by subsection (c).

(e)(1) A person applying for award of an agreement under this subtitle shall include with the application a description of the level of service provided by that person in each noncontiguous domestic trade served as of the date applicable under subsection (c). The application also shall include, for each such noncontiguous domestic trade: a list of vessels operated by that person in such trade, their container carrying capacity expressed in twenty-foot equivalent units (TEUs) or other carrying capacity, the itinerary for each such vessel, and such other information as the Secretary may require by regulation. Such description and information shall be made available to the public. Within 15 days of the date of an application for an agreement by a person seeking to provide service pursuant to subsections (b) and (c) of this section, the Secretary shall cause to be published in the Federal Register notice of such description, along with a request for public comment thereon. Comments on such description shall be submitted to the Secretary within 30 days of publication in the Federal Register. Within 15 days after receipt of comments, the Secretary shall issue a determination in writing either accepting, in whole or part, or rejecting use of the applicant's description to establish the level of service provided as of the date applicable under subsection (c): Provided, That notwithstanding the provisions of this subsection, processing of the application for an award of an agreement shall not be suspended or delayed during the time in which comments may be submitted with respect to the determination or during the time prior to issuance by the Secretary of the required determination: Provided further, That if the Secretary does not make the determination required by this paragraph within the time provided by this paragraph, the description of the level of service provided by the applicant shall be deemed to be the level of service provided as of the applicable date until such time as the Secretary makes the determination.

(2) No contractor shall implement the authority granted in subsection (d) of this section except as follows:

(A) An application shall be filed with the Secretary which shall state the increase in capacity sought to be offered, a description of the means by which such additional capacity would be provided, the basis for applicant's position that such increase in capacity would be in pro-

portion to or less than the increase in real gross product of the relevant noncontiguous State or Commonwealth since the applicable date established by subsection (c), and such information as the Secretary may require so that the Secretary may accurately determine such increase in real gross product of the relevant noncontiguous State or Commonwealth.

(B) Such increase in capacity sought by applicant and such information shall be made available to the public.

(C) Within 15 days of the date of an application pursuant to this paragraph the Secretary shall cause to be published in the Federal Register notice of such application, along with a request for public comment thereon.

(D) Comments on such application shall be submitted to the Secretary within 30 days of publication in the Federal Register.

(E) Within 15 days after receipt of comments, the Secretary shall issue a determination in writing either accepting, in whole or part, or rejecting, the increase in capacity sought by the applicant as being in proportion to or less than the increase in real gross product of the relevant noncontiguous State or Commonwealth since the applicable date established by subsection (c): Provided, That, notwithstanding the provisions of this section, if the Secretary does not make the determination required by this paragraph within the time provided by this paragraph, the increase in capacity sought by applicant shall be permitted as being in proportion to or less than such increase in real gross product until such time as the Secretary makes the determination.

(f) With respect to provision by a contractor of service in a noncontiguous domestic trade not authorized by this section, the Secretary shall deny payments under the operating agreement with respect to the period of provision of such service but shall deny payments only in part if the extent of provision of such unauthorized service was de minimis or not material.

(g) Notwithstanding any other provision of this subtitle, the Secretary may issue temporary permission for any United States citizen, as that term is defined in section 2 of the Shipping Act, 1916, to provide service to a noncontiguous State or Commonwealth upon the request of the Governor of such noncontiguous State or Commonwealth, in circumstances where an Act of God, a declaration of war or national emergency, or any other condition occurs that prevents ocean transportation service to such noncontiguous State or Commonwealth from being provided by persons currently providing such service. Such temporary permission shall expire 90 days from date of grant, unless extended by the Secretary upon written request of the Governor of such State or Commonwealth.

(h) As used in this section:

(1) The term “level of service provided by a contractor” in a trade as of a date means—

(A) with respect to service other than service described in (B), the total annual capacity provided by the contractor in that trade for the 12 calendar months preceding that date: Provided, That, with respect to unscheduled, contract carrier tug and barge service between points in Alaska south of the Arctic Circle and points in the contiguous 48 States, the level of service provided by a contractor shall include 100 percent of the capacity of the equipment dedicated to such service on the date specified in subsection (c) and actually utilized in that service in the two-year period preceding that date, excluding service to points between Anchorage, Alaska and Whittier, Alaska, served by common carrier service unless such unscheduled service is only for carriage of oil or pursuant to a contract with the United States military: Provided further, That, with respect to scheduled barge service between the contiguous 48 States and Puerto Rico, such total annual capacity shall be deemed as such total annual capacity plus the annual capacity of two additional barges, each capable of carrying 185 trailers and 100 automobiles; and

(B) with respect to service provided by container vessels, the overall capacity equal to the sum of—

(i) 100 percent of the capacity of vessels operated by or for the contractor on that date, with the vessels’ configuration and frequency of sailing in effect on that date, and which participate solely in that noncontiguous domestic trade; and

(ii) 75 percent of the capacity of vessels operated by or for the contractor on that date, with the vessels’ configuration and frequency of sailing in effect on that date, and which participate in that noncontiguous domestic trade and in another trade, provided that the term does not include any restriction on frequency, or number of sailings, or on ports called within such overall capacity.

(2) The level of service set forth in paragraph (1) shall be described with the specificity required by subsection (e)(1) and shall be the level of service in a trade with respect to the applicable date established by subsection (c) only if the service is not abandoned thereafter, except for interruptions due to military contingency or other events beyond the contractor’s control.

(3) The term “participates in a noncontiguous domestic trade” means directly or indirectly owns, charters, or operates a vessel engaged in transportation of cargo between a point in the contiguous 48 states and a point in Alaska, Hawaii, or Puerto Rico, other than a point in Alaska north of the Arctic Circle.

(4) The term “related party” means—

(A) a holding company, subsidiary, affiliate, or associate of a contractor who is a party to an operating agreement under this subtitle; and

(B) an officer, director, agent, or other executive of a contractor or of a person referred to in subparagraph (A).

## TITLE VII<sup>21</sup>—PRIVATE CHARTER OPERATION

### **SEC. 701. ADDITIONAL POWERS OF SECRETARY FOR COMPLETION OF PROGRAM (46 App. U.S.C. 1191 (1996)).**

Whenever the Secretary of Transportation shall find and determine, and such finding and determination shall be approved by the President of the United States, that the national policy declared in section 101 of this Act, and the objectives set forth in section 210 of this Act, cannot be fully realized within a reasonable time, in whole or in part, under the provisions of Titles V and VI, the Secretary of Transportation is hereby authorized and directed to complete its long-range program previously adopted as hereinafter provided in this title.

### **SEC. 702. CONSTRUCTION OR RECONDITIONING OF VESSELS BY SECRETARY (46 App. U.S.C. 1192 (1996)).**

The Secretary of Transportation is authorized to have constructed in shipyards in the continental United States, such new vessels as he shall determine may be required to carry out the objects of this Act, and to have old vessels reconditioned or remodeled in such yards: Provided, That if satisfactory contracts for such new construction or reconstruction, in accordance with the provisions of this Act, cannot be obtained from private shipbuilders, the Secretary of Transportation is authorized to have such vessels constructed, reconditioned, or remodeled in United States navy yards. For the purposes of this section, the term “continental United States” includes the States of Alaska and Hawaii.

### **SEC. 703. COMPETITIVE BIDDING (46 App. U.S.C. 1193 (1996)).**

(a) **Construction, reconstruction, or reconditioning of vessels.** No contract for the building of a new vessel, or for the reconditioning or reconstruction of any other vessel, shall be made by the Secretary of Transportation with any private shipbuilder, except after due advertisement and upon sealed competitive bids.

(b) **Requirements.** All contracts for the construction, reconditioning, or reconstruction of a vessel or vessels by a private shipbuilder under authority of this title shall be subject to all the provisions and requirements prescribed in title V of this Act with respect to contracts with a private shipbuilder for the construction of vessels under authority of that title.

(c) **Opening of bids.** All bids required by the Secretary of Transportation for the construction, reconstruction, or reconditioning of

---

<sup>21</sup> With respect to the charter of war-built vessels, see Section 5(e) and (f) of the Merchant Ship Sales Act, 1946, as amended (50 U.S.C. App. 1738 (e) & (f)). For provisions restricting the obligation of the Maritime Administration to pay for consumable stores, bunkers and slop chest items on chartered vessels, see Public Law 84-121 (69 STAT. 231) and Public Law 84-604 (70 STAT. 318).

vessels, and for the chartering of the Secretary's vessels hereinafter provided for, shall be opened at the time, hour, and place stated in the advertisement for bids, and all interested persons, including representatives of the press, shall be permitted to attend, and the results of such bidding shall be publicly announced.

**SEC. 704. CHARTER OR SALE OF VESSELS ACQUIRED BY DEPARTMENT OF TRANSPORTATION (46 App. U.S.C. 1194 (1996)).** All vessels transferred to or otherwise acquired by the Department of Transportation in any manner may be chartered or sold by the Secretary of Transportation pursuant to the further provisions of this Act.

**SEC. 705. EMPLOYMENT OF VESSELS ON FOREIGN TRADE ROUTES; SELECTION OF ROUTES; ENCOURAGING PRIVATE OPERATION BY SALE OR CHARTER; SELLING PRICE (46 App. U.S.C. 1195 (1996)).** As soon as practicable after the passage of this Act, and continuing thereafter, 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 of Transportation shall determine are necessary and essential for the development and maintenance of the commerce of the United States and the national defense: Provided, That such needs 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. It shall be the policy of the Secretary of Transportation to encourage private operation of each essential steamship line now owned by the United States by selling such lines to citizens of the United States in the manner provided in section 7 of the Merchant Marine Act, 1920, and in strict accordance with the provisions of section 5 of said Act, or by demising his vessels on bare-boat charter to citizens of the United States who shall agree to maintain such line or lines in the manner hereinafter provided. No vessel constructed under the provisions of this Act, as amended, shall be sold by the Secretary of Transportation for operation in the foreign trade for a sum less than the estimated foreign construction cost exclusive of national defense features (determined as of the date the construction contract therefor is executed) less depreciation based on a twenty-five-year life, nor shall any such vessel be sold by the Secretary of Transportation for operation in the domestic trade for a sum less than the cost of construction in the United States exclusive of national defense features less depreciation based on a twenty-five-year life.<sup>22</sup>

---

<sup>22</sup> See footnote 4, page 22

**SEC. 706. ADVERTISING FOR BIDS FOR CHARTERS;  
REJECTION OF BIDS (46 App. U.S.C. 1196 (1996)).**

(a) The Secretary of Transportation shall not charter the Department of Transportation's vessels to private operators except upon competitive sealed bids submitted in strict compliance with all the terms and conditions of a public advertisement soliciting such bids. Each and every advertisement for bids to charter the Department of Transportation's vessels shall state the number, type, and tonnage of the vessels the Secretary of Transportation is offering for bare-boat charter for operation as a steamship line on a designated trade route, the minimum number of sailings that will be required, the length of time for which the charter will be given, and all other information the Secretary of Transportation shall deem necessary for the information of prospective bidders.

(b) The Secretary of Transportation shall have authority to, and shall announce in his advertisements for bids that the Secretary of Transportation reserves the right to, reject any and all bids submitted. The Secretary of Transportation shall reject any bid for the charter (under sections 701 to 713, both inclusive, of this title, as amended ) of any vessel constructed under the provisions of this Act, as amended, if the charter hire offered by the bidder is lower than the minimum charter hire for such vessel would be if chartered under the provisions of section 714, as amended, of this title.

**SEC. 707. AWARDING CHARTER ON BIDS (46 App. U.S.C. 1197 (1996)).**

(a) **Highest bid.** The Secretary of Transportation shall award the charter to the bidder proposing to pay the highest monthly charter hire unless the Secretary of Transportation shall reject such bid for the reasons set forth in subsection (b) of this section.

(b) **Rejection of highest bid.** The Secretary of Transportation may reject the highest or most advantageous or any other bid, if, in the Secretary's discretion, the charter hire offered is deemed too low, or the Secretary of Transportation determines that the bidder lacks sufficient capital, credit, or experience to operate successfully the line; but the reason or reasons for rejection of any bid upon request of the bidder, shall be stated to such bidder in writing.

(c) **Next highest bid; rejection of all bids and readvertisement.** If the highest bid is rejected, the Secretary of Transportation may award the charter to the next highest bidder, or may reject all bids and readvertise the line: Provided, however, That the Secretary of Transportation may operate the line until conditions appear to be more favorable for a reoffering of the line for private charter.

**SEC. 708. PAYMENT OF SUBSIDIES TO CHARTERERS (46 App. U.S.C. 1198 (1996)).** The Secretary of Transportation may, if in his discretion financial aid is deemed necessary, enter into a contract with any charterer of its vessels for payment to such charterer of an operating-differential subsidy upon the same terms and conditions and subject to the same limitations and restrictions, where applicable, as are elsewhere provided in this Act with respect to payments of such subsidies to operators of privately owned vessels.

**SEC. 709. EXCESS PROFIT; PAYMENT TO SECRETARY; FORMULA FOR DETERMINING PROFIT (46 App. U.S.C. 1199 (1996)).**

(a) Every charter made by the Secretary of Transportation pursuant to the provisions of this title shall provide that whenever, at the end of any calendar year subsequent to the execution of such charter, the cumulative net voyage profits (after payment of the charter hire reserved in the charter and payment of the charter's fair and reasonable overhead expenses applicable to operation of the chartered vessels) shall exceed 10 per centum per annum on the charterer's capital necessarily employed in the business of such chartered vessels, the charterer shall pay over to the Secretary of Transportation as additional charter hire, one-half of such cumulative net voyage profit in excess of 10 per centum per annum: Provided, That the cumulative net profit so accounted for shall not be included in any calculation of cumulative net profit in subsequent years.

(b) Every charter shall contain a definition of the terms "net voyage profit" and "fair and reasonable overhead expenses", and "capital necessarily employed", as said terms are used in subsection (a) of this section, setting forth the formula for determining such profit and overhead expense and capital necessarily employed, which definitions shall have been previously approved by the Secretary of Transportation and published in the advertisement for bids for such charter.

**SEC. 710. UNDERTAKING REQUIRED OF CHARTERER (46 App. U.S.C. 1200 (1996)).** Every charterer of the Secretary of Transportation's vessels shall be required to deposit with the Secretary of Transportation an undertaking with approved sureties as security for the faithful performance of all of the conditions of the charter, including indemnity against liens on the chartered vessels, in such amount as the Secretary of Transportation shall require.

**SEC. 711. TERMS AND CONDITIONS OF CHARTERS (46 App. U.S.C. 1201 (1996)).** The charters to be made by the Secretary of Transportation pursuant to the provisions of this title shall demise the vessels to the charterer subject to all usual conditions contained in bare-boat charters, and until January 1, 1940, shall be for terms of three years

or less as the Secretary of Transportation may decide: Provided, That after January 1, 1940, charters may be executed by the Secretary of Transportation for such terms as the experience gained by the Secretary of Transportation shall indicate are to the best interests of the United States and the merchant marine.

**SEC. 712. INSURANCE REQUIREMENTS; REPAIRS; INSPECTION BY SECRETARY; TERMINATION OF CHARTER IN NATIONAL EMERGENCY (46 App. U.S.C. 1202 (1996)).** Every charter shall provide—

(a) That the charterer shall carry on the chartered vessels, at his own expense, policies of insurance covering all marine and port risks, protection and indemnity risks, and all other hazards and liabilities, in such amounts, in such form, and in such insurance companies as the Secretary of Transportation shall require and approve, adequate to cover all damages claimed against and losses sustained by the chartered vessels arising during the life of the charter: Provided, That in accordance with existing law, some or all of such insurance risks may be underwritten by the Secretary of Transportation himself as in his discretion he may determine.

(b) That the charterer shall at its own expense keep the chartered vessel in good state of repair and in efficient operating condition and shall at its own expense make any and all repairs as may be required by the Secretary of Transportation.

(c) That the Secretary of Transportation shall have the right to inspect the vessel at any and all times to ascertain its condition.

(d) That whenever the President shall proclaim that the security of the national defense makes it advisable, or during any national emergency declared by proclamation of the President, the Secretary of Transportation may terminate the charter without cost to the United States upon such notice to the charterers as the President shall determine.

**SEC. 713. FINANCIAL RESOURCES AND OTHER FACTORS CONSIDERED IN AWARDING CHARTERS (46 App. U.S.C. 1203 (1996)).**

In the awarding of charters, the Secretary of Transportation shall take in consideration the charter's financial resources and credit standing, practical experience in the operation of vessels, and any other factors that would be considered by a prudent businessman in entering into a transaction involving a large investment of his capital; and the Secretary of Transportation is directed to refrain from chartering the Department of Transportation's vessels to any person appearing to lack sufficient capital, credit, and experience to operate successfully the vessel over the period covered by the charter.

**SEC. 714.<sup>23</sup> CONSTRUCTION AND CHARTERING OF VESSELS FOR UNSUCCESSFUL ROUTES; PURCHASE OF VESSEL BY CHARTERER; PURCHASE PRICE; OPERATION OF VESSEL IN FOREIGN TRADE (46 App. U.S.C. 1204 (1996)).** If the Secretary of Transportation shall find that any trade route (determined by the Secretary of Transportation to be an essential trade route as provided in section 211 of this Act) cannot be successfully developed and maintained and the Secretary of Transportation's replacement program cannot be achieved under private operation of such trade route by a citizen of the United States with vessels registered under the laws thereof, without further Government aid in addition to the financial aids authorized under titles V and VI of this Act, the Secretary of Transportation is authorized to have constructed, in private shipyards or in navy yards, the vessel or vessels of the types deemed necessary for such trade route, and to demise such new vessel or vessels on bare-boat charter to the American-flag operator established on such trade route, without advertisement or competition, upon an annual charter hire of not less than 4 per centum of the price (herein referred to as the "foreign cost") at which such vessel or vessels would be sold if constructed under Title V, plus an amount equal to (i) the sum of a percentage of the depreciated foreign cost computed annually upon the basis of a twenty-five year life of the vessel determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the term of the charter, adjusted to the nearest one-eighth of 1 per centum, plus (ii) an allowance adequate in the judgment of the Secretary of Transportation to cover administrative costs. Such charter may contain an option to the charterer to purchase such vessel or vessels from the Secretary of Transportation within five years after delivery thereof under the charter, upon the same terms and conditions as are provided in title V for the purchase of new vessels from the Secretary of Transportation, except that (a) the purchase price shall be the foreign cost less depreciation to the date of purchase based upon a twenty-five-year life; (b) the required cash payment payable at the time of such purchase shall be 25 per centum of the purchase price as so determined; (c) the charter may provide that all or 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 such purchase; (d) the balance of the purchase price shall be paid within the years remaining of the twenty-five years after the date

---

<sup>23</sup> See footnote 4, page 22, supra.

of delivery of the vessel under the charter and in approximately equal annual installments, except that the first of said installments which shall be payable upon the next ensuing anniversary date of such delivery under the charter, shall be a proportionate part of the annual installment, interest to be payable upon the unpaid balances from the date of purchase, at a rate not less than (i) a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans adjusted to the nearest one-eighth of 1 per centum, plus (ii) an allowance adequate in the judgment of the Secretary of Transportation to cover administrative costs.

Such charter shall provide for operation of the vessel exclusively in foreign trade, or on a round-the-world voyage, or on a round voyage from the west coast of the United States to a European port or ports which includes intercoastal ports of the United States, or a round voyage from the Atlantic coast of the United States to the Orient which includes intercoastal ports of the United States, or on a voyage in foreign trade on which the vessel may stop at the State of Hawaii, or an island possession or island Territory of the United States, and if the vessel is operated in the domestic trade of any of the above-enumerated services the charterer will pay annually to the Secretary of Transportation that proportion of one-twenty-fifth of the difference between the domestic and foreign cost of such vessel as the gross revenue derived from the domestic trade bears to the gross revenue derived from the entire voyages completed during the preceding year.

**SEC. 715. EXPERIMENTAL OPERATION AND TESTING OF UNITED STATES VESSELS; NUMBER; BAREBOAT CHARTERS; REVIEW OF CHARTERS AND AGENCY AGREEMENTS; PROVISIONS APPLICABLE TO CHARTERS AND AGREEMENTS (46 App. U.S.C. 1205 (1996)).** The Secretary of Transportation, for the purpose of practical development, trial, and testing, is authorized without regard to other provisions of this title or other laws relating to chartering and general agency operations, to operate, under general agency agreements or bareboat charter, vessels owned by the United States (including any national defense reserve vessel) which have been constructed, reconditioned, or remodeled for experimental or testing purposes, in the foreign or domestic trade of the United States or for use for the account of any agency or department of the United States, under such reasonable terms or conditions as the Secretary of Transportation determines to be necessary to carry out the objects of this Act: Provided, however, That not in excess of ten such vessels shall be operated and tested under the authority of this section in any

one year. Bareboat charters entered into under this section shall be made at reasonable rates of charter and shall include such restrictions and conditions as the Secretary of Transportation determines to be necessary or appropriate to protect the public interest, including provisions for recapture of profits as provided for in section 709 of this Act, as amended. Charters and general agency agreements entered into under this section shall be reviewed annually for the purpose of determining whether conditions exist which would justify continuance of the charter or agreement. Those provisions of law prescribed or incorporated under the heading "vessel operations revolving fund"<sup>24</sup> in chapter VIII of the Third Supplemental Appropriation Act, 1951 (Public Law 45, Eighty-second Congress; 65 Stat. 52, 59); which relate to vessel operating activities of the Secretary of Transportation and to employment of seamen through general agents, shall be applicable in connection with charters and agreements entered into under this section.

---

<sup>24</sup> The Vessel Operations Revolving Fund is set out at page 177, *infra*.

## TITLE VIII—CONTRACT PROVISIONS

**SEC. 801. PROVISION FOR BOOKS AND RECORDS; FILING BALANCE SHEETS; INSPECTION AND AUDITING BY SECRETARY; RESCISSION OF CONTRACT ON FAILURE TO COMPLY WITH PROVISIONS (46 App. U.S.C. 1211 (1996)).** Every contract executed by the Secretary of Transportation under the provisions of title VI or VII of this Act; shall contain provisions requiring (1) that the contractor and every affiliate, domestic agent, subsidiary, or holding company connected with, or directly or indirectly controlling or controlled by, the contractor, to keep its books, records, and accounts, relating to the maintenance, operation, and servicing of the vessels, services, routes, and lines covered by the contract, in such form and under such regulations as may be prescribed by the Secretary of Transportation: Provided, That the provisions of this paragraph shall not require the duplication of books, records, and accounts required to be kept in some other form by the Interstate Commerce Commission; (2) that the contractor and every affiliate, domestic agent, subsidiary, or holding company connected with or directly or indirectly controlling or controlled by, the contractor, to file, upon notice from the Secretary of Transportation, balance sheets, profit and loss statements, and such other statements of financial operations, special report, memoranda of any facts and transactions, which in the opinion of the Secretary of Transportation affect the financial results in, the performance of, or transactions or operations under, such contract; (3) that the Secretary of Transportation shall be authorized to examine and audit the books, records, and accounts of all persons referred to in this section whenever he may deem it necessary or desirable; and (4) that upon the willful failure or refusal of any person described in this section to comply with the contract provisions required by this section, the Secretary of Transportation shall have the right to rescind the contract, and upon such rescission the United States shall be relieved of all further liability on such contract.

**SEC. 802. PURCHASE OR REQUISITION OF VESSELS BY UNITED STATES; AMOUNT OF PAYMENT (46 App. U.S.C. 1212 (1996)).** Every contract executed by the Secretary of Transportation under authority of title V of this Act shall provide that—

In the event the United States shall, through purchase or requisition, acquire ownership of the vessel or vessels on which a construction-differential subsidy was paid, the owner shall be paid therefor the value thereof, but in no event shall such payment exceed the actual depreciated construction cost thereof (together with the actual depreciated cost of capital improvements thereon, but excluding the cost of national-defense features) less the depreciated amount of construction-differen-

tial subsidy theretofore paid incident to the construction or reconditioning of such vessel or vessels, or the fair and reasonable scrap value of such vessel as determined by the Secretary of Transportation, whichever is the greater. Such determination shall be final. In computing the depreciated value of such vessel, depreciation shall be computed on each vessel on the schedule adopted by the Bureau of Internal Revenue for income-tax purposes.

The foregoing provision respecting the requisition or the acquisition of ownership by the United States shall run with the title to such vessel or vessels and be binding on all owners thereof.

**SEC. 804. OPERATING COMPETING FOREIGN-FLAG VESSEL FORBIDDEN (46 App. U.S.C. 1222 (1996)).**

(a) **Operating-Differential Subsidy; Competition With Essential American-Flag Service.** Except as provided in subsections (b) and (c) of this section, it shall be unlawful for any contractor receiving an operating-differential subsidy under title VI or for any charterer of vessels under title VII of this Act, or any holding company, subsidiary, affiliate, or associate of such contractor or such charterer, or any officer, director, agent, or executive thereof, directly or indirectly to own, charter, act as an agent or broker for, or operate any foreign-flag vessel which competes with any American-flag service determined by the Secretary of Transportation to be essential as provided in section 211 of this Act.

(b) **Waiver; Special Circumstances.** Under special circumstances and for good cause shown, the Secretary of Transportation may, in his discretion, waive the provisions of subsection (a) of this section as to any contractor, for a specific period of time.

(c) **Exceptions.** Upon application to the Secretary of Transportation the provisions of subsection (a) of this section shall not apply to the following specified activities of any contractor under title VI, or those in the foregoing specified relationship to him, who was not such a contractor on April 15, 1970, and who shall have complied with the requirement set forth in subsection (d) of this section:

(1) Until April 15, 1990—

(A) the continued ownership, charter, or operation of a foreign-flag vessel engaged in the carriage of dry or liquid cargoes in bulk which was owned, chartered, or operated by such contractor, or those in the foregoing specified relationship to him, on April 15, 1970;

(B) the continued acting as agent or broker for a vessel described in subsection (c)(1)(A) of this section which is owned, chartered, or operated by such contractor, or those in the foregoing specified relationship to him, and for which such contractor, or those in foregoing special relationship to him, were acting as agent or broker on April 15, 1970:

(d) **Statement to be Filed with Secretary.** No contractor under title VI, whether he shall have become such a contractor before or after the date of enactment of this section, shall avail himself of the provisions of subsection (c) of this section unless not later than ninety days after the enactment of this section there shall have been filed with the Secretary of Transportation a full and complete statement, satisfactory in form and substance to the Secretary, of all foreign-flag vessels which he, or those in the foregoing specified relationship to him, directly or indirectly owned, chartered, acted as agent or broker for, or operated on April 15, 1970.

(e) **Report to Congress.** During the period of time provided for in subsection (c) of this section, the Secretary of Transportation shall include in the annual report pursuant to section 208 of this Act, a report on the activities of contractors under such subsection, including but not limited to, the nature and extent of such activities; its effect, if any, upon carrying forward the national policy declared in section 101 of this Act; and the Secretary's recommendations for legislation, if such is deemed to be necessary.

(f) **Use of Foreign-Flag Vessels.**<sup>25</sup> The provisions of subsection (a) shall not preclude a contractor receiving assistance under subtitle A or B of title VI, or any holding company, subsidiary, or affiliate of the contractor, or any officer, director, agent, or executive thereof, from—

(1) owning, chartering, or operating any foreign-flag vessel on a voyage or a segment of a voyage that does not call at a port in the United States;

(2) owning, chartering, or operating any foreign-flag vessel in line haul service between the United States and foreign ports if—

(A) the foreign-flag vessel was owned, chartered, or operated by, or is a replacement for a foreign-flag vessel owned, chartered, or operat-

---

<sup>25</sup> Subsection (f) was added by Section 5(a) of Public Law 104-239, approved October 8, 1996 (110 STAT. 3131), the Maritime Security Act of 1996. Section 5(b) provides: "(b) **Effective Date.**—The amendment made by subsection (a) shall apply to a contractor under subtitle B of title VI of the Merchant Marine Act, 1936, as amended by this Act, upon enactment of this Act, and shall apply to a contractor under subtitle A of title VI of that Act, upon the earlier of—(1) the date that a payment is made, under the Maritime Security Program under subtitle B of that title to a contractor under subtitle B of that title who is not party to an operating-differential subsidy contract under subtitle A of that title, with the Secretary of Transportation to cause notice of the date of such payment to be published in the Federal Register as soon as possible; or (2) with respect to a particular contractor under the operating-differential subsidy program under subtitle A of that title, the date that contractor enters into a contract with the Secretary under the Maritime Security Program established by subtitle B of that title."

On December 20, 1996, the Maritime Security Program was entered into by Farrell Lines Incorporated, Waterman Steamship Corporation, Lykes Bros. Steamship Co. Inc., and First American Bulk Carrier Corporation. On January 21, 1997, American President Lines, Ltd. entered into the Maritime Security Program.

ed by, such owner or operator, or any holding company, subsidiary, affiliate, or associate of such owner or operator, on the date of enactment of the Maritime Security Act of 1996;

(B) the owner or operator, with respect to each additional foreign-flag vessel, other than a time chartered vessel, has first applied to have that vessel covered by an operating agreement under subtitle B of title VI, and the Secretary has not awarded an operating agreement with respect to that vessel within 90 days after the filing of the application; or

(C) the vessel has been placed under foreign documentation pursuant to section 9 of the Shipping Act, 1916 (46 U.S.C. App. 808), except that any foreign-flag vessel, other than a time chartered vessel, a replacement vessel under section 653(d), or a vessel operated by the owner or operator on the date of enactment of the Maritime Security Act of 1996, in line haul service between the United States and foreign ports is registered under the flag of an effective United States-controlled foreign flag, and available to be requisitioned by the Secretary of Transportation pursuant to section 902 of this Act;

(3) owning, chartering, or operating foreign-flag bulk cargo vessels that are operated in foreign-to-foreign service or the foreign commerce of the United States;

(4) chartering or operating foreign-flag vessels that are operated solely as replacement vessels for United States-flag vessels or vessel capacity that are made available to the Secretary of Defense pursuant to section 653 of this Act; or

(5) entering into time or space charter or other cooperative agreements with respect to foreign-flag vessels or acting as agent or broker for a foreign-flag vessel or vessels.

## **SEC. 805. FORBIDDEN PRACTICES RELATING TO COASTWISE SERVICE, SALARIES, OFFICERS, AND EMPLOYEES (46 App. U.S.C. 1223 (1996)).**

(a) **Foreign Trade Subsidy Contractor Engaging in Coastwise or Intercoastal Trade.** It shall be unlawful to award or pay any subsidy to any contractor under authority of subtitle A of title VI of this Act, or to charter any vessel to any person under title VII of this Act, if said contractor or charterer, or any holding company, subsidiary, affiliate, or associate of such contractor or charterer, or any officer, director, agent, or executive thereof, directly or indirectly, shall own, operate, or charter any vessel or vessels engaged in the domestic intercoastal or coastwise service, or own any pecuniary interest, directly or indirectly, in any person or concern that owns, charters, or operates any vessel or vessels in the domestic intercoastal or coastwise service, without the written permission of the Secretary of Transportation. Every person, firm, or cor-

poration having any interest in such application shall be permitted to intervene and the Secretary of Transportation shall give a hearing to the applicant and the intervenors. The Secretary of Transportation shall not grant any such application if the Secretary of Transportation finds it will result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or intercoastal service or that it would be prejudicial to the objects and policy of this Act: Provided, That if such contractor or other person above-described 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 routes or in the trade or trades for which 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, the Secretary of Transportation shall grant such permission without requiring further proof that public interest and convenience will be served by such operation, and without further proceedings as to the competition in such route or trade.

If such application be allowed, it shall be unlawful for any of the persons mentioned in this section to divert, directly or indirectly, any moneys, property, or other thing of value, used in foreign-trade operations, for which a subsidy is paid by the United States, into any such coastwise or intercoastal operations; and whosoever shall violate this provision shall be guilty of a misdemeanor.

**(b) Contractor in Default Paying More Than Specified Salary.**

Whenever any contractor under subtitle A of title VI or title VII receiving an operating-differential subsidy is in default with respect to any mortgage, note, purchase contract, or other obligation to the Secretary of Transportation, or has not maintained, in a manner satisfactory to the Secretary of Transportation, all of the reserves provided for in this Act, the Secretary of Transportation shall have the right to supervise the number and compensation of all officers and employees of the contractor.

**(d) Employing Other Persons or Concerns as Managing or Operating Agent.** It shall be unlawful, without express written consent of the Secretary of Transportation for any contractor holding a contract authorized under subtitle A of title VI or VII of this Act to employ any other person or concern as the managing or operating agent of such operator, or to charter any vessel, on which an operating-differential subsidy is to be paid, for operation by another person or concern, and if such charter is made, the person or concern operating the chartered vessel or vessels shall be subject to all the terms and provisions of this Act, including limitations of profits and salaries.

(f) **Penalty.** Any willful violation of any provision of this section shall constitute a breach of the contract or charter in force under this Act, and upon determining that such a violation has occurred the Secretary of Transportation may forthwith declare such contract or charter rescinded and any person willfully violating the provisions of this section shall be guilty of a misdemeanor.

**SEC. 809. CONTRACTS DESIGNED EQUITABLY FOR ALL PORTS; MINIMUM ALLOCATION OF FUNDS; REPORT TO CONGRESS; PREFERENCE TO CITIZENS OF UNITED STATES; REGIONAL OFFICES FOR MARITIME ADMINISTRATION (46 App. U.S.C. 1213 (1996)).**

(a) Contracts under this Act shall be entered into so as to equitably serve, insofar as possible, the foreign-trade requirements of the Atlantic, Gulf, Great Lakes, and Pacific ports of the United States. In order to assure equitable treatment for each range of ports referred to in the preceding sentence, not less than 10 percent of the funds appropriated for construction-differential subsidy and operating-differential subsidy pursuant to this Act or any law authorizing funds for the purposes of this Act shall be allocated to each such port range: Provided, however, That such allocation shall apply to the extent that subsidy contracts are approved by the Secretary of Transportation. For the purposes of this section and section 211(a), the Secretary shall establish trade routes, services, or lines that take into account the seasonal closure of the Saint Lawrence Seaway and provide for alternate routing of ships via a different range of ports during that closure so as to maintain continuity of service on a year-round basis. For the purposes of section 605(c), such an alternate routing via a different range of ports shall be deemed to be service from Great Lakes ports, provided such alternative routing is based upon receipt or delivery of cargo at Great Lakes-Saint Lawrence Seaway ports under through intermodal bills of lading. The Secretary shall include in the annual report pursuant to section 208 of this Act a detailed report (1) describing the actions that have been taken pursuant to this Act to assure insofar as possible that direct and adequate service is provided by United States-flag commercial vessels to each range of ports referred to in this section; and (2) including any recommendations for additional legislation that may be necessary to achieve the purpose of this section. In awarding contracts under this Act, preference shall be given to persons who are citizens of the United States and who have the support, financial and otherwise, of the domestic communities primarily interested.

(b) There shall be established and maintained within the Maritime Administration such regional offices as may be necessary, including, but not limited to, one such office for each of the four port ranges specified in subsection (a) of this section. The Secretary of Transportation shall

appoint a qualified individual to be the Director of each such regional office and shall carry out appropriate functions, activities, and programs of the Maritime Administration through such regional offices.

**SEC. 810. AGREEMENTS WITH OTHER CARRIERS FORBIDDEN; WITHHOLDING SUBSIDIES; ACTIONS BY INJURED PERSONS FOR DAMAGES (46 App. U.S.C. 1227 (1996)).** It shall be unlawful for any contractor receiving an operating-differential subsidy under title VI or for any charterer of vessels under title VII of this Act, to continue as a party to or to conform to any agreement with another carrier or carriers by water, or to engage in any practice in concert with another carrier or carriers by water, which is unjustly discriminatory or unfair to any other citizen of the United States who operates a common carrier by water exclusively employing vessels registered under the laws of the United States on any established trade route from and to a United States port or ports.

No payment or subsidy of any kind shall be paid directly or indirectly out of funds of the United States or any agency of the United States to any contractor or charterer who shall violate this section. Any person who shall be injured in his business or property by reason of anything forbidden by this section may sue therefor in any district court of the United States in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee.

## TITLE IX—MISCELLANEOUS PROVISIONS

### SEC. 901.<sup>26</sup> TRANSPORTATION IN AMERICAN VESSELS OF GOVERNMENT PERSONNEL AND CERTAIN CARGOES (46 App. U.S.C. 1241 (1996)).

(a) **Requirement that Officers and Employees Travel on American Ships.** Any officer or employee of the United States traveling on official business overseas or to or from any of the possessions of the United States shall travel and transport his personal effects on ships registered under the laws of the United States where such ships are available unless the necessity of his mission requires the use of a ship under a foreign flag. The Administrator of General Services shall prescribe regulations under which agencies shall not pay for or reimburse officers or employees for travel or shipping expenses incurred on a foreign ship in the absence of satisfactory proof of the necessity therefor.

#### (b) **Cargoes Procured, Furnished or Financed by United States; Waiver in Emergencies; Exceptions; Definition.**

(1) Whenever the United States shall procure, contract for, or otherwise obtain for its own account, or shall furnish to or for the account of any foreign nation without provision for reimbursement, any equipment, materials, or commodities, within or without the United States, or shall advance funds or credits or guarantee the convertibility of foreign currencies in connection with the furnishing of such equipment, materials, or commodities, the appropriate agency or agencies shall take such steps as may be necessary and practicable to assure that at least 50 per centum of the gross tonnage of such equipment, materials, or commodities (computed separately for dry bulk carriers, dry cargo liners, and tankers), which may be transported on ocean vessels shall be transported on privately owned United States-flag commercial vessels, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels, in such manner as will insure a fair and reasonable participation of United States-flag commercial vessels in such cargoes by geographic areas: Provided, That the provisions of this subsection may be waived whenever the Congress by concurrent resolution or otherwise, or the President of the United States or the Secretary of Defense declares that an emergency exists justifying a temporary waiver of the provisions of section 901(b)(1) and so notifies the appropriate agency or agencies: And provided further, That the provisions of this subsection shall not apply to cargoes carried in the vessels of the Panama Canal Company. Nothing herein shall repeal or otherwise mod-

---

<sup>26</sup> Section 901 sets forth certain cargo preference laws. Section 901(b)(1) is commonly referred to as the Cargo Preference Act of 1954 or PL 664. These and other cargo preference laws are set forth under **Cargo Reservation**, page 249, *infra*.

ify the provisions of Public Resolution Numbered 17, Seventy-third Congress (48 Stat. 500), as amended. For purposes of this section, the term “privately owned United States-flag commercial vessels” shall not be deemed to include any vessel which, subsequent to the date of enactment of this amendment, shall have been either (a) built outside the United States, (b) rebuilt outside the United States, or (c) documented under any foreign registry, until such vessel shall have been documented under the laws of the United States for a period of three years: Provided, however, That the provisions of this amendment shall not apply where, (1) prior to the enactment of this amendment, the owner of a vessel, or contractor for the purchase of a vessel, originally constructed in the United States and rebuilt abroad or contracted to be rebuilt abroad, has notified the Maritime Administration in writing of its intent to document such vessel under United States registry, and such vessel is so documented on its first arrival at a United States port not later than one year subsequent to the date of the enactment of this amendment, or (2) where prior to the enactment of this amendment, the owner of a vessel under United States registry has made a contract for the rebuilding abroad of such vessel and has notified the Maritime Administration of such contract, and such rebuilding is completed and such vessel is thereafter documented under United States registry on its first arrival at a United States port not later than one year subsequent to the date of the enactment of this amendment.

(2) Every department or agency having responsibility under this subsection shall administer its programs with respect to this subsection under regulations issued by the Secretary of Transportation. The Secretary of Transportation shall review such administration and shall annually report to the Congress with respect thereto.

**(c) Motor Vehicle Owned by Government Personnel.**

Notwithstanding any other provision of law, privately owned American shipping services may be utilized for the transportation of motor vehicles owned by Government personnel whenever transportation of such vehicles at Government expense is otherwise authorized by law.

**FINDINGS AND DECLARATIONS WITH RESPECT TO EXPORT TRANSPORTATION OF AGRICULTURAL COMMODITIES (46 App. U.S.C. 1241d (1996)).<sup>27</sup>**

(a) The Congress finds and declares—

(1) that a productive and healthy agricultural industry and a strong and active United States maritime industry are vitally important to the economic well-being and national security objectives of our Nation;

---

<sup>27</sup> Enacted as section 1141 of Title XI, subtitle C, of Public Law 99-198, approved December 23, 1985 (99 STAT. 1490), and not as part of the Merchant Marine Act, 1936.

(2) that both industries must compete in international markets increasingly dominated by foreign trade barriers and the subsidization practices of foreign governments; and

(3) that increased agricultural exports and the utilization of United States merchant vessels contribute positively to the United States balance of trade and generate employment opportunities in the United States.

(b) It is therefore declared to be the purpose and policy of the Congress in this subtitle—

(1) to enable the Department of Agriculture to plan its export programs effectively, by clarifying the ocean transportation requirements applicable to such programs;

(2) to take immediate and positive steps to promote the growth of the cargo carrying capacity of the United States merchant marine;

(3) to expand international trade in United States agricultural commodities and products and to develop, maintain, and expand markets for United States agricultural exports;

(4) to improve the efficiency of administration of both the commodity purchasing and selling and the ocean transportation activities associated with export programs sponsored by the Department of Agriculture;

(5) to stimulate and promote both the agricultural and maritime industries of the United States and encourage cooperative efforts by both industries to address their common problems; and

(6) to provide in the Merchant Marine Act, 1936, for the appropriate disposition of these findings and purposes.

**SEC. 901a. EXEMPTION OF CERTAIN AGRICULTURAL EXPORTS FROM REQUIREMENTS OF CARGO PREFERENCE LAWS (46 App. U.S.C. 1241e (1996)).**

The requirements of section 901(b)(1) of this Act and the Joint Resolution of March 26, 1934 (46 U.S.C. App. 1241-1), shall not apply to any export activities of the Secretary of Agriculture or the Commodity Credit Corporation—

(1) under which agricultural commodities or the products thereof acquired by the Commodity Credit 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 the products thereof at prevailing world market prices;

(2) under which payments are made available to United States exporters, users, or processors or, except as provided in section 901b, cash grants are made available to foreign purchasers, for the purpose described in paragraph (1);

(3) under which commercial credit guarantees are blended with direct credits from the Commodity Credit Corporation to reduce the effective rate of interest on export sales of United States agricultural commodities or the products thereof;

(4) under which credit or credit guarantees for not to exceed 3 years are extended by the Commodity Credit Corporation to finance or guarantee export sales of United States agricultural commodities or the products thereof; or

(5) under which agricultural commodities or the products thereof owned or controlled by or under loan from the Commodity Credit Corporation are exchanged or bartered for materials, goods, equipment, or services, but only if such materials, goods, equipment, or services are of a value at least equivalent to the value of the agricultural commodities or products exchanged or bartered therefor (determined on the basis of prevailing world market prices at the time of the exchange or barter), but nothing in this subsection shall be construed to exempt from the cargo preference provisions referred to in section 901b any requirement otherwise applicable to the materials, goods, equipment, or services imported under any such transaction.

**SEC. 901b. SHIPMENT REQUIREMENTS FOR CERTAIN EXPORTS SPONSORED BY DEPARTMENT OF AGRICULTURE (46 App. U.S.C. 1241f (1996)).**

**(a) Minimum Requirement Respecting Gross Tonnage Transported in United States-flag Commercial Vessels; Implementation.**

(1) In addition to the requirement for United States-flag carriage of a percentage of gross tonnage imposed by section 901(b)(1) of this Act, 25 percent of the gross tonnage of agricultural commodities or the products thereof specified in subsection (b) shall be transported on United States-flag commercial vessels.

(2) In order to achieve an orderly and efficient implementation of the requirement of paragraph (1)—

(A) an additional quantity equal to 10 percent of the gross tonnage referred to in paragraph (1) shall be transported in United States-flag vessels in calendar year 1986;

(B) an additional quantity equal to 20 percent of the gross tonnage shall be transported in such vessels in calendar year 1987; and

(C) an additional quantity equal to 25 percent of the gross tonnage shall be transported in such vessels in calendar year 1988 and in each calendar year thereafter.

(b) **Covered Export Activity.** This section shall apply to any export activity of the Commodity Credit Corporation or the Secretary of Agriculture—

- (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 Food Security Wheat Reserve Act of 1980 (7 U.S.C. 1736f-1);
- (4) under which agricultural commodities or the products thereof are—
  - (A) donated through foreign governments or agencies, private or public, including intergovernmental organizations; or
  - (B) sold for foreign currencies or for dollars on credit terms of more than ten years;
- (5) under which agricultural commodities or the products thereof 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 for the purpose of enabling the purchaser to obtain United States agricultural commodities or the products thereof in an amount greater than the difference between the prevailing world market price and the United States market price, free along side vessel at United States port; or
- (7) under which agricultural commodities owned or controlled by or under loan from the Commodity Credit Corporation are exchanged or bartered for materials, goods, equipment, or services produced in foreign countries, other than export activities described in section 901a(5).

(c) **Terms and Conditions.**

(1) The requirement for United States-flag transportation imposed by subsection (a) shall be subject to the same terms and conditions as provided in section 901(b) of this Act.

(2) In order to provide for effective and equitable administration of the cargo preference laws the calendar year for the purpose of compliance with minimum percentage requirements shall be for 12 month periods commencing April 1, 1986.

(3)(A)<sup>28</sup> Subject to subparagraph (B), in administering sections 901(b) and 901b (46 U.S.C. App. 1241(b) and 1241f), and, subject to subparagraph (B) of this paragraph, consistent with those sections, the Commodity Credit Corporation shall take such steps as may be necessary and practicable without detriment to any port range to allocate, on the principle of lowest landed cost without regard to the country of doc-

---

<sup>28</sup> Section 901b(c)(3) was amended by section 17 of Public Law 104-239, approved October 8, 1996 (110 STAT. 3138), the Maritime Security Act, 1996.

umentation of the vessel, 25 percent of the bagged, processed, or fortified commodities furnished pursuant to title II of the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1751 et seq.).

(B) In carrying out this paragraph, there shall first 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 documentation of the vessel and 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 United States-flag transportation under section 901(b) and this section shall not apply to commodities allocated under subparagraph (A) to the Great Lakes port range, and commodities allocated under subparagraph (A) to that port range 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 subparagraph (A) applies that is furnished and transported from the Great Lakes port range is less than 25 percent of the total annual tonnage of such commodities furnished.

(C) In awarding any contract for the transportation by vessel of commodities from the Great Lakes port range pursuant to an export activity referred to in subsection (b), each agency or instrumentality—

(i) shall consider expressions of freight interest for any vessel from a vessel operator who meets reasonable requirements for financial and operational integrity; and

(ii) 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.

(4) Any determination of nonavailability of United States-flag vessels resulting from the application of this subsection shall not reduce the gross tonnage of commodities required by sections 901(b) and 901b to be transported on United States-flag vessels.

(d) **“Export Activity” Defined.** As used in subsection (b), the term “export activity” does not include inspection or weighing activities, other activities carried out for health or safety purposes, or technical assistance provided in the handling of commercial transactions.

(e) **Prevailing World Market Price.**

(1) The prevailing world market price as to agricultural commodities or the products thereof shall be determined under sections 901a through 901d in accordance with procedures established by the Secretary of Agriculture. The Secretary shall prescribe such procedures by regula-

tion, with notice and opportunity for public comment, pursuant to section 553 of title 5, United States Code.

(2) In the event that a determination of the prevailing world market price of any other type of materials, goods, equipment, or service is required in order to determine whether a barter or exchange transaction is subject to subsection (b)(6) or (b)(7), such determination shall be made by the Secretary of Agriculture in consultation with the heads of other appropriate Federal agencies.

**SEC. 901c. MINIMUM TONNAGE (46 App. U.S.C. 1241g (1996)).**

(a)(1) For fiscal year 1986 and each fiscal year thereafter, the minimum quantity of agricultural commodities to be exported under programs subject to section 901b shall be the average of the tonnage exported under such programs during the base period defined in subsection (b), discarding the high and low years.

(2) The President may waive the minimum quantity for any fiscal year required under paragraph (1) if he determines and reports to the Congress, together with his reasons, that such quantity cannot be effectively used for the purposes of such programs or, based on a certification by the Secretary of Agriculture, that the commodities are not available for reasons which include the unavailability of funds.

(b) The base period utilized for computing the minimum tonnage quantity referred to in subsection (a) for any fiscal year shall be the five fiscal years beginning with the sixth fiscal year preceding such fiscal year and ending with the second fiscal year preceding such fiscal year.

**SEC. 901d. FINANCING OF SHIPMENT OF AGRICULTURAL COMMODITIES IN UNITED STATES-FLAG VESSELS (46 U.S.C. 1241h (1996)).**

(a) **Financing by Secretary of Transportation of Increased Ocean Freight Charges.** The Secretary of Transportation shall finance any increased ocean freight charges incurred in any fiscal year which result from the application of section 901b.

(b) **Reimbursement of Secretary of Agriculture and Commodity Credit Corporation; Computations.** If in any fiscal year the total cost of ocean freight and ocean freight differential for which obligations are incurred by the Department of Agriculture and the Commodity Credit Corporation on exports of agricultural commodities and products thereof under the agricultural export programs specified in section 901b(b) exceeds 20 percent of the value of such commodities and products and the cost of such ocean freight and ocean freight differential on which obligations are incurred by such Department and Corporation during such year, the Secretary of Transportation shall reimburse the

Department of Agriculture and the Commodity Credit Corporation for the amount of such excess. For the purpose of this subsection, commodities shipped from the inventory of the Commodity Credit Corporation shall be valued as provided in section 403(b) of the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1733(b)).

(c) **Issuance, etc., of Obligations for Financing.** For the purpose of meeting those expenses required to be assumed under subsections (a) and (b), the Secretary of Transportation shall issue to the Secretary of the Treasury such obligations in such forms and denominations, bearing such maturities and subject to such terms and conditions, as may be prescribed by the Secretary of Transportation with the approval of the Secretary of the Treasury. Such obligations shall be at a rate of interest as determined by the Secretary of the Treasury, taking into consideration the average market yield on outstanding marketable obligations of the United States with remaining periods of maturity comparable to the average maturities of such obligations during the month preceding the issuance of such obligations of the Secretary of Transportation. The Secretary of the Treasury shall purchase any obligations of the Secretary of Transportation issued under this subsection and, for the purpose of purchasing such obligations, the Secretary of the Treasury may use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, United States Code, after the date of the enactment of this Act and the purposes for which securities may be issued under such chapter are extended to include any purchase of the obligations of the Secretary of Transportation under this subsection. All redemptions and purchases by the Secretary of the Treasury of the obligations of the Secretary of Transportation shall be treated as public-debt transactions of the United States.

(d) **Authorization of Appropriations.** There is authorized to be appropriated annually for each fiscal year, commencing with the fiscal year beginning October 1, 1986, an amount sufficient to reimburse the Secretary of Transportation for the costs, including administrative expenses and the principal and interest due on the obligations to the Secretary of the Treasury incurred under this section. Reimbursement of any such costs shall be made with appropriated funds, as provided in this section, rather than through cancellation of notes.<sup>29</sup>

(e) **Notification of Congress Respecting Failure to Obtain Funds Necessary for Financing.** Notwithstanding the provisions of this sec-

---

<sup>29</sup>Public Law 101-202, approved December 22, 1987 (101 STAT. 1329-27), Making Continuing Appropriations for the fiscal year 1988, and for other purposes, provides: "Such sums as may be necessary for fiscal year 1988 and thereafter are hereby appropriated to liquidate debt and pay interest due to the Secretary of the Treasury, as required by section 901d, Merchant Marine Act, 1936."

tion, in the event that 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 901b(a), the Secretary of Transportation shall so notify the Congress within 10 working days of the discovery of such insufficiency.

**SEC. 901e. AUTHORIZATION OF APPROPRIATIONS (46 App. U.S.C. 1241i (1996)).** There are authorized to be appropriated such sums as may be necessary to carry out the provisions of sections 901a through 901k.

**SEC. 901f. TERMINATION OF SECTIONS 901a THROUGH 901k (46 App. U.S.C. 1241j (1996)).** The operation of sections 901a through 901k shall terminate 90 days after the date on which a notification is made pursuant to section 901d(e), except with respect to shipments of agricultural commodities and products subject to contracts entered into before the expiration of such 90-day period, unless within such 90-day period the Secretary of Transportation proclaims that funds are available to finance increased freight charges resulting from the requirements of sections 901b(a) and 901d(a) and (b). In the event of termination under this section, nothing in sections 901a through 901d shall be construed as exempting export activities from or subjecting export activities to the cargo preference laws except to the extent those activities are exempt under section 4(b) of Public Law 95-501 (7 U.S.C. 1707a(b)). In the event of termination under this section, the 50 percent requirement in section 901(b) of the Merchant Marine Act, 1936 shall be in full effect.

**SEC. 901g. NATIONAL ADVISORY COMMISSION ON AGRICULTURAL EXPORT TRANSPORTATION POLICY (46 App. U.S.C. 1241k (1996)).**

(a) **Establishment.** There is hereby established an advisory commission to be known as the National Advisory Commission on Agricultural Export Transportation Policy (hereafter in this section through section 901j referred to as the “Commission”).

(b) **Membership; Composition, Appointment, etc.**

(1) The Commission shall be composed of 16 members.

(2) Eight members of the Commission shall be appointed by the President.

(3) The chairman and ranking minority members of the Senate Committee on Agriculture, Nutrition, and Forestry, of the Subcommittee on Merchant Marine of the Senate Committee on Commerce, Science, and Transportation, of the House Committee on Agriculture, and of the House Committee on Merchant Marine and Fisheries shall serve as members of the Commission.

(4)(A) Four of the members appointed by the President shall be representatives of agricultural producers, cooperatives, merchandisers, and processors of agricultural commodities.

(B) The remaining four members appointed by the President shall be representatives of the United States-flag maritime industry, two of whom shall represent labor and two of whom shall represent management.

(c) **Chairman; Vacancy.**

(1) The members of the Commission shall elect a Chairman from among its members.

(2) Any vacancy in the Commission does not affect its powers but shall be filled in the same manner in which the original appointment was made.

**SEC. 901h. DUTIES OF COMMISSION (46 App. U.S.C. 12411 (1996)).**

(a) **Study and Review of Ocean Transportation of Agricultural Exports Subject to Cargo Preference Laws; Recommendations, Scope, etc.** It shall be the duty of the Commission to conduct a comprehensive study and review of the ocean transportation of agricultural exports subject to the cargo preference laws referred to in section 901b and to make recommendations to the President and the Congress for improving the efficiency of such transportation on United States-flag vessels in order to reduce the costs incurred by the United States in connection with such transportation. In carrying out such study and review, the Commission shall consider the extent to which any unfair or discriminatory practices of foreign governments increase the cost to the United States of transporting agricultural commodities subject to such cargo preference laws.

(b) **Reporting Requirements; Termination of Commission.**

(1) The Commission shall submit an interim report to the President and the Congress not later than one year after the date of the enactment of this subtitle and such other interim reports as the Commission considers advisable.

(2) The Commission shall submit a final report containing its findings and recommendations to the President and the Congress not later than two years after the date of the enactment of this subtitle. The report shall include recommendations for any changes in the provisions of paragraph (1) that would help assure that the cost of ocean freight and ocean freight differential incurred by the Department of Agriculture and the Commodity Credit Corporation on the agricultural export programs specified in section 901b, is not increased above historical levels as a result of the extra demand for United States-flag vessels caused by section 901b. (3) Sixty days after the submission of the final report, the Commission shall cease to exist.

(c) **Contents of Reports.** The Commission shall include in its reports submitted pursuant to subsection (b) recommendations concerning the feasibility and desirability of achieving the following goals with respect to the ocean transportation of agricultural commodities subject to the cargo preference laws referred to in section 901b:

(1) Ensuring that the timing of commodity purchase agreements entered into by the United States in connection with the export of such commodities, and the methods of implementing such agreements, will minimize cost to the United States.

(2) Ensuring that shipments of such commodities are made on the most modern and efficient United States-flag vessels available.

(3) Ensuring that shipments of such commodities are made under the most advantageous terms available, including—

(A) charters for full shiploads;

(B) charters for intermediate or long term;

(C) charters for consecutive voyages and contracts of affreightment; and

(D) adjustment of rates in the event that vessels used for shipments of such commodities also carry cargoes on return voyages.

(4) Reduction and elimination of impediments, including delays in port, to the efficient loading and operating of the vessels employed for shipment of such commodities.

(5) Utilization of open and competitive bidding for the ocean transportation of such commodities.

**SEC. 901i. INFORMATION AND ASSISTANCE TO BE FURNISHED TO COMMISSION (46 App. U.S.C. 1241m (1996)).**

(a) Each department, agency, and instrumentality of the United States, including independent agencies, shall furnish to the Commission, upon request made by the Chairman, such statistical data, reports, and other information as the Commission considers necessary to carry out its functions.

(b) The Secretary of Agriculture and the Secretary of Transportation shall make available to the Commission such staff, personnel, and administrative services as may reasonably be required to carry out the Commission's duties.

**SEC. 901j. COMPENSATION AND TRAVEL AND SUBSISTENCE EXPENSES OF COMMISSION MEMBERS (46 App. U.S.C. 1241n (1996)).** Members of the Commission shall serve without compensation in addition to compensation they may otherwise be entitled to receive as employees of the United States or as Members of Congress, but shall be reimbursed for travel, subsistence, and other nec-

essary expenses incurred in the performance of duties vested in the Commission.

**SEC. 901k. DEFINITION OF UNITED STATES FLAG VESSEL ELIGIBLE TO CARRY CARGOES UNDER CERTAIN SECTIONS (46 App. U.S.C. 1241o (1996)).** A United States flag vessel eligible to carry cargoes under sections 901b through 901d means a vessel, as defined in section 3 of title 1, United States Code, that is necessary for national security purposes and, if more than 25 years old, is within five years of having been substantially rebuilt and certified by the Secretary of Transportation as having a useful life of at least five years after that rebuilding.

**EFFECT ON OTHER LAWS.<sup>30</sup> (46 App. U.S.C. 1241p (1996)).** This subtitle shall not be construed as, modifying in any manner the provisions of section 4(b)(8) of the Food for Peace Act of 1966 (7 U.S.C. 1707a(b)(8)) or chapter 5 of title 5, United States Code.

**SEC. 902.<sup>31</sup> REQUISITION OR PURCHASE OF VESSELS IN TIME OF EMERGENCY (46 App. U.S.C. 1242 (1996)).**

**(a) Compensation; Restoration; Consequential Damages.**

Whenever the President shall proclaim that the security of the national defense makes it advisable or during any national emergency declared by proclamation of the President, it shall be lawful for the Secretary of Transportation to requisition or purchase any vessel or other watercraft owned by citizens of the United States, a documented vessel, or a vessel under construction within the United States, or for any period during such emergency, to requisition or charter the use of any such property. The termination of any emergency so declared shall be announced by a further proclamation by the President. When any such property or the use thereof is so requisitioned, the owner thereof shall be paid just compensation for the property taken or for the use of such property, but in no case shall the value of the property taken or used be deemed enhanced by the causes necessitating the taking or use. If any property is taken and used under authority of this section, but the ownership

---

<sup>30</sup> Enacted as section 1143 of Public Law 99-198, approved December 23, 1985 (99 STAT. 1496), and not as part of the Merchant Marine Act, 1936. Applies to 46 App. U.S.C. 1241d, et seq.

<sup>31</sup> For the purposes of section 902(a), World War II and the national emergencies of September 8, 1939 and May 27, 1941 were terminated by Public Law 80-239, approved July 25, 1947 (61 STAT. 449). The President, on December 16, 1950, issued a Proclamation of National Emergency (15 F.R. 9029). Note the effect of Public Law 94-412, approved September 14, 1976 (90 STAT. 1255), the National Emergencies Act, page 363, *infra*, on existing and future declarations of a national emergency.

thereof is not required by the United States, such property shall be restored to the owner in a condition at least as good as when taken, less ordinary wear and tear, or the owner shall be paid an amount for reconditioning sufficient to place the property in such condition. The owner shall not be paid for any consequential damages arising from a taking or use of property under authority of this section.

(b) **Determination of Value of Vessel.** When any vessel is taken or used under authority of this section, upon which vessel a construction-differential subsidy has been allowed and paid, the value of the vessel at the time of its taking shall be determined as provided in section 802 of this Act, and in determining the value of any vessel taken or used, on which a construction-differential subsidy has not been paid, the value of any national defense features previously paid for by the United States shall be excluded.

(c) **Charter of Vessels; Compensation; Reimbursement for Loss or Damage.** If any property is taken and used under authority of this section, but the ownership thereof is not required by the United States, the Secretary of Transportation, at the time of the taking or as soon thereafter as the exigencies of the situation may permit, shall transmit to the person entitled to the possession of such property a charter setting forth the terms which, in the Secretary's judgment, should govern the relationships between the United States and such person and a statement of the rate of hire which, in the Secretary's judgment, will be just compensation for the use of such property and for the services required under the terms of such charter. If such person does not execute and deliver such charter and accept such rate of hire, the Secretary of Transportation shall pay to such person as a tentative advance only, on account of such just compensation a sum equal to 75 per centum of such rate of hire as the same may from time to time be due under the terms of the charter so tendered, and such person shall be entitled to sue the United States in a court having jurisdiction of such claims to recover such amounts as would be equal to just compensation for the use of the property and for the services required in connection with such use: Provided, however, That in the event of an election by such person to reject the rate of hire fixed by the Secretary of Transportation and to sue in the courts, the excess of any amounts advanced on account of just compensation over the amount of the court judgment will be required to be refunded. In the event of loss or damage to such property, due to operation of a risk assumed by the United States under the terms of a charter prescribed in this subsection, but no valuation of such vessel or other property or mode of compensation has been agreed to, the United States shall pay just compensation for such loss or damage, to the extent the person entitled thereto is not reimbursed therefor through policies of insurance against such loss or damage.

(d) **Determination of Amount of Compensation.** In all cases, the just compensation authorized by this section shall be determined and paid by the Secretary of Transportation as soon as practicable, but if the amount of just compensation determined by the Secretary of Transportation is unsatisfactory to the person entitled thereto, such person shall be paid, as a tentative advance only, 75 per centum of the amount so determined and shall be entitled to sue the United States to recover such amount as would equal just compensation therefor, in the manner provided for by section 24, paragraph 20, and section 145 of the Judicial Code (U. S. C., 1946 edition, title 28, sacs. 41 (20) and 250): Provided, however, That in the event of an election to reject the amount determined by the Secretary of Transportation and to sue in the courts, the excess of any amounts advanced on account of just compensation over the amount of the court judgment will be required to be refunded.

The existence of any valid claim by way of mortgage or maritime claim or attachment lien upon such vessel shall not prevent the taking thereof pursuant to this section: Provided, however, That in the event any such claim exists the Secretary of Transportation may in his discretion deposit such portion of the compensation hereunder, or advances on account thereof, as may equal but not exceed the amount of such claims in respect of the vessel, with the Treasurer of the United States, and the fund so deposited shall be available for the payment of such compensation, and shall be subject to be applied to the payment of the amount of any valid claim by way of mortgage or maritime lien or attachment lien upon such vessel, or of any stipulation therefor in a court of the United States, or of any State, subsisting at the time of such requisition or taking of title or possession; the holder of any such claim may commence prior to June 30, 1943, or within six months after the first such deposit with the Treasurer and publication of notice thereof in the Federal Register, whichever date is later, and maintain in the United States district court from whose custody such vessel has been or may be taken or in whose territorial jurisdiction the vessel was lying at the time of requisitioning or taking of title or possession, a suit in admiralty according to the principles of libels in rem against the fund, which shall proceed and be heard and determined according to the principles of law and to the rules of practice obtaining in like cases between private parties, and any decree in said suit shall be paid out of the first and all subsequent deposits of compensation; and such suit shall be commenced in the manner provided by section 2 of the Suits in Admiralty Act and service of process shall be made in the manner therein provided by service upon the United States attorney and by mailing by registered mail to the Attorney General and the Secretary of Transportation and due notice shall under order of the court be given to all interested persons, and any decree shall be subject to appeal and revision as now provided in other cases of admiralty and maritime jurisdiction.

(e) **Use of Vessel by Secretary; Transfer to Other Departments or Agencies; Reimbursement of Secretary.** The Secretary of Transportation is authorized to repair, recondition, reconstruct, and operate, or charter for operation, any property acquired under authority of this section. The Secretary of Transportation is further authorized to transfer the possession or control of any such property to any department or agency of the Government of the United States upon such terms and conditions as may be approved by the President. In case of any such transfer the department or agency to which the transfer is made shall promptly reimburse the Secretary of Transportation for the Department of Transportation's expenditures on account of just compensation, purchase price, repairs, reconditioning, reconstruction, or charter hire for the property transferred. Such reimbursements shall be deposited in the construction fund established by section 206 of this Act.

**SEC. 905. DEFINITIONS (46 App. U.S.C. 1244 (1996)).** When used in this Act—

(a) The words “foreign commerce” or “foreign trade” mean commerce or trade between the United States, its Territories or possessions, or the District of Columbia, and a foreign country, except that in the context of section 607 of this Act concerning capital construction funds and except that in the context of title V of this Act, concerning construction-differential subsidy, the said words “foreign commerce” or “foreign trade” shall 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 such manner as will permit U.S.-flag bulk vessels freely to compete with foreign-flag bulk carrying vessels in their operation or in competing for charters, subject to rules and regulations promulgated by the Secretary of Transportation pursuant to section 204(b) of this Act.

(b) The term “person” includes corporations, partnerships, and associations existing under or authorized by the laws of the United States, or any State, Territory, District, or possession thereof, or of any foreign country.

(c) The words “citizen of the United States” include a corporation, partnership, or association only if it is a citizen of the United States within the meaning of section 2 of the Shipping Act, 1916, as amended (U.S.C., title 46, sec. 802), and with respect to a corporation under title VI of this Act, all directors of the corporation are citizens of the United States and, in the case of a corporation, partnership, or association operating a vessel on the Great Lakes, or on bays, sounds, rivers, harbors, or inland lakes of the United States the amount of interest required to be owned by a citizen of the United States shall be not less than 75 per centum.

(d) The word “construction” includes outfitting and equipping.

(f) The terms “Representative” and “Member of the Congress” include Delegates to the House of Representatives from the District of Columbia, Guam, and the Virgin Islands, and the Resident Commissioner to the House of Representatives from the Commonwealth of Puerto Rico.

(g) The term “United States” includes the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, the Virgin Islands, and the areas and installations in the Republic of Panama made available to the United States pursuant to 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.

**SEC. 906. SEPARABILITY OF PROVISIONS; SHORT TITLE (46 App. U.S.C. 1245 (1996)).** If any provisions of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of the Act, and the application of such provisions to other persons or circumstances, shall not be affected thereby. This Act may be cited as the Merchant Marine Act, 1936.

**SEC. 908. APPOINTMENT OF SECRETARY AS TRUSTEE OR RECEIVER; OPERATION OF VESSELS UNDER COURT ORDERS; PAYMENT OF OPERATING COSTS; CLAIMS AGAINST CORPORATION (46 App. U.S.C. 1247 (1996)).**

(a) Notwithstanding any other provision of law, in any proceeding in a bankruptcy, equity, or admiralty court of the United States in which a receiver or trustee may be appointed for any corporation engaged in the operation of one or more vessels of United States registry between the United States and any foreign country, upon which the United States holds mortgages, the court, upon finding that it will inure to the advantage of the estate and the parties in interest and that it will tend to further the purposes of this Act, may constitute and appoint the Secretary of Transportation as sole trustee or receiver, subject to the directions and orders of the court, and in any such proceeding the appointment of any person other than the Secretary as trustee or receiver shall become effective upon the ratification thereof by the Secretary without a hearing, unless the Secretary shall deem a hearing necessary. In no such proceeding shall the Secretary be constituted as trustee or receiver without the Secretary’s express consent.

(b) If the court, in any such proceeding, is unwilling to permit the trustee or receiver to operate such vessels in such service pending the

termination of such proceeding, without financial aid from the Government, and the Secretary certifies to the court that the continued operation of such vessel is, in the opinion of the Secretary, essential to the foreign commerce of the United States and is reasonably calculated to carry out the purposes and policy of this Act, the court may permit the Secretary to operate the vessels subject to the orders of the court and upon terms decreed by the court sufficient to protect all the parties in interest, for the account of the trustee or receiver, directly or through a managing agent or operator employed by the Secretary, if the Secretary undertakes to pay all operating losses resulting from such operation, and comply with the terms imposed by the court, and such vessel shall be considered to be a vessel of the United States within the meaning of the Suits in Admiralty Act. The Secretary shall have no claim against the corporation, its estate, or its assets for the amount of such payments, but the Secretary may pay such sums for depreciation as it deems reasonable and such other sums as the court may deem just. The payment of such sums, and compliance with other terms duly imposed by the court, together with the payment of the operating losses, shall be in satisfaction of all claims against the Secretary on account of the operation of such vessels.

**SEC. 909. ENROLLMENT IN SEALIFT READINESS PROGRAM (46 App. U.S.C. 1248 (1996)).** No vessel may receive construction differential subsidy or operating-differential subsidy if it is not offered for enrollment in a sealift readiness program approved by the Secretary of Defense.

# TITLE XI—FEDERAL SHIP FINANCING GUARANTEE PROGRAM<sup>32</sup>

**SEC. 1101. DEFINITIONS (46 App. U.S.C. 1271 (1996)).** As used in this title—

(a) The term “mortgage” includes—

(1) a preferred mortgage as defined in section 31301 of title 46, United States Code; and

(2) a mortgage on a vessel that will become a preferred mortgage when filed or recorded under chapter 313 of title 46, United States Code.

(b) The term “vessel” includes all types, whether in existence or under construction, of passenger cargo and combination passenger cargo carrying vessels, tankers, tugs, towboats, barges, dredges and ocean thermal energy conversion facilities or plantships which are or will be documented under the laws of the United States, fishing vessels whose ownership will meet the citizenship requirements for documenting vessels in the coastwise trade within the meaning of section 2 of the Shipping Act, 1916, as amended, floating drydocks which have a capacity of thirty-five thousand or more lifting tons and a beam of one hundred and twenty-five feet or more between the wing walls and oceanographic research or instruction or pollution treatment, abatement or control vessels;<sup>33</sup>

(c) The term “obligation” shall mean any note, bond, debenture, or other evidence of indebtedness (exclusive of notes or other obligations issued by the Secretary pursuant to subsection (d) of section 1105 of this title and obligations eligible for investment of funds under section

---

<sup>32</sup> The authority provided by Title XI of the Merchant Marine Act, 1936, is severely circumscribed by section 661c(b)(1) of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a, et seq.), providing: “Notwithstanding any other provisions of the law, new direct loan obligations may be incurred and new loan guarantee commitments may be made for the fiscal year 1992 and thereafter and to the extent that—(1) appropriations of budget authority to cover their costs are made in advance.”

For the specific application of the Title XI program to reactivate a closed shipyard, see section 1139 of Public Law 104-326, page 206, *infra*.

Also see section 213 of Public Law 101-710, approved December 12, 1989 (103 STAT. 1914) providing: “Before acquiring a vessel for use by the Coast Guard, the Secretary of Transportation or the Commandant of the Coast Guard, as appropriate, shall review the inventory of vessels acquired by the Secretary or the Secretary of Commerce as a result of as a default under title XI of the Merchant Marine Act, 1936 (46 App. U.S.C. 1271-1279c), to determine whether any of those vessels are suitable for use by the Coast Guard.”

<sup>33</sup> Note reference to section 1101(b) in section 102(c)(4) of Public Law 96-283 (94 STAT. 559), the “Deep Seabed Hard Materials Resources Act”.

1102 and subsection (d) of section 1108 of this title, issued for one of the purposes specified in subsection (a) of section 1104 of this title;

(d) The term “obligor” shall mean any party primarily liable for payment of the principal of or interest on any obligation;

(e) The term “obligee” shall mean the holder of an obligation;

(f) The term “actual cost” of a vessel as of any specified date means the aggregate, as determined by the Secretary, of (i) all amounts paid by or for the account of the obligor on or before that date, and (ii) all amounts which the obligor is then obligated to pay from time to time thereafter, for the construction, reconstruction or reconditioning of such vessel;

(g) The term “depreciated actual cost” of a vessel means the actual cost of the vessel depreciated on a straightline basis over the useful life of the vessel as determined by the Secretary, not to exceed twenty-five years from the date the vessel was delivered by the shipbuilder, or, if the vessel has been reconstructed or reconditioned, the actual cost of the vessel depreciated on a straightline basis from the date the vessel was delivered by the shipbuilder to the date of such reconstruction or reconditioning on the basis of the original useful life of the vessel and from the date of such reconstruction or reconditioning on a straightline basis and on the basis of a useful life of the vessel determined by the Secretary, plus all amounts paid or obligated to be paid for the reconstruction or reconditioning depreciated on a straightline basis on the basis of a useful life of the vessel determined by the Secretary;

(h) The terms “construction”, “reconstruction”, or “reconditioning” shall include, but shall not be limited to, designing, inspecting, outfitting, and equipping;

(i) The term “ocean thermal energy conversion facility or plantship” means any at-sea facility or vessel, whether mobile, floating unmoored, moored, or standing on the seabed, which uses temperature differences in ocean water to produce electricity or another form of energy capable of being used directly to perform work, and includes any equipment installed on such facility or vessel to use such electricity or other form of energy to produce, process, refine, or manufacture a product, and any cable or pipeline used to deliver such electricity, freshwater, or product to shore, and all other associated equipment and appurtenances of such facility or vessel, to the extent they are located seaward of the highwater mark;

(j) The term “citizen of the Northern Mariana Islands” means—

(1) an individual who qualifies as such under section 8 of the Schedule on Transitional Matters attached to the Constitution of the Northern Mariana Islands; or

(2) a corporation, partnership, association, or other entity formed under the laws of the Northern Mariana Islands, not less than 75 percent of the interest in which is owned by individuals referred to in paragraph (1) or citizens or nationals of the United States, in cases in which “owned” is used in the same sense as in section 2 of the Shipping Act, 1916 (46 U.S.C. 802);

(k) The term “fishery facility” means—

(1) for operations on land—

(A) any 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 one or more fisheries,

(B) the land necessary for any such structure or appurtenance described in subparagraph (A), and

(C) equipment which is for use in connection with any such structure or appurtenance and which is necessary for the performance of any function referred to in subparagraph (A);

(2) for operations other than on land, any vessel built in the United States used for, equipped to be used for, or of a type which is normally used for, the processing of fish; or

(3) for aquaculture, including operations on land or elsewhere—

(A) any structure or appurtenance thereto designed for aquaculture;

(B) the land necessary for any such structure or appurtenance described in subparagraph (A);

(C) equipment which is for use in connection with any such structure or appurtenance and which is necessary for the performance of any function referred to in subparagraph (A); and

(D) any vessel built in the United States used for, equipped to be used for, or of a type which is normally used for aquaculture; but only if such structure, appurtenance, land, equipment, or vessel is owned by an individual who is a citizen or national of the United States or a citizen of the Northern Mariana Islands or by a corporation, partnership, association, or other entity that is a citizen of the United States within the meaning of section 2 of the Shipping Act, 1916 (46 U.S.C. 802), and for purposes of applying such section 2 with respect to this section—

(i) the term “State” as used therein includes any State, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands of the United States, Guam, the Northern Mariana Islands, or any other Commonwealth, territory, or possession of the United States; and

(ii) citizens of the United States must own not less than 75 percent of the interest in the entity and nationals of the United States or

citizens of the Northern Mariana Islands shall be treated as citizens of the United States in meeting such ownership requirement;

(l) The term “fishing vessel” has the meaning given such term by section 3(11) of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1802(11)); and any reference in this title to a vessel designed principally for commercial use in the fishing trade or industry shall be treated as a reference to a fishing vessel;

(m) The term “United States” when used in a geographical context with respect to fishing vessels or fishery facilities includes all States referred to in subsection (k)(i).

(n) The term “Secretary” means the Secretary of Commerce with respect to fishing vessels and fishing facilities as provided by this title, and the Secretary of Transportation with respect to all other vessels and general shipyard facilities (as defined in section 1112(d)(3)).

(o) The term “eligible export vessel” means a vessel constructed, reconstructed, or reconditioned in the United States for use in world-wide trade which will, upon delivery or redelivery, be placed under or continued to be documented under the laws of a country other than the United States.

**SEC. 1102. FEDERAL SHIP FINANCING FUND (46 App. U.S.C. 1272 (1996)).** There is hereby created a Federal Ship Financing Fund (hereinafter referred to as the Fund) which shall be used by the Secretary as a revolving fund for the purpose of carrying out the provisions of this title, and there shall be allocated to such Fund the sum of \$1,000,000 out of funds made available to the Secretary under the appropriation authorized by Section 1107 (46 U.S.C.). Moneys in the Fund shall be deposited in the Treasury of the United States to the credit of the Fund or invested in bonds or other obligations of, or guaranteed as to principal and interest by, the United States.

**SEC. 1103. AUTHORIZATION OF SECRETARY TO GUARANTEE OBLIGATIONS (46 App. U.S.C. 1273 (1996)).**

(a) **Principal and Interest.** The Secretary is authorized to guarantee, and to enter into commitments to guarantee, the payment of the interest on, and the unpaid balance of the principal of, any obligation which is eligible to be guaranteed under this title. A guarantee, or commitment to guarantee, made by the Secretary under this title shall cover 100 percent of the amount of the principal and interest of the obligation.

(b) **Security Interest.** No obligation shall be guaranteed under this title unless the obligor conveys or agrees to convey to the Secretary such security interest, which may include a mortgage or mortgages on a vessel or vessels, as the Secretary may reasonably require to protect the interests of the United States.

(c) **Amount of Guarantee; Percentage Limitation; Determination of Actual Cost of Vessel.** The Secretary shall not guarantee the principal of obligations in an amount in excess of 75 per centum, or 87<sup>1</sup>/<sub>2</sub> per centum, whichever is applicable under section 1104 of this title, of the amount, as determined by the Secretary which determination shall be conclusive, paid by or for the account of the obligor for the construction, reconstruction, or reconditioning of a vessel or vessels with respect to which a security interest has been conveyed to the Secretary, unless the obligor creates an escrow fund as authorized by section 1108 of this title, in which case the Secretary may guarantee 75 per centum or 87<sup>1</sup>/<sub>2</sub> per centum, whichever is applicable under section 1104 of this title, of the actual cost of such vessel or vessels.

(d) **Pledge of United States.** The full faith and credit of the United States is pledged to the payment of all guarantees made under this title with respect to 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 payment in full of the guarantee.

(e) **Proof of Obligations.** Any guarantee, or commitment to guarantee, made by the Secretary under this title shall be conclusive evidence of the eligibility of the obligations for such guarantee, and the validity of any guarantee, or commitment to guarantee, so made shall be incontestable. Notwithstanding an assumption of an obligation by the Secretary under section 1105(a) or (b) of this Act, the validity of the guarantee of an obligation made by the Secretary under this title is unaffected and the guarantee remains in full force and effect.

(f) **Limitation on Outstanding Amount.** The aggregate unpaid principal amount of the obligations guaranteed under this section and outstanding at any one time shall not exceed \$12,000,000,000, of which (1) \$850,000,000 shall be limited to obligations pertaining to guarantees of obligations for fishing vessels and fishery facilities made under this title, and (2) \$3,000,000,000 shall be limited to obligations pertaining to guarantees of obligations for eligible export vessels. No additional limitations may be imposed on new commitments to guarantee loans for any fiscal year, except in such amounts as established in advance in annual authorization Acts. No vessel eligible for guarantees under this title shall be denied eligibility because of its type.

(g) **Loan Guarantees for Export Vessels; Finding Required; Termination of Authority.**

(1) The Secretary may not issue a commitment to guarantee obligations for an eligible export vessel unless, after considering—

(A) the status of pending applications for commitments to guarantee obligations for vessels documented under the laws of the United States and operating or to be operated in the domestic or foreign commerce of the United States,

(B) the economic soundness of the applications referred to in subparagraph (A), and

(C) the amount of guarantee authority available, the Secretary determines, in the sole discretion of the Secretary, that the issuance of a commitment to guarantee obligations for an eligible export vessel will not result in the denial of an economically sound application to issue a commitment to guarantee obligations for vessels documented under the laws of the United States operating in the domestic or foreign commerce of the United States.

(2) The Secretary may not issue commitments to guarantee obligations for eligible export vessels under this section after the later of—

(A) the 5th anniversary of the date on which the Secretary publishes final regulations setting forth the application procedures for the issuance of commitments to guarantee obligations for eligible export vessels,

(B) the last day of any 5-year period in which funding and guarantee authority for obligations for eligible export vessels have been continuously available, or

(C) the last date on which those commitments may be issued under any treaty or convention entered into after the date of the enactment of the National Shipbuilding and Shipyard Conversion Act of 1993 that prohibits guarantee of those obligations.

(h) **Risk Factor Determinations.**<sup>34</sup>

(1) The Secretary shall—

(A) establish in accordance with this subsection a system of risk categories for obligations guaranteed under this title, that categorizes the relative risk of guarantees made under this title with respect to the risk factors set forth in paragraph (3); and

(B) determine for each of the risk categories a subsidy rate equivalent to the cost of obligations in the category, expressed as a percentage of the amount guaranteed under this title for obligations in the category.

(2)(A) Before making a guarantee under this section for an obligation, the Secretary shall apply the risk factors set forth in paragraph (3) to place the obligation in a risk category established under paragraph (1)(A).<sup>35</sup>

---

<sup>34</sup> Subsection (h) was added by Section 13(a) of Public Law 104-239, approved October 8, 1996 (110 STAT. 3135), the Maritime Security Act of 1996.

<sup>35</sup> Section 13(b) of the Public Law 104-239, approved October 8, 1996 (110 STAT. 3135), the Maritime Security Act of 1996, provides: “(b) **Application.**— Subsection (h)(2) of section 1103 of the Merchant Marine Act, 1936 (46 U.S.C. App. 1273), as amended by subsection (a) of this section, shall apply to guarantees that the Secretary of Transportation makes or commits to make with any amounts that are unobligated on or after the date of enactment of this Act.”

(B) The Secretary shall consider the aggregate amount available to the Secretary for making guarantees under this title to be reduced by the amount determined by multiplying—

(i) the amount guaranteed under this title for an obligation, by

(ii) the subsidy rate for the category in which the obligation is placed under subparagraph (A) of this paragraph.

(C) The estimated cost to the Government of a guarantee made by the Secretary under this title for an obligation is deemed to be the amount determined under subparagraph (B) for the obligation.

(D) The Secretary may not guarantee obligations under this title after the aggregate amount available to the Secretary under appropriations Acts for the cost of loan guarantees is required by subparagraph (B) to be considered reduced to zero.

(3) The risk factors referred to in paragraphs (1) and (2) are the following:

(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, which is 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, any guarantee related to the project, other than the guarantee under this title for which the risk factor is applied.

(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 title is or will be in effect during the construction period of the project.

(4) 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).

**SEC. 1104A. ELIGIBILITY FOR GUARANTEE (46 App. U.S.C. 1274 (1996)).**

(a) **Purpose of Obligations.** Pursuant to the authority granted under section 1103(a) , the Secretary upon such terms as he shall prescribe,

may guarantee or make a commitment to guarantee, payment of the principal of and interest on an obligation which aids in—

(1) financing, including reimbursement of an obligor for expenditures previously made for, construction, reconstruction, or reconditioning of a vessel (including an eligible export vessel), which is designed principally for research, or for commercial use (A) in the coastwise or inter-coastal trade; (B) on the Great Lakes, or on bays, sounds, rivers, harbors, or inland lakes of the United States; (C) in foreign trade as defined in section 905 of this Act for purposes of title V of this Act; or (D) as an ocean thermal energy conversion facility or plantship; (E) with respect to floating drydocks in the construction, reconstruction, reconditioning, or repair of vessels; or (F) with respect to an eligible export vessel, in world-wide trade; Provided, however, That no guarantee shall be entered into pursuant to this paragraph (a)(1) later than one year after delivery, or redelivery in the case of reconstruction or reconditioning of any such vessel unless the proceeds of the obligation are used to finance the construction, reconstruction, or reconditioning of a vessel or vessels, or facilities or equipment pertaining to marine operations;

(2) financing, including reimbursement of an obligor for expenditures previously made for, construction, reconstruction, reconditioning, or purchase of a vessel or vessels owned by citizens or nationals of the United States or citizens of the Northern Mariana Islands which are designed principally for research, or for commercial use in the fishing trade or industry;

(3) financing the purchase, reconstruction, or reconditioning of vessels or fishery facilities for which obligations were guaranteed under this title that, under the provisions of section 1105:

(A) are vessels or fishery facilities for which obligations were accelerated and paid;

(B) were acquired by the Fund; or

(C) were sold at foreclosure instituted by the Secretary;

(4) financing, in whole or in part, the repayment to the United States of any amount of construction-differential subsidy paid with respect to a vessel pursuant to title V of this Act, as amended;

(5) refinancing existing obligations issued for one of the purposes specified in (1), (2), (3), or (4) whether or not guaranteed under this title, including, but not limited to, short-term obligations incurred for the purpose of obtaining temporary funds with the view to refinancing from time to time; or

(6) financing or refinancing, including, but not limited to, the reimbursement of obligors for expenditures previously made for, the construction, reconstruction, reconditioning, or purchase of fishery facilities.

Any obligation guaranteed under paragraph (6) shall be treated, for purposes of this title, in the same manner and to the same extent as an obligation guaranteed under this title which aids in the construction, reconstruction, reconditioning, or purchase of a vessel; except with respect to provisions of this title that by their nature can only be applied to vessels.

**(b) Contents of Obligations.** Obligations guaranteed under this title—

(1) shall have an obligor approved by the Secretary as responsible and possessing the ability, experience, financial resources, and other qualifications necessary to the adequate operation and maintenance of the vessel or vessels which serve as security for the guarantee of the Secretary;

(2) subject to the provisions of subsection (c)(1) and subsection (i), shall be in an aggregate principal amount which does not exceed 75 per centum of the actual cost or depreciated actual cost, as determined by the Secretary, of the vessel which is used as security for the guarantee of the Secretary: Provided, however, That in the case of a vessel, the size and speed of which are approved by the Secretary, and which is or would have been eligible for mortgage aid for construction under section 509 of this Act (or would have been eligible for mortgage aid under section 509 of this Act, except that the vessel was built with the aid of construction-differential subsidy and said subsidy has been repaid) and in respect of which the minimum downpayment by the mortgagor required by that section would be or would have been  $12\frac{1}{2}$  per centum of the cost of such vessel, such obligations may be in an amount which does not exceed  $87\frac{1}{2}$  per centum of such actual cost or depreciated actual cost: Provided, further, That the obligations which relate to a barge which is constructed without the aid of construction-differential subsidy, or, if so subsidized, on which said subsidy has been repaid, may be in an aggregate principal amount which does not exceed  $87\frac{1}{2}$  per centum of the actual cost or depreciated actual cost thereof:

Provided further, That in the case of a fishing vessel or fishery facility, the obligation shall be in an aggregate principal amount equal to 80 per cent of the actual cost or depreciated actual cost of the fishing vessel or fishery facility, except that no debt may be placed under this proviso through the Federal Financing Bank: Provided further, That in the case of an ocean thermal energy conversion facility or plantship which is constructed without the aid of construction-differential subsidy, such obligations may be in an aggregate principal amount which does not exceed  $87\frac{1}{2}$  percent of the actual cost or depreciated actual cost of the facility or plantship: Provided further, That in the case of an eligible export vessel, such obligations may be in an aggregate principal amount which does not exceed  $87\frac{1}{2}$  percent of the actual cost or depreciated actual cost of the eligible export vessel;

(3) shall have maturity dates satisfactory to the Secretary but, subject to the provisions of paragraph (2) of subsection (c) of this section, not to exceed twenty-five years from the date of the delivery of the vessel which serves as security for the guarantee of the Secretary or, if the vessel has been reconstructed or reconditioned, not to exceed the later of (i) twenty-five years from the date of delivery of the vessel and (ii) the remaining years of the useful life of the vessel as determined by the Secretary;

(4) shall provide for payments by the obligor satisfactory to the Secretary;

(5) shall bear interest (exclusive of charges for the guarantee and service charges, if any) at rates not to exceed such per centum per annum on the unpaid principal as the Secretary determines to be reasonable, taking into account the range of interest rates prevailing in the private market for similar loans and the risks assumed by the Secretary;

(6) shall provide, or a related agreement shall provide, that if the vessel used as security for the guarantee of the Secretary is a delivered vessel, the vessel shall be in class A-1, American Bureau of Shipping, or shall meet such other standards as may be acceptable to the Secretary, with all required certificates, including but not limited to, marine inspection certificates of the United States Coast Guard or, in the case of an eligible export vessel, of the appropriate national flag authorities under a treaty, convention, or other international agreement to which the United States is a party, with all outstanding requirements and recommendations necessary for retention of class accomplished, unless the Secretary permits a deferment of such repairs, and shall be tight, staunch, strong and well and sufficiently tackled, appareled, furnished, and equipped, and in every respect seaworthy and in good running condition and repair, and in all respects fit for service; and

(7) may provide, or a related agreement may provide, if the vessel used as security for the guarantee of the Secretary is a passenger vessel having the tonnage, speed, passenger accommodations and other characteristics set forth in title V of this Act, as amended, and if the Secretary approves, that the sole recourse against the obligor by the United States for any payments under the guarantee shall be limited to repossession of the vessel and the assignment of insurance claims and that the liability of the obligor for any payments of principal and interest under the guarantee shall be satisfied and discharged by the surrender of the vessel and all right, title, and interest therein to the United States: Provided, That the vessel upon surrender shall be (i) free and clear of all liens and encumbrances whatsoever except the security interest conveyed to the Secretary under this title, (ii) in class, and (iii) in as good order and condition, ordinary wear and tear excepted, as when acquired by the obligor, except that any deficiencies with respect to freedom from encum-

branches, condition and class may, to the extent covered by valid policies of insurance, be satisfied by the assignment to the Secretary of claims of the obligor under such policies.

The Secretary may not establish, as a condition of eligibility for guarantee under this title, a minimum principal amount for an obligation covering the reconstruction or reconditioning of a fishing vessel or fishery facility. For purposes of this title, 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.

**(c) Security.**

(1) The security for the guarantee of an obligation by the Secretary under this title may relate to more than one vessel and may consist of any combination of types of security. The aggregate principal amount of obligations which have more than one vessel as security for the guarantee of the Secretary under this title may equal, but not exceed, the sum of the principal amount of obligations permissible with respect to each vessel.

(2) If the security for the guarantee of an obligation by the Secretary under this title relates to more than one vessel, such obligation may have the latest maturity date permissible under subsection (b) of this section with respect to any of such vessels: Provided, That the Secretary may require such payments of principal, prior to maturity, with respect to all related obligations as he deems necessary in order to maintain adequate security for his guarantee.

**(d) Restrictions.**

(1)(A) No commitment to guarantee, or guarantee of, an obligation shall be made by the Secretary of Transportation unless the Secretary finds that the property or project with respect to which the obligation will be executed will be economically sound. In making that determination, the Secretary shall consider—

(i) 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 title is in effect;

(ii) the market potential for the employment of the vessel over the life of the guarantee;

(iii) projected revenues and expenses associated with employment of the vessel;

(iv) any charters, contracts of affreightment, transportation agreements, or similar agreements or undertakings relevant to the employment of the vessel;

(v) other relevant criteria; and

(vi) for inland waterways, the need for technical improvements, including but not limited to increased fuel efficiency, or improved safety.

(B) No commitment to guarantee, or guarantee of, an obligation shall be made by the Secretary of Commerce unless the Secretary finds, at or prior to the time such commitment is made or guarantee becomes effective, that the property or project with respect to which the obligation will be executed will be, in the Secretary's opinion, economically sound and in the case of fishing vessels, that the purpose of the financing or refinancing is consistent with the wise use of the fisheries resources and with the development, advancement, management, conservation, and protection of the fisheries resources, or with the need for technical improvements including but not limited to increased fuel efficiency or improved safety.

(2) No commitment to guarantee, or guarantee of an obligation may be made by the Secretary under this title for the purchase of a used fishing vessel or used fishery facility unless—

(A) the vessel or facility will be reconstructed or reconditioned in the United States and will contribute to the development of the United States fishing industry; or

(B) the vessel or facility will be used in the harvesting of fish from, or for a purpose described in section 1101(k) with respect to, an underutilized fishery.

(3) No commitment to guarantee, or guarantee of an obligation may be made by the Secretary under this title for the construction, reconstruction, or reconditioning of an eligible export vessel unless—

(A) the Secretary finds that the construction, reconstruction, or reconditioning of that 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, and

(B) the owner of the vessel agrees with the Secretary of Transportation that the vessel shall not be transferred to any country designated by the Secretary of Defense as a country whose interests are hostile to the interests of the United States.

(e)(1) **Guarantee Fees.** Except as otherwise provided in this subsection, the Secretary shall prescribe regulations to assess in accordance with this subsection a fee for the guarantee of an obligation under this title.

(2)(A) The amount of a fee under this subsection for a guarantee is equal to the sum determined by adding the amounts determined under subparagraph (B) for the years in which the guarantee is in effect.

(B) The amount referred to in subparagraph (A) for a year is the present value (determined by applying the discount rate determined under subparagraph (F)) of the amount determined by multiplying—

(i) the estimated average unpaid principal amount of the obligation that will be outstanding during the year (determined in accordance with subparagraph (E)), by

(ii) the fee rate established under subparagraph (C) for the obligation for each year.

(C) The fee rate referred to in subparagraph (B)(ii) for an obligation shall be—

(i) in the case of an obligation for a delivered vessel or equipment, not less than one-half of 1 percent and not more than 1 percent, determined by the Secretary for the obligation under the formula established under subparagraph (D); or

(ii) in the case of an obligation for a vessel to be constructed, reconstructed, or reconditioned, or of equipment to be delivered, not less than one-quarter of 1 percent and not more than one-half of 1 percent, determined by the Secretary for the obligation under the formula established under subparagraph (D).

(D) The Secretary shall establish a formula for determining the fee rate for an obligation for purposes of subparagraph (C), that—

(i) is a sliding scale based on the creditworthiness of the obligor;

(ii) takes into account the security provided for a guarantee under this title for the obligation; and

(iii) uses—

(I) in the case of the most creditworthy obligors, the lowest rate authorized under subparagraph (C) (i) or (ii), as applicable; and

(II) in the case of the least creditworthy obligors, the highest rate authorized under subparagraph (C) (i) or (ii), as applicable.

(E) For purposes of subparagraph (B)(i), the estimated average unpaid principal amount does not include the average amount (except interest) on deposit in a year in the escrow fund under section 1108.

(F) For purposes of determining present value under subparagraph (B) for an obligation, the Secretary shall apply a discount rate determined by the Secretary of the Treasury taking into consideration current market yields on outstanding obligations of the United States having periods to maturity comparable to the period to maturity for the obligation with respect to which the determination of present value is made.

(3) A fee under this subsection shall be assessed and collected not later than the date on which amounts are first paid under an obligation with respect to which the fee is assessed.

(4) A fee paid under this subsection is not refundable. However, an obligor shall receive credit for the amount paid for the remaining term

of the guaranteed obligation if the obligation is refinanced and guaranteed under this title after such refinancing.

(5) A fee paid under subsection (e) shall be included in the amount of the actual cost of the obligation guaranteed under this title and is eligible to be financed under this title.

(f) **Investigation of Applications.** The Secretary shall charge and collect from the obligor such amounts as he may deem reasonable for the investigation of applications for a guarantee, for the appraisal of properties offered as security for a guarantee, for the issuance of commitments, for services in connection with the escrow fund authorized by section 1108 and for the inspection of such properties during construction, reconstruction, or reconditioning: Provided, That such charges shall not aggregate more than one-half of 1 per centum of the original principal amount of the obligations to be guaranteed.

(g) **Disposition of Moneys.** All moneys received by the Secretary under the provisions of sections 1101—1107 of this title shall be deposited in the Fund.

(h) **Additional Requirements.** Obligations guaranteed under this title and agreements relating thereto shall contain such other provisions with respect to the protection of the security interests of the United States (including acceleration, assumptions, and subrogation provisions and the issuance of notes by the obligor to the Secretary), liens and releases of liens, payments of taxes, and such other matters as the Secretary may, in his discretion, prescribe.

(i) **Limitation on Establishment of Percentage.** The Secretary may not, with respect to—

(1) the general 75 percent or less limitation in subsection (b)(2);

(2) the 87 1/2 percent or less limitation in the 1st, 2nd, 4th, or 5th proviso to subsection (b)(2) or section 1112(b); or

(3) the 80 percent or less limitation in the 3rd proviso to such subsection; establish by rule, regulation, or procedure any percentage within any such limitation that is, or is intended to be, applied uniformly to all guarantees or commitments to guarantee made under this section that are subject to the limitation.

(j) **Procedure upon Receiving Loan Guarantee Application.**

(1) Upon receiving an application for a loan guarantee for an eligible export vessel, the Secretary shall promptly provide to the Secretary of Defense notice of the receipt of the application. During the 30-day period beginning on the date on which the Secretary of Defense receives such notice, the Secretary of Defense may disapprove the loan guarantee based on the assessment of the Secretary of the potential use of the vessel in a manner that may cause harm to United States national secu-

rity interests. The Secretary of Defense may not disapprove a loan guarantee under this section solely on the basis of the type of vessel to be constructed with the loan guarantee. The authority of the Secretary to disapprove a loan guarantee under this section may not be delegated to any official other than a civilian officer of the Department of Defense appointed by the President, by and with the advice and consent of the Senate.

(2) The Secretary of Transportation may not make a loan guarantee disapproved by the Secretary of Defense under paragraph (1).

**SEC. 1104B. FINANCING CONTRACT FOR CONSTRUCTION OR RECONSTRUCTION OF COMMERCIAL VESSEL; VESSEL REPLACEMENT GUARANTEE FUND (46 App. U.S.C. 1124a (1996)).**

(a) Notwithstanding the provisions of this title, except as provided in subsection (d) of this section, the Secretary, upon the terms the Secretary may prescribe, may guarantee or make a commitment to guarantee, payment of the principal of and interest on an obligation which aids in financing and refinancing, including reimbursement to an obligor for expenditures previously made, of a contract for construction or reconstruction of a vessel or vessels which are designed and to be employed for commercial use in the coastwise or intercoastal trade or in foreign trade as defined in section 905 of this Act if—

(1) the construction or reconstruction by an applicant is made necessary to replace vessels the continued operation of which is denied by virtue of the imposition of a statutorily mandated change in standards for the operation of vessels, and where, as a matter of law, the applicant would otherwise be denied the right to continue operating vessels in the trades in which the applicant operated prior to the taking effect of the statutory or regulatory change;

(2) 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 changes in operating standards imposed by statute;

(3) the capacity of the vessels to be constructed or reconstructed under this title will not increase the cargo carrying capacity of the vessels being replaced;

(4) the Secretary has not made a determination that the market demand for the vessel over its useful life will diminish so as to make the granting of the guarantee fiducially imprudent; and

(5) the Secretary has considered the provisions of section 1104A(d)(1)(A)(iii), (iv), and (v) of this title.

(b) For the purposes of this section—

(1) the maximum term for obligations guaranteed under this program may not exceed 25 years;

(2) obligations guaranteed may not exceed 87 1/2 percent of the actual cost or depreciated actual cost to the applicant for the construction or reconstruction of the vessel; and

(3) reconstruction cost obligations may not be guaranteed unless the vessel after reconstruction will have a useful life of at least 15 years.

The Secretary may not by rule, regulation, or procedure establish any percentage within the 87 1/2 percent or less limitation in paragraph (2) that is, or is intended to be, applied uniformly to all guarantees or commitments to guarantee made under this section.

(c)(1) The Secretary shall by rule require that the applicant provide adequate security against default. The Secretary may, in addition to any fees assessed under section 1104A(e), establish a Vessel Replacement Guarantee Fund into which shall be paid by obligors under this section—

(A) annual fees which may be an additional amount on the loan guarantee fee in section 1104A(e) not to exceed an additional 1 percent; or

(B) fees 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.

2) The Vessel Replacement Guarantee Fund shall be a subaccount in the Federal Ship Financing Fund, and shall—

(A) be the depository for all moneys received by the Secretary under sections 1101 through 1107 of this title with respect to guarantee or commitments to guarantee made under this section;

(B) not include investigation fees payable under section 1104A(f) which shall be paid to the Federal Ship Financing Fund; and

(C) be the depository, whenever there shall be outstanding any notes or obligations issued by the Secretary under section 1105(d) with respect to the Vessel Replacement Guarantee Fund, for all moneys received by the Secretary under sections 1101 through 1107 from applicants under this section.

(d) The program created by this section shall, in addition to the requirements of this section, be subject to the provisions of sections 1101 through 1103; 1104A(b)(1), (4), (5), (6); 1104A(e); 1104A(f); 1104A(h); and 1105 through 1107; except that the Federal Ship Financing Fund is not liable for any guarantees or commitments to guarantee issued under this section.

**SEC. 1105. DEFAULTS (46 App. U.S.C. 1275 (1996)).**

(a) **Rights of Obligee.** In the event of a default, which has continued for thirty days, in any payment by the obligor of principal or interest due under an obligation guaranteed under this title, the obligee or his agent shall have the right to demand (unless the Secretary shall, upon such terms as may be provided in the obligation or related agreements, prior to that demand, have assumed the obligor's rights and duties under the obligation and agreements and shall have made any payments in default) at or before the expiration of such period as may be specified in the guarantee or related agreements, but not later than ninety days from the date of such default, payment by the Secretary of the unpaid principal amount of said obligation and of the unpaid interest thereon to the date of payment. Within such period as may be specified in the guarantee or related agreements, but not later than thirty days from the date of such demand, the Secretary shall promptly pay to the obligee or his agent the unpaid principal amount of said obligation and unpaid interest thereon to the date of payment: Provided, That the Secretary shall not be required to make such payment if prior to the expiration of said period he shall find that there was no default by the obligor in the payment of principal or interest or that such default has been remedied prior to any such demand.

(b) **Notice of Default.** In the event of a default under a mortgage, loan agreement, or other security agreement between the obligor and the Secretary, the Secretary may upon such terms as may be provided in the obligation or related agreement, either:

(1) assume the obligor's rights and duties under the agreement, make any payment in default, and notify the obligee or the obligee's agent of the default and the assumption by the Secretary; or

(2) notify the obligee or the obligee's agent of the default, and the obligee or the obligee's agent shall have the right to demand at or before the expiration of such period as may be specified in the guarantee or related agreements, but not later than 60 days from the date of such notice, payment by the Secretary of the unpaid principal amount of said obligation and of the unpaid interest thereon. Within such period as may be specified in the guarantee or related agreements, but not later than 30 days from the date of such demand, the Secretary shall promptly pay to the obligee or the obligee's agent the unpaid principal amount of said obligation and unpaid interest thereon to the date of payment.

(c) **Secretary to Complete, Sell or Operate Property.** In the event of any payment or assumption by the Secretary under subsection (a) or (b) of this section, the Secretary shall have all rights in any security held by him relating to his guarantee of such obligations as are conferred upon him under any security agreement with the obligor. Notwithstanding any

other provision of law relating to the acquisition, handling, or disposal of property by the United States, the Secretary shall have the right, in his discretion, to complete, recondition, reconstruct, renovate, repair, maintain, operate, charter, or sell any property acquired by him pursuant to a security agreement with the obligor or may place a vessel in the national defense reserve. The terms of the sale shall be as approved by the Secretary.

(d) **Cash Payments; Issuance of Notes of Obligations.** Any amount required to be paid by the Secretary pursuant to subsection (a) or (b) of this section, shall be paid in cash. If at any time the moneys in the Fund authorized by section 1102 of this Act are not sufficient to pay any amount the Secretary is required to pay by subsection (a) or (b) of this section, the Secretary is authorized to issue to the Secretary of the Treasury notes or other obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be prescribed by the Secretary, with the approval of the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of such notes or other obligations. The Secretary of the Treasury is authorized and directed to purchase any notes and other obligations to be issued hereunder and for such purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act<sup>36</sup>, as amended, and the purposes for which securities may be issued under such Act, as amended, are extended to include any purchases of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this section. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States. Funds borrowed under this section shall be deposited in the Fund and redemptions of such notes and obligations shall be made by the Secretary from such Fund.

(e) **Actions Against Obligor.** In the event of a default under any guaranteed obligation or any related agreement, the Secretary shall take such action against the obligor or any other parties liable thereunder that, in his discretion, may be required to protect the interests of the United States. Any suit may be brought in the name of the United States or in the name of the obligee and the obligee shall make available to the United States all records and evidence necessary to prosecute any such

---

<sup>36</sup> The Second Liberty Bond Act was enacted as Chapter 59, Public Law 65-43, approved September 24, 1917 (40 STAT. 288-295), and repealed by section 5(b) of Public Law 97-258, approved September 13, 1982 (92 STAT. 1072).

suit. The Secretary shall have the right, in his discretion, to accept a conveyance of title to and possession of property from the obligor or other parties liable to the Secretary, and may purchase the property for an amount not greater than the unpaid principal amount of such obligation and interest thereon. In the event that the Secretary shall receive through the sale of property an amount of cash in excess of the unpaid principal amount of the obligation and unpaid interest on the obligation and the expenses of collection of those amounts, the Secretary shall pay the excess to the obligor.

**SEC. 1108. ESCROW FUND (46 App. U.S.C. 1270a (1996)).**

(a) **Creation.** If the proceeds of an obligation guaranteed under this title are to be used to finance the construction, reconstruction, or reconditioning of a vessel or vessels which will serve as security for the guarantee of the Secretary, the Secretary is authorized to accept and hold, in escrow under an escrow agreement with the obligor, a portion of the proceeds of all obligations guaranteed under this title whose proceeds are to be so used which is equal to: (i) the excess of the principal amount of all obligations whose proceeds are to be so used over 75 per centum, or 87 $\frac{1}{2}$  per centum, whichever is applicable under section 1104 of this title, paid by or for the account of the obligor for the construction, reconstruction, or reconditioning of the vessel or vessels; (ii) with such interest thereon, if any, as the Secretary may require: Provided, That in the event the security for the guarantee of an obligation by the Secretary relates both to a vessel or vessels to be constructed, reconstructed or reconditioned and to a delivered vessel or vessels, the principal amount of such obligation shall be prorated for purposes of this subsection (a) under regulations prescribed by the Secretary.

(b) **Disbursement Prior to Termination of Escrow Agreement.** The Secretary shall, as specified in the escrow agreement, disburse the escrow fund to pay amounts the obligor is obligated to pay as interest on such obligations or for the construction, reconstruction, or reconditioning of the vessel or vessels used as security for the guarantee of the Secretary under this title, to redeem such obligations in connection with a refinancing under paragraph (4) of subsection (a) of section 1104 or to pay to the obligor at such times as may be provided for in the escrow agreement any excess interest deposits, except that if payments become due under the guarantee prior to the termination of the escrow agreement, all amounts in the escrow fund at the time such payments become due (including realized income which has not yet been paid to the obligor) shall be paid into the Fund and (i) be credited against any amounts due or to become due to the Secretary from the obligor with respect to the guaranteed obligations and (ii) to the extent not so required, be paid to the obligor.

(c) **Disbursement upon Termination of Escrow Agreement.** If payments under the guarantee have not become due prior to the termination of the escrow agreement, any balance of the escrow fund at the time of such termination shall be disbursed to prepay the excess of the principal of all obligations whose proceeds are to be used to finance the construction, reconstruction, or reconditioning of the vessel or vessels which serve or will serve as security for such guarantee over 75 per centum or 87<sup>1</sup>/<sub>2</sub> per centum, whichever is applicable under section 1104 of this title, of the actual cost of such vessel or vessels to the extent paid, and to pay interest on such prepaid amount of principal, and the remainder of such balance of the escrow fund shall be paid to the obligor.

(d) **Investment of Fund.** The Secretary may invest and reinvest all or any part of the escrow fund in obligations of the United States with such maturities that the escrow fund will be available as required for purposes of the escrow agreement.

(e) **Payment of Income.** Any income realized on the escrow fund shall, upon receipt, be paid to the obligor.

(f) **Terms of Escrow Agreement.** The escrow agreement shall contain such other terms as the Secretary may consider necessary to protect fully the interests of the United States.

## **SEC. 1110. OCEAN THERMAL ENERGY CONVERSION DEMONSTRATION FACILITIES AND PLANTSHIPS (46 App. U.S.C. 1279c (1996)).**

(a) **Financing of Construction, Reconstruction, or Reconditioning.** Pursuant to the authority granted under section 1103(a) of this title, the Secretary, upon such terms as he shall prescribe, may guarantee or make a commitment to guarantee, payment of the principal of and interest on an obligation which aids in financing, including reimbursement of an obligor for expenditures previously made for, construction, reconstruction, or reconditioning of a commercial demonstration ocean thermal energy conversion facility or plantship. Guarantees or commitments to guarantee under this subsection shall be subject to all the provisos, requirements, regulations, and procedures which apply to guarantees or commitments to guarantee made pursuant to section 1104(a)(1) of this title, except that—

(1) no guarantees or commitments to guarantee may be made by the Secretary under this subsection before October 1, 1981;

(2) the provisions of subsection (d) of section 1104 of this title shall apply to guarantees or commitments to guarantee for that portion of a commercial demonstration ocean thermal energy conversion facility or plantship not to be supported with appropriated Federal funds;

(3) guarantees or commitments to guarantee made pursuant to this section may be in an aggregate principal amount which does not exceed

87<sup>1</sup>/<sub>2</sub> percent of the actual cost or depreciated actual cost of the commercial demonstration ocean thermal energy conversion facility or plantship: Provided, That, if the commercial demonstration ocean thermal energy conversion facility or plantship is supported with appropriated Federal funds, such guarantees or commitments to guarantee may not exceed 87<sup>1</sup>/<sub>2</sub> percent of the aggregate principal amount of that portion of the actual cost or depreciated actual cost for which the obligor has an obligation to secure financing in accordance with the terms of the agreement between the obligor and the Department of Energy or other Federal agency; and

(4) the provisions of this section may be used to guarantee obligations for a total of not more than 5 separate commercial demonstration ocean thermal energy conversion facilities and plantships or a demonstrated 400 megawatt capacity, whichever comes first.

(b) **Certification of Reasonableness of Risk.** A guarantee or commitment to guarantee shall not be made under this section unless the Secretary of Energy, in consultation with the Secretary, certifies to the Secretary that, for the ocean thermal energy conversion 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 Federal Government to a level which is reasonable. The Secretary of Energy must base his considerations on the following: (1) the successful demonstration of the technology to be used in such 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 such facility or plantship.

(c) **OTEC Demonstration Fund.** A special subaccount in the Federal Ship Financing Fund, to be known as the OTEC Demonstration Fund, shall be established on October 1, 1981. The OTEC Demonstration Fund shall be used for obligation guarantees authorized under this section which do not qualify under other sections of this title. Except as specified otherwise in this section, the operation of the OTEC Demonstration Fund shall be identical with that of the parent Federal Ship Financing Fund: except that, notwithstanding the provisions of section 1104(g), (1) all moneys received by the Secretary pursuant to sections 1101 through 1107 of this title with respect to guarantees or commitments to guarantee made pursuant to this section shall be deposited only in the OTEC Demonstration Fund, and (2) whenever there shall be outstanding any notes or other obligations issued by the Secretary pursuant to section 1105(d) of this title with respect to the OTEC Demonstration Fund, all moneys received by the Secretary pursuant to sections 1101 through 1107 of this title with respect to ocean

thermal energy conversional facilities or plantships shall be deposited in the OTEC Demonstration Fund. Assets in the OTEC Demonstration Fund may at any time be transferred to the parent fund whenever and to the extent that the balance thereof exceeds the total guarantees or commitments to guarantee made pursuant to this section then outstanding, plus any notes or other obligations issued by the Secretary pursuant to section 1105(d) of this title with respect to the OTEC Demonstration Fund. The Federal Ship Financing Fund shall not be liable for any guarantees or commitments to guarantee issued pursuant to this section. The aggregate unpaid principal amount of the obligations guaranteed with the backing of the OTEC Demonstration Fund and outstanding at any one time shall not exceed \$1,650,000,000.

(d) **Notes and Obligations** . The provisions of section 1105(d) of this title shall apply specifically to the OTEC Demonstration Fund as well as to the Fund: Provided, however, That any notes or obligations issued by the Secretary pursuant to section 1105(d) of this title with respect to the OTEC Demonstration Fund shall be payable solely from proceeds realized by the OTEC Demonstration Fund.

(e) **Taxability of Interest**. The interest on any obligation guaranteed under this section shall be included in gross income for purposes of chapter 1 of the Internal Revenue Code of 1954.

## **SEC. 1111. AUTHORITY FOR SECRETARY OF TRANSPORTATION TO MAKE LOAN GUARANTEES (46 App. U.S.C. 1279d (1996)).**

(a) **Authority to Guarantee Obligations for Eligible Export Vessels**. The Secretary may guarantee obligations for eligible export vessels—

(1) in accordance with the terms and conditions of this title applicable to loan guarantees in the case of vessels documented under the laws of the United States; or

(2) in accordance with such other terms as the Secretary determines to be more favorable than the terms otherwise provided in this title and to be compatible with export credit terms offered by foreign governments for the sale of vessels built in foreign shipyards.

(b) **Interagency Council**.

(1) **Establishment; Composition**. There is hereby established an interagency council for the purposes of this section. The council shall be composed of the Secretary of Transportation, who shall be chairman of the Council, the Secretary of the Treasury, the Secretary of State, the Assistant to the President for Economic Policy, the United States Trade Representative, and the President and Chairman of the United States Export-Import Bank, or their designees.

(2) **Purpose of the Council.** The council shall—

(A) obtain information on shipbuilding loan guarantees, on direct and indirect subsidies, and on other favorable treatment of shipyards provided by foreign governments to shipyards in competition with United States shipyards; and

(B) provide guidance to the Secretary in establishing terms for loan guarantees for eligible export vessels under subsection (a)(2).

(3) **Consultation with U.S. Shipbuilders.** The council shall consult regularly with United States shipbuilders to obtain the essential information concerning international shipbuilding competition on which to set terms and conditions for loan guarantees under subsection (a)(2).

(4) **Annual Report.** Not later than January 31 of each year (beginning in 1995), the Secretary of Transportation shall submit to Congress a report on the activities of the Secretary under this section during the preceding year. Each report shall include documentation of sources of information on assistance provided by the governments of other nations to shipyards in those nations and a summary of recommendations made to the Secretary during the preceding year regarding applications submitted to the Secretary during that year for loan guarantees under this title for construction of eligible export vessels.

## **SEC. 1112. LOAN GUARANTEES FOR SHIPYARD MODERNIZATION AND IMPROVEMENT (46 App. U.S.C. 1279e (1996)).**

(a) The Secretary, under section 1103(a) and subject to the terms the Secretary shall prescribe, may guarantee or make a commitment to guarantee the payment of the principal of, and the interest on, an obligation for advanced shipbuilding technology and modern shipbuilding technology of a general shipyard facility located in the United States.

(b) Guarantees or commitments to guarantee under this section are subject to the extent applicable to all the laws, requirements, regulations, and procedures that apply to guarantees or commitments to guarantee made under this title, except that guarantees or commitments to guarantee made under this section may be in the aggregate principal amount that does not exceed 87½ percent of the actual cost of the advanced shipbuilding technology or modern shipbuilding technology.

(c) The Secretary may accept the transfer of funds from any other department, agency, or instrumentality of the United States Government and may use those funds to cover the cost (as defined in section 502 of the Federal Credit Reform Act of 1990) of making guarantees or commitments to guarantee loans entered into under this section.

(d) For purposes of this section:

(1) 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 which 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) The term “modern shipbuilding technology” means the best available proven technology, techniques, and processes appropriate to enhancing the productivity of shipyards.

(3) The term “general shipyard facility” means—

(A) for operations on land—

(i) any structure or appurtenance thereto designed for the construction, repair, rehabilitation, refurbishment or rebuilding of any vessel (as defined in title 1, United States Code) and including graving docks, building ways, ship lifts, wharves, and pier cranes;

(ii) the land necessary for any structure or appurtenance described in clause (i); and

(iii) equipment that is for the use in connection with any structure or appurtenance and that is necessary for the performance of any function referred to in subparagraph (A);

(B) for operations other than on land, any vessel, floating drydock or barge built in the United States and used for, equipped to be used for, or of a type that is normally used for activities referred to in subparagraph (A)(i) of this paragraph.

## TITLE XII - WAR RISK INSURANCE

**SEC. 1201. DEFINITIONS (46 App. U.S.C. 1281 (1996)).** As used in this title—

(a) The term “American vessels” includes any vessel registered, enrolled, or licensed under the laws of the United States and any undocumented vessel owned or chartered by or made available to the United States or any department or agency thereof and any tug or barge or other watercraft (documented or undocumented) owned by a citizen of the United States used in essential water transportation or in the fishing trade or industry, except watercraft used exclusively in or for sport fishing.

(b) The term “transportation in the water-borne commerce of the United States” includes the operation of vessels in the fishing trade or industry, except watercraft used exclusively in or for sport fishing.

(c) The term “war risks” includes to such extent as the Secretary may determine all or any part of those losses which are excluded from marine insurance coverage under a “free of capture and seizure” clause, or analogous clauses.

(d) The term “citizen of the United States” includes corporations, partnerships, and associations existing, authorized, or organized under the laws of the United States or any State, district, Territory, or possession thereof.

(e) The term “Secretary” shall mean the Secretary of Transportation.

**SEC. 1202. AUTHORITY TO PROVIDE INSURANCE; CONSIDERATION OF RISK (46 App. U.S.C. 1282 (1996)).**

(a) The Secretary, with the approval of the President, and after such consultation with interested agencies of the Government as the President may require, may provide insurance and reinsurance against loss or damage by war risks in the manner and to the extent provided in this title, whenever it appears to the Secretary that such insurance adequate for the needs of the waterborne commerce of the United States can not be obtained on the reasonable terms and conditions from companies authorized to do an insurance business in a State of the United States.

(b) Any insurance or reinsurance issued under any of the provisions of this Act shall be based, insofar as practicable, upon consideration of the risk involved.

(c) Insurance and reinsurance for vessels may be provided by the Secretary under this title only on the condition that such vessels be available for the United States in time of war or national emergency.

**SEC. 1203. PERSONS, PROPERTY, AND INTERESTS INSURABLE (46 App. U.S.C. 1283 (1996)).** The Secretary may provide the insurance and reinsurance authorized by section 1202 with respect to the following persons, property, or interest:

(a) American vessels, including vessels under construction, foreign-flag vessels owned by citizens of the United States or engaged in transportation in the water-borne commerce of the United States or in such other transportation by water or such other services as may be deemed by the Secretary to be in the interest of the national defense or the national economy of the United States, when so engaged. In determining whether to grant such insurance or reinsurance to foreign-flag vessels, the Secretary shall further consider the characteristics, the employment, and the general management of the vessel by the owner or charterer. American- and foreign-flag vessels so insured or reinsured shall be subject to such vessel location reporting requirements as the Secretary may establish by regulation.

(b) Cargoes shipped or to be shipped on any such vessels, including shipments by express or registered mail; cargoes owned by citizens or residents of the United States, its Territories or possessions; cargoes imported to, or exported from, the United States, its Territories or possessions, and cargoes sold or purchased by citizens or residents of the United States, its Territories or possessions, under contracts of sale or purchase by the terms of which the risk of loss by war risks or the obligation to provide insurance against such risks is assumed by or falls upon a citizen or resident of the United States, its Territories or possessions; cargoes shipped between ports in the United States, or between ports in the United States and its Territories and possessions, or between ports in such Territories or possessions. For the purposes of this title, the term "cargo" shall include loaded or empty containers located aboard such vessels.

(c) The disbursements, including advances to masters and general average disbursements, and freight and passage moneys of such vessels.

(d) The personal effects of the masters, officers, and crews of such vessels, and of other persons transported on such vessels.

(e) Masters, officers, members of the crews of such vessels and other persons employed or transported thereon against loss of life, injury, detention by an enemy of the United States following capture.

(f) Statutory or contractual obligations or other liabilities of such vessels or of the owner or charterer of such vessels of the nature customarily covered by insurance.

**SEC. 1204. RISKS OTHER THAN WAR RISKS (46 App. U.S.C. 1284 (1996)).**

Whenever the Secretary shall insure any risk included under subsection (d), (e), or (f) of section 1203, insofar as it concerns liabilities relating to the masters, officers, and crews of such vessels or to other persons transported thereon, the insurance on such risks may include risks other than war risks to the extent that the Secretary determines to be necessary or advisable.

**SEC. 1205. INSURANCE ON PROPERTY OF GOVERNMENT DEPARTMENTS AND AGENCIES (46 App. U.S.C. 1285 (1996)).**

(a) Any department or agency of the United States may, with the approval of the President, procure from the Secretary any of the insurance as provided for in this title, except as provided in sections 1 and 2 of the Act of July 8, 1937 (50 Stat. 479).

(b) The Secretary is authorized with such approval to provide such insurance at the request of the Secretary of Defense, and such other agencies as the President may prescribe, without premium in consideration of the agreement of the Secretary of Defense or such agency to indemnify the Secretary against all losses covered by such insurance, and the Secretary of Defense and such other agencies are authorized to execute such indemnity agreement with the Secretary.

**SEC. 1206. LIABILITY INSURANCE FOR PERSONS PERFORMING SERVICES OR PROVIDING FACILITIES FOR VESSELS (46 App. U.S.C. 1286 (1996)).** The Secretary is authorized to provide insurance for any person who performs services or provides facilities for or with respect to any American- or foreign-flag vessels, public or private, against legal liabilities that may be incurred by such person in connection with the performance of such services or the providing of such facilities. Such insurance shall not be issued against liability to employees in respect of employers' liability of workmen's compensation. No such insurance shall be provided unless, in the opinion of the Secretary, such insurance is required in the prosecution of the war effort or in connection with national defense and can not be obtained at reasonable rates or upon reasonable conditions from approved companies authorized to do insurance business in any State of the United States.

**SEC. 1207. REINSURANCE; RATES; ALLOWANCES TO INSURANCE CARRIERS (46 App. U.S.C. 1287 (1996)).**

(a) To the extent that he is authorized by this title to provide marine, war risk, and liability insurance, the Secretary may reinsure, in whole or in part, any company authorized to do an insurance business in any State of the United States. The Secretary may reinsure with, or cede or

retrocede to, any such company any insurance or reinsurance provided by the Secretary in accordance with the provisions of this title.

(b) Reinsurance shall not be provided by the Secretary at rates less than nor obtained by the Secretary at rates more than the rates established by the Secretary on the same or similar risks or the rates charged by the insurance carrier for the insurance so reinsured whichever is most advantageous to the Secretary, except that the Secretary may make to the insurance carrier such allowances for expenses on account of the cost of services rendered or facilities furnished as he deems reasonable to accord with good business practice, but such allowance to the carrier shall not provide for any payment by the carrier on account of solicitation for or stimulation of insurance business.

**SEC. 1208. INSURANCE FUND; INVESTMENTS; APPROPRIATIONS (46 App. U.S.C. 1288 (1996)).**

(a) The Secretary shall create an insurance fund in the Treasury to enable him to carry out the provisions of this title. Moneys appropriated by Congress to carry out the provisions of this title and all moneys received from premiums, salvage, or other recoveries and all receipts in connection with this title shall be deposited in the Treasury to the credit of such fund. Payments of return premiums, losses, settlements, judgments, and all liabilities incurred by the United States under this title shall be made from such fund through the division of Disbursement, Treasury Department. Upon the request of the Secretary of Transportation, the Secretary of the Treasury may invest or reinvest all or any part of the fund in securities of the United States or in securities guaranteed as to principal and interest by the United States. The interest and benefits accruing from such securities shall be deposited to the credit of the fund.

(b) Such sums as shall be necessary to carry out the provisions of this title are authorized to be appropriated to such fund.

**TRANSFER OF FUNDS FROM VESSEL OPERATIONS REVOLVING FUND (46 App. U.S.C. 1288a (1996)).**<sup>37</sup> For the war-risk insurance revolving fund, authorized by title XII of the Merchant Marine Act, 1936, as amended (Public Law 763, approved September 7, 1950), the Secretary of Transportation is authorized to transfer to said fund, at such times as it may become necessary in order to place into effect the insurance coverage authorized by said title, and in such amounts as he may determine, not to exceed a total of \$10,000,000 from the "Vessel operations revolving fund".

---

<sup>37</sup> Enacted as section 601 of the Act of November 1, 1951 (65 STAT. 746), as amended, and not as part of the Merchant Marine Act, 1936.

**SEC. 1209. ADMINISTRATIVE PROVISIONS (46 App. U.S.C. 1289 (1996)).**

**(a) Issuance of Policies, Rules, and Regulations; Settlement of Claims; Valuation; Rejection and Review of Valuation.**

(1) The Secretary, in the administration of this title, may issue such policies, rules, and regulations as he deems proper and may adjust and pay losses, compromise and settle claims, whether in favor of or against the United States and pay the amount of any judgment rendered against the United States in any suit, or the amount of any settlement agreed upon, in respect of any claim under insurance authorized by this title.

(2) In respect of hull insurance, the valuation in the policy for actual or constructive total loss of the vessel insured shall be a stated valuation (exclusive of National Defense features paid for by the Government) determined by the Secretary which shall not exceed the amount that would be payable if the vessel had been requisitioned for title under section 902(a) at the time of the attachment of the insurance under said policy: Provided, That the insured shall have the right within sixty days after the attachment of the insurance under said policy, or within sixty days after determination of such valuation by the Secretary, whichever is later, to reject such valuation, and shall pay, at the rate provided for in said policy, premiums upon such asserted valuation as the insured shall specify at the time of rejection, but such asserted valuation shall not operate to the prejudice of the Government in any subsequent action on the policy. In the event of the actual or constructive total loss of the vessel, if the insured has not rejected such valuation the amount of any claim therefor which is adjusted, compromised, settled, adjudged, or paid shall not exceed such stated amount, but if the insured has so rejected such valuation, the insured shall be paid as a tentative advance only, 75 per centum of such valuation so determined by the Secretary and shall be entitled to sue the United States in a court having jurisdiction of such claims to recover such valuation as would be equal to the just compensation which such court determines would have been payable if the vessel had been requisitioned for title under section 902(a) at the time of the attachment of the insurance under said policy: Provided, That in the event of an election by the insured to reject the stated valuation fixed by the Secretary and to sue in the courts, the amount of the judgment will be payable without regard to the limitations contained in the twelfth paragraph under the heading "Maritime Activities" in title I of the Department of Commerce and Related Agencies Appropriation Act, 1956, in the tenth paragraph under the heading "Maritime Activities" in title III of the Department of State, Justice, and Commerce, and the United States Information Agency Appropriation Act, 1955, in the eleventh paragraph under the heading "Maritime Activities" in title III of the Department of Justice, State, and

Commerce Appropriation Act, 1954, the tenth paragraph under the heading "Operating Differential Subsidies" in title II of the Independent Offices Appropriation Act, 1953, the corresponding paragraphs of the Independent Offices Appropriation Act, 1952, and the Third Supplemental Appropriation Act, 1951, although the excess of any amounts advanced on account of just compensation over the amount of the court judgment will be required to be refunded. In the event of such court determination, premiums under the policy shall be adjusted on the basis of the valuation as finally determined and of the rate provided for in said policy.

(b) **Forms and Policies; Rates; Fees.** The Secretary may prescribe and change forms and policies, and fix, adjust, and change the amounts insured and rates of premium provided for in this title. The Secretary may charge and collect an annual fee in an amount calculated to cover the expenses of processing applications for insurance, the employment of underwriting agents, and the appointment of experts.

(c) **Commercial Practice Controlling; Limitation on Fees.** The Secretary, in administering this title, may exercise his powers, perform his duties and functions, and make his expenditures, in accordance with commercial practice in the marine insurance business. Except as authorized in subsection (d) of this section, no insurance broker or other person acting in a similar intermediary capacity shall be paid any fee or other consideration by the Secretary by virtue of his participation in arranging any insurance wherein the Secretary directly insures any of the risk thereof.

(d) **Underwriting Agents.** The Secretary may, and whenever he finds it practical to do so shall, employ domestic companies or groups of domestic companies authorized to do a marine insurance business in any State of the United States, to act as his underwriting agent. The Secretary may allow such companies or groups of companies fair and reasonable compensation for servicing insurance written by such companies or groups of companies as underwriting agent for the Secretary. The services of such underwriting agents may be utilized in the adjustment of claims under insurance provided by this title, but no claim shall be paid unless and until it has been approved by the Secretary. Such compensation may include an allowance for expenses reasonably incurred by such agent, but such allowance shall not include any payment by such agent on account of solicitation for or stimulation of insurance business.

(e) **Employment of Marine Insurance Experts.** The Secretary without regard to the laws, rules, or regulations relating to the employment of employees of the United States, may appoint and prescribe the duties of such number of experts in marine insurance as he deems necessary under this title.

(f) **Utilization of Services of other Government Agencies.** The Secretary with the consent of any executive department, independent establishment, or other agency of the Government, including any field service thereof, may avail himself of the use of information, services, facilities, officers, and employees thereof in carrying out the provisions of this title.

**SEC. 1210. SEAMEN S RIGHTS UNAFFECTED (46 App. U.S.C. 1290 (1996)).** This title shall not affect rights of seamen under existing law.

**SEC. 1211. REPORTS TO CONGRESS (46 App. U.S.C. 1291 (1996)).** The Secretary shall include in his annual report to Congress a detailed statement of all activities and of all expenditures and receipts under this title for the period covered by such report.

**SEC. 1212. ACTION ON CLAIMS FOR LOSSES; JURISDICTION OF COURTS; LIMITATION OF ACTIONS (46 App. U.S.C. 1292 (1996)).** Upon disagreement as to a loss insured under this title, suit may be maintained against the United States in admiralty in the district in which the claimant or his agent resides, and this remedy shall be exclusive of any other action by reason of the same subject matter against any agent or employee of the United States employed or retained under this title. If the claimant has no residence in the United States, suit may be brought in the district court of the District of Columbia or in such other district court in which the Attorney General of the United States agrees to accept service. Such suits shall be heard and determined under the provisions of an Act entitled "An Act authorizing suits against the United States in admiralty, suits for salvage services, and providing for the release of merchant vessels belonging to the United States from arrest and attachment in foreign jurisdiction, and for other purposes," approved March 9, 1920, as amended (known as the Suits in Admiralty Act). All persons having or claiming or who might have an interest in such insurance, may be made parties either initially or upon the motion of either party. In any case where the Secretary acknowledges the indebtedness of the United States on account of such insurance, and there is a dispute as to the persons entitled to receive payment, the United States may bring an action in the nature of a bill of interpleader against such parties, in the District Court for the District of Columbia, or in the district court of the district in which any such person resides. In such actions any party, if not a resident of or found within the district, may be brought in by order of court served in such reasonable manner as the court directs. If the court is satisfied that persons unknown might assert a claim on account of such insurance, it may direct service upon such persons unknown by publication in the Federal

Register. Judgment in any such suit shall discharge the United States from further liability to any parties to such action, and to all persons when service by publication upon persons unknown is directed by the court. The period within which suits may be commenced contained in said Suits in Admiralty Act shall, if claim be filed therefor within such period, be suspended from such time of filing until the claim shall have been administratively denied by the Secretary and for sixty days thereafter: Provided, however, That such claim shall be deemed to have been administratively denied if not acted upon within six months after the time of filing, unless the Secretary for good cause shown shall have otherwise agreed with the claimant.

**SEC. 1213. ADDITIONAL INSURANCE WITH OTHER UNDERWRITERS (46 App. U.S.C. 1293 (1996)).** A person having an insurable interest in a vessel may, with the approval of the Secretary, insure with other underwriters in an amount in excess of the amount insured with the Secretary of Transportation, and in that event the Secretary of Transportation shall not be entitled to the benefit of such insurance.

**SEC. 1214. EXPIRATION OF AUTHORITY TO PROVIDE INSURANCE (46 App. U.S.C. 1294 (1996)).** The authority of the Secretary to provide insurance and reinsurance under this title shall expire June 30, 2000.<sup>38</sup>

\* \* \* \* \*

**INDEMNIFICATION OF DEPARTMENT OF TRANSPORTATION FOR LOSSES COVERED BY VESSEL WAR RISK INSURANCE (10 U.S.C. 2645 (1996))<sup>39</sup>**

**(a) Prompt Indemnification Required.**

(1) In the event of a loss that is covered by vessel war risk insurance, the Secretary of Defense shall promptly indemnify the Secretary of Transportation for the amount of the loss consistent with the indemnification agreement between the two Secretaries that underlies such insurance. The Secretary of Defense shall make such indemnification—

(A) in the case of a claim for the loss of a vessel, not later than 90 days after the date on which the Secretary of Transportation determines

---

<sup>38</sup> The Title XII Insurance Program was extended to June 30, 2000, by Section 1094 of Public Law 104-106, approved February 10, 1996 (110 STAT. 186), the National Defense Authorization Act for Fiscal Year 1996, and also by Section 12 of Public Law 104-237, approved October 8, 1996 (110 STAT. 3134), the Maritime Security Act of 1996.

<sup>39</sup> This provision of law was enacted as Section 1079(b) of Public Law 104-201, approved September 23, 1996 (110 STAT. 2669), the National Defense Authorization Act, Fiscal Year 1997, and not as part of the Merchant Marine Act, 1936.

the claim to be payable or that amounts are due under the policy that provided the vessel war risk insurance; and

(B) in the case of any other claim, not later than 180 days after the date on which the Secretary of Transportation determines the claim to be payable.

(2) When there is a loss of a vessel that is (or may be) covered by vessel war risk insurance, the Secretary of Transportation may make, during the period when a claim for such loss is pending with the Secretary of Transportation, any required periodic payments owed by the insured party to a lessor or mortgagee of such vessel. Such payments shall commence not later than 30 days following the date of the presentment of the claim for the loss of the vessel to the Secretary of Transportation. If the Secretary of Transportation determines that the claim is payable, any amount paid under this paragraph arising from such claim shall be credited against the amount payable under the vessel war risk insurance. If the Secretary of Transportation determines that the claim is not payable, any amount paid under this paragraph arising from such claim shall constitute a debt to the United States, payable to the insurance fund. Any such amounts so returned to the United States shall be promptly credited to the fund or account from which the payments were made under this paragraph.

(b) **Source of Funds for Payment of Indemnity.** The Secretary of Defense may pay an indemnity described in subsection (a) from any funds available to the Department of Defense for operation and maintenance, and such sums as may be necessary for payment of such indemnity are hereby authorized to be transferred to the Secretary of Transportation for such purpose.

(c) **Deposit of Funds.** Any amount transferred to the Secretary of Transportation under this section shall be deposited in, and merged with amounts in, the Vessel War Risk Insurance Fund as provided in the second sentence of section 1208(a) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1288(a)).

(d) **Notice to Congress.** In the event of a loss that is covered by vessel war risk insurance in the case of an incident in which the covered loss is (or is expected to be) in an amount in excess of \$1,000,000, the Secretary of Defense shall submit to Congress-

(1) notification of the loss as soon after the occurrence of the loss as possible and in no event more than 30 days after the date of the loss; and

(2) semiannual reports thereafter updating the information submitted under paragraph (1) and showing with respect to losses arising from such incident the total amount expended to cover such losses, the source

of such funds, pending litigation, and estimated total cost to the Government.

**(e) Implementing Matters.**

(1) Payment of indemnification under this section is not subject to section 2214 or 2215 of this title or any other provision of law requiring notification to Congress before funds may be transferred.

(2) Consolidation of claims arising from the same incident is not required before indemnification of the Secretary of Transportation for payment of a claim may be made under this section.

**(f) Construction With Other Transfer Authority.** Authority to transfer funds under this section is in addition to any other authority provided by law to transfer funds (whether enacted before, on, or after the date of the enactment of this section) and is not subject to any dollar limitation or notification requirement contained in any other such authority to transfer funds.

**(g) Annual Report on Contingent Liabilities.** Not later than March 1 of each year, the Secretary of Defense shall submit to Congress a report setting forth the current amount of the contingent outstanding liability of the United States under the vessel war risk insurance program under title XII of the Merchant Marine Act, 1936 (46 U.S.C. App. 1281 et seq.).

**(h) Definitions. In this section:**

(1) *Vessel War Risk Insurance.* The term “vessel war risk insurance” means, insurance and reinsurance provided through policies issued by the Secretary of Transportation under title XII of the Merchant Marine Act, 1936 (46 U.S.C. App. 1281 et seq.) that is provided by that Secretary without premium at the request of the Secretary of Defense and is covered by an indemnity agreement between the Secretary of Transportation and the Secretary of Defense.

(2) *Vessel War Risk Insurance Fund.* The term “Vessel War Risk Insurance Fund” means the insurance fund referred to in the first sentence of section 1208(a) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1288(a)).

(3) *Loss.* The term “loss” includes damage to or destruction of property, personal injury or death, and other liabilities and expenses covered by the vessel war risk insurance.

# TITLE XIII - MARITIME EDUCATION AND TRAINING

**SEC. 1301. CONGRESSIONAL DECLARATION OF POLICY (46 App. U.S.C. 1295 (1996)).** 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. In furtherance of this policy—

(1) the Secretary of Transportation is authorized to take the steps necessary to provide for the education and training of citizens of the United States who are capable of providing for the safe and efficient operation of the merchant marine of the United States at all times and as a naval and military auxiliary in time of war or national emergency; and

(2) the Secretary of Navy, in cooperation with the Maritime Administrator and the head of each State maritime academy, shall assure that the training of future merchant marine officers at the United States Merchant Marine Academy and at the State maritime academies includes programs for naval science training in the operation of merchant marine vessels as a naval and military auxiliary and that naval officer training programs for the training of future officers, insofar as possible, be maintained at designated maritime academies consistent with United States Navy standards and needs.

**SEC. 1302. DEFINITIONS (46 App. U.S.C. 1295a (1996)).** For purposes of this title—

(1) the term “Secretary” means the Secretary of Transportation;

(2) the term “Academy” means the United States Merchant Marine Academy located at Kings Point, New York which is maintained under section 1303;

(3) the term “State maritime academy” means any maritime academy or college which is assisted under section 1304 and which is sponsored by any State or territory of the United States or, in the case of a regional maritime academy or college, sponsored by any group of States or territories of the United States, or both; and

(4) the term “merchant marine officer” means any person who holds a license issued by the United States Coast Guard which authorizes service—

(A) as a master, mate, or pilot on board any vessel of 1,000 gross tons or more as measured under section 14502 of title 46, United States Code, or an alternate tonnage measured under section 14302 of that title as prescribed by the Secretary under section 14104 of that

title which is documented under the laws of the United States and which operates on the oceans or on the Great Lakes; or

(B) as an engineer officer on board any vessel propelled by machinery of 4,000 horsepower or more which is documented under the laws of the United States.

**SEC. 1303. MAINTENANCE OF ACADEMY (46 App. U.S.C. 1295b (1996)).**

(a) **Duty of Secretary.** The Secretary shall maintain the Academy for providing instruction to individuals to prepare them for service in the merchant marine of the United States.

(b) **Nomination and appointment of cadets; designation and licensing of individuals from the Trust Territory of the Pacific Islands, Western Hemisphere nations and nations other than the United States.**

(1) Each Senator and Member of the House of Representatives, the Panama Canal Commission, the Governor of the Northern Mariana Islands, and the Delegate from American Samoa, may nominate for appointment as a cadet at the Academy any individual who is—

(A) a citizen of the United States or a national of the United States; and

(B) a resident of the State represented by such Senator if the individual is nominated by a Senator, a resident of the State in which the congressional district represented by such Member of the House of Representatives is located if the individual is nominated by a Member of the House of Representatives (or a resident of Guam, the Virgin Islands, the District of Columbia, the Commonwealth of Puerto Rico, or American Samoa if the individual is nominated by a Member of the House of Representatives representing such area), a resident of the area or installation described in paragraph (3)(A)(ii), or a son or daughter of the personnel described in such paragraph, if the individual is nominated by the Panama Canal Commission, or a resident of the Northern Mariana Islands if the individual is nominated by the Governor of the Northern Mariana Islands.

(2)(A) The Secretary shall establish minimum requirements for the individuals nominated pursuant to paragraph (1) and shall establish a system of competition for the selection of individuals qualified for appointment as cadets at the Academy.

(B) Such system of competition shall determine the relative merit of appointing each such individual to the Academy through the use of competitive examinations, an assessment of the academic background of the individual, and such other factors as are considered effective indicators of motivation and the probability of successful completion of training at the Academy.

(3)(A) Qualified individuals nominated pursuant to paragraph (1) shall be selected each year for appointment as cadets at the Academy to fill positions allocated as follows:

(i) Positions shall be allocated each year for individuals who are residents of each State and are nominated by the Members of the Congress from such State in proportion to the representation in Congress from that State.

(ii) Two positions shall be allocated each year for individuals nominated by the Panama Canal Commission who are sons or daughters of residents of any area or installation located in the Republic of Panama which is made available to the United States pursuant to 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 sons or daughters of personnel of the United States Government and the Panama Canal Commission residing in the Republic of Panama, nominated by the Panama Canal Commission.

(iii) One position shall be allocated each year for an individual who is a resident of Guam and is nominated by the Delegate to the House of Representatives from Guam.

(iv) One position shall be allocated each year for an individual who is a resident of the Virgin Islands and is nominated by the Delegate to the House of Representatives from the Virgin Islands.

(v) One position shall be allocated each year for an individual who is a resident of the Northern Mariana Islands and is nominated by the Governor of the Northern Mariana Islands.

(vi) One position shall be allocated each year for an individual who is a resident of American Samoa and is nominated by the Delegate to the House of Representatives from American Samoa.

(vii) Four positions shall be allocated each year for individuals who are residents of the District of Columbia and are nominated by the Delegate to the House of Representatives from the District of Columbia.

(viii) One position shall be allocated each year for an individual who is a resident of the Commonwealth of Puerto Rico and is nominated by the Resident Commissioner to the United States from Puerto Rico.

(B) The Secretary shall make appointments of qualified individuals to fill the positions allocated pursuant to subparagraph (A) (from among the individuals nominated pursuant to paragraph (1)) in the order of merit determined pursuant to paragraph (2)(B) among resi-

dents of each State, Guam, the Virgin Islands, the Northern Mariana Islands, American Samoa, the District of Columbia, and the Commonwealth of Puerto Rico and among individuals nominated by the Panama Canal Commission.

(C) If positions are not filled after the appointments are made pursuant to subparagraph (B), the Secretary shall make appointments of qualified individuals to fill such positions from among all individuals nominated pursuant to paragraph (1) in the order of merit determined pursuant to paragraph (2)(B) among all such individuals.

(D) In addition, the Secretary may each year appoint without competition as cadets at the Academy not more than 40 qualified individuals possessing qualities deemed to be of special value to the Academy. In making such appointments the Secretary shall attempt to achieve a national demographic balance at the Academy.

(E) No preference shall be granted in selecting individuals for appointment as cadets at the Academy because one or more members of the immediate family of any such individual are alumni of the Academy.

(F) Any citizen of the United States selected for appointment pursuant to this paragraph must agree to apply for midshipman status in the United States Naval Reserve (including the Merchant Marine Reserve, United States Naval Reserve) before being appointed as a cadet at the Academy.

(G) For purposes of this paragraph, the term "State" means the several States.

(4)(A) In addition to paragraph (3), the Secretary may permit, upon designation by the Secretary of the Interior, individuals from the Trust Territory of the Pacific Islands to receive instruction at the Academy.

(B) Not more than 4 individuals may receive instruction under this paragraph at any one time.

(C) Any individual receiving instruction under the authority of this paragraph shall receive the same allowances and shall be subject to the same rules and regulations governing admission, attendance, discipline, resignation, discharge, dismissal, and graduation as cadets at the Academy appointed from the United States, subject to such exceptions as shall be jointly agreed upon by the Secretary and the Secretary of the Interior.

(5)(A) In addition to paragraphs (3) and (4), the President may designate individuals from nations located in the Western Hemisphere other than the United States to receive instruction at the Academy.

(B) Not more than 12 individuals may receive instruction under this paragraph at any one time, and not more than 2 individuals receiving instruction under this paragraph at any one time may be from the same nation.

(C) Any individual receiving instruction under this subparagraph is entitled to the same allowances and shall be subject to the same rules and regulations governing admission, attendance, discipline, resignation, discharge, dismissal, and graduation as cadets at the Academy appointed from the United States.

(6)(A) In addition to paragraphs (3), (4), and (5), the Secretary may permit, upon approval of the Secretary of State, individuals from nations other than the United States to receive instruction at the Academy.

(B) Not more than 30 individuals may receive instruction under this paragraph at any one time.

(C) The Secretary shall insure that each nation from which an individual comes to receive instruction under this paragraph shall reimburse the Secretary for the cost of such instruction (including the same allowances as received by cadets at the Academy appointed from the United States) as determined by the Secretary.

(D) Any individual receiving instruction at the Academy under this paragraph shall be subject to the same rules and regulations governing admission, attendance, discipline, resignation, discharge, dismissal, and graduation as cadets at the Academy appointed from the United States.

(7)(A) The Secretary may permit, upon approval of the Secretary of State, additional individuals from the Republic of Panama to receive instruction at the Academy, in addition to those individuals appointed under paragraphs (3), (4), (5), and (6) of this subsection.

(B) The Secretary shall be reimbursed for the cost of that instruction (including the same allowances as received by cadets at the Academy appointed from the United States) as determined by the Secretary.

(C) An individual receiving instructions at the Academy under this paragraph shall be subject to the same rules and regulations governing admission, attendance, discipline, resignation, discharge, dismissal, and graduation as cadets at the Academy appointed from the United States.

(8) An individual appointed as a cadet under paragraph (3), or receiving instruction under paragraph (4), (5), (6), or (7) of this subsection is not entitled to hold a license authorizing service on a merchant marine vessel of the United States solely by reason of graduation from the Academy.

**(c) Appointment of cadet as midshipman in the United States Naval Reserve.** Any citizen of the United States who is appointed as a cadet at the Academy may be appointed by the Secretary of the Navy as a midshipman in the United States Naval Reserve (including the Merchant Marine Reserve, United States Naval Reserve).

(d) **Uniforms, textbooks, and transportation allowances.** The Secretary shall provide to any cadet at the Academy all required uniforms and textbooks and allowances for transportation (including reimbursement of traveling expenses) while traveling under orders as a cadet of the Academy.

(e) **Commitment agreements.**

(1) Each individual appointed as a cadet at the Academy after the date occurring 6 months after the effective date of the Maritime Education and Training Act of 1980, who is a citizen of the United States, shall as a condition of appointment to the Academy sign an agreement committing such individual—

(A) to complete the course of instruction at the Academy, unless the individual is separated by the Academy;

(B) to fulfill the requirements for a license as an officer in the merchant marine of the United States on or before the date of graduation from the Academy of such individual;

(C) to maintain a license as an officer in the merchant marine of the United States for at least 6 years following the date of graduation from the Academy of such individual;

(D) to apply for an appointment as, to accept if tendered an appointment as, and to serve as a commissioned officer in the United States Naval Reserve (including the Merchant Marine Reserve, United States Naval Reserve), the United States Coast Guard Reserve, or any other Reserve unit of an armed force of the United States, for at least 6 years following the date of graduation from the Academy of such individual;

(E) to serve the foreign and domestic commerce and the national defense of the United States for at least 5 years following the date of graduation from the Academy—

(i) as a merchant marine officer serving on vessels documented under the laws of the United States or on vessels owned and operated by the United States or by any State or territory of the United States;

(ii) 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 clause (i) is not available to such individual;

(iii) as a commissioned officer on active duty in an armed force of the United States or in the National Oceanic and Atmospheric Administration; or

(iv) by combining the services specified in clauses (i), (ii), and (iii); and

(F) to report to the Secretary on the compliance by the individual to this paragraph.

(2) If the Secretary determines that any individual who has attended the Academy for not less than 2 years has failed to fulfill the part of the agreement (required by paragraph (1)) described in paragraph (1)(A), such individual may be ordered by the Secretary of the Navy to active duty in the United States Navy to serve for a period of time not to exceed 2 years. In cases of hardship as determined by the Secretary, the Secretary may waive this paragraph.

(3)(A) If the Secretary determines that any individual has failed to fulfill any part of the agreement (required by paragraph (1)) described in subparagraphs (B), (C), (D), (E), or (F) of paragraph (1), such individual may be ordered to active duty to serve a period of time not less than 3 years and not more than the unexpired portion (as determined by the Secretary) of the service required by subparagraph (E) of such paragraph. The Secretary, in consultation with the Secretary of Defense, shall determine in which service the individual shall be ordered to active duty to serve such period of time. In cases of hardship as determined by the Secretary, the Secretary may waive this paragraph.

(B) If the Secretary of Defense is unable or unwilling to order an individual to active duty under subparagraph (A), the Secretary of Transportation—

(i) may recover from the individual the cost of education provided by the Federal Government; and

(ii) shall request the Attorney General to begin court proceedings to recover the costs of education if the Secretary decides to seek recovery under clause (i).

(4) The Secretary may defer the service commitment of any individual pursuant to subparagraph (E) of paragraph (1) (as specified in the agreement required by such paragraph) for a period of not more than 2 years if such individual is engaged in a graduate course of study approved by the Secretary, except that any deferment of service as a commissioned officer pursuant to paragraph (1)(E) must be approved by the Secretary of the military department (including the Secretary of Commerce with respect to the National Oceanic and Atmospheric Administration) which has jurisdiction over such service.

(f) **Places of training.** The Secretary may provide for the training of cadets at the Academy—

(1) on vessels owned or subsidized by the United States;

(2) on other vessels documented under the laws of the United States if the owner of any such vessel cooperates in such use; and

(3) in shipyards or plants and with any industrial or educational organizations.

(g) **Bachelor of science degrees awarded.** The Superintendent of the Academy may confer the degree of bachelor of science upon any individual who has met the conditions prescribed by the Secretary and who, if a citizen of the United States, has passed the examination for a merchant marine officer's license. No individual may be denied a degree under this subsection because the individual is not permitted to take such examination solely because of physical disqualification.

(h) **Board of visitors.**

(1) A Board of Visitors to the Academy shall be established, for a term of two years commencing at the beginning of each Congress, to visit the Academy annually on a date determined by the Secretary and to make recommendations on the operation of the Academy.

(2) The Board shall be composed of—

(A) 2 Senators appointed by the chairman of the Commerce, Science, and Transportation Committee of the Senate;

(B) 3 Members of the House of Representatives appointed by the chairman of the Merchant Marine and Fisheries Committee 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 chairman of the Commerce, Science, and Transportation Committee of the Senate and the chairman of the Merchant Marine and Fisheries Committee of the House of Representatives, as ex officio members.

(3) Whenever a member of the Board is unable to attend the annual meeting provided in paragraph (1), another individual may be appointed in the manner provided by paragraph (2) as a substitute for such member.

(4) The chairmen of the Commerce, Science, and Transportation Committee of the Senate and the Merchant Marine and Fisheries Committee of the House of Representatives may designate staff members of such committees to serve without reimbursement as staff for the Board.

(5) While away from their homes or regular places of business in the performance of services for the Board, members of the Board and any staff members designated under paragraph (4) shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5, United States Code

(i) **Advisory Board.**

(1) An Advisory Board to the 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.

(2) The Advisory Board shall be composed of not more than 7 persons of distinction in education and other fields relating to the Academy who shall be appointed by the Secretary for terms not to exceed 3 years and may be reappointed.

(3) The Secretary shall appoint a chairman from among the members of the Advisory Board.

(4) While away from their homes or regular places of business in the performance of service for the Advisory Board, members of the Advisory Board shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5, United States Code.

(5) The Federal Advisory Committee Act (5 U.S.C. App. 1 et seq.) shall not apply to the Advisory Board established pursuant to this subsection.

#### **SEC. 1304. STATE MARITIME ACADEMIES (46 App. U.S.C. 1295c (1996)).**

(a) **Cooperation and assistance.** The Secretary shall cooperate with and assist any State maritime academy in providing instruction to individuals to prepare them for service in the merchant marine of the United States.

(b) **Regional maritime academies.** The Governors of all States or territories of the United States, or both, cooperating to sponsor a regional maritime academy shall designate in writing one State or territory of the United States, from among the sponsoring States or territories, or both, to conduct the affairs of such regional maritime academy. Any regional maritime academy shall be eligible for assistance from the Federal Government on the same basis as any State maritime academy sponsored by a single State or territory of the United States.

(c) **Training vessels.**<sup>40</sup>

(1)(A) The Secretary may furnish for training purposes any suitable vessel under the control of the Secretary or provided under subparagraph (B), or construct and furnish a suitable vessel if such a vessel is not available, to any State maritime academy meeting the requirements of subsection (f)(1). Any such vessel—

---

<sup>40</sup> Section 101(a) of Public Law 100-202, approved December 22, 1987 (101 STAT. 1329-28), Maritime Administration Appropriations Act, Fiscal Year 1988 (46 App. U.S.C. 1295c-1) provides: "Hereafter no funds shall be appropriate for the purchase or construction of training vessels for State maritime academies unless a plan for sharing training vessels between States maritime academies has been approved by the Maritime Administration."

(i) shall be repaired, reconditioned, and equipped (including supplying all apparel, charts, books, and instruments of navigation) as necessary for use as a training ship;

(ii) shall be furnished to such State maritime academy only after application for such vessel is made in writing by the Governor of the State or territory sponsoring such State maritime academy or, with respect to a regional maritime academy the Governor of the State or territory designated pursuant to subsection (b);

(iii) shall be furnished to such State maritime academy only if a suitable port for the safe mooring of such vessel is available while it is being used by such academy;

(iv) shall be maintained in good repair by the Secretary; and

(v) shall remain the property of the United States.

(B) Any department or agency of the United States may provide to the Secretary to be furnished to any State maritime academy any vessel (including equipment) which is suitable for the purposes of this paragraph and which can be provided without detriment to the service to which such vessel is assigned.

(2) The Secretary may pay to any State maritime academy the amount of the costs of all fuel consumed by any vessel furnished under paragraph (1) while such vessel is being used for training purposes by such academy.

(3)(A) The Secretary may provide for the training of individuals attending a State maritime academy—

(i) on vessels owned or subsidized by the United States;

(ii) on other vessels documented under the laws of the United States if the owner of any such vessel cooperates in such use; and

(iii) in shipyards or plants and with any industrial or educational organizations.

(B) While traveling under orders for purposes of receiving training under this paragraph, any individual who is attending a State maritime academy shall receive from the Secretary allowances for transportation (including reimbursement of traveling expenses) in accordance with any regulations promulgated by the Secretary.

**(d) Annual payments.**

(1)(A) The Secretary may enter into an agreement, which shall be effective for not more than 4 years, with one State maritime academy (not including regional maritime academies) located in each State or territory of the United States which meets the requirements of subsection (f)(1), and with each regional maritime academy which meets the requirements of subsection (f)(1), to make annual payments to each such academy for the maintenance and support of such academy.

(B) Subject to subparagraph (C), the annual payment to such State maritime academy 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, and to such regional maritime academy shall be at least equal to the amount given the academy by all States and territories cooperating to sponsor the academy.

(C) The amount under subparagraph (B) may not be more than \$25,000, except that the amount shall be—

(i) \$100,000 to such State maritime academy if the academy meets the condition set forth in subsection (f)(2); or

(ii) \$200,000 to such regional maritime academy if the academy meets the condition set forth in subsection (f)(2).

(2) 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.

(e) **Detailing of personnel.** Upon the request of the Governor of any State or territory, the President may detail, without reimbursement, any of the personnel of the United States Navy, the United States Coast Guard, or the United States Maritime Service to any State maritime academy to serve as superintendents, professors, lecturers, or instructors at such academy.

(f) **Conditions to receiving payments or use of vessels.**

(1) As a condition to receiving any payment or the use of any vessel under this section, any State maritime academy shall—

(A) 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;

(B) agree in writing to conform to such standards for courses, training facilities, admissions, and instruction as are established by the Secretary after consultation with the superintendents of the State maritime academies; and

(C)<sup>41</sup> agree in writing to require, as a condition for graduation, that each individual who is a citizen of the United States and who is

---

<sup>41</sup> Section 3(a) of Public Law 101-115, approved October 13, 1989 added section 1304(f)(1)(C). Section 3(b) provides: “(b) The requirements set forth in subsection (f)(1)(C) of section 1304 of the Merchant Marine Act, 1936, as added by subsection (a) of this section, shall be a condition to any payment or use of any vessel received by a State maritime academy under section 1304 after December 31, 1989.” Section 706 of Public Law 101-595, approved November 16, 1990, provides that section 3 of Public Law 101-115, shall not be effective prior to October 1, 1994.

attending the academy in a merchant marine officer preparation program shall pass the examination administered by the Coast Guard required for issuance of a license under section 7101 of title 46, United States Code.

(2) As a condition to receiving an annual payment of any amount in excess of \$25,000 under subsection (d), a State maritime academy shall agree to admit to such academy each year a number of individuals who meet the admission requirements of such academy and who are citizens of the United States residing in States and territories of the United States other than the States or territories, or both, supporting such academy. The Secretary shall determine the number of individuals under this paragraph for each State maritime academy so that such number does not exceed one-third of the total number of individuals attending such academy at any time.

**(g) Student incentive payment agreements.<sup>42</sup>**

(1) The Secretary may enter into an agreement, which shall be effective for not more than 4 academic years, with any individual, who is a citizen of the United States and is attending a State maritime academy which entered into an agreement with the Secretary under subsection (d)(1), to make student incentive payments to such individual, which payments shall be in amounts equaling \$3,000 for each academic year and which payments shall be—

(A) allocated among the various State maritime academies in a fair and equitable manner;

(B) used to assist the individual in paying the cost of uniforms, books, and subsistence; and

(C) paid by the Secretary as the Secretary shall prescribe while the individual is attending the academy.

(2) Each agreement entered into under paragraph (1) shall require the individual to accept midshipman and enlisted reserve status in the United States Naval Reserve (including the Merchant Marine Reserve, United States Naval Reserve) before receiving any student incentive payments under this subsection.

(3) Each agreement entered into under paragraph (1) shall obligate the individual receiving student incentive payments under the agreement—

(A) to complete the course of instruction at the State maritime academy which the individual is attending, unless the individual is separated by such academy;

---

<sup>42</sup> Section 6201(a)(1) of Public Law 102-587, approved November 4, 1992 (196 STAT. 5093), increased the student incentive payment from \$1,200 to \$3,000. Section (6201(a)(2) provides that this increased amount applies to the academic years beginning after the date of enactment.

(B) to take the examination for a license as an officer in the merchant marine of the United States on or before the date of graduation from such State maritime academy of such individual and to fulfill the requirements for such license not later than 3 months after such graduation date;

(C) to maintain a license as an officer in the merchant marine of the United States for at least 6 years following the date of graduation from such State maritime academy of such individual;

(D) to accept if tendered an appointment as, and to serve as a commissioned officer in the United States Naval Reserve (including the Merchant Marine Reserve, United States Naval Reserve), the United States Coast Guard Reserve, or any other reserve unit of an armed force of the United States, for at least 6 years following the date of graduation from such State maritime academy of such individual;

(E) to serve the foreign and domestic commerce and the national defense of the United States for at least 3 years following the date of graduation from the Academy—

(i) as a merchant marine officer serving on vessels documented under the laws of the United States or on vessels owned and operated by the United States or by any State or territory of the United States;

(ii) 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 clause (i) is not available to such individual;

(iii) as a commissioned officer on active duty in an armed force of the United States or in the National Oceanic and Atmospheric Administration; or

(iv) by combining the services specified in clauses (i), (ii), and (iii); and

(F) to report to the Secretary on the compliance by the individual to this paragraph.

(4) If the Secretary determines that any individual who has accepted the payment described in paragraph (1) has failed to fulfill the part of the agreement (required by paragraph (1)) described in paragraph (3)(A), such individual may be ordered by the Secretary of the Navy to active duty in the United States Navy to serve for a period of time not to exceed 2 years. In cases of hardship as determined by the Secretary, the Secretary may waive this paragraph.

(5) If the Secretary determines that any individual has failed to fulfill any part of the agreement (required by paragraph (1)) described in subparagraphs (B), (C), (D), (E), or (F) of paragraph (3), such individual

may be ordered to active duty to serve a period of time not less than 2 years and not more than the unexpired portion (as determined by the Secretary) of the service required by subparagraph (E) of such paragraph. The Secretary, in consultation with the Secretary of Defense, shall determine in which service the individual shall be ordered to active duty to serve such period of time. In cases of hardship as determined by the Secretary, the Secretary may waive this paragraph.

(6) The Secretary may defer the service commitment of any individual pursuant to subparagraph (E) of paragraph (3) (as specified in the agreement required by such paragraph) for a period of not more than 2 years if such individual is engaged in a graduate course of study approved by the Secretary, except that any deferment of service as a commissioned officer pursuant to subparagraph (E) of such paragraph must be approved by the Secretary of the military department (including the Secretary of Commerce with respect to the National Oceanic and Atmospheric Administration) which has jurisdiction over such service.

(7) This subsection shall apply only to individuals first entering a State maritime academy after the date occurring 6 months after the effective date of the Maritime Education and Training Act of 1980.

(h) **Appointment of cadet as midshipman in United States Naval Reserve.** Any citizen of the United States attending a State maritime academy may be appointed by the Secretary of the Navy as a midshipman in the United States Naval Reserve (including the Merchant Marine Reserve, United States Naval Reserve).

## **SEC. 1305. ADDITIONAL TRAINING (46 App. U.S.C. 1295d (1996)).**

(a) The Secretary may provide additional training on maritime subjects, as the Secretary deems necessary, to supplement other training opportunities and may make any such training available to the personnel of the merchant marine of the United States and to individuals preparing for a career in the merchant marine of the United States.

(b) The Secretary may prepare or purchase any equipment or supplies required for any training provided under subsection (a) and may contract with any person, partnership, firm, association, or corporation (without regard to section 3709 of the Revised Statutes of the United States (41 U.S.C. 5)) for the performance of any services deemed necessary by the Secretary in the preparation of any such equipment or supplies and in the supervision and administration of any such training.

(c)(1) The Secretary shall assist maritime training institutions approved by the Secretary in establishing a maritime oil pollution prevention, response, and clean-up training program.

(2) Under the program established under paragraph (1)—

(A) the Secretary may provide, to maritime training institutions approved by the Secretary, vessels described in paragraph (4), with title free of all liens, subject to the requirements specified under paragraph (3); and

(B) in return for receipt of such vessels, such institutions shall—

(i) employ the vessels for the training of students and appropriate maritime industry personnel in oil spill prevention, response, clean-up, and related skills; and

(ii) make the vessels and qualified students available to appropriate Federal, State, and local oil spill response authorities in the event of a maritime oil spill.

(3) The requirements referred to in paragraph (2)(A) are as follows:

(i) any vessel provided under paragraph (2)(A) shall be tendered to the approved maritime training institution at a location determined by the Secretary;

(ii) no such vessel may be sold, traded, chartered, donated, scrapped, or in any way altered or disposed of without the prior approval of the Secretary;

(iii) no such vessel may be used in competition with any privately-owned vessel documented under the laws of the United States or any State, unless necessary to carry out the purposes of this subsection;

(iv) any approved maritime training institution in possession of such a vessel which can no longer utilize the vessel for training purposes shall return the vessel to the Secretary, who shall take possession of the vessel at the training institution and thereafter may dispose of the vessel, or provide the vessel to another approved maritime training institution, as the Secretary determines appropriate; and

(v) such other requirements or conditions as the Secretary determines appropriate.

(4) The vessels referred to in paragraph (2)(A) are United States-built offshore supply vessels and United States-built tug/supply vessels in the possession of the Maritime Administration as a result of defaults on loans guaranteed under title XI of this Act.

**SEC. 1306. UNITED STATES MARITIME SERVICE (46 App. U.S.C. 1295e (1996)).**

(a) **Establishment and maintenance.** The Secretary may establish and maintain a voluntary organization for the training of citizens of the United States to serve on merchant marine vessels of the United States to be known as the United States Maritime Service.

(b) **Enrollment; compensation; course of study and periods of training; uniforms.** The Secretary may determine the number of individuals to be enrolled for training and reserve purposes in such service, to fix the rates of pay and allowances of such individuals without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code (relating to classification and General Schedule pay rates), to prescribe the course of study and the periods of training in such service, and to prescribe the uniform of such service and the rules governing the wearing and furnishing of such uniform.

(c) **Ranks, grades, and ratings same as for United States Coast Guard.** The ranks, grades, and ratings for personnel of the United States Maritime Service shall be the same as are then prescribed for the personnel of the United States Coast Guard.

**SEC. 1307. CIVILIAN NAUTICAL SCHOOL (46 App. U.S.C. 1295f (1996)).**

(a) **Definition.** As used in this section, the term “civilian nautical school” means any school operated and conducted in the United States (except the Academy maintained under section 1303, any State maritime academy assisted under section 1304, and any other school operated by the United States or any agency of the United States) which offers instruction to individuals quartered on board any vessel for the primary purpose of training them for service in the merchant marine.

(b) **Examination and inspection of school; rating and certification.** Each civilian nautical school shall be subject to examination and inspection by the Secretary, and the Secretary may (under such rules and regulations as the Secretary may prescribe) provide for the rating and certification of such schools as to the adequacy of the course of instruction, the competency of the instructors, and the suitability of the equipment used by, or in connection with, such school.

(d) **Fines and penalties. Whoever—**

(1) violates this section or any regulations promulgated to implement this section; shall be fined not more than \$10,000 or imprisoned for not more than one year, or both, for each offense.

**SEC. 1308. POWERS AND DUTIES OF SECRETARY (46 App. U.S.C. 1295g (1996)).**

(a) **Rules and regulations.** The Secretary shall establish such rules and regulations as may be necessary to carry out this title.

(b) **Excess vessels and equipment.** The Secretary may cooperate with and assist the Academy, any State maritime academy, and any nonprofit training institution which has been jointly approved by the Secretary and the Secretary of the department in which the United States Coast

Guard is operating as offering training courses which meet Federal regulations for maritime training, by making vessels, shipboard equipment, and other marine equipment, owned by the United States which have been determined to be excess or surplus, available by gift, loan, sale, lease, or charter to such institution for instructional purposes on such terms as the Secretary deems appropriate.

**(c) Securing of information, facilities, or equipment; detailing of personnel.**

(1) The Secretary may secure directly from any department or agency of the United States any information, facilities, or equipment, on a reimbursable basis, necessary to carry out this title.

(2) Upon the request of the Secretary, the head of any department or agency of the United States (including any military department of the United States) may detail, on a reimbursable basis, any of the personnel of such department or agency to the Secretary to assist in carrying out this title.

**(d) Employment of personnel.** To carry out this title, the Secretary may employ at the Academy any individual as a professor, lecturer, or instructor, without regard to the provisions of title 5, United States Code (governing appointments in the competitive service), and may pay such individual without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title (relating to classification and General Schedule pay rates).

**TRAINING OF FUTURE NAVAL OFFICERS UNDER NAVAL RESERVE OFFICER TRAINING CORPS PROGRAMS AT MERCHANT MARINE ACADEMIES FOR PROMOTION OF MAXIMUM INTEGRATION OF NAVAL AND MERCHANT MARINE SEAPOWER OF THE NATION (46 App. U.S.C. 1126-1 (1996)).<sup>43</sup>**

(a) It is the policy of the United States that the United States Navy and the Merchant Marine of the United States work closely together to promote the maximum integration of the total seapower forces of the Nation. In furtherance of this policy, it is necessary and desirable that special steps be taken to assure that Naval Reserve Officer Training Corps programs (for training future naval officers) be maintained at Federal and State merchant marine academies.

(b) It is the sense of the Congress that the Secretary of the Navy should work with the Maritime Administrator and the administrators of the several merchant marine academies to assure that the training available at these academies is consistent with Navy standards and needs.

---

<sup>43</sup>Enacted as section 603 of Public Law 94-361, approved July 14, 1976 (90 STAT. 929), as amended.

# VESSEL OPERATIONS REVOLVING FUND

## **VESSEL OPERATIONS REVOLVING FUND; ESTABLISHMENT; USES; LIMITATIONS (46 App. U.S.C. 1241a (1996)).<sup>1</sup>**

For working capital for the “Vessel Operations Revolving Fund”, which is hereby created for the purpose of carrying out vessel operating functions of the Secretary of Transportation, including charter, operation, maintenance, repair, reconditioning, and betterment of merchant vessels under the jurisdiction of the Secretary of Transportation, \$20,000,000, to remain available until expended.

Notwithstanding any other provision of law, rates for shipping services rendered under said Fund shall be prescribed by the Secretary of Transportation and the Fund shall be credited with all receipts from vessel operating activities conducted thereunder: Provided, That the provisions of sections 1(a), 1(c), 3(c) and 4 of Public Law 17, Seventy-eighth Congress (57 Stat. 45), as amended,<sup>2</sup> shall be applicable in connection with such operations and to seamen employed through general agents as employees of the United States, who may be employed in accordance with customary commercial practices in the maritime industry, notwithstanding the provisions of any law applicable in terms to the employment of persons by the United States: Provided further, That such sums as may be determined to be necessary by the Secretary of Transportation, with the approval of the Bureau of the Budget, but not exceeding 2 per centum of vessel operating expenses, may be advanced from this Fund to the appropriation “Salaries and expenses” for the purposes of that appropriation in connection with vessel operating functions, but without regard to the limitations on amounts as stated therein: Provided further, That notwithstanding any other provisions of law, the unexpended balances of any working funds or of allocation accounts established, subsequent to January 1, 1951, for the activities provided for under this appropriation, together with receipts heretofore and hereafter received from such activities, may be transferred to and consolidated with this Fund, which shall be available for the purposes of such working funds or allocation accounts.

No money made available to the Department of Transportation, for Maritime Activities, by this or any other Act shall be used in payment for a vessel the title to which is acquired by the Government either by requisition or purchase, or the use of which is taken either by requisition or agreement, or which is insured by the Government and lost while so insured, unless the price or hire to be paid therefor, (except in cases where section 802 of the Merchant Marine Act, 1936, as amended, is

---

<sup>1</sup> Enacted as section 801 of the Act of June 2, 1951 (65 STAT. 59), as amended.

<sup>2</sup> 50 U.S.C. App. 129(a), (c), 1293(c), 1294.

applicable) is computed in accordance with subsection 902(a) of said Act, as that subsection is interpreted by the General Accounting Office.

**AVAILABILITY OF VESSEL OPERATIONS REVOLVING FUND; VESSELS INVOLVED IN MORTGAGE FORECLOSURE OR FORFEITURE PROCEEDINGS; REDELIVERY AND LAYUP OF CHARTERED SHIPS; CUSTODY AND HUSBANDING OF GOVERNMENT-OWNED SHIPS (46 App. U.S.C.**

**1241b (1996)).**<sup>3</sup> Hereafter the vessel operations revolving fund, created by the Third Supplemental Appropriation Act, 1951, shall be available for necessary expenses incurred, in connection with protection, preservation, maintenance, acquisition, or use of vessels involved in mortgage-foreclosure or forfeiture proceedings instituted by the United States, including payment of prior claims and liens, expenses of sale, or other charges incident thereto; for necessary expenses incident to the redelivery and lay-up, in the United States, of ships now chartered under agreements which do not call for their return to the United States; for activation, repair and deactivation of merchant ships chartered for limited emergency purposes during the fiscal year 1957 under the jurisdiction of the Secretary of Transportation; and for payment of expenses of custody and husbanding of Government-owned ships other than those within reserve fleets.

**EXPENSES FOR ACTIVATION, REPAIR AND DEACTIVATION OF MERCHANT SHIPS; RECEIPTS (46 App. U.S.C. 1241c**

**(1996)).**<sup>4</sup> The vessel operations revolving fund created by the Third Supplemental Appropriations Act, 1951, approved June 2, 1951 (Public Law 45, Eighty-second congress; 65 Stat. 52, at 59), shall, beginning July 1, 1956, be available for expenses incurred in connection with the activation, repair, and deactivation of merchant ships chartered under the jurisdiction of the Secretary of Transportation. There shall be credited to such fund all receipts on account of operations after July 1, 1956, under charters of Government-owned ships under the jurisdiction of the Secretary of Transportation.

---

<sup>3</sup> Enacted as section 101 of the Act of June 20, 1956 (70 STAT. 319), as amended.

<sup>4</sup> Enacted as part of the Act of August 1, 1956 (70 STAT. 897).

# MARITIME LIABILITY

## CHAPTER 301—GENERAL.

### 46 U.S.C. 30101 (1996). DEFINITIONS.

In this subtitle—

- (1) “documented vessel” means a vessel documented under chapter 121 of this title;
- (2) “foreign vessel” means a vessel of foreign registry or operated under the authority of a foreign country;
- (3) “public vessel” means (except in chapter 315 of this title) a vessel that is owned, demise chartered, or operated by the United States Government or a government of a foreign country;
- (4) “recreational vessel” means a vessel—
  - (A) operated primarily for pleasure; or
  - (B) leased, rented, or demise chartered to another for the latter’s pleasure;
- (5) “seaman” means a master or a crewmember of a vessel in operation;
- (6) “State” means a State of the United States, Guam, Puerto Rico, the Virgin Islands, American Samoa, the District of Columbia, the Northern Mariana Islands, and any other territory or possession of the United States;
- (7) “State vessel” means a vessel owned or demise chartered by the government of a State or an authority or a political subdivision of a State;
- (8) “United States”, when used in a geographic sense, means the States of the United States, Guam, Puerto Rico, the Virgin Islands, American Samoa, the District of Columbia, the Northern Mariana Islands, and any other territory or possession of the United States; and
- (9) “vessel of the United States” means a vessel documented under chapter 121 of this title, numbered under chapter 123 of this title, or titled under the law of a State.

## CHAPTER 313. COMMERCIAL INSTRUMENTS AND MARITIME LIENS

### SUBCHAPTER I—GENERAL.

### 46 U.S.C. 31301 (1996). DEFINITIONS.

In this chapter—

- (1) “acknowledge” means making—
  - (A) an acknowledgment or notarization before a notary public or other official authorized by a law of the United States or a State to take acknowledgments of deeds; or

(B) a certificate issued under the Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents, 1961;

(2) “district court” means—

(A) a district court of the United States (as defined in section 451 of title 28);

(B) the District Court of Guam;

(C) the District Court of the Virgin Islands;

(D) the District Court for the Northern Mariana Islands;

(E) the High Court of American Samoa; and

(F) any other court of original jurisdiction of a territory or possession of the United States;

(3) “mortgagee” means—

(A) a person to whom property is mortgaged; or

(B) when a mortgage on a vessel involves a trust, the trustee that is designated in the trust agreement;

(4) “necessaries” includes repairs, supplies, towage, and the use of a dry dock or marine railway;

(5) “preferred maritime lien” means a maritime lien on a vessel—

(A) arising before a preferred mortgage was filed under section 31321 of this title;

(B) for damage arising out of maritime tort;

(C) for wages of a stevedore when employed directly by a person listed in section 31341 of this title;

(D) for wages of the crew of the vessel;

(E) for general average; or

(F) for salvage, including contract salvage; and

(6) “preferred mortgage”—

(A) means a mortgage that is a preferred mortgage under section 31322 of this title; and

(B) also means in sections 31325 and 31326 of this title, a mortgage, hypothecation, or similar charge that is established as a security on a foreign vessel if the mortgage, hypothecation, or similar charge was executed under the laws of the foreign country under whose laws the ownership of the vessel is documented and has been registered under those laws in a public register at the port of registry of the vessel or at a central office.

#### **46 U.S.C. 31302 (1996). AVAILABILITY OF INSTRUMENTS, COPIES, AND INFORMATION.**

The Secretary of Transportation shall—

(1) make any instrument filed or recorded with the Secretary under this chapter available for public inspection;

(2) on request, provide a copy, including a certified copy, of any instrument made available for public inspection under this chapter; and

(3) on request, provide a certificate containing information included in an instrument filed or recorded under this chapter.

**46 U.S.C. 31303 (1996). CERTAIN CIVIL ACTIONS NOT AUTHORIZED.** If a mortgage covers a vessel and additional property that is not a vessel, this chapter does not authorize a civil action in rem to enforce the rights of the mortgagee under the mortgage against the additional property.

**46 U.S.C. 31304 (1996). LIABILITY FOR NONCOMPLIANCE.**

(a) If a person makes a contract secured by, or on the credit of, a vessel covered by a mortgage filed or recorded under this chapter and sustains a monetary loss because the mortgagor or the master or other individual in charge of the vessel does not comply with a requirement imposed on the mortgagor, master, or individual under this chapter, the mortgagor is liable for the loss.

(b) A civil action may be brought to recover for losses referred to in subsection (a) of this section. The district courts have original jurisdiction of the action, regardless of the amount in controversy or the citizenship of the parties. If the plaintiff prevails, the court shall award costs and attorney fees to the plaintiff.

**46 U.S.C. 31305 (1996). WAIVER OF LIEN RIGHTS.** This chapter does not prevent a mortgagee or the lien holder from waiving or subordinating at any time by agreement or otherwise the lien holder's right to a lien, the priority or, if a preferred mortgage lien, the preferred status of the lien.

**46 U.S.C. 31306 (1996). DECLARATION OF CITIZENSHIP.**

(a) Except as provided by the Secretary of Transportation, when an instrument transferring an interest in a vessel is presented to the Secretary of Transportation for filing or recording, the transferee shall file with the instrument a declaration, in the form the Secretary may prescribe by regulation, stating information about citizenship and other information the Secretary may require to show the transaction involved does not violate section 9 or 37 of the Shipping Act, 1916 (46 App. U.S.C. 808, 835).

(b) A declaration under this section filed by a corporation must be signed by its president, secretary, treasurer, or other official authorized by the corporation to execute the declaration.

(c) Except as provided by the Secretary, an instrument transferring an interest in a vessel is not valid against any person until the declaration required by this section has been filed.

(d) A person knowingly making a false statement of a material fact in a declaration filed under this section shall be fined under title 18, imprisoned for not more than 5 years, or both.

**46 U.S.C. 31307 (1996). STATE STATUTES SUPERSEDED.**

This chapter supersedes any State statute conferring a lien on a vessel to the extent the statute establishes a claim to be enforced by a civil action in rem against the vessel for necessities.

**46 U.S.C. 31308 (1996). SECRETARY OF COMMERCE OR TRANSPORTATION AS MORTGAGEE.** When the Secretary of Commerce or Transportation is a mortgagee under this chapter, the Secretary may foreclose on a lien arising from a right established under a mortgage under title XI of the Merchant Marine Act, 1936 (46 App. U.S.C. 1271 et seq.), subject to section 362(b) of title 11.

**46 U.S.C. 31309 (1996). GENERAL CIVIL PENALTY.** Except as otherwise provided in this chapter, a person violating 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.

**46 U.S.C. 31321 (1996). FILING, RECORDING, AND DISCHARGE.**

(a)(1) A bill of sale, conveyance, mortgage, assignment, or related instrument, whenever made, that includes any part of a documented vessel or a vessel for which an application for documentation is filed, must be filed with the Secretary of Transportation to be valid, to the extent the vessel is involved, against any person except—

- (A) the grantor, mortgagor, or assignor;
- (B) the heir or devisee of the grantor, mortgagor, or assignor; and
- (C) a person having actual notice of the sale, conveyance, mortgage, assignment, or related instrument.

(2) Each bill of sale, conveyance, mortgage, assignment, or related instrument that is filed in substantial compliance with this section is valid against any person from the time it is filed with the Secretary.

(3) The parties to an instrument or an application for documentation shall use diligence to ensure that the parts of the instrument or application for which they are responsible are in substantial compliance with the filing and documentation requirements.

(4) (A) A bill of sale, conveyance, mortgage, assignment, or related instrument may be filed electronically under regulations prescribed by the Secretary.

(B) A filing made electronically under subparagraph (A) shall not be effective after the 10-day period beginning on the date of the filing

unless the original instrument is provided to the Secretary within that 10-day period.

(b) To be filed, a bill of sale, conveyance, mortgage, assignment, or related instrument must—

(1) identify the vessel;

(2) state the name and address of each party to the instrument;

(3) state, if a mortgage, the amount of the direct or contingent obligations (in one or more units of account as agreed to by the parties) that is or may become secured by the mortgage, excluding interest, expenses, and fees;

(4) state the interest of the grantor, mortgagor, or assignor in the vessel;

(5) state the interest sold, conveyed, mortgaged, or assigned; and

(6) be signed and acknowledged.

(c) If a bill of sale, conveyance, mortgage, assignment, or related document is filed that involves a vessel for which an application for documentation is filed, and the Secretary decides that the vessel cannot be documented by an applicant—

(1) the Secretary shall send notice of the Secretary's decision, including reasons for the decision, to each interested party to the instrument filed for recording; and

(2) 90 days after sending the notice as provided under clause (1) of this subsection, the Secretary—

(A) may terminate the filing; and

(B) may return the instrument filed without recording it under subsection (e) of this section.

(d) A person may withdraw an application for documentation of a vessel for which a mortgage has been filed under this section only if the mortgagee consents.

(e) The Secretary shall—

(1) record the bills of sale, conveyances, mortgages, assignments, and related instruments of a documented vessel complying with subsection (b) of this section in the order they are filed; and

(2) maintain appropriate indexes, for use by the public, of instruments filed or recorded, or both.

(f) On full and final discharge of the indebtedness under a mortgage recorded under subsection (e)(1) of this section, a mortgagee, on request of the Secretary or mortgagor, shall provide the Secretary with an acknowledged certificate of discharge of the indebtedness in a form prescribed by the Secretary. The Secretary shall record the certificate.

(g) The mortgage or related instrument of a vessel covered by a preferred mortgage under section 31322(d) of this title, that is later filed

under this section at the time an application for documentation is filed, is valid under this section from the time the mortgage or instrument representing financing became a preferred mortgage under section 31322(d).

(h) On full and final discharge of the indebtedness under a mortgage deemed to be a preferred mortgage under section 31322(d) of this title, a mortgagee, on request of the Secretary, a State, or mortgagor, shall provide the Secretary or the State, as appropriate, with an acknowledged certificate of discharge of the indebtedness in a form prescribed by the Secretary or the State, as applicable. If filed with the Secretary, the Secretary shall enter that information in the vessel identification system under chapter 125 of this title.

#### **46 U.S.C. 31322 (1996) PREFERRED MORTGAGES.**

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

(1) includes the whole of the vessel;

(2) is filed in substantial compliance with section 31321 of this title;

and

(3)(A) covers a documented vessel; or

(B) covers a vessel for which an application for documentation is filed that is in substantial compliance with the requirements of chapter 121 of this title and the regulations prescribed under that chapter.

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

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

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

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

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

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

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

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

(2) This subsection applies to mortgages or instruments covering vessels titled in a State after—

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

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

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

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

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

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

## **SUBCHAPTER II. COMMERCIAL INSTRUMENTS.**

### **46 U.S.C. 31323 (1996). DISCLOSING AND INCURRING OBLIGATIONS BEFORE EXECUTING PREFERRED MORTGAGES.**

(a) On request of the mortgagee and before executing a preferred mortgage, the mortgagor shall disclose in writing to the mortgagee the existence of any obligation known to the mortgagor on the vessel to be mortgaged.

(b) After executing a preferred mortgage and before the mortgagee has had a reasonable time to file the mortgage, the mortgagor may not incur, without the consent of the mortgagee, any contractual obligation establishing a lien on the vessel except a lien for—

(1) wages of a stevedore when employed directly by a person listed in section 31341 of this title;

(2) wages for the crew of the vessel;

(3) general average; or

(4) salvage, including contract salvage.

(c) On conviction of a mortgagor under section 31330(a)(1)(A) or (B) of this title for violating this section, the mortgage indebtedness, at the option of the mortgagee, is payable immediately.

**46 U.S.C. 31324 (1996). RETENTION AND EXAMINATION OF MORTGAGES OF VESSELS COVERED BY PREFERRED MORTGAGES.**

(a) On request, the owner, master, or individual in charge of a vessel covered by a preferred mortgage shall permit a person to examine the mortgage if the person has business with the vessel that may give rise to a maritime lien or the sale, conveyance, mortgage, or assignment of a mortgage of the vessel.

(b) A mortgagor of a preferred mortgage covering a self-propelled vessel shall use diligence in keeping a certified copy of the mortgage on the vessel.

**46 U.S.C. 31325 (1996). PREFERRED MORTGAGE LIENS AND ENFORCEMENT.<sup>1</sup>**

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

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

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

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

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

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

(3) enforce the preferred mortgage lien or a claim for the outstanding indebtedness secured by the mortgaged vessel, or both, by exercising any other remedy (including an extrajudicial remedy) against a documented vessel, a vessel for which an application for documentation is filed under chapter 121 of this title, a foreign vessel, or a mortgagor,

---

<sup>1</sup> Section 1124(a) and (b) of Public Law 104-324, approved October 19, 1996 (110 STAT. 3980), amended 46 U.S.C. 31325, by the addition of subsection (b)(3) and (f). Section 1124(c) provides: “(c) Rule of Construction. The amendment made by subsections (a) and (b) may not be construed to imply that remedies other than judicial remedies were not available before the date of enactment of this section to enforce claims for outstanding indebtedness secured by mortgaged vessels.”

maker, comaker, or guarantor for the amount of the outstanding indebtedness or any deficiency in full payment of that indebtedness if—

(A) the remedy is allowed under applicable law; and

(B) the exercise of the remedy will not result in a violation of section 9 or 37 of the Shipping Act, 1916 (46 App. U.S.C. 808, 835).

(c) The district courts have original jurisdiction of a civil action brought under subsection (b)(1) or (2) of this section. However, for a documented vessel, a vessel to be documented under chapter 121 of this title, or a foreign vessel, this jurisdiction is exclusive of the courts of the States for a civil action brought under subsection (b)(1) of this section.

(d)(1) Actual notice of a civil action brought under subsection (b)(1) of this section, or to enforce a maritime lien, must be given in the manner directed by the court to—

(A) the master or individual in charge of the vessel;

(B) any person that recorded under section 31343(a) or (d) of this title a notice of a claim of an undischarged lien on the vessel; and

(C) a mortgagee of a mortgage filed or recorded under section 31321 of this title that is an undischarged mortgage on the vessel.

(2) Notice under paragraph (1) of this subsection is not required if, after search satisfactory to the court, the person entitled to the notice has not been found in the United States.

(3) Failure to give notice required by this subsection does not affect the jurisdiction of the court in which the civil action is brought. However, unless notice is not required under paragraph (2) of this subsection, the party required to give notice is liable to the person not notified for damages in the amount of that person's interest in the vessel terminated by the action brought under subsection (b)(1) of this section. A civil action may be brought to recover the amount of the terminated interest. The district courts have original jurisdiction of the action, regardless of the amount in controversy or the citizenship of the parties. If the plaintiff prevails, the court may award costs and attorney fees to the plaintiff.

(e) In a civil action brought under subsection (b)(1) of this section—

(1) the court may appoint a receiver and authorize the receiver to operate the mortgaged vessel and shall retain in rem jurisdiction over the vessel even if the receiver operates the vessel outside the district in which the court is located; and

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

(f)(1) Before title to the documented vessel or vessel for which an application for documentation is filed under chapter 121 is transferred by an extrajudicial remedy, the person exercising the remedy should

give notice of the proposed transfer to the Secretary, to the mortgagee of any mortgage on the vessel filed in substantial compliance with section 31321 of this title before notice of the proposed transfer is given to the Secretary, and to any person that recorded a notice of a claim of an undischarged lien on the vessel under section 31343(a) or (d) of this title before notice of the proposed transfer is given to the Secretary.

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

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

**46 U.S.C. 31326 (1996). COURT SALES TO ENFORCE PREFERRED MORTGAGE LIENS AND MARITIME LIENS AND PRIORITY OF CLAIMS.**

(a) When a vessel is sold by order of a district court in a civil action in rem brought to enforce a preferred mortgage lien or a maritime lien, any claim in the vessel existing on the date of sale is terminated, including a possessory common law lien of which a person is deprived under section 31325(e)(2) of this title, and the vessel is sold free of all those claims.

(b) Each of the claims terminated under subsection (a) of this section attaches, in the same amount and in accordance with their priorities to the proceeds of the sale, except that—

(1) the preferred mortgage lien, including a preferred mortgage lien on a foreign vessel whose mortgage has been guaranteed under title XI of the Merchant Marine Act, 1936 (46 App. U.S.C. 1101 et seq.), has priority over all claims against the vessel (except for expenses and fees allowed by the court, costs imposed by the court, and preferred maritime liens); and

(2) for a foreign vessel whose mortgage has not been guaranteed under title XI of that Act, the preferred mortgage lien is subordinate to a maritime lien for necessities provided in the United States.

**46 U.S.C. 31327 (1996). FORFEITURE OF MORTGAGEE INTEREST.** The interest of a mortgagee in a documented vessel or a vessel covered by a preferred mortgage under section 31322(d) of this title may be terminated by a forfeiture of the vessel for a violation of a law of the United States only if the mortgagee authorized, consented, or conspired to do the act, failure, or omission that is the basis of the violation.

## **46 U.S.C. 31329 (1996). COURT SALES OF DOCUMENTED VESSELS.**

(a) A documented vessel may be sold by order of a district court only to—

(1) a person eligible to own a documented vessel under section 12102 of this title; or

(2) a mortgagee of that vessel.

(b) When a vessel is sold to a mortgagee not eligible to own a documented vessel—

(1) the vessel must be held by the mortgagee for resale;

(2) the vessel held by the mortgagee is subject to section 902 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1242); and

(3) the sale of the vessel to the mortgagee is not a sale foreign within the terms of the first proviso of section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883).

(c) Unless waived by the Secretary of Transportation, a person purchasing a vessel by court order under subsection (a)(1) of this section or from a mortgagee under subsection (a)(2) of this section must document the vessel under chapter 121 of this title.

(d) The vessel may be operated by the mortgagee not eligible to own a documented vessel only with the approval of the Secretary.

(e) A sale of a vessel contrary to this section is void.

(f) This section does not apply to a documented vessel that has been operated only for pleasure.

## **46 U.S.C. 31330 (1996). PENALTIES.**

(a)(1) A mortgagor shall be fined under title 18, imprisoned for not more than 2 years, or both, if the mortgagor—

(A) with intent to defraud, does not disclose an obligation on a vessel as required by section 31323(a) of this title;

(B) with intent to defraud, incurs a contractual obligation in violation of section 31323(b) of this title;

(C) with intent to hinder or defraud an existing or future creditor of the mortgagor or a lienor of the vessel, files a mortgage with the Secretary of Transportation; or

(D) with intent to defraud, does not comply with section 31321(h) of this title.

(2) A mortgagor is liable to the United States Government for a civil penalty of not more than \$10,000 if the mortgagor—

(A) does not disclose an obligation on a vessel as required by section 31323(a) of this title;

(B) incurs a contractual obligation in violation of section 31323(b) of this title;

(C) files with the Secretary a mortgage made not in good faith; or

(D) does not comply with section 31321(h) of this title.

(b)(1) A person that knowingly violates section 31329 of this title shall be fined under title 18, imprisoned for not more than 3 years, or both.

(2) A person violating section 31329 of this title is liable to the Government for a civil penalty of not more than \$25,000.

(3) A vessel involved in a violation under section 31329 of this title and its equipment may be seized by, and forfeited to, the Government.

(c) If a person not an individual violates this section, the president or chief executive of the person also is subject to any penalty provided under this section.

### **SUBCHAPTER III. MARITIME LIENS.**

#### **46 U.S.C. 31341. PERSONS PRESUMED TO HAVE AUTHORITY TO PROCURE NECESSARIES.**

(a) The following persons are presumed to have authority to procure necessities for a vessel:

(1) the owner;

(2) the master;

(3) a person entrusted with the management of the vessel at the port of supply; or

(4) an officer or agent appointed by—

(A) the owner;

(B) a charterer;

(C) an owner pro hac vice; or

(D) an agreed buyer in possession of the vessel.

(b) A person tortiously or unlawfully in possession or charge of a vessel has no authority to procure necessities for the vessel.

#### **46 U.S.C. 31342 (1996). ESTABLISHING MARITIME LIENS.**

(a) Except as provided in subsection (b) of this section, a person providing necessities to a vessel on the order of the owner or a person authorized by the owner—

(1) has a maritime lien on the vessel;

(2) may bring a civil action in rem to enforce the lien; and

(3) is not required to allege or prove in the action that credit was given to the vessel.

(b) This section does not apply to a public vessel.

**46 U.S.C. 31343 (1996). RECORDING AND DISCHARGING LIENS ON PREFERRED MORTGAGE VESSELS.**

(a) Except as provided under subsection (d) of this section, a person claiming a lien on a vessel covered by a preferred mortgage filed or recorded under this chapter may record with the Secretary of Transportation a notice of that person's lien claim on the vessel. To be recordable, the notice must—

- (1) state the nature of the lien;
- (2) state the date the lien was established;
- (3) state the amount of the lien;
- (4) state the name and address of the person; and
- (5) be signed and acknowledged.

(b) The Secretary shall record a notice complying with subsection (a) of this section.

(c) On full and final discharge of the indebtedness that is the basis for a claim recorded under subsection (b) of this section, on request of the Secretary or owner, the person having the claim shall provide the Secretary with an acknowledged certificate of discharge of the indebtedness. The Secretary shall record the certificate.

(d) A person claiming a lien on a vessel covered by a preferred mortgage under section 31322(d) of this title must record and discharge the lien as provided by the law of the State in which the vessel is titled.

# FAST SEALIFT PROGRAM

## SEC. 1424.<sup>1</sup> FAST SEALIFT PROGRAM.

(a) **Establishment of Program.** The Secretary of the Navy shall establish a program for the construction and operation, or conversion and operation, of cargo vessels that incorporate features essential for military use of the vessels.

(b) **Program Requirements.** The program under this section shall be carried out as follows:

(1) The Secretary of the Navy shall establish the design requirements for vessels to be constructed or converted under the program.

(2) In establishing the design requirements for vessels to be constructed or converted under the program, the Secretary shall use commercial design standards and shall consult with the Administrator of the Maritime Administration.

(3) Construction or conversion of the vessels shall be accomplished in private United States shipyards.

(4) The vessels constructed or converted under the program shall incorporate propulsion systems whose main components (that is, the engines, reduction gears, and propellers) are manufactured in the United States.

(5) The vessels constructed or converted under the program shall incorporate bridge and machinery control systems and interior communications equipment which—

(A) are manufactured in the United States; and

(B) have more than half of their value, in terms of cost, added in the United States.

(6) The Secretary of Defense may waive the requirement of paragraph (5) with respect to a system or equipment described in that paragraph if—

(A) the system or equipment is not available; or

(B) the costs of compliance would be unreasonable compared to the costs of purchase from a foreign manufacturer.

(c) **Charter of Vessels Constructed.**

(1) Except when the Secretary determines that having a vessel immediately available with a full or partial crew is in the national interest, the Secretary, in consultation with the Administrator of the Maritime

<sup>1</sup> Section 1424 of Public Law 101-510, approved November 5, 1990 (104 STAT. 1485, 1683), as amended (10 U.S.C. 7291, note).

Administration, shall charter each vessel constructed before October 1, 1995, under the program for commercial operation. Any such charter—

(A) shall not permit the operation of the vessel other than in the foreign commerce of the United States;

(B) may be made only with an individual or entity that is a citizen of the United States (which, in the case of a corporation, partnership, or association, shall be determined in the manner specified in section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802)); and

(C) shall require that the vessel be documented (and remain documented) under the laws of the United States.

(2) The Secretary may enter into a charter under paragraph (1) only through the use of competitive bidding procedures that ensure that the highest charter rates are obtained by the United States consistent with good business practice, except that the Secretary may operate the vessel (or contract to have the vessel operated) in direct support of United States military forces during a time of war or national emergency and at other times when the Administrator of the Maritime Administration determines that operation would not unfairly compete with another United States-flag vessel.

(3) If the Secretary determines that a vessel previously chartered under the program no longer has commercial utility, the Secretary may transfer the vessel to the National Defense Reserve Fleet.

(4) A contract for the charter of a vessel under paragraph (1) shall include a provision that the charter may be terminated for national security reasons without cost to the United States.

**(d) Reports to Congress.**

(1) Not later than six months after the date of the enactment of this Act, the Secretary of the Navy shall submit to Congress a report describing the Secretary's plan for implementing the fast sealift program authorized by this section.

(2) Not later than three years after the date of the enactment of this Act, the Secretary shall submit to Congress a report on the implementation of the plan described in the report submitted under paragraph (1). The report shall include a description of vessels built or under contract to be built pursuant to this section, the use of such vessels, and the operating experience and manning of such vessels.

(3) The reports under paragraphs (1) and (2) shall be prepared in consultation with the Administrator of the Maritime Administration.

**(e) Availability of Funds.** Amounts appropriated to the Department of Defense for any fiscal year for acquisition of fast sealift vessels may be used for the program under this section.

## **SEC. 1021.<sup>2</sup> PROCUREMENT OF SHIPS FOR THE FAST SEALIFT PROGRAM.**

### **(a) Acquisition and Conversion of U.S. Built Vessels.**

Notwithstanding any other provision of law, the Secretary of the Navy may use funds available for the Fast Sealift Program—

(1) to acquire vessels for the program from among available vessels built in United States shipyards; and

(2) to convert in United States shipyards vessels built in United States shipyards.

**(b) Acquisition of Five Foreign-Built Vessels.** Notwithstanding any other provision of law, funds available for the Fast Sealift Program may be used for the acquisition of five vessels built in foreign shipyards and for conversion of those vessels in United States shipyards if the Secretary of the Navy determines that acquisition of those vessels is necessary to expedite the availability of vessels for sealift.

## **SEC. 375.<sup>3</sup> CONSIDERATION OF VESSEL LOCATION FOR THE AWARD OF LAYBERTH CONTRACTS FOR SEALIFT VESSELS.**

**(a) Consideration of Vessel Location in the Award of LAYBERTH Contracts.** As a factor in the evaluation of bids and proposals for the award of contracts to LAYBERTH sealift vessels of the Department of the Navy, the Secretary of the Navy shall include the location of the vessels, including whether the vessels should be layberthed at locations where—

(1) members of the Armed Forces are likely to be loaded onto the vessels; and

(2) layberthing the vessels maximizes the ability of the vessels to meet mobility and training needs of the Department of Defense.

**(b) Establishment of Location as a Major Criterion.** In the evaluation of bids and proposals referred to in subsection (a), the Secretary of the Navy shall give the same level of consideration to the location of the vessels as the Secretary gives to other major factors established by the Secretary.

**(c) Applicability.** Subsection (a) shall apply to any solicitation for bids or proposals issued after the end of the 120-day period beginning on the date of the enactment of this Act.

---

<sup>2</sup> Section 1021 of Public Law 102-484, approved October 23, 1992 (106 STAT. 2485) (10 U.S.C. 7291, note).

<sup>3</sup> Section 375 of Public Law 102-484, approved October 23, 1992 (106 STAT. 2385, 2315) (10 U.S.C. 7291, note).

# NATIONAL DEFENSE SEALIFT FUND

## 10 U.S.C. 2218. NATIONAL DEFENSE SEALIFT FUND.

(a) **Establishment.** There is established in the Treasury of the United States a fund to be known as the “National Defense Sealift Fund”.

(b) **Administration of Fund.** The Secretary of Defense shall administer the Fund consistent with the provisions of this section.

(c) **Fund Purposes.**

(1) Funds in the National Defense Sealift Fund shall be available for obligation and expenditure only for the following purposes:

(A) Construction (including design of vessels), purchase, alteration, and conversion of Department of Defense sealift vessels.

(B) Operation, maintenance, and lease or charter of Department of Defense vessels for national defense purposes.

(C) Installation and maintenance of defense features for national defense purposes on privately owned and operated vessels that are constructed in the United States and documented under the laws of the United States.

(D) Research and development relating to national defense sealift.

(E) Expenses for maintaining the National Defense Reserve Fleet under section 11 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1744), and for the costs of acquisition of vessels for, and alteration and conversion of vessels in (or to be placed in), the fleet, but only for vessels built in United States shipyards.

(2) Funds in the National Defense Sealift Fund may be obligated or expended only in amounts authorized by law.

(3) Funds obligated and expended for a purpose set forth in subparagraph (B) or (D) of paragraph (1) may be derived only from funds deposited in the National Defense Sealift Fund pursuant to subsection (d)(1).

(d) **Deposits.** There shall be deposited in the Fund the following:

(1) All funds appropriated to the Department of Defense for fiscal years after fiscal year 1993 for—

(A) construction (including design of vessels), purchase, alteration, and conversion of national defense sealift vessels;

(B) operations, maintenance, and lease or charter of national defense sealift vessels;

(C) installation and maintenance of defense features for national defense purposes on privately owned and operated vessels; and

(D) research and development relating to national defense sealift.

(2) All receipts from the disposition of national defense sealift ves-

sels, excluding receipts from the sale, exchange, or scrapping of National Defense Reserve Fleet vessels under sections 508 and 510 of the Merchant Marine Act of 1936 (46 U.S.C. App. 1158, 1160), shall be deposited in the Fund.

(3) All receipts from the charter of vessels under section 1424(c) of the National Defense Authorization Act for Fiscal Year 1991 (10 U.S.C. 7291 note).<sup>1</sup>

**(e) Acceptance of Support.**

(1) The Secretary of Defense may accept from any person, foreign government, or international organization any contribution of money, personal property (excluding vessels), or assistance in kind for support of the sealift functions of the Department of Defense.

(2) Any contribution of property accepted under paragraph (1) may be retained and used by the Department of Defense or disposed of in accordance with procedures prescribed by the Secretary of Defense.

(3) The Secretary of Defense shall deposit in the Fund money and receipts from the disposition of any property accepted under paragraph (1).

**(f) Limitations.**

(1) Not more than a total of five vessels built in foreign ship yards may be purchased with funds in the National Defense Sealift Fund pursuant to subsection (c)(1).

(2) Construction, alteration, or conversion of vessels with funds in the National Defense Sealift Fund pursuant to subsection (c)(1) shall be conducted in United States ship yards and shall be subject to section 1424(b) of Public Law 101-510 (104 Stat. 1683).<sup>2</sup>

**(g) Expiration of Funds after 5 Years.** No part of an appropriation that is deposited in the National Defense Sealift Fund pursuant to subsection (d)(1) shall remain available for obligation more than five years after the end of fiscal year for which appropriated except to the extent specifically provided by law.

**(h) Budget Requests.** Budget requests submitted to Congress for the National Defense Sealift Fund shall separately identify—

(1) the amount requested for programs, projects, and activities for construction (including design of vessels), purchase, alteration, and conversion of national defense sealift vessels;

---

<sup>1</sup> Section 1424 is set forth under Fast Sealift Program, page 193, *supra*.

<sup>2</sup> See footnote 1, *supra*.

(2) the amount requested for programs, projects, and activities for operation, maintenance, and lease or charter of national defense sealift vessels;

(3) the amount requested for programs, projects, and activities for installation and maintenance of defense features for national defense purposes on privately owned and operated vessels that are constructed in the United States and documented under the laws of the United States; and

(4) the amount requested for programs, projects, and activities for research and development relating to national defense sealift.

(i) **Title or Management of Vessels.** Nothing in this section (other than subsection (c)(1)(E)) shall be construed to affect or modify title to, management of, or funding responsibilities for, any vessel of the National Defense Reserve Fleet, or assigned to the Ready Reserve Force component of the National Defense Reserve Fleet, as established by section 11 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1744).

(j) **Authority for Certain Use of Funds.** Upon a determination by the Secretary of Defense that such action serves the national defense interest and after consultation with the congressional defense committees, the Secretary may use funds available for obligation or expenditure for a purpose specified under subsection (c)(1) (A), (B), (C), and (D) for any purpose under subsection (c)(1).

(k) **Definitions.** In this section:

(1) The term “Fund” means the National Defense Sealift Fund established by subsection (a).

(2) The term “Department of Defense sealift vessel” means any ship owned, operated, controlled, or chartered by the Department of Defense that is—

(A) a fast sealift ship, including any vessel in the Fast Sealift Program established under section 1424 of Public Law 101-510 (104 Stat. 1683);<sup>3</sup>

(B) a maritime propositioning ship;

(C) an afloat propositioning ship;

(D) an aviation maintenance support ship; or

(E) a hospital ship.

(3) The term “national defense sealift vessel” means—

(A) a Department of Defense sealift vessel; and

---

<sup>3</sup> See footnote 1, *supra*.

(B) a national defense reserve fleet vessel, including a vessel in the Ready Reserve Force maintained under section 11 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1744).

(4) The term “congressional defense committees” means—

(A) the Committee on Armed Services and the Committee on Appropriations of the Senate; and

(B) the Committee on National Security and the Committee on Appropriations of the House of Representatives.

# SHIPYARD DEVELOPMENT

## NATIONAL SHIPBUILDING INITIATIVE.<sup>1</sup>

**SEC. 1351. SHORT TITLE.** This subtitle may be cited as the “National Shipbuilding and Shipyard Conversion Act of 1993”.

### **SEC. 1352. NATIONAL SHIPBUILDING INITIATIVE.**

(a) **Establishment of Program.** There shall be a National Shipbuilding Initiative program, to be carried out to support the industrial base for national security objectives by assisting in the reestablishment of the United States shipbuilding industry as a self-sufficient, internationally competitive industry.

(b) **Administering Departments.** The program shall be carried out—

(1) by the Secretary of Defense, with respect to programs under the jurisdiction of the Secretary of Defense; and

(2) by the Secretary of Transportation, with respect to programs under the jurisdiction of the Secretary of Transportation.

(c) **Program Elements.** The National Shipbuilding Initiative shall consist of the following program elements:

(1) *Financial Incentives Program.* A financial incentives program to provide loan guarantees to initiate commercial ship construction for domestic and export sales, encourage shipyard modernization, and support increased productivity.

(2) *Technology Development Program.* A technology development program, to be carried out within the Department of Defense by the Defense Advanced Research Projects Agency, to improve the technology base for advanced shipbuilding technologies and related dual-use technologies through activities including a development program for innovative commercial ship design and production processes and technologies.

(3) *Navy’s Affordability through Commonality Program.* Enhanced support by the Secretary of Defense for the shipbuilding program of the Department of the Navy known as the Affordability Through Commonality (ATC) program, to include enhanced support (A) for the development of common modules for military and commercial ships, and (B) to foster civil-military integration into the next generation of Naval surface combatants.

(4) *Navy’s Manufacturing Technology and Technology Base Programs.* Enhanced support by the Secretary of Defense for, and

---

<sup>1</sup> Sections 1351 to 1354 of Public Law 103-160, approved November 30, 1993 (107 STAT. 1809), as amended (10 U.S.C. 2501, note).

strengthened funding for, that portion of the Manufacturing Technology program of the Navy, and that portion of the Technology Base program of the Navy, that are in the areas of shipbuilding technologies and ship repair technologies.

**SEC. 1353. DEPARTMENT OF DEFENSE PROGRAM MANAGEMENT THROUGH DEFENSE ADVANCED RESEARCH PROJECTS AGENCY.** The Secretary of Defense shall designate the Defense Advanced Research Projects Agency of the Department of Defense as the lead agency of the Department of Defense for activities of the Department of Defense which are part of the National Shipbuilding Initiative program. Those activities shall be carried out as part of defense conversion activities of the Department of Defense.

**SEC. 1354. DEFENSE ADVANCE RESEARCH PROJECTS AGENCY FUNCTIONS AND MINIMUM FINANCIAL COMMITMENT OF NON-FEDERAL GOVERNMENT PARTICIPANTS.**

(a) **DARPA Functions.** The Secretary of Defense, acting through the Director of the Defense Advanced Research Projects Agency, shall carry out the following functions with respect to the National Shipbuilding Initiative program:

(1) Consultation with the Maritime Administration, the Office of Economic Adjustment, the National Economic Council, the National Shipbuilding Research Project, the Coast Guard, the National Oceanic and Atmospheric Administration, appropriate naval commands and activities, and other appropriate Federal agencies on—

(A) development and transfer to the private sector of dual-use shipbuilding technologies, ship repair technologies, and shipbuilding management technologies;

(B) assessments of potential markets for maritime products; and

(C) recommendation of industrial entities, partnerships, joint ventures, or consortia for short-and long-term manufacturing technology investment strategies.

(2) Funding and program management activities to develop innovative design and production processes and the technologies required to implement those processes.

(3) Facilitation of industry and Government technology development and technology transfer activities (including education and training, market assessments, simulations, hardware models and prototypes, and national and regional industrial base studies).

(4) Integration of promising technology advances made in the Technology Reinvestment Program of the Advanced Research Projects Agency into the National Shipbuilding Initiative to effect full defense conversion potential.

**(b) Financial Commitment of Non-Federal Government Participants.**

(1) *Maximum Department of Defense Share.* The Secretary of Defense shall ensure that the amount of funds provided by the Secretary to a non-Federal government participant does not exceed 50 percent of the total cost of technology development and technology transfer activities.

(2) *Regulations.* The Secretary may prescribe regulations to provide for consideration of in-kind contributions by non-Federal Government participants in a partnership for the purpose of calculating the share of the partnership costs that has been or is being undertaken by such participants. In prescribing the regulations, the Secretary may determine that a participant that is a small business concern may use funds received under the Small Business Innovation Research Program or the Small Business Technology Transfer Program to help pay the costs of partnership activities. Any such funds so used may be included in calculating the amount of the financial commitment undertaken by the non-Federal Government participants unless the Secretary determines that the small business concern has not made a significant equity contribution in the program from non-Federal sources.

## **SHIPYARD REVITALIZATION**

### **SEC. 1031.<sup>2</sup> REVITALIZATION OF UNITED STATES SHIPBUILDING INDUSTRY.**

(a) **In general.** The Secretary of Defense shall require that all sealift ships built under the fast sealift program established in section 1424 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510; 104 Stat. 1683) shall be constructed and designed to commercial specifications.

**(b) Interagency working group to formulate a program to preserve shipyard industrial base.**

(1) Not later than March 1, 1993, the President shall establish an interagency working group for the sole purpose of developing and implementing a comprehensive plan to enable and ensure that domestic shipyards can compete effectively in the international shipbuilding market.

(2) The working group shall include representatives from all appropriate agencies, including the Department of Defense, the Department of State, the Department of Commerce, the Department of

---

<sup>2</sup> Sections 1031 of Public Law 102-484, approved October 23, 1992 (106 STAT. 2489), as amended (10 U.S.C. 7291, note).

Transportation, the Department of Labor, the Office of the United States Trade Representative, and the Maritime Administration.

(3) The President shall submit to Congress the comprehensive plan developed by the working group not later than October 1, 1993.

(c) **Report on ship dumping practices.** The Secretary of Transportation shall prepare a report on the countries that provide subsidies for the construction or repair of vessels in foreign shipyards or that engage in ship dumping practices.

(d) **Report on defense contracts.** The Secretary of Defense shall prepare a report on—

(1) the amount of Department of Defense contracts that were awarded to companies physically located or headquartered in the countries identified in the Secretary of Transportation's report under subsection (d) for the most recent year for which data is available; and

(2) the effect on defense programs of a prohibition of awarding contracts to companies physically located or headquartered in the countries identified in the Secretary of Transportation's report under subsection (d).

(e) **Report on adequacy of United States shipbuilding industry.** The Secretary of Defense shall prepare a report on—

(1) the adequacy of United States shipbuilding industry to meet military requirements, including sealift, during the period of 1994 through 1999; and

(2) the causes of any inadequacy identified and actions that could be taken to correct such inadequacies.

(f) **Submission of reports.** The reports under subsections (c), (d), and (e) shall be submitted to Congress with the President's budget for fiscal year 1994.

(g) **Penalty for failure to comply**

(1) Except as provided in paragraph (2), if the President fails to submit to Congress a comprehensive plan as required by subsection (b) by October 1, 1993, no funds appropriated to the Department of Defense for fiscal year 1994 may be used to enter into a contract for the construction, repair, or purchase of any product or service with any company that has headquarters in any country that continues to provide a subsidy to a foreign shipyard for the construction or repair of vessels or that engages in ship dumping practices.

(2) Paragraph (1) shall not apply if the President—

(A) notifies Congress that he is unable to submit the plan by the time required under subsection (c); and

(B) includes with the notice a brief explanation of the reasons for the delay and a statement that the plan will be submitted by April 15, 1994.

(h) **Definitions.** For purposes of subsection (c):

(1) The term “foreign shipyard” includes a ship construction or repair facility located in a foreign country that is directly or indirectly owned, controlled, managed, or financed by a foreign shipyard that receives or benefits from a subsidy.

(2) The term “subsidy” includes any of the following:

(A) Officially supported export credits and development assistance.

(B) Direct official operating support to the commercial shipbuilding and repair industry, or to a related entity that favors the operation of shipbuilding and repair, including—

(i) grants;

(ii) loans and loan guarantees other than those available on the commercial market;

(iii) forgiveness of debt;

(iv) equity infusions on terms inconsistent with commercially reasonable investment practices;

(v) preferential provision of goods and services; and

(vi) public sector ownership of commercial shipyards on terms inconsistent with commercially reasonable investment practices.

(C) Direct official support for investment in the commercial shipbuilding and repair industry, or to a related entity that favors the operation of shipbuilding and repair, including the kinds of support listed in clauses (i) through (v) of subparagraph (B), and any restructuring support, except public support for social purposes directly and effectively linked to shipyard closures.

(D) Assistance in the form of grants, preferential loans, preferential tax treatment, or otherwise, that benefits or is directly related to shipbuilding and repair for purposes of research and development that is not equally open to domestic and foreign enterprises.

(E) Tax policies and practices that favor the shipbuilding and repair industry, directly or indirectly, such as tax credits, deductions, exemptions and preferences, including accelerated depreciation, if the benefits are not generally available to persons or firms not engaged in shipbuilding or repair.

(F) Any official regulation or practice that authorizes or encourages persons or firms engaged in shipbuilding or repair to enter into anti-competitive arrangements.

(G) Any indirect support directly related, in law or in fact, to shipbuilding and repair at national yards, including any public assistance

favoring shipowners with an indirect effect on shipbuilding or repair activities, and any assistance provided to suppliers of significant inputs to shipbuilding, which results in benefits to domestic shipbuilders.

(H) Any export subsidy identified in the Illustrative List of Export Subsidies in the Annex to the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade or any other export subsidy that may be prohibited as a result of the Uruguay Round of trade negotiations.

(3) The term “vessel” means any self-propelled, sea-going vessel—

(A) of not less than 100 gross tons, as measured under the International Convention of Tonnage Measurement of Ships, 1969; and

(B) not exempt from entry under section 441 of the Tariff Act of 1930 (19 U.S.C. 1431).

## SHIPYARD REACTIVATION

### SEC. 1139.<sup>3</sup> REACTIVATION OF CLOSED SHIPYARDS.

(a) **In General.** The Secretary may issue a guarantee or a commitment to guarantee obligations under title XI of the Merchant Marine Act, 1936 (46 App. U.S.C. 1271 et seq.), upon such terms as the Secretary may prescribe, to assist in the reactivation and modernization of any shipyard in the United States that is closed on the date of the enactment of this Act, if the Secretary finds that—

(1) the closed shipyard historically built military vessels and responsible entities now seek to reopen it as an internationally competitive commercial shipyard;

(2)(A) the closed shipyard has been designated by the President as a public-private partnership project; or

(B) has a reuse plan approved by the Navy in which commercial shipbuilding and repair are primary activities and has a revolving economic conversion fund approved by the Department of Defense; and

(3) the State in which the shipyard is located, and each other involved State, or a State-chartered agency, is making a significant financial investment in the overall cost of reactivation and modernization as its contribution to the reactivation and modernization project, in addition to the funds required by subsection (d)(2) of this section.

---

<sup>3</sup> Sections 1139 of Public Law 104-324, approved October 19, 1996 (110 STAT. 389).

(b) **Waivers.** Notwithstanding any other provision of title XI of the Merchant Marine Act, 1936 (46 App. U.S.C. 1271 et seq.), the Secretary shall not apply the requirements of section 1104A(d) of that Act when issuing a guarantee or a commitment to guarantee an obligation under this section.

(c) **Conditions.** The Secretary shall impose such conditions on the issuance of a guarantee or a commitment to guarantee under this section as are necessary to protect the interests of the United States from the risk of a default. The Secretary shall consider the interdependency of such shipyard modernization and reactivation projects and related vessel loan guarantee requests pending under title XI of the Merchant Marine Act, 1936 (46 App. U.S.C. 1271 et seq.) before issuing a guarantee or a commitment to guarantee under this section.

(d) **Funding Provisions.**

(1) The Secretary may not guarantee or commit to guarantee obligations under this section that exceed \$100,000,000 in the aggregate.

(2) The amount of appropriated funds required by the Federal Credit Reform Act of 1990 (2 U.S.C. 661a et seq.) in advance of the Secretary's issuance of a guarantee or a commitment to guarantee under this section shall be provided by the State in which the shipyard is located, and other involved States, or by a State-chartered agency, and deposited by the Secretary in the financing account established under the Federal Credit Reform Act of 1990 (2 U.S.C. 661a et seq.) for loan guarantees issued by the Secretary under title XI of the Merchant Marine Act of 1936 (46 App. U.S.C. 1271 et seq.). No federally appropriated funds shall be available for this purpose. The funds deposited into that financing account shall be held and applied by the Secretary in accordance with the provisions of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a et seq.), except that, unless the Secretary shall have earlier paid an obligee or been required to pay an obligee pursuant to the terms of a loan guarantee, the funds deposited in that financing account shall be returned, upon the expiration of the Secretary's loan guarantee, to the State, States, or State-chartered agency which originally provided the funds to the Secretary.

(3) Notwithstanding the provisions of any other law or regulation, the cost (as that term is defined by the Federal Credit Reform Act of 1990 (2 U.S.C. 661a et seq.)) of a guarantee or commitment to guarantee issued under this section—

(A) may only be determined with reference to the merits of the specific closed shipyard reactivation project which is the subject of that guarantee or commitment to guarantee, without reference to any other project, type of project, or averaged risk; and

(B) may not be used in determining the cost of any other project, type of project, or averaged risk applicable to guarantees or commitments to guarantee issued under title XI of the Merchant Marine Act, 1936 (46 App. U.S.C. 1271 et seq.).

(e) **Sunset.** No commitment to guarantee obligations under this section shall be issued by the Secretary after one year after the date of enactment of this section.

(f) **Definition.** As used in this section, the term “Secretary” means the Secretary of Transportation.

# NATIONAL MARITIME ENHANCEMENT INSTITUTES

## NATIONAL MARITIME ENHANCEMENT INSTITUTES (46 App. U.S.C. 1121-2 (1996)).

(a) The Secretary of Transportation may designate National Maritime Enhancement Institutes.

(b) Activities undertaken by such an Institute may include—

(1) conducting research concerning methods for improving 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) An institution seeking designation as a National Maritime Enhancement Institute shall submit an application under regulations prescribed by the Secretary.

(d) 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 designee for carrying out the activities specified in subsection (b);

(2) the capability of the designee 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 designee encompassing research and training directed to enhancing maritime industries;

(4) the demonstrated ability of the designee 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; and

(5) the qualification of the designee as a nonprofit institution of higher learning.

(e) 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 shall not exceed \$500,000.

# MERCHANT SHIP SALES ACT OF 1946

## SEC. 2. DECLARATION OF POLICY (50 U.S.C. App. 1735 (1996)).

(a) It is necessary for the national security and development and maintenance of the domestic and the export and import foreign commerce of the United States that the United States have an efficient and adequate American-owned merchant marine (1) sufficient to carry its domestic water-borne commerce and a substantial portion of its water-borne export and import foreign commerce and to provide shipping service on all routes essential for maintaining the flow of such domestic and foreign water-borne 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 under the United States flag by citizens of the United States; (4) composed of the best-equipped, safest, and most suitable types of vessels, constructed in the United States and manned with a trained and efficient citizen personnel; and (5) supplemented by efficient American-owned facilities for shipbuilding and ship repair, marine insurance, and other auxiliary services.

(b) It is hereby declared to be the policy of this Act to foster the development and encourage the maintenance of such a merchant marine.

## SEC. 3. DEFINITIONS (50 U.S.C. App. 1736 (1996)).

As used in this Act the term—

(a) “Secretary” means the Secretary of Transportation.

(g) “Citizen of the United States” includes a corporation, partnership, or association only if it is a citizen of the United States within the meaning of section 2 of the Shipping Act of 1916, as amended. The term “affiliated interest” as used in sections 9 and 10 of this Act includes any person affiliated or associated with a citizen applicant for benefits under this Act who the Secretary, pursuant to rules and regulations prescribed hereunder, determines should be so included in order to carry out the policy and purposes of this Act.

## SEC. 5. CHARTER OF VESSELS (50 U.S.C. App. 1738 (1996)).

(c) **Laws Applicable to Charter Hire.** The provisions of sections 708, 709, 710, 712, and 713, of the Merchant Marine Act, 1936, as amended, shall be applicable to charters made under this section.

(e) **Proceedings and Findings; Extension of Charters.**

(1) Notwithstanding the provisions of sections 11 and 14 of this Act, as amended, war-built dry-cargo vessels owned by the United States on or after June 30, 1950, may be chartered pursuant to this Act for bareboat use in any service which, in the opinion of the Maritime

Administration, is required in the public interest and is not adequately served, and for which privately owned American flag vessels are not available for charter by private operators on reasonable conditions and at reasonable rates for use in such service. No charters shall be made by the Secretary of Transportation under authority of this subsection until the Maritime Administration shall have given due notice to all interested parties and shall have afforded such parties an opportunity for a public hearing on such charters and shall have certified its findings to the Secretary of Transportation. The Secretary of Transportation is authorized to include in such charters such restrictions and conditions as the Maritime Administration determines to be necessary or appropriate to protect the public interest in respect of such charters and to protect privately owned vessels against competition from vessels chartered under this section: Provided, however, That all such charters shall contain a provision that they will be reviewed annually by the Maritime Administration with recommendations to the Secretary of Transportation, for the purpose of determining whether conditions exist justifying continuance of the charters under the provisions of this subsection.

(2) A charter existing on June 30, 1950, with respect to a war-built dry-cargo vessel may be extended to October 31, 1950, if application is made within ten days after the enactment hereof for the charter of such vessel under subsection (e) of this section and if the Secretary of Transportation deems such extension is justified in accordance with the provisions of section 5(e)(1): Provided, however, That a new voyage under such extended charter shall not be begun after October 31, 1950, unless it has been determined prior to such date, in accordance with the procedure set forth in this subsection, that the continued use of the vessel in the service is required. The Maritime Administration shall conduct all hearings on applications made under the paragraph immediately upon receipt thereof and shall promptly certify its findings to the Secretary of Transportation, provided that all such certifications shall be made not later than October 31, 1950.

**(f) Charter of Passenger Vessels.**

(1) Notwithstanding the provisions of sections 11 and 14 of this Act, as amended, the Secretary of Transportation may charter any passenger vessel, whether or not war-built, owned by the United States on or after June 30, 1950, pursuant to title VII of the Merchant Marine Act, 1936, as amended, and may charter any war-built passenger vessel owned by the United States for use in the domestic trade of the United States, under the conditions prescribed for the charter of war-built cargo vessels in subsection (e) of this section.

(2) Charters existing on June 30, 1950, with respect to passenger vessels may be continued until December 31, 1951, or until expiration thereof by the terms of their provisions.

**SEC. 8. EXCHANGE OF VESSELS (50 App. U.S.C. 1741 (1996)).**

(d) **Transfer of Substitute Vessels.** In the case of any vessel constructed in the United States after January 1, 1937, which has been taken by the United States for use in any manner, the Secretary, if in its opinion the transfer would aid in carrying out the policies of this Act, is authorized to transfer to the owner of such vessel another vessel which is deemed by the Secretary to be of comparable type with adjustments for depreciation and difference in design or speed, and to the extent applicable, adjustments with respect to the retained vessel as provided for in section 9, and such other adjustments and terms and conditions, including transfer of mortgage obligations in favor of the United States binding upon the old vessel, as the Secretary may prescribe.

**SEC. 11. NATIONAL DEFENSE RESERVE FLEET (50 U.S.C. App. 1744 (1996)).<sup>1</sup>**

(a) **Fleet Components.** The Secretary of Transportation shall maintain a National Defense Reserve Fleet, including any vessel assigned by the Secretary to the Ready Reserve Force component of the fleet, consisting of those vessels owned or acquired by the United States Government that the Secretary of Transportation, after consultation with the Secretary of the Navy, determines are of value for national defense purposes and that the Secretary of Transportation decides to place and maintain in the fleet.

(b)<sup>2</sup> **Permitted Uses.** Except as otherwise provided by law, a vessel in the fleet may be used—

(1) for an account of an agency of the United States Government in a period during which vessels may be requisitioned under section 902 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1242); or

(2) on the request of the Secretary of Defense, and in accordance with memoranda of agreement between the Secretary of Transportation and the Secretary of Defense, for—

(A) testing for readiness and suitability for mission performance;

(B) defense sealift functions for which other sealift assets are not reasonably available; and

(C) support of the deployment of the United States armed forces in a military contingency, for military contingency operations, or for

---

<sup>1</sup> For the use of obsolete vessels from the National Defense Reserve Fleet as artificial reefs, see section 207 of Public Law 98-623, approved November 8, 1984.

<sup>2</sup> Section 6205(a) of Public Law 102-587, approved November 4, 1992 (106 STAT. 5094), reinstated subsection (b) and provides: “The effective date of this subsection in December 12, 1989.”

civil contingency operations upon orders from the National Command Authority;

(3) for otherwise lawfully permitted storage or transportation of non-defense-related cargo as directed by the Secretary of Transportation with the concurrence of the Secretary of Defense; or

(4) for training purposes to the extent authorized by the Secretary of Transportation with the concurrence of the Secretary of Defense.

**(c) Ready Reserve Force Management.**

(1) ***Minimum Requirements.*** To ensure the readiness of vessels in the Ready Reserve Force component of the National Defense Reserve Fleet, the Secretary of Transportation shall, at a minimum—

(A) maintain all of the vessels in a manner that will enable each vessel to be activated within a period specified in plans for mobilization of the vessels;

(B) activate and conduct sea trials on each vessel at least once every twenty-four months;

(C) maintain in an enhanced activation status those vessels that are scheduled to be activated within 5 days;

(D) locate those vessels that are scheduled to be activated within 5 days near embarkation ports specified for those vessels; and

(E) notwithstanding section 2109 of title 46, United States Code, have each vessel inspected by the Secretary of the department in which the Coast Guard is operating to determine if the vessel meets the safety standards that would apply under part B of subtitle II of that title if the vessel were not a public vessel.

**(2) *Vessel Managers.***

(A) ***Eligibility for Contract.*** A person, including a shipyard, is eligible for a contract for the management of a vessel in the Ready Reserve Force if the Secretary determines, at a minimum, that the person has—

(i) experience in the operation of commercial-type vessels or public vessels owned by the United States Government; and

(ii) the management capability necessary to operate, maintain, and activate the vessel at a reasonable price.

(B) ***Contract Requirement.*** The Secretary of Transportation shall include in each contract for the management of a vessel in the Ready Reserve Force a requirement that each seaman who performs services on any vessel covered by the contract hold the license or merchant mariner's document that would be required under chapter 71 or chapter 73 of title 46, United States Code for a seaman performing that service while operating the vessel if the vessel were not a public vessel.

(e) **Exemption of Fleet from 46 U.S.C. 3703a.** Vessels in the National Defense Reserve Fleet are exempt from the provisions of section 3703a of title 46, United States Code.<sup>3</sup>

**SEC. 12. RECONVERSION OF VESSELS FOR NORMAL COMMERCIAL OPERATION; APPLICABILITY OF OTHER LAWS TO CONSTRUCTION CONTRACTS; COASTWISE TRADE; DISPOSITION OF MONEYS; GREAT LAKES TRADE (50 U.S.C. 1745 (1996)).**

(a) The Secretary is authorized to reconvert or restore for normal operation in commercial services and to convert for operation on the Great Lakes, including the Saint Lawrence River and Gulf, and their connecting waterways, including removal of national defense or war-service features, any vessel authorized to be sold or chartered under this Act. The Secretary is authorized to make such replacements, alterations, or modifications with respect to any vessel authorized to be sold or chartered under this Act, and to install therein such special features, as may be necessary or advisable to make such vessel suitable for commercial operation on trade routes or services or comparable as to commercial utility to other such vessels of the same general type.

\* \* \* \* \*

**CERTAIN LAWS AFFECTING THE NATIONAL DEFENSE RESERVE FLEET**

**1. NATIONAL MARITIME HERITAGE ACT.**

Section 6 of Public Law 103-451, approved November 2, 1994 (108 STAT. 4769) (16 U.S.C. 5405 (1996)), the National Maritime Heritage Act provides:

**SEC. 6. FUNDING (16 U.S.C. 5405 (1996)).**

(a) **Availability of funds from sale and scrapping of obsolete vessels.**

(1) *In general.* Notwithstanding any other provision of law, the amount of funds credited in a fiscal year to the Vessel Operations Revolving Fund established by the Act of June 2, 1951 (46 App. U.S.C. 1241a), that is attributable to the sale of obsolete vessels in the National Defense Reserve Fleet that are scrapped or sold under section 508 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1158) shall be available until expended as follows:

(A) 50 percent shall be available to the Administrator of the Maritime Administration for such acquisition, maintenance, repair,

---

<sup>3</sup> 46 U.S.C. 3703a, **Tank Vessel Construction Standards**, provides for the so-called double hull requirement.

reconditioning, or improvement of vessels in the National Defense Reserve Fleet as is authorized under other Federal law.

(B) 25 percent shall be available to the Administrator of the Maritime Administration for the payment or reimbursement of expenses incurred by or on behalf of State maritime academies or the United States Merchant Marine Academy for facility and training ship maintenance, repair, and modernization, and for the purchase of simulators and fuel.

(C) The remainder shall be available to the Secretary to carry out the Program,<sup>4</sup> as provided in subsection (b).

(2) **Application.** Paragraph (1) does not apply to amounts credited to the Vessel Operations Revolving Fund before July 1, 1994.

**(b) Use of amounts for program.**

(1) **In general.** Except as provided in paragraph (2), of amounts available each fiscal year for the Program under subsection (a)(1)(C)—

(A) 1/2 shall be used for grants under section 4(b); and

(B) 1/2 shall be used for grants under section 4(c).

(2) **Use for interim projects.** Amounts available for the Program under subsection (a)(1)(C) that are the proceeds of any of the first 6 obsolete vessels in the National Defense Reserve Fleet that are sold or scrapped after July 1, 1994, under section 508 of the Merchant Marine Act, 1936 (46 [App.] U.S.C. 1158) are available to the Secretary for grants for interim projects approved under section 4(j) of this Act.

**(3) Administrative expenses.**

(A) **In general.** Not more than 15 percent or \$ 500,000, whichever is less, of the amount available for the Program under subsection (a)(1)(C) for a fiscal year may be used for expenses of administering the Program.

(B) **Allocation.** Of the amount available under subparagraph (A) for a fiscal year—

(i) 1/2 shall be allocated to the National Trust for expenses incurred in administering grants under section 4(b); and

(ii) 1/2 shall be allocated as appropriate by the Secretary to the National Park Service and participating State Historic Preservation Officers.

**(c) Disposals of vessels.**

(1) **Requirement.** The Secretary of Transportation shall dispose of all vessels described in paragraph (2)—

---

<sup>4</sup> Section 7(4) of the Act defines “Program” to mean the National Maritime Heritage Grants Program established under Section 4 of the Act.

(A) by September 30, 1999;

(B) in a manner that maximizes the return on the vessels to the United States; and

(C) in accordance with the plan of the Department of Transportation for disposal of those vessels and requirements under sections 508 and 510(i) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1158, 1160(i)).

(2) **Vessels described.** The vessels referred to in paragraph (1) are the vessels in the National Defense Reserve Fleet after July 1, 1994, that—

(A) are not assigned to the Ready Reserve Force component of that fleet; and

(B) are not specifically authorized or required by statute to be used for a particular purpose.

(d) **Treatment of amounts available.** Amounts available under this section shall not be considered in any determination of the amounts available to the Department of the Interior.

## **2. VESSEL REPAIR AND MAINTENANCE PILOT PROGRAM.**

Section 16 of Public Law 104-239, approved October 8, 1996 (110 STAT. 3138), the Maritime Security Act of 1996, provides:

### **SEC. 16. VESSEL REPAIR AND MAINTENANCE PILOT PROGRAM.**

(a) **In General.** The Secretary of Transportation shall conduct a pilot program to evaluate the feasibility of using renewable contracts for the maintenance and repair of outported vessels in the Ready Reserve Force to enhance the readiness of those vessels. Under the pilot program, the Secretary, subject to the availability of appropriations and within 6 months after the date of the enactment of this Act, shall award 9 contracts for this purpose.

(b) **Use of Various Contracting Arrangements.** In conducting a pilot program under this section, the Secretary of Transportation shall use contracting arrangements similar to those used by the Department of Defense for procuring maintenance and repair of its vessels.

(c) **Contract Requirements.** Each contract with a shipyard under this section shall—

(1) subject to subsection (d), provide for the procurement from the shipyard of all repair and maintenance (including activation, deactivation, and drydocking) for 1 vessel in the Ready Reserve Force that is outported in the geographical vicinity of the shipyard;

(2) be effective for 1 fiscal year; and

(3) be renewable, subject to the availability of appropriations, for each subsequent fiscal year through fiscal year 1998.

(d) **Limitation of Work Under Contracts.** A contract under this section may not provide for the procurement of operation or manning for a vessel that may be procured under another contract for the vessel to which section 11(d)(2) of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1774(d)(2)) applies.

(e) **Geographic Distribution.** The Secretary shall seek to distribute contract awards under this section to shipyards located throughout the United States.

(f) **Reports.** The Secretary shall submit to the Congress—

(1) an interim report on the effectiveness of each contract under this section in providing for economic and efficient repair and maintenance of the vessel included in the contract, no later than 20 months after the date of the enactment of this Act; and

(2) a final report on that effectiveness no later than 6 months after the termination of all contracts awarded pursuant to this section.

**3. CONVEYANCE OF EQUIPMENT.** Section 1009 of Public Law 104-324, approved October 19, 1996 (100 STAT. 3959), the Coast Guard Authorization Act of 1996, provides:

#### **SEC. 1009. CONVEYANCE OF EQUIPMENT.**

The Secretary of Transportation may convey any unneeded equipment from other vessels in the National Defense Reserve Fleet to the JOHN W. BROWN and other qualified United States memorial ships in order to maintain their operating condition.

#### **4. LIMITED DOUBLE HULL EXEMPTION.**

Section 1103 of Public Law 104-324, approved October 19, 1996 (110 STAT. 3966), the Coast Guard Authorization Act of 1996, amended 46 U.S.C. 3703a(b) in part by the addition of a paragraph (6) to exclude from the double hull requirement: “(6) a vessel in the National Defense Reserve Fleet pursuant to section 11 of the Merchant Ship Sales Act of 1946 (50 App. U.S.C. 1744).”

**5. EXISTING TANK VESSEL RESEARCH.** Section 1134 of Public Law 104-324, approved October 19, 1996 (110 STAT. 3984), the Coast Guard Authorization Act of 1996, provides:

(a) **Funding.**—The Secretary of Transportation shall take steps to allocate funds appropriated for research, development, testing, and evaluation, including the combination of funds from any source available and authorized for this purpose, to ensure that any Government-sponsored project intended to evaluate double hull alternatives that provide equal or greater protection to the marine environment, or interim solutions to remediate potential environmental damage resulting from oil

spills from existing tank vessels, commenced prior to the date of enactment of this section, is fully funded for completion by the end of fiscal year 1997. Any vessel construction or repair necessary to carry out the purpose of this section must be performed in a shipyard located in the United States.

(b) **Use of Public Vessels.**—The Secretary may provide vessels owned by, or demise chartered to, and operated by the Government and not engaged in commercial service, without reimbursement, for use in and the support of projects sponsored by the Government for research, development, testing, evaluation, and demonstration of new or improved technologies that are effective in preventing or mitigating oil discharges and protecting the environment.

# MERCHANT MARINE ACT, 1920

**SEC. 1. PURPOSE AND POLICY OF UNITED STATES (46 App. U.S.C. 861 (1996)).** It is necessary for the national defense and for the proper growth of its foreign and domestic commerce that the United States shall have a merchant marine of the best equipped and most suitable types of vessels sufficient to carry the greater portion of its commerce and serve as a naval or military auxiliary in time of war or national emergency, ultimately to be owned and operated privately by citizens of the United States; and it is declared to be the policy of the United States to do whatever may be necessary to develop and encourage the maintenance of such a merchant marine, and, in so far as may not be inconsistent with the express provisions of this Act, the Secretary of Transportation shall, in the disposition of vessels and shipping property as hereinafter provided, in the making of rules and regulations, and in the administration of the shipping laws keep always in view this purpose and object as the primary end to be attained.

**PURCHASE ALLOWANCE IN SALE OF VESSELS FOR COST OF PUTTING VESSELS IN CLASS (46 App. U.S.C. 864a (1996)).<sup>1</sup>** Hereafter the Secretary of Transportation may make allowances to purchasers of vessels for cost of putting such vessels in class, such allowances to be determined on the basis of competitive bids, without regard to the provisions of the last paragraph of section 3(d) of the Merchant Ship Sales Act of 1946.

**ELEMENTS CONSIDERED IN SALE OF VESSELS IN DETERMINATION OF SELLING PRICE (46 App. U.S.C. 864b (1996)).<sup>2</sup>** Hereafter, no sale of a vessel by the Maritime Administration of the Department of Transportation shall be completed until its ballast and equipment shall have been inventoried and their value taken into consideration by the Maritime Administration in determining the selling price.

**SEC. 6. SALE TO ALIENS (46 App. U.S.C. 865 (1996)).** The Secretary of Transportation is authorized and empowered to sell to aliens, at such prices and on such terms and conditions as he may determine, not inconsistent with the provisions of section 5 (except that completion of the payment of the purchase price and interest shall not be deferred more than ten years after the making of the contract of sale), such vessels as he shall, after careful investigation, deem unnecessary to the promotion and maintenance of an efficient American merchant

---

<sup>1</sup> Enacted as section 101 of the Act of June 30, 1948 (62 STAT. 1199).

<sup>2</sup> Enacted as section 1 of the Act of June 29, 1949 (63 STAT. 349).

marine; but no such sale shall be made unless the Secretary of Transportation, after diligent effort, has been unable to sell, in accordance with the terms and conditions of section 5, such vessels to persons citizens of the United States, and has determined to make such sale; and he shall make as a part of his records a full statement of its reasons for making such sale. Deferred payments of purchase price of vessels under this section shall bear interest at the rate of not less than 5 per centum per annum, payable semiannually.

**SEC. 7. ESTABLISHMENT AND OPERATION OF STEAMSHIP LINES BETWEEN PORTS OF UNITED STATES; INVESTIGATION AND DETERMINATION; SALE OR CHARTER OF VESSELS; PREFERENCE IN SALES OR CHARTERS; CONTINUED OPERATION OF LINES; ADDITIONAL LINES; RATES AND CHARGES (46 App. U.S.C. 866 (1996)).** The Secretary of Transportation is authorized and directed to investigate and determine as promptly as possible after the enactment of this Act and from time to time thereafter what steamship lines should be established and put in operation from ports in the United States or any Territory, District, or possession thereof to such world and domestic markets as in his judgment are desirable for the promotion, development, expansion, and maintenance of the foreign and coastwise trade of the United States and an adequate postal service, and to determine the type, size, speed, and other requirements of the vessels to be employed upon such lines and the frequency and regularity of their sailings, with a view to furnishing adequate, regular, certain, and permanent service. The Secretary of Transportation is authorized to sell, and if a satisfactory sale cannot be made, to charter such of the vessels referred to in section 4 of this Act or otherwise acquired by the Secretary of Transportation, as will meet these requirements to responsible persons who are citizens of the United States who agree to establish and maintain such lines upon such terms of payment and other conditions as the Secretary of Transportation may deem just and necessary to secure and maintain the service desired; and if any such steamship line is deemed desirable and necessary, and if no such citizen can be secured to supply such service by the purchase or charter of vessels on terms satisfactory to the Secretary of Transportation, the Secretary of Transportation shall operate vessels on such line until the business is developed so that such vessels may be sold on satisfactory terms and the service maintained, or unless it shall appear within a reasonable time that such line cannot be made self-sustaining: Provided, That preference in the sale or assignment of vessels for operation on such steamship lines shall be given to persons who are citizens of the United States who have the support, financial and otherwise, of the domestic communities primarily interested in such lines if the Secretary of Transportation is satisfied of the ability of such persons

to maintain the service desired and proposed to be maintained, or to persons who are citizens of the United States who may then be maintaining a service from the port of the United States to or in the general direction of the world-market port to which the Secretary of Transportation has determined that such service should be established: Provided further, That where steamship lines and regular service have been established and are being maintained by ships of the board at the time of the enactment of this Act, such lines and service shall be maintained by the board until, in the opinion of the board, the maintenance thereof is unbusinesslike and against the public interests: And provided further, That whenever the Secretary of Transportation shall determine, as provided in this Act, that trade conditions warrant the establishment of a service or additional service under Government administration where a service is already being given by persons, citizens of the United States, the rates and charges for such Government service shall not be less than the cost thereof, including a proper interest and depreciation charge on the value of Government vessels and equipment employed therein.

**SEC. 8. INVESTIGATION OF PORT, TERMINAL, AND WAREHOUSE FACILITIES (46 App. U.S.C. 867 (1996)).** It shall be the duty of the Secretary of Transportation, in cooperation with the Secretary of War, with the object of promoting, encouraging, and developing ports and transportation facilities in connection with water commerce over which he has jurisdiction, to investigate territorial regions and zones tributary to such ports, taking into consideration the economies of transportation by rail, water, and highway and the natural direction of the flow of commerce; to investigate the causes of the congestion of commerce at ports and the remedies applicable thereto; to investigate the subject of water terminals, including the necessary docks, warehouses, apparatus, equipment, and appliances in connection therewith, with a view to devising and suggesting the types most appropriate for different locations and for the most expeditious and economical transfer or interchange of passengers or property between carriers by water and carriers by rail; to advise with communities regarding the appropriate location and plan of construction of wharves, piers, and water terminals; to investigate the practicability and advantages of harbor, river, and port improvements in connection with foreign and coastwise trade; and to investigate any other matter that may tend to promote and encourage the use by vessels of ports adequate to care for the freight which would naturally pass through such ports: Provided, That if after such investigation the Secretary of Transportation shall be of the opinion that rates, charges, rules, or regulations of common carriers by rail subject to the jurisdiction of the Surface Transportation Board are detrimental to the declared object of this section, or that new rates, charges, rules, or regulations, new or additional port terminal facilities,

or affirmative action on the part of such common carriers by rail is necessary to promote the objects of this section, the Secretary of Transportation may submit his findings to the Surface Transportation Board for such action as such Board may consider proper under existing law.

**SEC. 9. VESSELS SOLD UNDER DEFERRED PAYMENT PLAN; INSURANCE (46 App. U.S.C. 868 (1996)).**

If the terms and conditions of any sale of a vessel made under the provisions of this Act include deferred payments of the purchase price, the Secretary of Transportation shall require, as part of such terms and conditions, that the purchaser of the vessel shall keep the same insured (a) against loss or damage by fire, and against marine risks and disasters, and war and other risks if the Secretary of Transportation so specifies, with such insurance companies, associations or underwriters, and under such forms of policies, and to such an amount, as the Secretary of Transportation may prescribe or approve; and (b) by protection and indemnity insurance with such insurance companies, associations, or underwriters and under such forms of policies, and to such an amount as the Secretary of Transportation may prescribe or approve. The Insurance required to be carried under this section shall be made payable to the Secretary of Transportation and/or to the parties as interest may appear. The Secretary of Transportation is authorized to enter into any agreement that he deems wise in respect to the payment and/or the guarantee of premiums of insurance.

**SEC. 10. CREATION OF FUND FOR INSURANCE OF INTERESTS OF UNITED STATES (46 App. U.S.C. 869 (1996)).** The Secretary of Transportation may create out of insurance premiums, and revenue from operations and sales, and maintain and administer separate insurance funds which he may use to insure in whole or in part against all hazards commonly covered by insurance policies in such cases, any legal or equitable interest of the United States (1) in any vessel constructed or in process of construction; and (2) in any plants or property in the possession or under the authority of the Secretary of Transportation. The United States shall be held to have such an interest in any vessel toward the construction, reconditioning, remodeling, improving, or equipping of which a loan has been made under the authority of this Act, in any vessel upon which he holds a mortgage or lien of any character, or in any vessel which is obligated by contract with the owner to perform any service in behalf of the United States, to the extent of the Government's interest therein.

**SEC. 12. REPAIR AND OPERATION OF VESSELS UNTIL SALE (46 App. U.S.C. 871 (1996)).** All vessels may be reconditioned and kept in suitable repair and until sold shall be managed and

operated by the Secretary of Transportation or chartered or leased by him on such terms and conditions as the Secretary of Transportation shall deem wise for the promotion and maintenance of an efficient merchant marine, pursuant to the policy and purposes declared in sections 1 and 5 of this Act. The term "reconditioned" as used in this section includes the substitution of the most modern, most efficient, and most economical types of internal-combustion engines as the main propulsive power of vessels. Should the Secretary of Transportation have any such engines built in the United States and installed, in private shipyards or navy yards of the United States, in one or more merchant vessels owned by the United States, and the cost to the Secretary of Transportation of such installation exceeds the amount of funds otherwise available to him for that use, the Secretary of Transportation may transfer to his funds from which expenditures under this section may be paid, from his construction loan fund authorized by section 11 of the Merchant Marine Act, 1920, so much as in his judgment may be necessary to meet obligations under contracts for such installation; and the Treasurer of the United States shall, at the request of the Secretary of Transportation, make the transfer accordingly: Provided, That the total amount expended by the Secretary of Transportation for this purpose shall not in the aggregate exceed \$ 25,000,000. Any such vessel hereafter so equipped by the Secretary of Transportation under the provisions of this section shall not be sold for a period of five years from the date the installation thereof is completed, unless it is sold for a price not less than the cost of the installation thereof and of any other work of reconditioning done at the same time plus an amount not less than \$ 10 for each dead-weight ton of the vessel as computed before such reconditioning thereof is commenced. The date of the completion of such installation and the amount of the dead-weight tonnage of the vessel shall be fixed by the Secretary of Transportation: Provided further, That in fixing the minimum price at which the vessel may thus be sold the Secretary of Transportation may deduct from the aggregate amount above prescribed 5 per centum thereof per annum from the date of the installation to the date of sale as depreciation: And provided further, That no part of such fund shall be expended upon the re-conditioning of any vessel unless the Secretary of Transportation shall have first made a binding contract for a satisfactory sale of such vessel in accordance with the provisions of this Act, or for the charter or lease of such vessels for a period of not less than five years by a capable, solvent operator; or unless the Secretary of Transportation is prepared and intends to directly put such vessel in operation immediately upon completion. Such vessel, in any of the enumerated instances, shall be documented under the laws of the United States and shall remain documented under such laws for a period of not less than five years from the date of the completion of the instal-

lation, and during such period it shall be operated only on voyages which are not exclusively coastwise.

**SEC. 13. SALE OF PROPERTY OTHER THAN VESSELS (46 App. U.S.C. 872 (1996)).** The Secretary of Transportation is further authorized to sell all property other than vessels transferred to him under section 4 upon such terms and conditions as the Secretary of Transportation may determine and prescribe.

**SEC. 17. POSSESSION AND CONTROL OF TERMINAL EQUIPMENT AND FACILITIES (46 App. U.S.C. 875 (1996)).** The President may at any time he deems it necessary, by order setting out the need therefor and fixing the period of such need, permit or transfer the possession and control of any part of the property taken over by or transferred to the Secretary of Transportation under this section to the War Department or the Navy Department for their needs; and when in the opinion of the President such need therefor ceases the possession and control of such property shall revert to the Secretary of Transportation. None of such property shall be sold except as may be provided by law.

**SEC. 19. POWER OF SECRETARY AND COMMISSION TO MAKE RULES AND REGULATIONS (46 App. U.S.C. 876 (1996)).**

(1) The Secretary of Transportation is authorized and directed in aid of the accomplishment of the purposes of this Act—

(a) To make all necessary rules and regulations to carry out the provisions of this Act;

And the Federal Maritime Commission is authorized and directed in aid of the accomplishment of the purposes of this Act:

(b) To make rules and regulations affecting shipping in the foreign trade not in conflict with law in order to adjust or meet general or special conditions unfavorable to shipping in the foreign trade, whether in any particular trade or upon any particular route or in commerce generally, including intermodal movements, terminal operations, cargo solicitation, forwarding and agency services, non-vessel-operating common carrier operations, and other activities and services integral to transportation systems, and which arise out of or result from foreign laws, rules, or regulations or from competitive methods or practices employed by owners, operators, agents, or masters of vessels of a foreign country; and

(c) To request the head of any department, board, bureau, or agency of the Government to suspend, modify, or annul rules or regulations which have been established by such department, board, bureau, or

agency, or to make new rules or regulations affecting shipping in the foreign trade other than such rules or regulations relating to the Public Health Service, the Consular Service, and the Steamboat Inspection Service.

(2) No rule or regulation shall be established by any department, board, bureau, or agency of the Government which affect shipping in the foreign trade, except rules or regulations affecting the Public Health Service, the Consular Service, and the Steamboat Inspection Service, until such rule or regulation has been submitted to the board for its approval and final action has been taken thereon by the board or the President.

(3) Whenever the head of any department, board, bureau, or agency of the Government refuses to suspend, modify, or annul any rule or regulation, or make a new rule or regulation upon request of the board, as provided in subdivision (c) of paragraph (1) of this section, or objects to the decision of the board in respect to the approval of any rule or regulation, as provided in paragraph (2) of this section, either the board or the head of the department, board, bureau, or agency which has established or is attempting to establish the rule or regulation in question may submit the facts to the President, who is hereby authorized to establish or suspend, modify, or annul such rule or regulation.

(4) No rule or regulation shall be established which in any manner gives vessels owned by the United States any preference or favor over those vessels documented under the laws of the United States and owned by persons who are citizens of the United States.

(5) The Commission may initiate a rule or regulation under paragraph (1)(b) of this section either on its own motion or pursuant to a petition. Any person, including a common carrier, tramp operator, bulk operator, shipper, shippers' association, ocean freight forwarder, marine terminal operator, or any component of the Government of the United States, may file a petition for relief under paragraph (1)(b) of this section.

(6) In furtherance of the purposes of paragraph (1)(b) of this section—

(a) the Commission may, by order, require any person (including any common carrier, tramp operator, bulk operator, shipper, shippers' association, ocean freight forwarder, 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 which the Commission considers necessary or appropriate;

(b) the Commission may require a report or answers to questions to be made under oath;

(c) the Commission may prescribe the form and the time for response to a report and answers to questions; and

(d) a person who fails to file a report, answer, documentary material, or other information required under this paragraph shall be liable to the United States Government for a civil penalty of not more than \$5,000 for each day that the information is not provided.

(7) In proceedings under paragraph (1)(b) of this section—

(a) the Commission may authorize a party to use depositions, written interrogatories, and discovery procedures that, to the extent practicable, are in conformity with the rules applicable in civil proceedings in the district courts of the United States;

(b) the Commission may by subpoena compel the attendance of witnesses and production of books, papers, documents, and other evidence;

(c) subject to funds being provided by appropriations Acts, witnesses are, unless otherwise prohibited by law, entitled to the same fees and mileage as in the courts of the United States;

(d) for failure to supply information ordered to be produced or compelled by subpoena under subdivision (b), the Commission may— (i) after notice and an opportunity for hearing, suspend tariffs of a common carrier or that common carrier's right to use the tariffs of conferences of which it is a member, or (ii) assess a civil penalty of not more than \$5,000 for each day that the information is not provided; and

(e) when a person violates an order of the Commission or fails to comply with a subpoena, the Commission may seek enforcement by a United States district court having jurisdiction over the parties, and if, after hearing, the court determines that the order was regularly made and duly issued, it shall enforce the order by an appropriate injunction or other process, mandatory or otherwise.

(8) Notwithstanding any other law, the Commission may refuse to disclose to the public a response or other information provided under the terms of this section.

(9) If the Commission finds that conditions that are unfavorable to shipping under paragraph (1)(b) of this section exist, the Commission may—

(a) limit sailings to and from United States ports or the amount or type of cargo carried;

(b) suspend, in whole or in part, tariffs filed with the Commission for carriage to or from United States ports, including a common carrier's right to use tariffs of conferences in United States trades of which it is a member for any period the Commission specifies;

(c) suspend, in whole or in part, an ocean common carrier's right to operate under an agreement filed with the Commission, including any

agreement authorizing preferential treatment at terminals, preferential terminal leases, space chartering, or pooling of cargoes or revenue with other ocean common carriers;

(d) impose a fee, not to exceed \$1,000,000 per voyage; or

(e) 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.

(10) Upon request by the Commission—

(a) the collector of customs at the port or place of destination in the United States shall refuse the clearance required by section 4197 of the Revised Statutes (46 App. U.S.C. 91) to a vessel of a country that is named in a rule or regulation issued by the Commission under paragraph (1)(b) of this section, and shall collect any fees imposed by the Commission under paragraph (9)(d) of this section; and

(b) the Secretary of the department in which the Coast Guard is operating shall deny entry for purpose of oceanborne trade, of a vessel of a country that is named in a rule or regulation issued by the Commission under paragraph (1)(b) of this section, to any port or place in the United States or the navigable waters of the United States, or shall detain that 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.

(11) A common carrier that accepts or handles cargo for carriage under a tariff that has been suspended under paragraph (7)(d) or (9)(b) of this section, or after its right to use another tariff has been suspended under those paragraphs, is subject to a civil penalty of not more than \$50,000 for each day that it is found to be operating under a suspended tariff.

(12) The Commission may consult with, seek the cooperation of, or make recommendations to other appropriate Government agencies prior to taking any action under this section.

**SEC. 21. COASTWISE LAWS EXTENDED TO ISLAND TERRITORIES AND POSSESSIONS (46 App. U.S.C. 877 (1996)).<sup>3</sup>** From and after February 1, 1922, the coastwise laws of the United States shall extend to the island Territories and possessions of the United States not now covered thereby, and the Secretary of Transportation is directed prior to the expiration of such year to have established adequate steamship service at reasonable rates to accommodate the commerce and the passenger travel of said islands and to maintain and operate such service until it can be taken over and operated and maintained upon satisfactory terms by private capital and enterprise: Provided, That

---

<sup>3</sup> Note that America Samoa is excluded from the coastwise laws by the provision of law set forth in 48 U.S.C. 1664.

if adequate shipping service is not established by February 1, 1922, the President shall extend the period herein allowed for the establishment of such service in the case of any island Territory or possession for such time as may be necessary for the establishment of adequate shipping facilities therefor: Provided further, That until Congress shall have authorized the registry as vessels of the United States of vessels owned in the Philippine Islands, the Government of the Philippine Islands is hereby authorized to adopt, from time to time, and enforce regulations governing the transportation of merchandise and passengers between ports or places in the Philippine Archipelago: And provided further, That the foregoing provisions of this section shall not take effect with reference to the Philippine Islands until the President of the United States after a full investigation of the local needs and conditions shall, by proclamation, declare that an adequate shipping service has been established as herein provided and fix a date for the going into effect of the same: And provided further, That the coastwise laws of the United States shall not extend to the Virgin Islands of the United States until the President of the United States shall, by proclamation, declare that such coastwise laws shall extend to the Virgin Islands and fix a date for the going into effect of same.

**SEC. 27. JONES ACT - TRANSPORTATION OF MERCHANDISE BETWEEN POINTS IN UNITED STATES IN OTHER THAN DOMESTIC BUILT OR REBUILT AND DOCUMENTED VESSELS; INCINERATION OF HAZARDOUS WASTE AT SEA (46 App. U.S.C. 883 (1996)).**<sup>4</sup> No merchandise, including merchandise owned by the United States Government, a State (as defined in section 2101 of title 46, United States Code), or a subdivision of a State, shall be transported by water, or by land and water, on penalty of forfeiture of the merchandise (or a monetary amount up to the value thereof as determined by the Secretary of the Treasury, or the actual cost of the transportation, whichever is greater, to be recovered from any consignor, seller, owner, importer, consignee, agent, or other person or persons so transporting or causing said merchandise to be transported), between points in the United States, including Districts, Territories, and possessions thereof embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any other vessel than a vessel built in and documented under the laws of the United States and owned by persons who are citizens of the United States,<sup>5</sup> or

---

<sup>4</sup> The Jones Act is one of the U.S. cabotage laws that are set forth under **Cabotage**, page 243, *infra*.

<sup>5</sup> Note that 46 U.S.C. 12106(d)(2) provides: “(2) For purposes of the first proviso of section 27 of the Merchant Marine Act, 1920. . . a vessel meeting the criteria of this subsection shall be considered to be owned exclusively by citizens of the United States.”

vessels to which the privilege of engaging in the coastwise trade is extended by sections 18 or 22 of this Act: Provided, That no vessel of more than 200 gross tons (as measured under chapter 143 of title 46, United States Code) having at any time acquired the lawful right to engage in the coastwise trade, either by virtue of having been built in, or documented under the laws of the United States, and later sold foreign in whole or in part, or placed under foreign registry, shall hereafter acquire the right to engage in the coastwise trade: Provided further, That no vessel which has acquired the lawful right to engage in the coastwise trade, by virtue of having been built in or documented under the laws of the United States, and which has later been rebuilt, shall have the right thereafter to engage in the coastwise trade, unless the entire rebuilding, including the construction of any major components of the hull or superstructure of the vessel, is effected within the United States, its Territories (not including trust territories), or its possessions: Provided further, That this section shall not apply to merchandise transported between points within the continental United States, including Alaska, over through routes heretofore or hereafter recognized by the Surface Transportation Board for which routes rate tariffs have been or shall hereafter be filed with the Board when such routes are in part over Canadian rail lines and their own or other connecting water facilities: Provided further, That this section shall not become effective upon the Yukon River until the Alaska Railroad shall be completed and the Secretary of Transportation shall find that proper facilities will be furnished for transportation by persons citizens of the United States for properly handling the traffic: Provided further, That this section shall not apply to the transportation of merchandise loaded on railroad cars or to motor vehicles with or without trailers, and with their passengers or contents when accompanied by the operator thereof, when such railroad cars or motor vehicles are transported in any railroad car ferry operated between fixed termini on the Great Lakes as part of a rail route, if such 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, and if the stock of such common carrier by water, or its predecessor, was owned or controlled by a common carrier by rail prior to June 5, 1920, and if the stock of the common carrier owning such car ferry is with the approval of the Board, now owned or controlled by any common carrier by rail and if such car ferry is built in and documented under the laws of the United States: Provided further, That upon such terms and conditions as the Secretary of the Treasury by regulation may prescribe, and, if the transporting vessel is of foreign registry, upon a finding by the Secretary of the Treasury, pursuant to information obtained and furnished by the Secretary of State, that the government of the nation of registry extends reciprocal privileges to vessels of the United States, this

section shall not apply to the transportation by vessels of the United States not qualified to engage in the coastwise trade, or by vessels of foreign registry, of (a) empty cargo vans, empty lift vans, and empty shipping tanks, (b) equipment for use with cargo vans, lift vans, or shipping tanks, (c) empty barges specifically designed for carriage aboard a vessel and equipment, excluding propulsion equipment, for use with such barges, and (d) any empty instrument for international traffic exempted from application of the customs laws by the Secretary of the Treasury pursuant to the provisions of section 322(a), Tariff Act of 1930 (19 U.S.C. 1322)(a)), if the articles described in clauses (a) through (d) are owned or leased by the owner or operator of the transporting vessel and are transported for his use in handling his cargo in foreign trade; and (e) stevedoring equipment and material, if such equipment and material is owned or leased by the owner or operator of the transporting vessel, or is owned or leased by the stevedoring company contracting for the lading or unloading of that vessel, and is transported without charge for use in the handling of cargo in foreign trade; Provided further, That upon such terms and conditions as the Secretary of the Treasury by regulation may prescribe, and, if the transporting vessel is of foreign registry, upon his finding, pursuant to information furnished by the Secretary of State, that the government of the nation of registry extends reciprocal privileges to vessels of the United States, the Secretary of the Treasury may suspend the application of this section to the transportation of merchandise between points in the United States (excluding transportation between the continental United States and noncontiguous states, districts, territories, and possessions embraced within the coastwise laws) which, while moving in the foreign trade of the United States, is transferred from a non-self-propelled barge certified by the owner or operator to be specifically designed for carriage aboard a vessel and regularly carried aboard a vessel in foreign trade to another such barge owned or leased by the same owner or operator, without regard to whether any such barge is under foreign registry or qualified to engage in the coastwise trade: Provided further, That until April 1, 1984, and notwithstanding any other provisions of this section, any vessel documented under the laws of the United States and owned by persons who are citizens of the United States may, when operated upon a voyage in foreign trade, transport merchandise in cargo vans, lift vans, and shipping-tanks between points embraced within the coastwise laws for transfer to or when transferred from another vessel or vessels, so documented and owned, of the same operator when the merchandise movement has either a foreign origin or a foreign destination; but this proviso (1) shall apply only to vessels which that same operator owned, chartered or contracted for the construction of prior to the date of the enactment of this proviso [enacted Nov. 16, 1979], and (2) shall not

apply to movements between points in the contiguous United States and points in Hawaii, Alaska, the Commonwealth of Puerto Rico and United States territories and possessions. For the purposes of this section, after December 31, 1983, or after such time as an appropriate vessel has been constructed and documented as a vessel of the United States, 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 for the purpose of the incineration at sea of that waste shall be deemed to be transportation by water of merchandise between points in the United States: Provided, however, That the provisions of this sentence shall not apply to this transportation when performed by a foreign-flag ocean incineration vessel, owned by or under construction on May 1, 1982, for a corporation wholly owned by a citizen of the United States; the term "citizen of the United States", as used in this provision, means a corporation as defined in sections 2(a) and 2(b) of the Shipping Act, 1916 (46 U.S.C. 802(a) and (b)). The incineration equipment on these vessels shall meet all current United States Coast Guard and Environmental Protection Agency standards. These vessels shall, in addition to any other inspections by the flag state, be inspected by the United States Coast Guard, including drydock inspections and internal examinations of tanks and void spaces, as would be required of a vessel of the United States. Satisfactory inspection shall be certified in writing by the Secretary of Transportation. Such inspections may occur concurrently with any inspections required by the flag state or subsequent to but no more than one year after the initial issuance or the next scheduled issuance of the Safety of Life at Sea Safety Construction Certificate. In making such inspections, the Coast Guard shall refer to the conditions established by the initial flag state certification as the basis for evaluating the current condition of the hull and superstructure. The Coast Guard shall allow the substitution of an equivalent fitting, material, appliance, apparatus, or equipment other than that required for vessels of the United States if the Coast Guard has been satisfied that fitting, material, appliance, apparatus, or equipment is at least as effective as that required for vessels of the United States. Provided further, That for the purposes of this section, supplies aboard United States documented fish processing vessels, which are necessary and used for the processing or assembling of fishery products aboard such vessels, shall be considered ship's equipment and not merchandise: Provided further, That for purposes of this section, the term "merchandise" includes valueless material: Provided further, That this section applies to the transportation of valueless material or any dredged material regardless of whether it has commercial value, from a point or place in the United States or a point or place on the high seas within the Exclusive Economic Zone as defined in the Presidential Proclamation of

March 10, 1983, to another point or place in the United States or a point or place on the high seas within that Exclusive Economic Zone:

Provided further, That the transportation of any platform jacket in or on a 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)), shall not be deemed transportation subject to this section if the launch barge has a launch capacity of 12,000 long tons or more, was built as of the date of enactment of this proviso [enacted June 7, 1988], and is documented under the laws of the United States, and the platform jacket cannot be transported on and launched from a launch barge of lesser launch capacity that is identified by the Secretary of Transportation and is available for such transportation.

**REPORTS REQUIRED OF UNITED STATES VESSELS REBUILT ABROAD, PENALTY FOR FAILURE TO REPORT; MITIGATION OF PENALTY (46 App. U.S.C. 883a (1996))**<sup>6</sup> If any vessel of more than five hundred gross tons as measured under section 14502 of title 46, United States Code, or an alternate tonnage measured under section 14302 of that title as prescribed by the Secretary under section 14104 of that title documented under the laws of the United States, or last documented under such laws, is rebuilt, and any part of the rebuilding, including the construction of major components of the hull and superstructure of the vessel, is not effected within the United States, its Territories (not including trust territories) or its possessions, a report of the circumstances of such rebuilding shall be made to the Secretary of the Treasury, upon the first arrival of the vessel thereafter at a port within the customs territory of the United States, if rebuilt outside the United States, its Territories (not including trust territories), or its possessions, or, in any other case, upon completion of the rebuilding, in accordance with such regulations as the Secretary may prescribe. If the required report is not made, the vessel, together with its tackle, apparel, equipment, and furniture, shall be forfeited, and the master and owner shall each be liable to a penalty of \$ 200. Any penalty or forfeiture incurred under this Act may be remitted or mitigated by the Secretary under the provisions of section 5294 of the Revised Statutes of the United States, as amended (U. S. C., 1952 edition, title 46, sec. 7)

**REGULATIONS (46 App. U.S.C. 883b (1996)).**<sup>7</sup> The Secretary of the Treasury shall prescribe such regulations as may be necessary to carry out the purposes of this Act.

---

<sup>6</sup> Enacted as section 2 of the Act of July 14, 1956 (70 STAT. 544).

<sup>7</sup> Enacted as section 3 of the Act of July 14, 1956 (70 STAT. 544).

**SEC. 27A. BOWATERS AMENDMENT - CORPORATION AS CITIZEN; FISHERIES AND TRANSPORTATION OF MERCHANDISE OR PASSENGERS BETWEEN POINTS IN UNITED STATES; PARENT AND SUBSIDIARY CORPORATIONS; DOMESTIC BUILT VESSELS; CERTIFICATE; SURRENDER OF DOCUMENTS ON CHANGE IN STATUS (46 App. U.S.C. 883-1 (1996)).** Notwithstanding any other provision of law, a corporation incorporated under the laws of the United States or any State, Territory, District, or possession thereof, shall be deemed to be a citizen of the United States for the purposes of and within the meaning of that term as used in sections 9 and 37 of the Shipping Act, 1916, as amended (46 U. S. C. 808, 835), section 27 of the Merchant Marine Act of 1920, as amended (46 U. S. C. 883), Revised Statutes, section 4370 (46 U. S. C. 316), and the laws relating to the documentation of vessels, if it is established by a certificate filed with the Secretary of the Treasury as hereinafter provided, that—

(a) a majority of the officers and directors of such corporation are citizens of the United States;

(b) not less than 90 per centum of the employees of such corporation are residents of the United States;

(c) such corporation is engaged primarily in a manufacturing or mineral industry in the United States or any Territory, District, or possession thereof;

(d) the aggregate book value of the vessels owned by such corporation does not exceed 10 per centum of the aggregate book value of the assets of such corporation; and

(e) such corporation purchases or produces in the United States, its Territories, or possessions not less than 75 per centum of the raw materials used or sold in its operations but no vessel owned by any such corporation shall engage in the fisheries or in the transportation of merchandise or passengers for hire between points in the United States, including Territories, Districts, and possessions thereof, embraced within the coastwise laws, except as a service for a parent or subsidiary corporation and except when such vessel is under demise or bareboat charter at prevailing rates for use otherwise than in the domestic noncontiguous trades from any such corporation to a carrier subject to jurisdiction under subchapter II of chapter 135 of title 49, United States Code, which otherwise qualifies as a citizen under section 2 of the Shipping Act, 1916, as amended (46 U. S. C. 802), and which is not connected, directly or indirectly, by way of ownership or control with such corporation.

As used herein (1), the term “parent” means a corporation which controls, directly or indirectly, at least 50 per centum of the voting stock of

such corporation, and (2), the term “subsidiary” means a corporation not less than 50 per centum of the voting stock of which is controlled, directly or indirectly, by such corporation or its parent, but no corporation shall be deemed to be a “parent” or “subsidiary” hereunder unless it is incorporated under the laws of the United States, or any State, Territory, District, or possession thereof, and there has been filed with the Secretary of the Treasury a certificate as hereinafter provided.

Vessels built in the United States and owned by a corporation meeting the conditions hereof which are non-self-propelled or which, if self-propelled, are of less than five hundred gross tons as measured under section 14502 of title 46, United States Code, or an alternate tonnage measured under section 14302 of that title as prescribed by the Secretary under section 14104 of that title shall be entitled to documentation under the laws of the United States, and except as restricted by this section, shall be entitled to engage in the coastwise trade and, together with their owners or masters, shall be entitled to all the other benefits and privileges and shall be subject to the same requirements, penalties, and forfeitures as may be applicable in the case of vessels built in the United States and otherwise documented or exempt from documentation under the laws of the United States.

A corporation seeking hereunder to document a vessel under the laws of the United States or to operate a vessel exempt from documentation under the laws of the United States shall file with the Secretary of the Treasury of the United States a certificate under oath, in such form and at such times as may be prescribed by him, executed by its duly authorized officer or agent, establishing that such corporation complies with the conditions of this section above set forth. A “parent” or “subsidiary” of such corporation shall likewise file with the Secretary of the Treasury a certificate under oath, in such form and at such time as may be prescribed by him, executed by its duly authorized officer or agent, establishing that such “parent” or “subsidiary” complies with the conditions of this section above set forth, before such corporation may transport any merchandise or passengers for such parent or subsidiary. If any material matter of fact alleged in any such certificate which, within the knowledge of the party so swearing is not true, there shall be a forfeiture of the vessel (or the value thereof) documented or operated hereunder in respect to which the oath shall have been made. If any vessel shall transport merchandise for hire in violation of this section, such merchandise shall be forfeited to the United States. If any vessel shall transport passengers for hire in violation of this section, such vessel shall be subject to a penalty of \$ 200 for each passenger so transported. Any penalty or forfeiture incurred under this section may be remitted or mitigated by the Secretary of the Treasury under the provisions of section 7 of title 46, United States Code.

Any corporation which has filed a certificate with the Secretary of the Treasury as provided for herein shall cease to be qualified under this section if there is any change in its status whereby it no longer meets the conditions above set forth, and any documents theretofore issued to it, pursuant to the provisions of this section, shall be forthwith surrendered by it to the Secretary of the Treasury.

**SEC. 28. CHARGES FOR TRANSPORTATION SUBJECT TO INTERSTATE COMMERCE PROVISIONS (46 App. U.S.C. 884 (1996)).** No carrier shall charge, collect, or receive, for transportation subject to the Interstate Commerce Act of persons or property, under any joint rate, fare, or charge, or under any export, import, or other proportional rate, fare, or charge, which is based in whole or in part on the fact that the persons or property affected thereby is to be transported to, or has been transported from, any port in a possession or dependency of the United States, or in a foreign country, by a carrier by water in foreign commerce, any lower rate, fare, or charge than that charged, collected, or received by it for the transportation of persons, or of a like kind of property, for the same distance, in the same direction, and over the same route, in connection with commerce wholly within the United States, unless the vessel so transporting such persons or property is, or unless it was at the time of such transportation by water, documented under the laws of the United States. Whenever the Secretary of Transportation is of the opinion, however, that adequate shipping facilities to or from any port in a possession or dependency of the United States or a foreign country are not afforded by vessels so documented, he shall certify this fact to the Surface Transportation Board, and the Board may, by order, suspend the operation of the provisions of this section with respect to the rates, fares, and charges for the transportation by rail of persons and property transported from, or to be transported to such ports, for such length of time and under such terms and conditions as he may prescribe in such order, or in any order supplemental thereto. Such suspension of operation of the provisions of this section may be terminated by order of the Board whenever the Secretary of Transportation is of the opinion that adequate shipping facilities by such vessels to such ports are afforded and shall so certify to the Board.

**SEC. 29. ASSOCIATION OF MARINE INSURANCE COMPANIES; APPLICATION OF ANTITRUST LAWS (46 App. U.S.C. 885 (1996)).**

(a) Whenever used in this section—

(1) The term “association” means any association, exchange, pool, combination, or other arrangement for concerted action; and

(2) The term “marine insurance companies” means any persons, com-

panies, or associations, authorized to write marine insurance or reinsurance under the laws of the United States or of a State, Territory, District, or possession thereof.

(b) Nothing contained in the “anti-trust laws” as designated in section 1 of the Act entitled “An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,” approved October 15, 1914, shall be construed as declaring illegal an association entered into by marine insurance companies for the following purposes: To transact a marine insurance and reinsurance business in the United States and in foreign countries and to reinsure or otherwise apportion among its membership the risks undertaken by such association or any of the component members.

### **SEC. 33. JONES ACT - RECOVERY FOR INJURY TO OR DEATH OF SEAMAN (46 App. U.S.C. 688 (1996)).**

(a) **Application of Railway Employee Statutes; Jurisdiction.** Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located.

#### **(b) Limitation for Certain Aliens; Applicability in Lieu of Other Remedy.**

(1) No action may be maintained under subsection (a) or under any other maritime law of the United States for maintenance and cure or for damages for the injury or death of a person who was not a citizen or permanent resident alien of the United States at the time of the incident giving rise to the action, if the incident occurred—

(A) while that person was in the employ of an enterprise engaged in the exploration, development, or production of offshore mineral or energy resources—including but not limited to 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; and

(B) in the territorial waters or waters overlaying the continental shelf of a nation other than the United States, its territories, or possessions.

As used in this paragraph, the term “continental shelf” has the meaning stated in Article I of the 1958 Convention on the Continental Shelf.

(2) The provisions of paragraph (1) of this subsection shall not be applicable if the person bringing the action establishes that no remedy was available to that person—

(A) under the laws of the nation asserting jurisdiction over the area in which the incident occurred; or

(B) under the laws of the nation in which, at the time of the incident, the person for whose injury or death a remedy is sought maintained citizenship or residency.

**SEC. 36. PARTIAL INVALIDITY (46 App. U.S.C. 887 (1996)).** If any provision of this Act is declared unconstitutional or the application of any provision to certain circumstances be held invalid, the remainder of the Act and the application of such provisions to circumstances other than those as to which it is held invalid shall not be affected thereby.

**SEC. 37. DEFINITIONS (46 App. U.S.C. 888 (1996)).** When used in this Act, unless the context otherwise requires, the terms “person,” “vessel,” “documented under the laws of the United States,” and “citizen of the United States” shall have the meaning assigned to them by sections 1 and 2 of the “Shipping Act, 1916,” as amended; the term “board” means the United States Shipping Board; and the term “alien” means any person not a citizen of the United States.

**SEC. 39. SHORT TITLE (46 App. U.S.C. 889 (1996)).** This Act may be cited as the Merchant Marine Act, 1920.

# MERCHANT MARINE ACT, 1928

**SEC. 1. DECLARATION OF POLICY. (46 App. U.S.C. 891 (1996)).** The policy and primary purpose declared in section 1 of Merchant Marine Act, 1920 (U. S. C., Title 46, App. 861) are hereby confirmed.

**SEC. 202. VESSELS OF SECRETARY; REMODELING AND IMPROVING. (46 App. U.S.C. 891b (1996)).** In addition to his power to recondition and repair vessels under section 12 of the Merchant Marine Act, 1920 as amended (U. S. C., Title 46, App. 871), the Secretary of Transportation may remodel and improve vessels owned by the United States and in its possession or under his control, so as to equip them adequately for competition in the foreign trade of the United States. Any vessel so remodeled or improved shall be documented under the laws of the United States and shall remain documented under such laws for not less than five years from the date of the completion of the remodeling or improving and so long as there remains due the United States any money or interest on account of such vessel, and during such period it shall be operated only on voyages which are not exclusively coastwise.

**SEC. 203. REPLACEMENT VESSELS. (46 App. U.S.C. 891c (1996)).** The necessity for the replacement of vessels owned by the United States and in the possession or under the control of the Secretary of Transportation and the construction for the board of additional up-to-date cargo, combination cargo and passenger, and passenger ships, to give the United States an adequate merchant marine, is hereby recognized, and the Secretary of Transportation is authorized and directed to present to Congress from time to time, recommendations setting forth what new vessels are required for permanent operation under the United States flag in foreign trade, and the estimated cost thereof, to the end that Congress may, from time to time, make provision for replacements and additions. All vessels built for the Secretary of Transportation shall be built in the United States, and they shall be planned with reference to their possible usefulness as auxiliaries to the naval and military services of the United States.

**SEC. 703. DEFINITIONS. (46 App. U.S.C. 891u (1996)).**

(a) When used in this Act, and for the purposes of this Act only, the words “foreign trade” mean trade between the United States, its Territories or possessions, or the District of Columbia and a foreign country: Provided, however, That the loading or the unloading of cargo, mail, or passengers at any port in any Territory or possession of the United States shall be construed to be foreign trade if the stop at such

Territory or possession is an intermediate stop on what would otherwise be a voyage in foreign trade.

(b) When used in this Act the term “citizen of the United States” includes a corporation, partnership, or association only if it is a citizen of the United States within the meaning of section 2 of the Shipping Act, 1916, as amended.

**SEC. 704. REAFFIRMATION OF STEAMSHIP LINE POLICY (46 App. U.S.C. 891v (1996)).** The policy and the primary purpose declared in section 7 of the Merchant Marine Act, 1920, are hereby reaffirmed.

**SEC. 705. SHIP OPERATIONS; ALLOCATIONS. (46 App. U.S.C. 891w (1996)).** In the allocations of the operations of the ships, the Secretary of Transportation shall distribute them as far as possible and without detriment to the service among the various ports of the country.

**SEC. 706. SHORT TITLE. (46 App. U.S.C. 891x (1996)).** This Act may be cited as the “Merchant Marine Act, 1928.”

# CABOTAGE

**JONES ACT - TRANSPORTATION OF MERCHANDISE.** See Section 27 of the Merchant Marine Act, 1920, as amended (46 App. U.S.C. 883), page 230, supra..

**TRANSPORTATION OF PASSENGERS. THE ACT OF JUNE 19, 1886, AS AMENDED. (46 App. U.S.C. 289 (1996)).** No foreign vessel shall transport passengers between ports or places in the United States, either directly or by way of a foreign port, under a penalty of two hundred dollars for each passenger so transported and landed.

**BOWATERS AMENDMENT - TRANSPORTATION OF MERCHANDISE.** See Section 27A of the Merchant Marine Act, 1920, as amended (46 App. U.S.C. 883-1), page 235, supra. .

**PUERTO RICO PASSENGER SHIP ACT. PUBLIC LAW 98-563 (46 App. U.S.C. 289c (1996)).**

(a) **Authorization of Transportation.** Notwithstanding any other provision of law, passengers may be transported on passenger vessels not qualified to engage in the coastwise trade between ports in Puerto Rico and other ports in the United States, directly or by way of a foreign port, except as otherwise provided in this Act.

(b) **Notification by Secretary; Termination of Services.**

(1) Upon a showing to the Secretary of Transportation, by the vessel owner or charterer, that service aboard a United States passenger vessel qualified to engage in the coastwise trade is being offered or advertised pursuant to a certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation (46 App. U.S.C. 817e) from the Federal Maritime Commission for service in the coastwise trade between ports in Puerto Rico and other ports in the United States, the Secretary shall notify the owner or operator of each vessel transporting passengers under authority of this Act that he shall, within 270 days after notification, terminate all such service. Coastwise privileges granted to every owner or operator under this Act shall expire on the 270th day following the Secretary's notification.

(2) Upon a showing to the Secretary, by the vessel owner or charterer, that service aboard a United States passenger vessel not qualified to engage in the coastwise trade is being offered or advertised pursuant to a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation (46 App. U.S.C. 817e) from the Federal Maritime Commission for service in the coastwise trade between ports in Puerto Rico and other ports in the United States, the Secretary shall notify the owner or operator of each foreign-

flag vessel transporting passengers under authority of this Act that he shall, within 270 days after notification, terminate all such service. Coastwise privileges granted to every owner or operator of a foreign-flag vessel transporting passengers under authority of this Act shall expire on the 270th day following the Secretary's notification.

(c) **Extension of Termination Period.** If, at the expiration of the 270-day period specified in subsections (b)(1) and (b)(2) of this Act, the vessel that has been offering or advertising service pursuant to a certificate described in either of those subsections has not entered the coastwise passenger trade between ports in Puerto Rico and other ports in the United States, then the termination of service required by either of those subsections shall not be required until 90 days following the entry into that trade by the United States vessel.

(d) **Reinstatement of Coastwise Privileges.** Any coastwise privileges granted in this Act that expire under subsection (b)(1) or (b)(2) shall be reinstated upon a determination by the Secretary that the service on which the expiration of the privileges was based is no longer available.

(e) **“Passenger Vessel” Defined.** For the purposes of subsections (b)(1) and (b)(2), the term “passenger vessel” means any vessel of similar size or offering service comparable to any other vessel transporting passengers under authority of this Act.

#### **VESSELS THAT MAY ENGAGE IN DREDGING (46 App. U.S.C. 292 (1996)).**

(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 meets the requirements of section 27 of the Merchant Marine Act, 1920 and section 2 of the Shipping Act, 1916 for engaging in the coastwise trade;

(2) when chartered, the charterer of the vessel is a citizen of the United States under section 2 of the Shipping Act, 1916 for engaging in the coastwise trade; and

(3) for a vessel that is at least 5 net tons, the vessel is documented under chapter 121 of title 46, United States Code, with a coastwise endorsement.

(b) **Exception.** A documented vessel with a registry endorsement may engage in the dredging of gold in Alaska.

(c) **Penalty.** When a vessel is operated in knowing violation of this section, that vessel and its equipment are liable to seizure by and forfeiture to the United States Government.

**USE OF FOREIGN VESSELS IN UNITED STATES PORTS. (46 App. U.S.C. 316 (1996)).**

(a) **Towing United States Vessels; Fines and Penalties.** It shall be unlawful for any vessel not wholly owned by a person who is a citizen of the United States within the meaning of the laws respecting the documentation of vessels and not having in force a certificate of documentation issued under section 12106 of title 46, United States Code, to tow any vessel other than a vessel in distress, from any port or place in the United States, its Territories or possessions, embraced within the coastwise laws of the United States, to any other port or place within the same, either directly or by way of a foreign port or place, or to do any part of such towing, or to tow any such vessel, from point to point within the harbors of such places, or to tow any vessel transporting valueless material or any dredged material, regardless of whether it has commercial value, from a point or place in the United States or a point or place on the high seas within the Exclusive Economic Zone as defined in the Presidential Proclamation of March 10, 1983, to another point or place in the United States or a point or place on the high seas within that Exclusive Economic Zone. The owner and master of any vessel towing another vessel in violation of the provisions of this section shall each be liable to a fine of not less than \$ 250 nor more than \$ 1,000, which fines shall constitute liens upon the offending vessel enforceable through the district court of the United States for any district in which such vessel may be found, and clearance shall not be granted to such vessel until the fines have been paid. The towing vessel shall also be further liable to a penalty of \$ 50 per ton on the measurement of every vessel towed in violation of this section, which sum may be recovered by way of libel or suit.

(b) **“Person” Defined.** The term “person” as used in subsection (a) of this section, shall be held to include persons, firms, partnerships, associations, organizations, and corporations, doing business or existing under or by the authority of the laws of the United States, or of any State, Territory, district, or other subdivision thereof.

(c) **Foreign Railroad Companies using Ferries, Tugboats, or Towboats.** Any foreign railroad company or corporation, whose road enters the United States by means of a ferry, tugboat, or towboat, may own such vessel and operate the same in connection with the water transportation of the passenger, freight, express, baggage, and mail cars used by such road, together with the passengers, freight, express matter, baggage, and mails transported in such cars, without being subject to any other or different restrictions than those imposed by law on any vessel of the United States entering ports of the United States from ports in the same foreign country: Provided, That except as authorized by section 27 of the Merchant Marine Act, 1920, as amended (U. S. C., 1934

edition, Supp. IV, title 46, sec. 883), such ferry, tugboat, or towboat shall not, under penalty of forfeiture, be used in connection with the transportation of any merchandise shipped from any port or place in the United States, its Territories or possessions, embraced within the coastwise laws of the United States, to any other port or place within the same.

(d) **Salvaging Operations by Foreign Vessels.** No foreign vessel shall, 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, except when authorized by a treaty or in accordance with the provisions of the Act of June 19, 1878, as amended (U. S. C., 1934 edition, title 46, sec. 725): Provided, however, That if, on investigation, the Secretary of Commerce is satisfied that no suitable vessel wholly owned by a person who is a citizen of the United States and documented under the laws of the United States or numbered pursuant to the Act of June 7, 1918, as amended (U. S. C., 1934 edition, Supp. IV, title 46, sec. 288), is available in any particular locality he may authorize the use of a foreign vessel or vessels in salvaging operations in that locality and no penalty shall be incurred for such authorized use.

(e) **Operations Permitted by Treaty.** Nothing in this section shall be held or construed to prohibit or restrict any assistance to vessels or salvage operations authorized by 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 by the treaty between the United States and Mexico “to facilitate assistance to and salvage of vessels in territorial waters,” signed at Mexico City, June 13, 1935 (49 Stat. 3359).

**WRECKED VESSELS ACT (46 App. U.S.C. 14 (1996)).** The Secretary of Transportation may issue a certificate of documentation with a coastwise endorsement for any vessel wrecked on the coasts of the United States or her possessions or adjacent waters, when purchased by a citizen or citizens of the United States and thereupon repaired in a shipyard in the United States or her possessions, if it shall be proved to the satisfaction of the Secretary of Transportation, if he deems it necessary, through a board of three appraisers appointed by him, that the said repairs put upon such vessels are equal to three times the appraised salvaged value of the vessel: Provided, That the expense of the appraisal herein provided for shall be borne by the owner of the vessel: Provided further, That if any of the material matters of fact sworn to or repre-

mented by the owner, or at his instance, to obtain the register of any vessel are not true, there shall be a forfeiture to the United States of the vessel in respect to which the oath shall have been made, together with tackle, apparel, and furniture thereof.

### **SEC. 1117. USE OF FOREIGN REGISTRY OIL SPILL**

**RESPONSE VESSELS.**<sup>1</sup> 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) that foreign country has by its laws accorded to vessels of the United States the same privileges accorded to vessels of that foreign country under this section.

### **VESSEL TO TRANSPORT LNG TO PUERTO RICO.**<sup>2</sup>

(f) **Certificate of Documentation for a Liquefied Gas Tanker.**— Notwithstanding section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), section 12106 of title 46, United States Code, section 506 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1156) and any agreement with the United States Government, the Secretary of Transportation may issue a certificate of documentation with a coast-wise endorsement for a vessel to transport liquefied natural gas or liquefied petroleum gas to the Commonwealth of Puerto Rico from other ports in the United States, if the vessel—

(1) is a foreign built vessel that was built prior to the date of enactment of this Act; or

(2) is documented under chapter 121 of title 46, United States Code, before the date of enactment of this Act, even if the vessel is placed under a foreign registry and subsequently redocumented under that chapter for operation under this section.

---

<sup>1</sup> Section 1117 of Public Law 104-324, approved October 19, 1996 (110 STAT. 3973).

<sup>2</sup> Section 1120(f) of Public Law 104-324, approved October 19, 1996 (110 STAT. 3978).

### **WAIVER OF NAVIGATION AND VESSEL INSPECTION LAWS.<sup>3</sup>**

The head of each department or agency responsible for the administration of the navigation and vessel-inspection laws is directed to waive compliance with such laws upon the request of the Secretary of Defense to the extent deemed necessary in the interest of national defense by the Secretary of Defense. The head of such department or agency is authorized to waive compliance with such laws to such extent and in such manner and upon such terms as he may prescribe, either upon his own initiative or upon the written recommendation of the head of any other agency, whenever he deems that such action is necessary in the interest of national defense.

*Sec. 2.* The authority granted by this Act shall terminate at such time as the Congress by concurrent resolution or the President may designate.

### **MISCELLANEOUS PROVISIONS:**

**46 App. U.S.C. 289a. Transportation of passengers in Canadian vessels between Rochester and Alexandria Bay.** Until such time as passenger service shall be 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 Commerce is authorized in his discretion to issue annually permits to Canadian passenger vessels to transport passengers between these ports; such Canadian vessels holding such permits not to be subject to the provisions of section 8 of the Act of June 19, 1886, as amended by section 2 of the Act of February 17, 1898.

**46 App. 289b. Transportation of passengers and merchandise in Canadian vessels between points in Alaska and the United States.** Notwithstanding the provisions of law of the United States restricting to vessels of the United States the transportation of passengers and merchandise directly or indirectly from any port in the United States to another port of the United States, passengers may be transported on Canadian vessels between ports in southeastern Alaska, and passengers and merchandise may be transported on Canadian vessels between Hyder, Alaska, and other points in southeastern Alaska, and between Hyder, Alaska, and other points in the United States outside Alaska, either directly or via a foreign port, or for any part of the transportation until the Secretary of Transportation determines that United States-flag service is available to provide such transportation.

---

<sup>3</sup> Public Law 81-891, approved December 27, 1950 (64 STAT. 1120) (Note preceding 46 App. U.S.C. 1).

# CARGO RESERVATION

## MILITARY CARGO PREFERENCE ACT OF 1904.<sup>1</sup> (10 U.S.C. 2631 (1996)).

(a) Only vessels of the United States or belonging to the United States may be used in the transportation by sea of supplies bought for the Army, Navy, Air Force, or Marine Corps. However, if the President finds that the freight charged by those vessels is excessive or otherwise unreasonable, contracts for transportation may be made as otherwise provided by law. Charges made for the transportation of those supplies by those vessels may not be higher than the charges made for transporting like goods for private persons.

(b)(1) In each request for proposals to enter into a time-charter contract for the use of a vessel for the transportation of supplies under this section, the Secretary of Defense shall require that any reflagging or repair work on a vessel for which a proposal is submitted in response to the request for proposals be performed in the United States (including any territory of the United States).

(2) In paragraph (1), the term “reflagging or repair work” means work performed on a vessel—

(A) to enable the vessel to meet applicable standards to become a vessel of the United States; or

(B) to convert the vessel to a more useful military configuration.

(3) The Secretary of Defense may waive the requirement described in paragraph (1) if the Secretary determines that such waiver is critical to the national security of the United States. The Secretary shall immediately notify the Congress of any such waiver and the reasons for such waiver.

---

<sup>1</sup> See also 10 U.S.C. 2631a, added by section 1173(a) of Public Law 103-160, approved November 30, 1993, providing:

### **10 U.S.C. 2631a (1996). Contingency Planning: Sealift and Related International Transportation Requirements.**

(a) **Consideration of Private Capabilities.** The Secretary of Defense shall ensure that all studies and reports of the Department of Defense, and all actions taken in the Department of Defense, concerning sealift and related intermodal transportation requirements take into consideration the full range of the transportation and distribution capabilities that are available from operators of privately owned United States flag merchant vessels.

(b) **Private Capacities Presentations.** The Secretary shall afford each operator of a vessel referred to in subsection (a), not less often than annually, an opportunity to present to the Department of Defense information on its port-to-port and intermodal transportation capacities.

**PUBLIC RESOLUTION 17.<sup>2</sup> SHIPMENT OF EXPORTS FINANCED BY GOVERNMENT IN UNITED STATES VESSELS (46 App. U.S.C. 1241-1)(1996)).** It is the sense of Congress that in any loans made by the Reconstruction Finance Corporation or any other instrumentality of the Government to foster the exporting of agricultural or other products, provision shall be made that such products shall be carried exclusively in vessels of the United States, unless, as to any or all of such products, the Secretary of Transportation, after investigation, shall certify to the Reconstruction Finance Corporation or any other instrumentality of the Government that vessels of the United States are not available in sufficient numbers, or in sufficient tonnage capacity, or on necessary sailing schedule, or at reasonable rates.

**CARGO PREFERENCE ACT OF 1954-PUBLIC LAW 664. SECTION 901(b) OF THE MERCHANT MARINE ACT, 1936 (46 App. U.S.C. 1241(b)(1996)).**

**(b) Cargoes Procured, Furnished or Financed by United States; Waiver in Emergencies; Exceptions; Definition.**

(1) Whenever the United States shall procure, contract for, or otherwise obtain for its own account, or shall furnish to or for the account of any foreign nation without provision for reimbursement, any equipment, materials, or commodities, within or without the United States, or shall advance funds or credits or guarantee the convertibility of foreign currencies in connection with the furnishing of such equipment, materials, or commodities, the appropriate agency or agencies shall take such steps as may be necessary and practicable to assure that at least 50 per centum of the gross tonnage of such equipment, materials, or commodities (computed separately for dry bulk carriers, dry cargo liners, and tankers), which may be transported on ocean vessels shall be transported on privately owned United States-flag commercial vessels, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels, in such manner as will insure a fair and reasonable participation of United States-flag commercial vessels in such cargoes by geographic areas: Provided, That the provisions of this subsection may be waived whenever the Congress by concurrent resolution or otherwise, or the President of the United States or the Secretary of Defense declares that an emergency exists justifying a temporary waiver of the provisions of section 901(b)(1) and so notifies the appropriate agency or agencies: And provided further, That the provisions of this subsection shall not apply to cargoes carried in the vessels of the Panama Canal Company. Nothing herein shall repeal or otherwise

---

<sup>2</sup> Enacted March 26, 1934, (48 STAT. 500), as amended by Public Law 97-31, approved August 6, 1981 (92 STAT. 165).

modify the provisions of Public Resolution Numbered 17, Seventy-third Congress (48 Stat. 500), as amended. For purposes of this section, the term “privately owned United States-flag commercial vessels” shall not be deemed to include any vessel which, subsequent to the date of enactment of this amendment, shall have been either (a) built outside the United States, (b) rebuilt outside the United States, or (c) documented under any foreign registry, until such vessel shall have been documented under the laws of the United States for a period of three years:

Provided, however, That the provisions of this amendment shall not apply where, (1) prior to the enactment of this amendment, the owner of a vessel, or contractor for the purchase of a vessel, originally constructed in the United States and rebuilt abroad or contracted to be rebuilt abroad, has notified the Maritime Administration in writing of its intent to document such vessel under United States registry, and such vessel is so documented on its first arrival at a United States port not later than one year subsequent to the date of the enactment of this amendment, or (2) where prior to the enactment of this amendment, the owner of a vessel under United States registry has made a contract for the rebuilding abroad of such vessel and has notified the Maritime Administration of such contract, and such rebuilding is completed and such vessel is thereafter documented under United States registry on its first arrival at a United States port not later than one year subsequent to the date of the enactment of this amendment.

(2) Every department or agency having responsibility under this subsection shall administer its programs with respect to this subsection under regulations issued by the Secretary of Transportation. The Secretary of Transportation shall review such administration and shall annually report to the Congress with respect thereto.

**FOOD SECURITY ACT OF 1985. PUBLIC LAW 99 - 198, AS AMENDED (46 App. U.S.C. 1241e - 1241o (1996)).**

See sections 901a through 901k of the Merchant Marine Act, 1936, commencing at page 109, *supra*.

**EXPORT OF ALASKAN NORTH SLOPE OIL.<sup>3</sup>**

**SEC. 201—EXPORTS OF ALASKAN NORTH SLOPE OIL,** amends section 28 of the Mineral Leasing Act (30 U.S.C. 185), by amending subsection (s) to read as follows:

**EXPORTS OF ALASKAN NORTH SLOPE OIL**

(s)(1) Subject to paragraphs (2) through (6) of this subsection and notwithstanding any other provision of this Act or any other provision

---

<sup>3</sup> Set forth in Title II of Public Law 104-58, approved November 28, 1995 (109 STAT. 557, 560), the Alaska Power Administration Asset Sale and Termination Act.

of law (including any regulation) applicable to the export of oil transported by pipeline over right-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1652), such oil may be exported unless the President finds that exportation of this oil is not in the national interest. The President shall make his national interest determination within five months of the date of enactment of this subsection. In evaluating whether exports of this oil are in the national interest, the President shall at a minimum consider—

(A) whether exports of this oil would diminish the total quantity or quality of petroleum available to the United States;

(B) the results of an appropriate environmental review, including consideration of appropriate measures to mitigate any potential adverse effects of exports of this oil on the environment, which shall be completed within four months of the date of the enactment of this subsection; and

(C) whether exports of this oil are likely to cause sustained material oil supply shortages or sustained oil prices significantly above world market levels that would cause sustained material adverse employment effects in the United States or that would cause substantial harm to consumers, including noncontiguous States and Pacific territories.

If the President determines that exports of this oil are in the national interest, he may impose such terms and conditions (other than a volume limitation) as are necessary or appropriate to ensure that such exports are consistent with the national interest.

(2) Except in the case of oil exported to a country with which the United States entered into a bilateral international oil supply agreement before November 26, 1979, or to a country pursuant to the International Emergency Oil Sharing Plan of the International Energy Agency, any oil transported by pipeline over right-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1652) shall, when exported, be transported by a vessel documented under the laws of the United States and owned by a citizen of the United States (as determined in accordance with section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802)).

(3) Nothing in this subsection shall restrict the authority of the President under the Constitution, the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.), the National Emergencies Act (50 U.S.C. 1601 et seq.), or Part B of title II of the Energy Policy and Conservation Act (42 U.S.C. 6271-76) to prohibit exports.

(4) The Secretary of Commerce shall issue any rules necessary for implementation of the President's national interest determination, including any licensing requirements and conditions, within 30 days of the date of such determination by the President. The Secretary of

Commerce shall consult with the Secretary of Energy in administering the provisions of this subsection.

(5) If the Secretary of Commerce finds that exporting oil under authority of this subsection has caused sustained material oil supply shortages or sustained oil prices significantly above world market levels and further finds that these supply shortages or price increases have caused or are likely to cause sustained material adverse employment effects in the United States, the Secretary of Commerce, in consultation with the Secretary of Energy, shall recommend, and the President may take, appropriate action concerning exports of this oil, which may include modifying or revoking authority to export such oil.

(6) Administrative action under this subsection is not subject to sections 551 and 553 through 559 of title 5, United States Code.

## **SEC. 202. GAO REPORT.**

(a) **Review.**—The Comptroller General of the United States shall conduct a review of energy production in California and Alaska and the effects of Alaskan North Slope oil exports, if any, on consumers, independent refiners, and shipbuilding and ship repair yards on the West Coast and in Hawaii. The Comptroller General shall commence this review three years after the date of enactment of this Act and, within twelve months after commencing the review, shall provide a report to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources and the Committee on Commerce of the House of Representatives.

(b) **Contents of Report.**—The report shall contain a statement of the principal findings of the review and recommendations for Congress and the President to address job loss in the shipbuilding and ship repair industry on the West Coast, as well as adverse impacts on consumers and refiners on the West Coast and in Hawaii, that the Comptroller General attributes to Alaska North Slope oil exports.

# SHIPPING ACT OF 1984

**SEC. 1. (46 App. U.S.C. 1701 note (1996)).** This Act may be cited as the “Shipping Act of 1984”.

**SEC. 2. DECLARATION OF POLICY (46 App. U.S.C. 1701 (1996)).** The purposes of this Act are—

(1) to 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) to 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; and

(3) to encourage the development of an economically sound and efficient United States-flag liner fleet capable of meeting national security needs.

**SEC. 3. DEFINITIONS (46 App. U.S.C. 1702 (1996)).** As used in this Act—

(1) “agreement” means an understanding, arrangement, or association (written or oral) and any modification or cancellation thereof; but the term does not include a maritime labor agreement.

(2) “antitrust laws” means the Act of July 2, 1890 (ch. 647, 26 Stat. 209), as amended; the Act of October 15, 1914 (ch. 323, 38 Stat. 730), as amended; the Federal Trade Commission Act (38 Stat. 717), as amended; sections 73 and 74 of the Act of August 27, 1894 (28 Stat. 570), as amended; the Act of June 19, 1936 (ch. 592, 49 Stat. 1526), as amended; the Antitrust Civil Process Act (76 Stat. 548), as amended; and amendments and Acts supplementary thereto.

(3) “assessment agreement” means an agreement, whether part of a collective-bargaining agreement or negotiated separately, to the extent that it provides for the funding of collectively bargained fringe benefit obligations on other than a uniform man-hour basis, regardless of the cargo handled or type of vessel or equipment utilized.

(4) “bulk cargo” means cargo that is loaded and carried in bulk without mark or count.

(5) “Commission” means the Federal Maritime Commission.

(6) “common carrier” means a person holding 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 that—

(A) assumes responsibility for the transportation from the port or point of receipt to the port or point of destination, and

(B) utilizes, 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, except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, or chemical parcel-tanker. As used in this paragraph, “chemical parcel-tanker” means a vessel whose cargo-carrying capability consists of individual cargo tanks for bulk chemicals that are a permanent part of the vessel, that have segregation capability with piping systems to permit simultaneous carriage of several bulk chemical cargoes with minimum risk of cross-contamination, and that has a valid certificate of fitness under the International Maritime Organization Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk.

(7) “conference” means an association of ocean common carriers permitted, pursuant to an approved or effective agreement, to engage in concerted activity and to utilize a common tariff; but the term does not include a joint service, consortium, pooling, sailing, or transshipment arrangement.

(8) “controlled carrier” means an ocean common carrier that is, or whose operating assets are, directly or indirectly, owned or controlled by the government under whose registry the vessels of the carrier operate; ownership or control by a government shall be deemed to exist with respect to any carrier if—

(A) a majority portion of the interest in the carrier is owned or controlled in any manner by that government, by any agency thereof, or by any 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” means a return by a common carrier of any portion of the freight money to a shipper as a consideration for that shipper giving all, or any portion, of its shipments to that or any other common carrier, or for any other purpose, the payment of which is deferred beyond the completion of the service for which it is paid, and is made only if, during both the period for which computed and the period of deferment, the shipper has complied with the terms of the rebate agreement or arrangement.

(10) “fighting ship” means a vessel used in a particular trade by an ocean common carrier or group of such carriers for the purpose of excluding, preventing, or reducing competition by driving another ocean common carrier out of that trade.

(11) “forest products” means forest products in an unfinished or semifinished state that require special handling moving in lot sizes too large for a container, including, but not limited to 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, paper board in rolls, and paper in rolls.

(12) “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.

(13) “inland portion” means the charge to the public by a common carrier for the nonocean portion of through transportation.

(14) “loyalty contract” means a contract with an ocean common carrier or conference, other than a service contract or contract based upon time-volume rates, by which a shipper obtains lower rates by committing all or a fixed portion of its cargo to that carrier or conference.

(15) “marine terminal operator” means a person engaged in the United States in the business of furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier.

(16) “maritime labor agreement” means a collective-bargaining agreement between an employer subject to this Act, or group of such employers, and a labor organization representing employees in the maritime or stevedoring industry, or an agreement preparatory to such a collective-bargaining agreement among members of a multiemployer bargaining group, or an agreement specifically implementing provisions of such a collective-bargaining agreement or providing for the formation, financing, or administration of a multiemployer bargaining group; but the term does not include an assessment agreement.

(17) “non-vessel-operating common carrier” means a common carrier that does not operate the vessels by which the ocean transportation is provided, and is a shipper in its relationship with an ocean common carrier.

(18) “ocean common carrier” means a vessel-operating common carrier.

(19) “ocean freight forwarder” means a person in the United States that—

(A) dispatches shipments from the United States via common carriers 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.

(20) “person” includes individuals, corporations, partnerships, and associations existing under or authorized by the laws of the United States or of a foreign country.

(21) “service contract” means a contract between a shipper and an ocean common carrier or conference in which the shipper makes a com-

mitment to provide a certain minimum quantity of cargo over a fixed time period, and the ocean common carrier or conference commits to a certain rate or rate schedule as well as a defined service level—such as, assured space, transit time, port rotation, or similar service features; the contract may also specify provisions in the event of nonperformance on the part of either party.

(22) “shipment” means all of the cargo carried under the terms of a single bill of lading.

(23) “shipper” means an owner or person for whose account the ocean transportation of cargo is provided or the person to whom delivery is to be made.

(24) “shippers’ association” means a group of shippers that consolidates or distributes freight on a nonprofit basis for the members of the group in order to secure carload, truckload, or other volume rates or service contracts.

(25) “through rate” means the single amount charged by a common carrier in connection with through transportation.

(26) “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 point or port and a foreign point or port.

(27) “United States” includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Marianas, and all other United States territories and possessions.

#### **SEC. 4. AGREEMENTS WITHIN SCOPE OF ACT (46 App. U.S.C. 1703 (1996)).**

(a) **Ocean common carriers.** This Act applies to agreements by 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 restrict or otherwise regulate the number and character of sailings between ports;

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

(5) engage in exclusive, preferential, or cooperative working arrangements among themselves or with one or more marine terminal operators or non-vessel-operating common carriers;

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

(7) regulate or prohibit their use of service contracts.

(b) **Marine terminal operators.** This Act applies to agreements (to the extent the agreements involve ocean transportation in the foreign commerce of the United States) among marine terminal operators and 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; and
- (2) engage in exclusive, preferential, or cooperative working arrangements.

(c) **Acquisitions.** This Act does not apply to an acquisition by any person, directly or indirectly, of any voting security or assets of any other person.

## **SEC. 5. AGREEMENTS (46 App. U.S.C. 1704 (1996)).**

(a) **Filing Requirements.** A true copy of every agreement entered into with respect to an activity described in section 4(a) or (b) of this Act shall be filed with the Commission, except agreements related to transportation to be performed within or between foreign countries and agreements among common carriers to establish, operate, or maintain a marine terminal in the United States. In the case of an oral agreement, a complete memorandum specifying in detail the substance of the agreement shall be filed. The Commission may by regulation prescribe the form and manner in which an agreement shall be filed and the additional information and documents necessary to evaluate the agreement.

(b) **Conference Agreements.** Each conference agreement must—

- (1) state its purpose;
- (2) provide reasonable and equal terms and conditions 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 upon 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 10(c)(1) or (3) of this Act;
- (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 shippers' requests and complaints; and

(8) provide that any member of the conference may take independent action on any rate or service item required to be filed in a tariff under section 8(a) of this Act upon not more than 10 calendar days' notice to the conference and that the conference will include the new rate or service item in its tariff for use by that member, effective no later than 10 calendar 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) **Assessment Agreements.** Assessment agreements shall be filed with the Commission and become effective on filing. The Commission shall thereafter, upon complaint filed within 2 years of the date of the agreement, disapprove, cancel, or modify any such agreement, or charge or assessment pursuant thereto, that it finds, after notice and hearing, to be unjustly discriminatory or unfair as between carriers, shippers, or ports. The Commission shall issue its final decision in any such proceeding within 1 year of the date of filing of the complaint. To the extent that an assessment or charge is found in the proceeding to be unjustly discriminatory or unfair as between carriers, shippers, or ports, the Commission shall remedy the unjust discrimination or unfairness for the period of time between the filing of the complaint and the final decision by means of assessment adjustments. These adjustments shall be implemented by prospective credits or debits to future assessments or charges, except in the case of a complainant who has ceased activities subject to the assessment or charge, in which case reparation may be awarded. Except for this subsection and section 7(a) of this Act, this Act, the Shipping Act, 1916, and the Intercoastal Shipping Act, 1933, do not apply to assessment agreements.

(e) **Maritime Labor Agreements.** This Act and the Shipping Act, 1916 do not apply to maritime labor agreements. This subsection does not exempt from this Act or the Shipping Act, 1916 any rates, charges, regulations, or practices of a common carrier that are required to be set forth in a tariff, whether or not those rates, charges, regulations, or practices arise out of, or are otherwise related to, a maritime labor agreement.

## **SEC. 6. ACTION ON AGREEMENTS (46 App. U.S.C. 1705 (1996)).**

(a) **Notice.** Within 7 days after an agreement is filed, the Commission shall transmit a notice of its filing to the Federal Register for publication.

(b) **Review Standard.** The Commission shall reject any agreement filed under section 5(a) of this Act that, after preliminary review, it finds does not meet the requirements of section 5. The Commission shall notify in writing the person filing the agreement of the reason for rejection of the agreement.

(c) **Review and Effective Date.** Unless rejected by the Commission under subsection (b), agreements, other than assessment agreements, shall become 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 day is later; or

(2) if additional information or documentary material is requested under subsection (d), on the 45th day after the Commission receives—

(A) all the additional information and documentary material requested; or

(B) if the request is not fully complied with, the information and documentary material submitted and a statement of the reasons for noncompliance with the request. The period specified in paragraph (2) may be extended only by the United States District Court for the District of Columbia upon an application of the Commission under subsection (i).

(d) **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 documentary material it deems necessary to make the determinations required by this section.

(e) **Request for Expedited Approval.** The Commission may, upon request of the filing party, shorten the review period specified in subsection (c), but in no event to a date less than 14 days after notice of the filing of the agreement is published in the Federal Register.

(f) **Term of Agreements.** The Commission may not limit the effectiveness of an agreement to a fixed term.

(g) **Substantially Anticompetitive Agreements.** If, at any time after the filing or effective date of an agreement, 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, it may, after notice to the person filing the agreement, seek appropriate injunctive relief under subsection (h).

(h) **Injunctive Relief.** The Commission may, upon making the determination specified in subsection (g), bring suit in the United States District Court for the District of Columbia to enjoin operation of the agreement. The court may issue a temporary restraining order or preliminary injunction and, upon a showing 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, may enter a permanent injunction. In a suit under this subsection, the burden of proof is on the Commission. The court may not allow a third party to intervene with respect to a claim under this subsection.

(i) **Compliance with Informational Needs.** If a person filing an agreement, or an officer, director, partner, agent, or employee thereof, fails substantially to comply with a request for the submission of additional information or documentary material within the period specified in subsection (c), the United States District Court for the District of Columbia, at the request of the Commission—

- (1) may order compliance;
- (2) shall extend the period specified in subsection (c)(2) until there has been substantial compliance; and
- (3) may grant such other equitable relief as the court in its discretion determines necessary or appropriate.

(j) **Nondisclosure of Submitted Material.** Except for an agreement filed under section 5 of this Act, information and documentary material filed with the Commission under section 5 or 6 is exempt from disclosure under section 552 of title 5, United States Code and may not be made public except as may be relevant to an administrative or judicial action or proceeding. This section does not prevent disclosure to either body of Congress or to a duly authorized committee or subcommittee of Congress.

(k) **Representation.** Upon notice to the Attorney General, the Commission may represent itself in district court proceedings under subsections (h) and (i) of this section and section 11(h) of this Act. With the approval of the Attorney General, the Commission may represent itself in proceedings in the United States Courts of Appeal under subsections (h) and (i) of this section and section 11(h) of this Act.

## **SEC. 7. EXEMPTION FROM ANTITRUST LAWS (46 App. U.S.C. 1706 (1996)).**

(a) **In General.** The antitrust laws do not apply to—

- (1) any agreement that has been filed under section 5 of this Act and is effective under section 5(d) or section 6, or is exempt under section 16 of this Act from any requirement of this Act;
- (2) any activity or agreement within the scope of this Act, whether permitted under or prohibited by this Act, undertaken or entered into with a reasonable basis to conclude that (A) it is pursuant to an agreement on file with the Commission and in effect when the activity took place, or (B) it is exempt under section 16 of this Act from any filing requirement of this Act;

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

(4) any agreement or activity concerning the foreign inland segment of through transportation that is part of transportation provided in a United States import or export trade;

(5) any agreement or activity to provide or furnish wharfage, dock, warehouse, or other terminal facilities outside the United States; or

(6) subject to section 20(e)(2) of this Act, any agreement, modification, or cancellation approved by the Commission before the effective date of this Act under section 15 of the Shipping Act, 1916, or permitted under section 14b thereof, and any properly published tariff, rate, fare, or charge, classification, rule, or regulation explanatory thereof implementing that agreement, modification, or cancellation.

(b) **Exceptions.** This Act does not extend antitrust immunity—

(1) to any agreement with or among air carriers, rail carriers, motor carriers, or common carriers by water not subject to this Act with respect to transportation within the United States;

(2) to any discussion or agreement among common carriers that are subject to this Act regarding the inland divisions (as opposed to the inland portions) of through rates within the United States; or

(3) to any agreement among common carriers subject to this Act to establish, operate, or maintain a marine terminal in the United States.

(c) **Limitations.**

(1) Any determination by an agency or court that results in the denial or removal of the immunity to the antitrust laws set forth in subsection (a) shall not remove or alter the antitrust immunity for the period before the determination.

(2) No person may 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 Act.

## **SEC. 8. TARIFFS (46 App. U.S.C. 1707 (1996)).**

(a) **In General.**

(1) Except with regard to bulk cargo, forest products, recycled metal scrap, waste paper, and paper waste, each common carrier and conference shall file with the Commission, and keep open to public inspection, 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, common carriers shall not be required to state separately or otherwise reveal in tariff filings the inland divisions of a through rate. Tariffs shall—

- (A) state the places between which cargo will be carried;
- (B) list each classification of cargo in use;
- (C) state the level of ocean freight forwarder compensation, if any, by a carrier or conference;
- (D) state separately each terminal or other charge, privilege, or facility under the control of the carrier or conference and any rules or regulations that in any way change, affect, or determine any part or the aggregate of the rates or charges; and
- (E) include sample copies of any loyalty contract, bill of lading, contract of affreightment, or other document evidencing the transportation agreement.

(2) Copies of tariffs shall be made available to any person, and a reasonable charge may be assessed for them.

(b) **Time-Volume Rates.** Rates shown in tariffs filed under subsection (a) may vary with the volume of cargo offered over a specified period of time.

(c) **Service Contracts.** An ocean common carrier or conference may enter into a service contract with a shipper or shippers' association subject to the requirements of this Act. Except for service contracts dealing with bulk cargo, forest products, recycled metal scrap, waste paper, or paper waste, each contract entered into under this subsection shall be filed confidentially with the Commission, and at the same time, a concise statement of its essential terms shall be filed with the Commission and made available to the general public in tariff format, and those essential terms shall be available to all shippers similarly situated. The essential terms shall include—

- (1) the origin and destination port ranges in the case of port-to-port movements, and the origin and destination geographic areas in the case of through intermodal movements;
- (2) the commodity or commodities involved;
- (3) the minimum volume;
- (4) the line-haul rate;
- (5) the duration;
- (6) service commitments; and
- (7) the liquidated damages for nonperformance, if any.

The exclusive remedy for a breach of a contract entered into under this subsection shall be an action in an appropriate court, unless the parties otherwise agree.

(d) **Rates.** No new or initial rate or change in an existing rate that results in an increased cost to the shipper may become effective earlier than 30 days after filing with the Commission. The Commission, for good cause, may allow such a new or initial rate or change to become

effective in less than 30 days. A change in an existing rate that results in a decreased cost to the shipper may become effective upon publication and filing with the Commission.

(e) **Refunds.** The Commission may, upon application of a carrier or shipper, permit a common carrier or conference to refund a portion of freight charges collected from a shipper or to waive the collection of a portion of the charges from a shipper if—

(1) there is an error in a tariff of a clerical or administrative nature or an error due to inadvertence in failing to file a new tariff and the refund will not result in discrimination among shippers, ports, or carriers;

(2) the common carrier or conference has, prior to filing an application for authority to make a refund, filed a new tariff with the Commission that sets forth the rate on which the refund or waiver would be based;

(3) the common carrier or conference agrees that if permission is granted by the Commission, an appropriate notice will be published in the tariff, or such other steps taken as the Commission may require that give notice of the rate on which the refund or waiver would be based, and additional refunds or waivers as appropriate shall be made with respect to other shipments in the manner prescribed by the Commission in its order approving the application; and

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

(f) **Form.** The Commission may by regulation prescribe the form and manner in which the tariffs required by this section shall be published and filed. The Commission may reject a tariff that is not filed in conformity with this section and its regulations. Upon rejection by the Commission, the tariff is void and its use is unlawful.

## **SEC. 9. CONTROLLED CARRIERS (46 App. U.S.C. 1708 (1996)).**

(a) **Controlled Carrier Rates.** No controlled carrier subject to this section may maintain rates or charges in its tariffs or service contracts filed with the Commission that are below a level that is just and reasonable, nor may any such carrier establish or maintain unjust or unreasonable classifications, rules, or regulations in those tariffs or service contracts. An unjust or unreasonable classification, rule, or regulation means one that results or is likely to result in the carriage or handling of cargo at rates or charges that are below a just and reasonable level. The Commission may, at any time after notice and hearing, disapprove any rates, charges, classifications, rules, or regulations that the controlled carrier has failed to demonstrate to be just and reasonable. In a proceeding under this subsection, the burden of proof is on the controlled

carrier to demonstrate that its rates, charges, classifications, rules, or regulations are just and reasonable. Rates, charges, classifications, rules, or regulations filed by a controlled carrier that have been rejected, suspended, or disapproved by the Commission are void and their use is unlawful.

(b) **Rate Standards.** For the purpose of this section, in determining whether rates, charges, classifications, rules, or regulations by a controlled carrier are just and reasonable, the Commission may take into account appropriate factors including, but not limited to, whether—

(1) the rates or charges which have been filed or which would result from the pertinent classifications, rules, or regulations are below a level which is fully compensatory to the controlled carrier based upon that carrier's actual costs or upon its constructive costs, which are hereby defined as the costs of another carrier, other than a controlled carrier, operating similar vessels and equipment in the same or a similar trade;

(2) the rates, charges, classifications, rules, or regulations are the same as or similar to those filed or assessed by other carriers in the same trade;

(3) the rates, charges, classifications, rules, or regulations are required to assure movement of particular cargo in the trade; or

(4) the rates, charges, classifications, rules, or regulations are required to maintain acceptable continuity, level, or quality of common carrier service to or from affected ports.

(c) **Effective Date of Rates.** Notwithstanding section 8(d) of this Act and except for service contracts, the rates, charges, classifications, rules, or regulations of controlled carriers may not, without special permission of the Commission, become effective sooner than the 30th day after the date of filing with the Commission. Each controlled carrier shall, upon the request of the Commission, file, within 20 days of request (with respect to its existing or proposed rates, charges, classifications, rules, or regulations), a statement of justification that sufficiently details the controlled carrier's need and purpose for such rates, charges, classifications, rules, or regulations upon which the Commission may reasonably base its determination of the lawfulness thereof.

(d) **Disapproval of Rates.** Whenever the Commission is of the opinion that the rates, charges, classifications, rules, or regulations filed by a controlled carrier may be unjust and unreasonable, the Commission may issue an order to the controlled carrier to show cause why those rates, charges, classifications, rules, or regulations should not be disapproved. Pending a determination as to their lawfulness in such a proceeding, the Commission may suspend the rates, charges, classifications, rules, or regulations at any time before their effective date. In the case of rates, charges, classifications, rules, or regulations that have already become

effective, the Commission may, upon the issuance of an order to show cause, suspend those rates, charges, classifications, rules, or regulations on not less than 60 days' notice to the controlled carrier. No period of suspension under this subsection may be greater than 180 days.

Whenever the Commission has suspended any rates, charges, classifications, rules, or regulations under this subsection, the affected carrier may file new rates, charges, classifications, rules, or regulations to take effect immediately during the suspension period in lieu of the suspended rates, charges, classifications, rules, or regulations—except that the Commission may reject the new rates, charges, classifications, rules, or regulations if it is of the opinion that they are unjust and unreasonable.

(e) **Presidential Review.** Concurrently with the publication thereof, the Commission shall transmit to the President each order of suspension or final order of disapproval of rates, charges, classifications, rules, or regulations of a controlled carrier subject to this section. Within 10 days after the receipt or the effective date of the Commission order, the President may request the Commission in writing to stay the effect of the Commission's order if the President finds that the stay is required for reasons of national defense or foreign policy, which reasons shall be specified in the report. Notwithstanding any other law, the Commission shall immediately grant the request by the issuance of an order in which the President's request shall be described. During any such stay, the President shall, whenever practicable, attempt to resolve the matter in controversy by negotiation with representatives of the applicable foreign governments.

(f) **Exceptions.** This section does not apply to—

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

(2) a controlled carrier of a state which, on the effective date of this section, has subscribed to the statement of shipping policy contained in note 1 to annex A of the Code of Liberalization of Current Invisible Operations, adopted by the Council of the Organization for Economic Cooperation and Development;

(3) rates, charges, classifications, rules, or regulations of a controlled carrier in any particular trade that are covered by an agreement effective under section 6 of this Act, other than an agreement in which all of the members are controlled carriers not otherwise excluded from the provisions of this subsection;

(4) rates, charges, classifications, rules, or regulations governing the transportation of cargo by a controlled carrier between the country by whose government it is owned or controlled, as defined herein and the United States; or

(5) a trade served exclusively by controlled carriers.

## **SEC. 10. PROHIBITED ACTS (46 App. U.S.C. 1709 (1996)).**

(a) **In General.** No person may—

(1) knowingly and willfully, directly or indirectly, by means of false billing, false classification, false weighing, false report of weight, false measurement, or by 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 be applicable;

(2) operate under an agreement required to be filed under section 5 of this Act that has not become effective under section 6, or that has been rejected, disapproved, or canceled; or

(3) operate under an agreement required to be filed under section 5 of this Act except in accordance with the terms of the agreement or any modifications made by the Commission to the agreement.

(b) **Common Carriers.** No common carrier, either alone or in conjunction with any other person, directly or indirectly, may—

(1) charge, demand, collect, or receive greater, less, or different compensation for the transportation of property or for any service in connection therewith than the rates and charges that are shown in its tariffs or service contracts;

(2) rebate, refund, or remit in any manner, or by any device, any portion of its rates except in accordance with its tariffs or service contracts;

(3) extend or deny to any person any privilege, concession, equipment, or facility except in accordance with its tariffs or service contracts;

(4) allow any 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 by any other unjust or unfair device or means;

(5) retaliate against any 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;

(6) except for service contracts, engage in any unfair or unjustly discriminatory practice in the matter of—

(A) rates;

(B) cargo classifications;

(C) cargo space accommodations or other facilities, due regard being had for the proper loading of the vessel and the available tonnage;

(D) the loading and landing of freight; or

(E) the adjustment and settlement of claims;

- (7) employ any fighting ship;
- (8) offer or pay any deferred rebates;
- (9) use a loyalty contract, except in conformity with the antitrust laws;
- (10) demand, charge, or collect any rate or charge that is unjustly discriminatory between shippers or ports;
- (11) except for service contracts, make or give any undue or unreasonable preference or advantage to any particular person, locality, or description of traffic in any respect whatsoever;
- (12) subject any particular person, locality, or description of traffic to an unreasonable refusal to deal or any undue or unreasonable prejudice or disadvantage in any respect whatsoever;
- (13) refuse to negotiate with a shippers' association;
- (14) knowingly and willfully accept cargo from or transport cargo for the account of a non-vessel-operating common carrier that does not have a tariff and a bond, insurance, or other surety as required by sections 8 and 23 of this Act;
- (15) knowingly and willfully enter into a service contract with a non-vessel-operating common carrier or in which a non-vessel-operating common carrier is listed as an affiliate that does not have a tariff and a bond, insurance, or other surety as required by sections 8 and 23 of this Act; or
- (16) 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 that information—
  - (A) may be used to the detriment or prejudice of the shipper or consignee;
  - (B) may improperly disclose its business transaction to a competitor; or
  - (C) may be used to the detriment or prejudice of any common carrier.

Nothing in paragraph (16) shall be construed to prevent providing such information, in response to legal process, to the United States, or 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 Act. Nor shall it be prohibited for any ocean common carrier that is a party to a conference agreement approved under this Act, or any receiver, trustee, lessee, agent, or employee of that carrier, or any other person authorized by that carrier to receive information, to give information to the conference or any person, firm, corporation, or agency designated by the conference, or to prevent the conference or its designee from soliciting or receiving information for the purpose of

determining whether a shipper or consignee has breached an agreement with the conference or its member lines or for the purpose of determining whether a member of the conference has breached the conference agreement, or for the purpose of compiling statistics of cargo movement, but the use of such information for any other purpose prohibited by this Act or any other Act is prohibited.

(c) **Concerted Action.** No conference or group of two or more common carriers may—

(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 nonocean carrier or group of nonocean carriers (for example, truck, rail, or air operators) on any matter relating to rates or services provided to ocean common carriers within the United States by those nonocean carriers: Provided, That this paragraph does not prohibit the setting and publishing of a joint through rate by a conference, joint venture, or an 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; or

(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 otherwise required by the law of the United States or the importing or exporting country, or as agreed to by a shipper in a service contract.

(d) **Common Carriers, Ocean Freight Forwarders, and Marine Terminal Operators.**

(1) No common carrier, ocean freight forwarder, or marine terminal operator may fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property.

(2) No marine terminal operator may agree with another marine terminal operator or with a common carrier to boycott, or unreasonably discriminate in the provision of terminal services to, any common carrier or ocean tramp.

(3) The prohibitions in subsection (b)(11), (12), and (16) of this section apply to marine terminal operators.

(e) **Joint Ventures.** For purposes of this section, a joint venture or consortium of two or more common carriers but operated as a single entity shall be treated as a single common carrier.

## **SEC. 11. COMPLAINTS, INVESTIGATIONS, REPORTS, AND REPARATIONS (46 App. U.S.C. 1710 (1996)).**

(a) **Filing of Complaints.** Any person may file with the Commission a sworn complaint alleging a violation of this Act, other than section 6(g), and may seek reparation for any injury caused to the complainant by that violation.

(b) **Satisfaction or Investigation of Complaints.** The Commission shall furnish a copy of a complaint filed pursuant to subsection (a) of this section to the person named therein who shall, within a reasonable time specified by the Commission, satisfy the complaint or answer it in writing. If the complaint is not satisfied, the Commission shall investigate it in an appropriate manner and make an appropriate order.

(c) **Commission Investigations.** The Commission, upon complaint or upon its own motion, may investigate any conduct or agreement that it believes may be in violation of this Act. Except in the case of an injunction granted under subsection (h) of this section, each agreement under investigation under this section remains in effect until the Commission issues an order under this subsection. The Commission may by order disapprove, cancel, or modify any agreement filed under section 5(a) of this Act that operates in violation of this Act. With respect to agreements inconsistent with section 6(g) of this Act, the Commission's sole remedy is under section 6(h).

(d) **Conduct of Investigation.** Within 10 days after the initiation of a proceeding under this section, the Commission shall set a date on or before which its final decision will be issued. This date may be extended for good cause by order of the Commission.

(e) **Undue Delays.** If, within the time period specified in subsection (d), the Commission determines that it is unable to issue a final decision because of undue delays caused by a party to the proceedings, the Commission may impose sanctions, including entering a decision adverse to the delaying party.

(f) **Reports.** The Commission shall make a written report of every investigation made under this Act in which a hearing was held stating its conclusions, decisions, findings of fact, and order. A copy of this report shall be furnished to all parties. The Commission shall publish each report for public information, and the published report shall be competent evidence in all courts of the United States.

(g) **Reparations.** For any complaint filed within 3 years after the cause of action accrued, the Commission shall, upon petition of the

complainant and after notice and hearing, direct payment of reparations to the complainant for actual injury (which, for purposes of this subsection, also includes the loss of interest at commercial rates compounded from the date of injury) caused by a violation of this Act plus reasonable attorney's fees. Upon a showing that the injury was caused by activity that is prohibited by section 10(b)(5) or (7) or section 10(c)(1) or (3) of this Act, or that violates section 10(a)(2) or (3), the Commission may direct the payment of additional amounts; but the total recovery of a complainant may not exceed twice the amount of the actual injury. In the case of injury caused by an activity that is prohibited by section 10(b)(6)(A) or (B) of this Act, 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.

**(h) Injunction.**

(1) In connection with any investigation conducted under this section, the Commission may bring suit in a district court of the United States to enjoin conduct in violation of this Act. Upon a showing that standards for granting injunctive relief by courts of equity are met and after notice to the defendant, 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. Any such suit shall be brought in a district in which the defendant resides or transacts business.

(2) After filing a complaint with the Commission under subsection (a), the complainant may file suit in a district court of the United States to enjoin conduct in violation of this Act. Upon a showing that standards for granting injunctive relief by courts of equity are met and after notice to the defendant, 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. Any such suit shall be brought in the district in which the defendant has been sued by the Commission under paragraph (1); or, if no suit has been filed, in a district in which the defendant resides or transacts business. A defendant that prevails in a suit under this paragraph shall be allowed reasonable attorney's fees to be assessed and collected as part of the costs of the suit.

**SEC. 12. SUBPENAS AND DISCOVERY (46 App. U.S.C. 1711 (1996)).**

**(a) In General.** In investigations and adjudicatory proceedings under this Act—

(1) depositions, written interrogatories, and discovery procedures may be utilized by any party under rules and regulations issued by the Commission that, to the extent practicable, shall be in conformity with

the rules applicable in civil proceedings in the district courts of the United States; and

(2) the Commission may by subpoena compel the attendance of witnesses and the production of books, papers, documents, and other evidence.

(b) **Witness Fees.** Witnesses shall, unless otherwise prohibited by law, be entitled to the same fees and mileage as in the courts of the United States.

### **SEC. 13. PENALTIES (46 App. U.S.C. 1712 (1996)).**

(a) **Assessment of Penalty.** Whoever violates a provision of this Act, a regulation issued thereunder, or a Commission order is liable to the United States for a civil penalty. The amount of the civil penalty, unless otherwise provided in this Act, may not exceed \$5,000 for each violation unless the violation was willfully and knowingly committed, in which case the amount of the civil penalty may not exceed \$25,000 for each violation. Each day of a continuing violation constitutes a separate offense.

(b) **Additional Penalties.**

(1) For a violation of section 10(b)(1),(2),(3),(4), or (8) of this Act, the 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.

(2) For failure to supply information ordered to be produced or compelled by subpoena under section 12 of this Act, the Commission may, after notice and an opportunity for hearing, suspend any or all tariffs of a common carrier, or that common carrier's right to use any or all tariffs of conferences of which it is a member.

(3) A common carrier that accepts or handles cargo for carriage under a tariff that has been suspended or after its right to utilize that tariff has been suspended is subject to a civil penalty of not more than \$50,000 for each shipment.

(4) If, in defense of its failure to comply with a subpoena or discovery order, a common carrier alleges that documents or information 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. Upon receiving the notification, the Secretary of State shall promptly consult with the government of the nation within which the documents or information are alleged to be located for the purpose of assisting the Commission in obtaining the documents or information sought.

(5) If, after notice and hearing, the Commission finds that the action of a common carrier, acting alone or in concert with any 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 the imposition of any of the penalties authorized under paragraphs (1), (2), and (3) of this subsection.

(6) Before an order under this subsection becomes effective, it shall be immediately submitted to the President who may, within 10 days after receiving it, disapprove the order if the President finds that disapproval is required for reasons of the national defense or the foreign policy of the United States.

(c) **Assessment Procedures.** Until a matter is referred to the Attorney General, the Commission may, after notice and an opportunity for hearing, assess each civil penalty provided for in this Act. In determining the amount of the 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 such other matters as justice may require. The Commission may compromise, modify, or remit, with or without conditions, any civil penalty.

(d) **Review of Civil Penalty.** A person against whom a civil penalty is assessed under this section may obtain review thereof under chapter 158 of title 28, United States Code.

(e) **Failure to Pay Assessment.** If a person fails to 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 recover the amount assessed in an appropriate district court of the United States. In such an action, the court shall enforce the Commission's order unless it finds that the order was not regularly made or duly issued.

(f) **Limitations.**

(1) No penalty may be imposed on any person for conspiracy to violate section 10(a)(1), (b)(1), or (b)(4) of this Act, or to defraud the Commission by concealment of such a violation.

(2) Each proceeding to assess a civil penalty under this section shall be commenced within 5 years from the date the violation occurred.

#### **SEC. 14. COMMISSION ORDERS (46 App. U.S.C. 1713 (1996)).**

(a) **In General.** Orders of the Commission relating to a violation of this Act or a regulation issued thereunder shall be made, upon sworn

complaint or on its own motion, only after opportunity for hearing. Each order of the Commission shall continue in force for the period of time specified in the order or until suspended, modified, or set aside by the Commission or a court of competent jurisdiction.

(b) **Reversal or Suspension of Orders.** The Commission may reverse, suspend, or modify any order made by it, and upon application of any party to a proceeding may grant a rehearing of the same or any matter determined therein. No rehearing may, except by special order of the Commission, operate as a stay of that order.

(c) **Enforcement of Nonreparation Orders.** In case of violation of an order of the Commission, or for failure to comply with a Commission subpoena, the Attorney General, at the request of the Commission, or any party injured by the violation, may seek enforcement by a United States district court having jurisdiction over the parties. If, after hearing, the court determines that the order was properly made and duly issued, it shall enforce the order by an appropriate injunction or other process, mandatory or otherwise.

(d) **Enforcement of Reparation Orders.**

(1) In case of violation of an order of the Commission for the payment of reparation, the person to whom the award was made may seek enforcement of the order in a United States district court having jurisdiction of the parties.

(2) In a United States district court the findings and order of the Commission shall be prima facie evidence of the facts therein stated, and the petitioner shall not be liable for costs, nor for the costs of any subsequent stage of the proceedings, unless they accrue upon his appeal. A petitioner in a United States district court who prevails shall be allowed reasonable attorney's fees to be assessed and collected as part of the costs of the suit.

(3) 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 suit in a district in which any one plaintiff could maintain a suit against any one defendant. Service of process against a defendant not found in that district may be made in a district in which is located any office of, or point of call on a regular route operated by, that defendant. Judgment may be entered in favor of any plaintiff against the defendant liable to that plaintiff.

(e) **Statute of Limitations.** An action seeking enforcement of a Commission order must be filed within 3 years after the date of the violation of the order.

**SEC. 15. REPORTS AND CERTIFICATES (46 App. U.S.C. 1714 (1996)).**

(a) **Reports.** The Commission may require any common carrier, or any officer, receiver, trustee, lessee, agent, or employee thereof, to file with it any periodical or special report or any account, record, rate, or charge, or memorandum of any facts and transactions appertaining to the business of that common carrier. The report, account, record, rate, charge, or memorandum shall be made under oath whenever the Commission so requires, and shall be furnished in the form and within the time prescribed by the Commission. Conference minutes required to be filed with the Commission under this section shall not be released to third parties or published by the Commission.

(b) **Certification.** The Commission shall require the chief executive officer of each common carrier and, to the extent it deems feasible, may require any shipper, shippers' association, marine terminal operator, ocean freight forwarder, or broker to file a periodic written certification made under oath with the Commission attesting to—

- (1) a policy prohibiting the payment, solicitation, or receipt of any rebate that is unlawful under the provisions of this Act;
- (2) the fact that this policy has been promulgated recently to each owner, officer, employee, and agent thereof;
- (3) the details of the efforts made within the company or otherwise to prevent or correct illegal rebating; and
- (4) a policy of full cooperation with the Commission in its efforts to end those illegal practices.

Whoever fails to file a certificate required by the Commission under this subsection is liable to the United States for a civil penalty of not more than \$5,000 for each day the violation continues.

**SEC. 16. EXEMPTIONS (46 App. U.S.C. 1715 (1996)).** The Commission, upon application or on its own motion, may by order or rule exempt for the future any class of agreements between persons subject to this Act or any specified activity of those persons from any requirement of this Act if it finds that the exemption will not substantially impair effective regulation by the Commission, be unjustly discriminatory, result in a substantial reduction in competition, or be detrimental to commerce. The Commission may attach conditions to any exemption and may, by order, revoke any exemption. No order or rule of exemption or revocation of exemption may be issued unless opportunity for hearing has been afforded interested persons and departments and agencies of the United States.

**SEC. 17. REGULATIONS (46 App. U.S.C. 1716 (1996)).**

(a) The Commission may prescribe rules and regulations as necessary to carry out this Act.

(b) The Commission may prescribe interim rules and regulations necessary to carry out this Act. For this purpose, the Commission is excepted from compliance with the notice and comment requirements of section 553 of title 5, United States Code. All rules and regulations prescribed under the authority of this subsection that are not earlier superseded by final rules shall expire no later than 270 days after the date of enactment of this Act.

**SEC. 18. AGENCY REPORTS AND ADVISORY COMMISSION (46 App. U.S.C. 1717 (1996)).**

(a) **Collection of Data.** For a period of 5 years following the enactment of this Act, the Commission shall collect and analyze information concerning the impact of this Act upon the international ocean shipping industry, including data on:

- (1) increases or decreases in the level of tariffs;
- (2) changes in the frequency or type of common carrier services available to specific ports or geographic regions;
- (3) the number and strength of independent carriers in various trades; and
- (4) the length of time, frequency, and cost of major types of regulatory proceedings before the Commission.

(b) **Consultation with Other Departments and Agencies.** The Commission shall consult with the Department of Transportation, the Department of Justice, and the Federal Trade Commission annually concerning data collection. The Department of Transportation, the Department of Justice, and the Federal Trade Commission shall at all times have access to the data collected under this section to enable them to provide comments concerning data collection.

(c) **Agency Reports.**

(1) Within 6 months after expiration of the 5-year period specified in subsection (a), the Commission shall report the information, with an analysis of the impact of this Act, to Congress, to the Advisory Commission on Conferences in Ocean Shipping established in subsection (d), and to the Department of Transportation, the Department of Justice, and the Federal Trade Commission.

(2) Within 60 days after the Commission submits its report, the Department of Transportation, the Department of Justice, and the Federal Trade Commission shall furnish an analysis of the impact of this Act to Congress and to the Advisory Commission on Conferences in Ocean Shipping.

(3) The reports required by this subsection shall specifically address the following topics:

(A) the advisability of adopting a system of tariffs based on volume and mass of shipment;

(B) the need for antitrust immunity for ports and marine terminals; and

(C) the continuing need for the statutory requirement that tariffs be filed with and enforced by the Commission.

**(d) Establishment and Composition of Advisory Commission.**

(1) Effective 5 1/2 years after the date of enactment of this Act, there is established the Advisory Commission on Conferences in Ocean Shipping (hereinafter referred to as the “Advisory Commission”).

(2) The Advisory Commission shall be composed of 17 members as follows:

(A) a cabinet level official appointed by the President;

(B) 4 members from the United States Senate appointed by the President pro tempore of the Senate, 2 from the membership of the Committee on Commerce, Science, and Transportation and 2 from the membership of the Committee on the Judiciary;

(C) 4 members from the United States House of Representatives appointed by the Speaker of the House, 2 from the membership of the Committee on Merchant Marine and Fisheries, and 2 from the membership of the Committee on the Judiciary; and

(D) 8 members from the private sector appointed by the President.

(3) The President shall designate the chairman of the Advisory Commission.

(4) The term of office for members shall be for the term of the Advisory Commission.

(5) A vacancy in the Advisory Commission shall not affect its powers, and shall be filled in the same manner in which the original appointment was made.

(6) Nine members of the Advisory Commission shall constitute a quorum, but the Advisory Commission may permit as few as 2 members to hold hearings.

**(e) Compensation of Members of the Advisory Commission.**

(1) Officials of the United States Government and Members of Congress who are members of the Advisory Commission shall serve without compensation in addition to that received for their services as officials and Members, but they shall be reimbursed for reasonable travel, subsistence, and other necessary expenses incurred by them in the performance of the duties vested in the Advisory Commission.

(2) Members of the Advisory Commission appointed from the private sector shall each receive compensation not exceeding the maximum per diem rate of pay for grade 18 of the General Schedule under section 5332 of title 5, United States Code, when engaged in the performance of the duties vested in the Advisory Commission, plus reimbursement for reasonable travel, subsistence, and other necessary expenses incurred by them in the performance of those duties, notwithstanding the limitations in sections 5701 through 5733 of title 5, United States Code.

(3) Members of the Advisory Commission appointed from the private sector are not subject to section 208 of title 18, United States Code. Before commencing service, these members shall file with the Advisory Commission a statement disclosing their financial interests and business and former relationships involving or relating to ocean transportation. These statements shall be available for public inspection at the Advisory Commission's offices.

(f) **Advisory Commission Functions.** The Advisory Commission shall conduct a comprehensive study of, and make recommendations concerning, conferences in ocean shipping. The study shall specifically address whether the Nation would be best served by prohibiting conferences, or by closed or open conferences.

(g) **Powers of the Advisory Commission.**

(1) The Advisory Commission may, for the purpose of carrying out its functions, hold such hearings and sit and act at such times and places, administer such oaths, and require, by subpoena or otherwise, the attendance and testimony of such witnesses, and the production of such books, records, correspondence, memorandums, papers, and documents as the Advisory Commission may deem advisable. Subpenas may be issued to any person within the jurisdiction of the United States courts, under the signature of the chairman, or any duly designated member, and may be served by any person designated by the chairman, or that member. In case of contumacy by, or refusal to obey a subpoena to, any person, the Advisory Commission may advise the Attorney General who shall invoke the aid of any court of the United States within the jurisdiction of which the Advisory Commission's proceedings are carried on, or where that person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, and documents; and the court may issue an order requiring that person to appear before the Advisory Commission, there to produce records, if so ordered, or to give testimony. A failure to obey such an order of the court may be punished by the court as a contempt thereof. All process in any such case may be served in the judicial district whereof the person is an inhabitant or may be found.

(2) Each department, agency, and instrumentality of the executive branch of the Government, including independent agencies, shall furnish to the Advisory Commission, upon request made by the chairman, such information as the Advisory Commission deems necessary to carry out its functions.

(3) Upon request of the chairman, the Department of Justice, the Department of Transportation, the Federal Maritime Commission, and the Federal Trade Commission shall detail staff personnel as necessary to assist the Advisory Commission.

(4) The chairman may rent office space for the Advisory Commission, may utilize the services and facilities of other Federal agencies with or without reimbursement, may accept voluntary services notwithstanding section 1342 of title 31, United States Code, may accept, hold, and administer gifts from other Federal agencies, and may enter into contracts with any public or private person or entity for reports, research, or surveys in furtherance of the work of the Advisory Commission.

(h) **Final Report.** The Advisory Commission shall, within 1 year after all of its members have been duly appointed, submit to the President and to the Congress a final report containing a statement of the findings and conclusions of the Advisory Commission resulting from the study undertaken under subsection (f), including recommendations for such administrative, judicial, and legislative action as it deems advisable. Each recommendation made by the Advisory Commission to the President and to the Congress must have the majority vote of the Advisory Commission present and voting.

(i) **Expiration of the Commission.** The Advisory Commission shall cease to exist 30 days after the submission of its final report.

(j) **Authorization of Appropriation.** There is authorized to be appropriated \$500,000 to carry out the activities of the Advisory Commission.

## **SEC. 19. OCEAN FREIGHT FORWARDERS (46 App. U.S.C. 1718 (1996)).**

(a) **License.** No person may act as an ocean freight forwarder unless that person holds a license issued by the Commission. The Commission shall issue a forwarder's license to any person that—

(1) the Commission determines to be qualified by experience and character to render forwarding services; and

(2) furnishes a bond in a form and amount determined by the Commission to insure financial responsibility that is issued by a surety company found acceptable by the Secretary of the Treasury.

(b) **Suspension or Revocation.** The Commission shall, after notice and hearing, suspend or revoke a license if it finds that the ocean freight forwarder is not qualified to render forwarding services or that it willfully failed to comply with a provision of this Act or with a lawful order, rule, or regulation of the Commission. The Commission may also revoke a forwarder's license for failure to maintain a bond in accordance with subsection (a)(2).

(c) **Exception.** A person whose primary business is the sale of merchandise may forward shipments of the merchandise for its own account without a license.

(d) **Compensation of Forwarders by Carriers.**

(1) A common carrier may compensate an ocean freight forwarder in connection with a shipment dispatched on behalf of others only when the ocean freight forwarder has certified in writing that it holds a valid license and has performed the following services:

(A) Engaged, booked, secured, reserved, or contracted directly with the carrier or its agent for space aboard a vessel or confirmed the availability of that space.

(B) Prepared and processed the ocean bill of lading, dock receipt, or other similar document with respect to the shipment.

(2) No common carrier may pay compensation for services described in paragraph (1) more than once on the same shipment.

(3) No compensation may be paid to an ocean freight forwarder except in accordance with the tariff requirements of this Act.

(4) No ocean freight forwarder may receive compensation from a common carrier with respect to a shipment in which the forwarder has a direct or indirect beneficial interest nor shall a common carrier knowingly pay compensation on that shipment.

**SEC. 20. CONTRACTS, AGREEMENTS, AND LICENSES UNDER PRIOR SHIPPING LEGISLATION (46 App. U.S.C. 1719 (1996)).**

(d) **Effects on Certain Agreements and Contracts.** All agreements, contracts, modifications, and exemptions previously approved or licenses previously issued by the Commission shall continue in force and effect as if approved or issued under this Act; and all new agreements, contracts, and modifications to existing, pending, or new contracts or agreements shall be considered under this Act.

(e) **Savings Provisions.**

(1) Each service contract entered into by a shipper and an ocean common carrier or conference before the date of enactment of this Act may remain in full force and effect and need not comply with the require-

ments of section 8(c) of this Act until 15 months after the date of enactment of this Act.

(2) This Act and the amendments made by it shall not affect any suit—

(A) filed before the date of enactment of this Act, or

(B) with respect to claims arising out of conduct engaged in before the date of enactment of this Act filed within 1 year after the date of enactment of this Act.

### **SEC. 23. SURETY FOR NON-VESSEL OPERATING COMMON CARRIERS (46 App. U.S.C. 1721 (1996)).**

(a) **Surety.** Each non-vessel-operating common carrier shall furnish to the Commission a bond, proof of insurance, or such other surety, as the Commission may require, in a form and an amount determined by the Commission to be satisfactory to insure the financial responsibility of that carrier. Any bond submitted pursuant to this section shall be issued by a surety company found acceptable by the Secretary of the Treasury.

(b) **Claims Against Surety.** A bond, insurance, or other surety obtained pursuant to this section shall be available to pay any judgment for damages against a non-vessel-operating common carrier arising from its transportation-related activities under this Act or order for reparations issued pursuant to section 11 of this Act or any penalty assessed against a non-vessel-operating carrier pursuant to section 13 of this Act.

(c) **Resident Agent.** A non-vessel-operating common carrier 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.

(d) **Tariffs.** The Commission may suspend or cancel any or all tariffs of a non-vessel-operating common carrier for failure to maintain the bond, insurance, or other surety required by subsection (a) of this section or to designate an agent as required by subsection (c) of this section or for a violation of section 10(a)(1) of this Act.

# SHIPPING ACT, 1916

## SEC. 1. DEFINITIONS (46 App. U.S.C. 801 (1996)).

When used in this Act:

The term “common carrier by water in interstate commerce” means a common carrier engaged in the transportation by water of passengers or property on the high seas or the Great Lakes on regular routes from port to port between one State, Territory, District, or possession of the United States and any other State, Territory, District, or possession of the United States, or between places in the same Territory, District, or possession.

The term “other person subject to this Act” means any person not included in the term “common carrier by water in interstate commerce” carrying on the business of forwarding or furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water in interstate commerce.

The term “person” includes corporations, partnerships, and associations, existing under or authorized by the laws of the United States, or any State, Territory, District, or possession thereof, or of any foreign country.

The term “vessel” includes all water craft and other artificial contrivances of whatever description and at whatever stage of construction, whether on the stocks or launched, which are used or are capable of being or are intended to be used as a means of transportation on water.

The term “documented under the laws of the United States,” means “registered, enrolled, or licensed under the laws of the United States.”

The term “carrying on the business of forwarding” means the dispatching of shipments by any person on behalf of others, by oceangoing common carriers in commerce between the United States and its Territories or possessions, or between such Territories and possessions, and handling the formalities incident to such shipments.

The term “maritime labor agreement” means any collective bargaining agreement between an employer subject to this Act, or group of such employers and a labor organization representing employees in the maritime or stevedoring industry, or any agreement preparatory to such a collective bargaining agreement among members of a multiemployer bargaining group, or any agreement specifically implementing provisions of such a collective bargaining agreement or providing for the formation, financing, or administration of a multiemployer bargaining group.

**SEC. 2 (a) - (c). CORPORATION, PARTNERSHIP, OR ASSOCIATION AS CITIZEN<sup>1</sup> (46 App. U.S.C. 802 (1996)).**

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

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

(c) **Determination of Seventy-five Per Centum of Interest.** Seventy-five per centum of the interest in a corporation shall not be deemed to be owned by citizens of the United States (a) if the title to 75 per centum of its stock is not vested in such citizens free from any trust or fiduciary obligation in favor of any person not a citizen of the United States; or (b) if 75 per centum of the voting power in such corporation is not vested in citizens of the United States; or (c) if, through any contract or understanding, it is so arranged that more than 25 per centum of the voting power in such corporation may be exercised, directly or indirectly, in behalf of any person who is not a citizen of the United States;

---

<sup>1</sup> Note provisions of law at the end of Section 2 of the Shipping Act, 1916, concerning recent changes to the U.S. vessel citizenship requirements for certain purposes. Also note that both 46 U.S.C. 12106(d)(2) and 46 U.S.C. 12106(e)(4), pages 381, 382, *infra*, provide that for the purpose of Section 2 of the Shipping Act, 1916, a vessel meeting the requirements of those subsections shall be deemed to be owned exclusively by citizens of the United States.

or (d) if by any other means whatsoever control of any interest in the corporation in excess of 25 per centum is conferred upon or permitted to be exercised by any person who is not a citizen of the United States.

**SEC. 2 (d). APPLICABILITY TO RECEIVERS AND TRUSTEES (46 App. U.S.C. 803 (1996)).**

The provisions of this Act shall apply to receivers and trustees of all persons to whom the Act applies, and to the successors or assignees of such persons.

\* \* \* \* \*

**PROVISIONS THAT AFFECT SECTION 2 CITIZENSHIP REQUIREMENTS**

**COASTWISE ENDORSEMENT.** Section 1113(d) of Public Law 104-324, approved October 19, 1996 (110 STAT. 3971), added a subsection (e) to **46 U.S.C. 12106. Coastwise Endorsement**, as follows:

(e)(1) A certificate of documentation for a vessel may be endorsed with a coastwise endorsement if—

(A) the vessel is eligible for documentation;

(B) the person that owns the vessel, a parent entity of that person, or a subsidiary of a parent entity of that person, is primarily engaged in leasing or other financing transactions;

(C) 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 for engaging in the coastwise trade under section 2 of the Shipping Act, 1916;

(D) the demise charter is for a period of at least 3 years or a shorter period as may be prescribed by the Secretary; and

(E) the vessel is otherwise eligible for documentation under this section.

(2) The demise charter and any amendments to that charter shall be filed with the certificate required by this subsection, or within 10 days following the filing of an amendment to the charter, and such charter and amendments shall be made available to the public.

(3) Upon termination by a demise charterer required under paragraph (1)(C), the coastwise endorsement of the vessel may, in the sole discretion of the Secretary, be continued after the termination for default of the demise charterer for a period not to exceed 6 months on such terms and conditions as the Secretary may prescribe.

(4) For purposes of section 2 of the Shipping Act, 1916, and section 12102(a) of this title, a vessel meeting the criteria of this subsection is deemed to be owned exclusively by citizens of the United States.

**TRUST CHARTERS/INDIRECT VESSEL OWNERS.** Section 1136(c) and (d) of Public Law 104-324, approved October 19, 1996 (110 STAT. 3987) provide:

**Sec. 1136 (c). Trust Charterers.**—Notwithstanding section 12102(d)(4) of title 46, United States Code, as amended by this section, for purposes of subtitle B of title VI of the Merchant Marine Act, 1936 a vessel is deemed to be owned and operated by a citizen of the United States (as that term is used in that subtitle) if—

(1) the person chartering the vessel from a trust under section 12102(d)(2) of that title is a citizen of the United States under section 2 of the Shipping Act, 1916 (46 App. U.S.C. 802); and

(2)(A) the vessel—

(i) is delivered by a shipbuilder, following completion of construction, on or after May 1, 1995 and before January 31, 1996; or

(ii) is owned by a citizen of the United States under section 2 of the Shipping Act, 1916 on September 1, 1996, or is a replacement for such a vessel; or

(B) payments have been made with respect to the vessel under subtitle B of title VI of the Merchant Marine Act, 1936 for at least 1 year.

**Sec. 1136(d). Indirect Vessel Owners.**—Notwithstanding any other provision of law, for purposes of subtitle B of title VI of the Merchant Marine Act, 1936 the following vessels are deemed to be owned and operated by a citizen of the United States (as that term is used in that subtitle) if the vessels are owned, directly or indirectly, by a person that is a citizen of the United States under section 2 of the Shipping Act, 1916 (46 App. U.S.C. 802):

(1) Any vessel constructed under a shipbuilding contract signed on December 21, 1995, and having hull number 3077, 3078, 3079, or 3080.

(2) Any vessel delivered by a shipbuilder, following completion of construction, on or after May 1, 1995, and before January 31, 1996.

(3) Any vessel owned on September 1, 1996, by a person that is a citizen of the United States under section 2 of the Shipping Act, 1916, or a replacement for such a vessel.

(4) Any vessel with respect to which payments have been made under subtitle B of title VI of the Merchant Marine Act, 1936 for at least 1 year.

\* \* \* \* \*

## **CONTINUATION OF THE SHIPPING ACT, 1916.**

**SEC. 9. REGISTRATION, ENROLLMENT, AND LICENSING OF VESSELS PURCHASED, CHARTERED, OR LEASED; REGULATIONS; COASTWISE TRADE. (46 App. U.S.C. 808 (1996)).**

(b) Every vessel purchased, chartered, or leased from the Secretary of Transportation shall, unless otherwise authorized by the Secretary of Transportation, be operated only under such registry or enrollment and license. Such vessels while employed solely as merchant vessels shall be subject to all laws, regulations, and liabilities governing merchant vessels, whether the United States be interested therein as owner, in whole or in part, or hold any mortgage, lien, or other interest therein.

\* \* \* \* \*

(c)<sup>2</sup> Except as provided in section 611 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1181), and sections 31322(a)(1)(D) and 12106(e) of title 46, United States Code, a person may not, without the approval of the Secretary of Transportation—

(c)<sup>3</sup> Except as provided in section 611 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1181), and sections 12106(e), 31322(a)(1)(D) and 31328 of title 46, United States Code, a person may not, without the approval of the Secretary of Transportation—

\* \* \* \* \*

(1) sell, lease, charter, deliver, or in any manner transfer, or agree to sell, lease, charter, deliver, or in any manner transfer, to a person not a citizen of the United States, any interest in or control of a documented vessel (except in a vessel that has been operated only as a fishing vessel, fish processing vessel, or fish tender vessel (as defined in section 2101 of title 46, United States Code) or in a vessel that has been operated only for pleasure) owned by a citizen of the United States or the last documentation of which was under the laws of the United States; or

(2) place a documented vessel, or a vessel the last documentation of which was under the laws of the United States, under foreign registry or operate that vessel under the authority of a foreign country.

(d)(1) Any charter, sale, or transfer of a vessel, or interest in or control of that vessel, contrary to this section is void.

(2) A person that knowingly charters, sells, or transfers a vessel, or interest in or control of that vessel, contrary to this section shall be fined under title 18, United States Code, imprisoned for not more than 5 years, or both.

(3) A documented vessel may be seized by, and forfeited to, the United States Government if—

(A) the vessel is placed under foreign registry or operated under the authority of a foreign country contrary to this section; or

---

<sup>2</sup> As amended by section 1113(c)(1)(A) of Public Law 104-324, approved October 19, 1996 (110 STAT. 3970).

<sup>3</sup> As amended by section 1113(e) of Public Law 104-324, approved October 19, 1996 (110 STAT. 3971).

(B) a person knowingly charters, sells, or transfers a vessel, or interest or control in that vessel, contrary to this section.

(4) A person that charters, sells, 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.

\* \* \* \* \*

(e)<sup>4</sup> Notwithstanding subsection (c)(2), the Merchant Marine Act, 1936, or any contract entered into with the Secretary of Transportation under that Act, a vessel may be placed under a foreign registry, without approval of the Secretary, if—

(1)(A) the Secretary determines that at least one replacement vessel 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 title 46, United States Code, by the owner of the vessel placed under the foreign registry; and

(B) the replacement vessel is not more than 10 years of age on the date of that documentation;

(2)(A) an application for an operating agreement under subtitle B of title VI of the Merchant Marine Act, 1936 has been filed with respect to a vessel which is eligible to be included in the Maritime Security Fleet under section 651(b)(1) of that Act; and

(B) the Secretary has not awarded an operating agreement with respect to that vessel within 90 days after the date of that application;

(3) a contract covering the vessel under subtitle A of title VI of the Merchant Marine Act, 1936 has expired, and that vessel is more than 15 years of age on the date the contract expires; or

(4) an operating agreement covering the vessel under subtitle B of title VI of the Merchant Marine Act, 1936 has expired.

(e)<sup>5</sup> To promote financing with respect to a vessel to be documented under chapter 121 of title 46, United States Code. the Secretary may grant approval under subsection (c) before the date the vessel is documented.

\* \* \* \* \*

**SEC. 12. INVESTIGATIONS AS TO COST OF MERCHANT VESSELS (46 App. U.S.C. 811 (1996)).** The Secretary of Transportation shall investigate the relative cost of building merchant vessels in the United States and in foreign maritime countries, and the

---

<sup>4</sup> Subsection (e), as added by Section 6 of Public Law 104-329, approved October 8, 1996 (110 STAT. 3132).

<sup>5</sup> Subsection (e), as added by Section 1136(b) of Public Law 104-324, approved October 19, 1996 (110 STAT. 3987).

relative cost, advantages, and disadvantages of operating in the foreign trade vessels under United States registry and under foreign registry. The Secretary shall examine the rules under which vessels are constructed abroad and in the United States, and the methods of classifying and rating same, and the Secretary shall 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 ascertain what steps may be necessary to develop an ample marine insurance system as an aid in the development of an American merchant marine. The Secretary shall examine the navigation laws of the United States and the rules and regulations thereunder, and make such recommendations to the Congress as the Secretary deems proper for the amendment, improvement, and revision of such laws, and for the development of the American merchant marine. The Secretary shall investigate the legal status of mortgage loans on vessel property, with a view to means of improving the security of such loans and of encouraging investment in American shipping.

The Secretary shall, on or before the first day of December in each year, make a report to the Congress, which shall include his recommendations and the results of his investigations, a summary of his transactions, and a statement of all expenditures and receipts under this Act, and of the operations of any corporation in which the United States is a stockholder, and the names and compensation of all persons employed by the Secretary of Transportation.

**SEC. 34. PARTIAL INVALIDITY NOT AFFECTING REMAINDER. (46 App. U.S.C. 833 (1996)).** If any provisions of this Act, or the application of such provision to certain circumstances, is held unconstitutional, the remainder of the Act, and the application of such provision to circumstances other than those as to which it is held unconstitutional, shall not be affected thereby.

**SEC. 36. REFUSAL OF CLEARANCE TO VESSEL REFUSING TO ACCEPT FREIGHT (46 App. U.S.C. 834 (1996)).** The Secretary of the Treasury is authorized to refuse a clearance to any vessel or other vehicle laden with merchandise destined for a foreign or domestic port whenever he shall have satisfactory reason to believe that the master, owner, or other officer of such vessel or other vehicle refuses or declines to accept or receive freight or cargo in good condition tendered for such port of destination or for some intermediate port of call, together with the proper freight or transportation charges therefor, by any citizen of the United States, unless the same is fully laden and

has no space accommodations for the freight or cargo so tendered, due regard being had for the proper loading of such vessel or vehicle, or unless such freight or cargo consists of merchandise for which such vessel or vehicle is not adaptable.

**SEC. 37. RESTRICTIONS ON TRANSFERS OF SHIPPING FACILITIES DURING WAR OR NATIONAL EMERGENCY. (46 App. U.S.C. 835 (1996)).** When the United States is at war or during any national emergency, the existence of which is declared by proclamation of the President, it shall be unlawful, without first obtaining the approval of the Secretary of Transportation:

(a) To transfer to or place under any foreign registry or flag any vessel owned in whole or in part by any person a citizen of the United States or by a corporation organized under the laws of the United States, or of any State, Territory, District, or possession thereof; or

(b) To sell, mortgage, lease, charter, deliver, or in any manner transfer, or agree to sell, mortgage, lease, charter, deliver, or in any manner transfer, to any person not a citizen of the United States, (1) any such vessel or any interest therein, or (2) any vessel documented under the laws of the United States, or any interest therein, or (3) any shipyard, dry dock, ship-building or ship-repairing plant or facilities, or any interest therein; or

(c) To issue, transfer, or assign a bond, note, or other evidence of indebtedness which is secured by a mortgage of a vessel to a trustee or by an assignment to a trustee of the owner's right, title, or interest in a vessel under construction, or by a mortgage to a trustee on a shipyard, drydock, or ship-building or ship-repairing plant or facilities, to a person not a citizen of the United States, unless the trustee or a substitute trustee of such mortgage or assignment is approved by the Secretary of Transportation: Provided, however, That the Secretary of Transportation shall grant his approval if such trustee or a substitute trustee is a bank or trust company which (1) is organized as a corporation, and is doing business, under the laws of the United States or any State thereof, (2) is authorized under such laws to exercise corporate trust powers, (3) is a citizen of the United States, (4) is subject to supervision or examination by Federal or State authority, and (5) has a combined capital and surplus (as set forth in its most recent published report of condition) of at least \$3,000,000; or for the trustee or substitute trustee approved by the Secretary of Transportation to operate said vessel under the mortgage or assignment: Provided further, That if such trustee or a substitute trustee at any time ceases to meet the foregoing qualifications, the Secretary of Transportation shall disapprove such trustee or substitute trustee, and after such disapproval the transfer or assignment of such bond, note, or

other evidence of indebtedness to a person not a citizen of the United States, without the approval of the Secretary of Transportation, shall be unlawful; or

(d) To enter into any contract, agreement, or understanding to construct a vessel within the United States for or to be delivered to any person not a citizen of the United States, without expressly stipulating that such construction shall not begin until after the war or emergency proclaimed by the President has ended; or

(e) To make any agreement or effect any understanding whereby there is vested in or for the benefit of any person not a citizen of the United States, the controlling interest or a majority of the voting power in a corporation which is organized under the laws of the United States, or of any State, Territory, District, or possession thereof, and which owns any vessel, shipyard, dry dock, or ship-building or ship-repairing plant or facilities; or

(f) To cause or procure any vessel constructed in whole or in part within the United States, which has never cleared for any foreign port, to depart from a port of the United States before it has been documented under the laws of the United States.

Whoever violates, or attempts or conspires to violate, any of the provisions of this section shall be guilty of a misdemeanor, punishable by a fine of not more than \$5,000 or by imprisonment for not more than five years, or both.

If a bond, note, or other evidence of indebtedness which is secured by a mortgage of a vessel to a trustee or by an assignment to a trustee of the owner's right, title, or interest in a vessel under construction, or by a mortgage to a trustee on a shipyard, drydock or ship-building or ship-repairing plant or facilities, is issued, transferred, or assigned to a person not a citizen of the United States in violation of subsection (c) of this section, the issuance, transfer or assignment shall be void.

Any vessel, shipyard, dry dock, ship-building or ship-repairing plant or facilities, or interest therein, sold, mortgaged, leased, chartered, delivered, transferred, or documented, or agreed to be sold, mortgaged, leased, chartered, delivered, transferred, or documented, in violation of any of the provisions of this section, and any stocks, bonds, or other securities sold or transferred, or agreed to be sold or transferred, in violation of any of such provisions, or any vessel departing in violation of the provisions of subdivision (e) [f], shall be forfeited to the United States.

Any such sale, mortgage, lease, charter, delivery, transfer, documentation, or agreement therefor shall be void, whether made within or without the United States, and any consideration paid therefor or deposited in connection therewith shall be recoverable at the suit of the person who has paid or deposited the same, or of his successors or assigns,

after the tender of such vessel, shipyard, dry dock, shipbuilding or ship-repairing plant or facilities, or interest therein, or of such stocks, bonds, or other securities, to the person entitled thereto, or after forfeiture thereof to the United States, unless the person to whom the consideration was paid, or in whose interest it was deposited, entered into the transaction in the honest belief that the person who paid or deposited such consideration was a citizen of the United States.

**SEC. 38. FORFEITURE (46 App. U.S.C. 836 (1996)).** All forfeitures incurred under the provisions of this Act may be prosecuted in the same court, and may be disposed of in the same manner, as forfeitures incurred for offenses against the law relating to the collection of duties, except that forfeitures may be remitted without seizure of the vessel.

**SEC. 39. PRIMA FACIE EVIDENCE (46 App. U.S.C. 837 (1996)).** In any action or proceeding under the provisions of this Act to enforce a forfeiture the conviction in a court of criminal jurisdiction of any person for a violation thereof with respect to the subject of the forfeiture shall constitute prima facie evidence of such violation against the person so convicted.

**SEC. 41. APPROVALS BY SECRETARY (46 App. U.S.C. 839 (1996)).** Whenever by said section nine or thirty-seven the approval of the Secretary of Transportation is required to render any act or transaction lawful, such approval may be accorded either absolutely or upon such conditions as the Secretary of Transportation prescribes.

Whenever the approval of the Secretary of Transportation is accorded upon any condition a statement of such condition shall be entered upon his records and incorporated in the same document or paper which notifies the applicant of such approval. A violation of such condition so incorporated shall constitute a misdemeanor and shall be punishable by fine and imprisonment in the same manner, and shall subject the vessel, stocks, bonds, or other subject matter of the application conditionally approved to forfeiture in the same manner, as though the act conditionally approved had been done without the approval of the Secretary of Transportation, but the offense shall be deemed to have been committed at the time of the violation of the condition.

Whenever by this Act the approval of the Secretary of Transportation is required to render any act or transaction lawful, whoever knowingly makes any false statement of a material fact to the Secretary of Transportation, [or to any member thereof,] or to any officer, attorney, or agent [of the Department of Transportation] [thereof], for the purpose of securing such approval, shall be guilty of a misdemeanor and subject to a fine of not more than \$ 5,000 or to imprisonment for not more than five years, or both.

**SEC. 46. SHORT TITLE (46 App. U.S.C. 843 (1996)).** This Act may be cited as “Shipping Act, 1916.”

# FOREIGN SHIPPING PRACTICES ACT<sup>1</sup>

## SEC. 10001. SHORT TITLE.<sup>2</sup>

This subtitle may be cited as the “Foreign Shipping Practices Act of 1988”.

## SEC. 10002. FOREIGN LAWS AND PRACTICES (46 App. U.S.C. 1710a (1996)).

(a) **Definitions.** For purposes of this section—

(1) “common carrier”, “marine terminal operator”, “nonvessel-operating common carrier”, “ocean common carrier”, “person”, “shipper”, “shippers’ association”, and “United States” have the meanings given each such term, respectively, in section 3 of the Shipping Act of 1984 (46 A.P. U.S.C. 1702);

(2) “foreign carrier” means an ocean common carrier a majority of whose vessels are documented under the laws of a country other than the United States;

(3) “maritime services” means port-to-port carriage of cargo by the vessels operated by ocean common carriers;

(4) “maritime-related services” means intermodal operations, terminal operations, cargo solicitation, forwarding and agency services, non-vessel-operating common carrier operations, and all other activities and services integral to total transportation systems of ocean common carriers and their foreign domiciled affiliates on their own and others’ behalf;

(5) “United States carrier” means an ocean common carrier which operates vessels documented under the laws of the United States; and

(6) “United States oceanborne trade” means the carriage of cargo between the United States and a foreign country, whether direct or indirect, by an ocean common carrier.

(b) **Authority to Conduct Investigations.** The Federal Maritime Commission shall investigate whether any laws, rules, regulations, policies, or practices of foreign governments, or any practices of foreign carriers or other persons 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

---

<sup>1</sup> Title X, Subtitle A, of Public Law 100-418, approved August 23, 1988, the Omnibus Trade and Competitiveness Act of 1988.

<sup>2</sup> 46 App. U.S.C. 1701, note.

United States carriers or other persons providing maritime or maritime-related services in the United States.

**(c) Investigations.**

(1) Investigations under subsection (b) of this section may be initiated by the Commission on its own motion or on the petition of any person, including any common carrier, shipper, shippers' association, ocean freight forwarder, or marine terminal operator, or any branch, department, agency, or other component of the Government of the United States.

(2) The Commission shall complete any such investigation and render a decision within 120 days after it is initiated, except that the Commission may extend such 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 (b) of this section exists. Any notice providing such an extension shall clearly state the reasons for such extension.

**(d) Information Requests.**

(1) In order to further the purposes of subsection (b) of this section, the Commission may, by order, require any person (including any common carrier, shipper, shippers' association, ocean freight forwarder, or marine terminal operator, or any 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 which the Commission considers necessary or appropriate. The Commission may require that the response to any such order shall be made under oath. Such response shall be furnished in the form and within the time prescribed by the Commission.

(2) In an investigation under subsection (b) of this section, the Commission may issue subpoenas to compel the attendance and testimony of witnesses and the production of records or other evidence.

(3) Notwithstanding any other provision of law, the Commission may, in its discretion, determine that any information submitted to it in response to a request under this subsection, or otherwise, shall not be disclosed to the public.

**(e) Action Against Foreign Carriers.**

(1) Whenever, after notice and opportunity for comment or hearing, the Commission determines that the conditions specified in subsection (b) of this section exist, the Commission shall take such action as it considers necessary and appropriate against any foreign carrier that is a contributing cause to, or whose government is a contributing cause to, such conditions, in order to offset such conditions. Such action may include—

(A) limitations on sailings to and from United States ports or on the amount or type of cargo carried;

(B) suspension, in whole or in part, of any or all tariffs filed with the Commission, including the right of an ocean common carrier to use any or all tariffs of conferences in United States trades of which it is a member for such period as the Commission specifies;

(C) suspension, in whole or in part, of the right of an ocean common carrier to operate under any agreement filed with the Commission, including agreements authorizing preferential treatment at terminals, preferential terminal leases, space chartering, or pooling of cargo or revenues with other ocean common carriers; and

(D) a fee, not to exceed \$1,000,000 per voyage.

(2) The Commission may consult with, seek the cooperation of, or make recommendations to other appropriate Government agencies prior to taking any action under this subsection.

(3) Before a determination under this subsection becomes effective or a request is made under subsection (f) of this section, the determination shall be submitted immediately to the President who may, within 10 days after receiving such determination, disapprove the determination in writing, setting forth the reasons for the disapproval, if the President finds that disapproval is required for reasons of the national defense or the foreign policy of the United States.

(f) **Actions Upon Request of the Commission.** Whenever the conditions specified in subsection (b) of this section are found by the Commission to exist, upon the request of the Commission—

(1) the collector of customs at any port or place of destination in the United States shall refuse the clearance required by section 4197 of the Revised Statutes (46 App. U.S.C. 91) to any vessel of a foreign carrier that is identified by the Commission under subsection (e) of this section; and

(2) the Secretary of the department in which the Coast Guard is operating shall deny entry, for purposes of oceanborne trade, of any vessel of a foreign carrier that is identified by the Commission under subsection (e) of this section to any port or place in the United States or the navigable waters of the United States, or shall detain any such vessel at the port or place in the United States from which it is about to depart for any other port or place in the United States.

(g) **Report.** The Commission shall include in its annual report to Congress—

(1) a list of the twenty foreign countries which 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 subsection (b) of this section being investigated or found to exist in foreign countries;

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

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

(5) a list of petitions filed under subsection (c) of this section that the Commission rejected, and the reasons for each such rejection.

(h) The actions against foreign carriers authorized in subsections (e) and (f) of this section may be used in the administration and enforcement of section 13(b)(5) of the Shipping Act of 1984 (46 App. U.S.C. 1712(b)(5)) or section 19(1)(b) of the Merchant Marine Act, 1920 (46 App. U.S.C. 876).

(i) Any rule, regulation or final order of the Commission issued under this section shall be reviewable exclusively in the same forum and in the same manner as provided in section 2342(3)(B) of title 28, United States Code.

# AUTOMATED TARIFF FILING AND INFORMATION SYSTEM

## 46 U.S.C. 1707a (1996) AUTOMATED TARIFF FILING AND INFORMATION SYSTEM.

(a) **Definitions.** In this section, the following definitions apply:

(1) *Commission.* The term “Commission” means the Federal Maritime Commission.

(2) *Common Carrier.* The term “common carrier” means a common carrier under section 3 of the Shipping Act of 1984 (46 App. U.S.C. 1702), a common carrier by water in interstate commerce under the Shipping Act, 1916 (46 App. U.S.C. 801 et seq.), or a common carrier by water in intercoastal commerce under the Intercoastal Shipping Act, 1933 (46 App. U.S.C. 843 et seq.).

(3) *Conference.* The term “conference” has the meaning given that term under section 3 of the Shipping Act of 1984 (46 App. U.S.C. 1702).

(4) *Essential Terms of Service Contracts.* The term “essential terms of service contracts” means the essential terms that are required to be filed with the Commission and made available under section 8(c) of the Shipping Act of 1984 (46 App. U.S.C. 1707(c)).

(5) *Tariff.* The term “tariff” means a tariff of rates, charges, classifications, rules, and practices required to be filed by a common carrier or conference under section 8 of the Shipping Act of 1984 (46 App. U.S.C. 1707), or a rate, fare, charge, classification, rule, or regulation required to be filed by a common carrier or conference under the Shipping Act, 1916 (46 U.S.C. 801 et seq.), or the Intercoastal Shipping Act, 1933 (46 App. U.S.C. 843 et seq.).

(b) **Tariff Form and Availability.**

(1) *Requirement to File.* Notwithstanding any other law, each common carrier and conference shall, in accordance with subsection (c), file electronically with the Commission all tariffs, and all essential terms of service contracts, required to be filed by that common carrier or conference under the Shipping Act of 1984 (46 App. U.S.C. 1701 et seq.), the Shipping Act, 1916 (46 App. U.S.C. 801 et seq.), and the Intercoastal Shipping Act, 1933 (46 App. U.S.C. 843 et seq.).

(2) *Availability of Information.* The Commission shall make available electronically to any person, without time, quantity, or other limitation, both at the Commission headquarters and through appropriate access from remote terminals—

(A) all tariff information, and all essential terms of service contracts, filed in the Commission’s Automated Tariff Filing and Information System database; and

(B) all tariff information in the System enhanced electronically by the Commission at any time.

\* \* \* \* \*

# TITLE 49, SUBTITLE IV—INTERSTATE TRANSPORTATION<sup>1</sup>

[EXCERPTS]

## TITLE II - SURFACE TRANSPORTATION BOARD

### CHAPTER 7 - SURFACE TRANSPORTATION BOARD.

#### 49 U.S.C. 701 (1996). ESTABLISHMENT OF BOARD.

(a) **Establishment.** There is hereby established within the Department of Transportation the Surface Transportation Board.

(b) **Membership.**

(1) The Board shall consist of 3 members, to be appointed by the President, by and with the advice and consent of the Senate. Not more than 2 members may be appointed from the same political party.

(2) At any given time, at least 2 members of the Board shall be individuals with professional standing and demonstrated knowledge in the fields of transportation or transportation regulation, and at least one member shall be an individual with professional or business experience (including agriculture) in the private sector.

(3) The term of each member of the Board shall be 5 years and shall begin when the term of the predecessor of that member ends. An individual appointed to fill a vacancy occurring before the expiration of the term for which the predecessor of that individual was appointed, shall be appointed for the remainder of that term. When the term of office of a member ends, the member may continue to serve until a successor is appointed and qualified, but for a period not to exceed one year. The President may remove a member for inefficiency, neglect of duty, or malfeasance in office.

(4) On January 1, 1996, the members of the Interstate Commerce Commission serving unexpired terms on December 29, 1995, shall become members of the Board, to serve for a period of time equal to the remainder of the term for which they were originally appointed to the Interstate Commerce Commission. Any member of the Interstate Commerce Commission whose term expires on December 31, 1995, shall become a member of the Board, subject to paragraph (3).

(5) No individual may serve as a member of the Board for more than 2 terms. In the case of an individual who becomes a member of the

---

<sup>1</sup> These provisions of law were enacted by Public Law 104-88, approved December 29, 1995 (109 STAT. 804), the I.C.C. Termination Act of 1995, as amended by Public Law 104-287, approved October 11, 1996 (110 STAT. 3388).

Board pursuant to paragraph (4), or an individual appointed to fill a vacancy occurring before the expiration of the term for which the predecessor of that individual was appointed, such individual may not be appointed for more than one additional term.

(6) A member of the Board may not have a pecuniary interest in, hold an official relation to, or own stock in or bonds of, a carrier providing transportation by any mode and may not engage in another business, vocation, or employment.

(7) A vacancy in the membership of the Board does not impair the right of the remaining members to exercise all of the powers of the Board. The Board may designate a member to act as Chairman during any period in which there is no Chairman designated by the President.

(c) **Chairman.**

(1) There shall be at the head of the Board a Chairman, who shall be designated by the President from among the members of the Board. The Chairman shall receive compensation at the rate prescribed for level III of the Executive Schedule under section 5314 of title 5.

(2) Subject to the general policies, decisions, findings, and determinations of the Board, the Chairman shall be responsible for administering the Board. The Chairman may delegate the powers granted under this paragraph to an officer, employee, or office of the Board. The Chairman shall—

(A) appoint and supervise, other than regular and full-time employees in the immediate offices of another member, the officers and employees of the Board, including attorneys to provide legal aid and service to the Board and its members, and to represent the Board in any case in court;

(B) appoint the heads of offices with the approval of the Board;

(C) distribute Board business among officers and employees and offices of the Board;

(D) prepare requests for appropriations for the Board and submit those requests to the President and Congress with the prior approval of the Board; and

(E) supervise the expenditure of funds allocated by the Board for major programs and purposes.

**49 U.S.C. 702 (1996). FUNCTIONS.**

Except as otherwise provided in the ICC Termination Act of 1995, or the amendments made thereby, the Board shall perform all functions that, immediately before January 1, 1996, were functions of the Interstate Commerce Commission or were performed by any officer or employee of the Interstate Commerce Commission in the capacity as such officer or employee.

## **49 U.S.C. 703 (1996). ADMINISTRATIVE PROVISIONS.**

(a) **Executive Reorganization.** Chapter 9 of title 5, United States Code, shall apply to the Board in the same manner as it does to an independent regulatory agency, and the Board shall be an establishment of the United States Government.

(b) **Open Meetings.** For purposes of section 552b of title 5, United States Code, the Board shall be deemed to be an agency.

(c) **Independence.** In the performance of their functions, the members, employees, and other personnel of the Board shall not be responsible to or subject to the supervision or direction of any officer, employee, or agent of any other part of the Department of Transportation.

(d) **Representation by Attorneys.** Attorneys designated by the Chairman of the Board may appear for, and represent the Board in, any civil action brought in connection with any function carried out by the Board pursuant to this chapter or subtitle IV or as otherwise authorized by law.

(e) **Admission to Practice.** Subject to section 500 of title 5, the Board may regulate the admission of individuals to practice before it and may impose a reasonable admission fee.

(f) **Budget Requests.** In each annual request for appropriations by the President, the Secretary of Transportation shall identify the portion thereof intended for the support of the Board and include a statement by the Board—

(1) showing the amount requested by the Board in its budgetary presentation to the Secretary and the Office of Management and Budget; and

(2) an assessment of the budgetary needs of the Board.

(g) **Direct Transmittal to Congress.** The Board shall transmit to Congress copies of budget estimates, requests, and information (including personnel needs), legislative recommendations, prepared testimony for congressional hearings, and comments on legislation at the same time they are sent to the Secretary of Transportation. An officer of an agency may not impose conditions on or impair communications by the Board with Congress, or a committee or Member of Congress, about the information.

**49 U.S.C. 704 (1996). ANNUAL REPORT.** The Board shall annually transmit to the Congress a report on its activities.

**49 U.S.C. 705 (1996). AUTHORIZATION OF APPROPRIATIONS.** There are authorized to be appropriated for the activities of the Board—

(1) \$8,421,000 for fiscal year 1996;

- (2) \$12,000,000 for fiscal year 1997; and
- (3) \$12,000,000 for fiscal year 1998.

**49 U.S.C. 706 (1996). REPORTING OFFICIAL ACTION.**

(a) **Reports on Proceedings.** The Board shall make a written report of each proceeding conducted on complaint or on its own initiative and furnish a copy to each party to that proceeding. The report shall include the findings, conclusions, and the order of the Board and, if damages are awarded, the findings of fact supporting the award. The Board may have its reports published for public use. A published report of the Board is competent evidence of its contents.

\* \* \* \* \*

**49 U.S.C. 721 (1996). POWERS.**

(a) **In General.** The Board shall carry out this chapter and subtitle IV. Enumeration of a power of the Board in this chapter or subtitle IV does not exclude another power the Board may have in carrying out this chapter or subtitle IV. The Board may prescribe regulations in carrying out this chapter and subtitle IV.

(b) **Inquiries, Reports, and Orders.** The Board may—

- (1) inquire into and report on the management of the business of carriers providing transportation and services subject to subtitle IV;
- (2) inquire into and report on the management of the business of a person controlling, controlled by, or under common control with those carriers to the extent that the business of that person is related to the management of the business of that carrier;
- (3) obtain from those carriers and persons information the Board decides is necessary to carry out subtitle IV; and
- (4) when necessary to prevent irreparable harm, issue an appropriate order without regard to subchapter II of chapter 5 of title 5.

(c) **Subpoena Witnesses.**

(1) The Board may subpoena witnesses and records related to a proceeding of the Board from any place in the United States, to the designated place of the proceeding. If a witness disobeys a subpoena, the Board, or a party to a proceeding before the Board, may petition a court of the United States to enforce that subpoena.

(2) The district courts of the United States have jurisdiction to enforce a subpoena issued under this section. Trial is in the district in which the proceeding is conducted. The court may punish a refusal to obey a subpoena as a contempt of court.

(d) **Depositions.**

(1) In a proceeding, the Board may take the testimony of a witness by deposition and may order the witness to produce records. A party to a

proceeding pending before the Board may take the testimony of a witness by deposition and may require the witness to produce records at any time after a proceeding is at issue on petition and answer.

(2) If a witness fails to be deposed or to produce records under paragraph (1), the Board may subpoena the witness to take a deposition, produce the records, or both.

(3) A deposition may be taken before a judge of a court of the United States, a United States magistrate judge, a clerk of a district court, or a chancellor, justice, or judge of a supreme or superior court, mayor or chief magistrate of a city, judge of a county court, or court of common pleas of any State, or a notary public who is not counsel or attorney of a party or interested in the proceeding.

(4) Before taking a deposition, reasonable notice must be given in writing by the party or the attorney of that party proposing to take a deposition to the opposing party or the attorney of record of that party, whoever is nearest. The notice shall state the name of the witness and the time and place of taking the deposition.

(5) The testimony of a person deposed under this subsection shall be taken under oath. The person taking the deposition shall prepare, or cause to be prepared, a transcript of the testimony taken. The transcript shall be subscribed by the deponent.

(6) The testimony of a witness who is in a foreign country may be taken by deposition before an officer or person designated by the Board or agreed on by the parties by written stipulation filed with the Board. A deposition shall be filed with the Board promptly.

(e) **Witness Fees.** Each witness summoned before the Board or whose deposition is taken under this section and the individual taking the deposition are entitled to the same fees and mileage paid for those services in the courts of the United States.

#### **49 U.S.C. 722 (1996). BOARD ACTION.**

(a) **Effective Date of Actions.** Unless otherwise provided in subtitle IV, the Board may determine, within a reasonable time, when its actions, other than an action ordering the payment of money, take effect.

(b) **Terminating and Changing Actions.** An action of the Board remains in effect under its own terms or until superseded. The Board may change, suspend, or set aside any such action on notice. Notice may be given in a manner determined by the Board. A court of competent jurisdiction may suspend or set aside any such action.

(c) **Reconsidering Actions.** The Board may, at any time on its own initiative because of material error, new evidence, or substantially changed circumstances—

(1) reopen a proceeding;

(2) grant rehearing, reargument, or reconsideration of an action of the Board; or

(3) change an action of the Board.

An interested party may petition to reopen and reconsider an action of the Board under this subsection under regulations of the Board.

(d) **Finality of Actions.** Notwithstanding subtitle IV, an action of the Board under this section is final on the date on which it is served, and a civil action to enforce, enjoin, suspend, or set aside the action may be filed after that date.

#### **49 U.S.C. 723 (1996). SERVICE OF NOTICE IN BOARD PROCEEDINGS.**

(a) **Designation of Agent.** A carrier providing transportation subject to the jurisdiction of the Board under subtitle IV shall designate an agent in the District of Columbia, on whom service of notices in a proceeding before, and of actions of, the Board may be made.

(b) **Filing and Changing Designations.** A designation under subsection (a) shall be in writing and filed with the Board. The designation may be changed at any time in the same manner as originally made.

(c) **Service of Notice.** Except as otherwise provided, notices of the Board shall be served on its designated agent at the office or usual place of residence in the District of Columbia of that agent. A notice of action of the Board shall be served immediately on the agent or in another manner provided by law. If that carrier does not have a designated agent, service may be made by posting the notice in the office of the Board.

\* \* \* \* \*

#### **49 U.S.C. 724 (1996). SERVICE OF PROCESS IN COURT PROCEEDINGS.**

(a) **Designation of Agent.** A carrier providing transportation subject to the jurisdiction of the Board under subtitle IV shall designate an agent in the District of Columbia on whom service of process in an action before a district court may be made. Except as otherwise provided, process in an action before a district court shall be served on the designated agent of that carrier at the office or usual place of residence in the District of Columbia of that agent. If the carrier does not have a designated agent, service may be made by posting the notice in the office of the Board.

(b) **Changing Designation.** A designation under this section may be changed at any time in the same manner as originally made.

**49 U.S.C. 725 (1996). ADMINISTRATIVE SUPPORT.** The Secretary of Transportation shall provide administrative support for the Board.

\* \* \* \* \*

**49 U.S.C. 727 (1996). DEFINITIONS.** All terms used in this chapter that are defined in subtitle IV shall have the meaning given those terms in that subtitle.

## **CHAPTER 131. GENERAL PROVISIONS.**

### **49 U.S.C. 13101 (1996). TRANSPORTATION POLICY.**

(a) **In General.** To ensure the development, coordination, and preservation of a transportation system that meets the transportation needs of the United States, including the United States Postal Service and national defense, it is the policy of the United States Government to oversee the modes of transportation and—

(1) in overseeing those modes—

(A) to recognize and preserve the inherent advantage of each mode of transportation;

(B) to promote safe, adequate, economical, and efficient transportation;

(C) to encourage sound economic conditions in transportation, including sound economic conditions among carriers;

(D) to encourage the establishment and maintenance of reasonable rates for transportation, without unreasonable discrimination or unfair or destructive competitive practices;

(E) to cooperate with each State and the officials of each State on transportation matters; and

(F) to encourage fair wages and working conditions in the transportation industry;

(2) in overseeing transportation by motor carrier, to promote competitive and efficient transportation services in order to—

(A) encourage fair competition, and reasonable rates for transportation by motor carriers of property;

(B) promote efficiency in the motor carrier transportation system and to require fair and expeditious decisions when required;

(C) meet the needs of shippers, receivers, passengers, and consumers;

(D) allow a variety of quality and price options to meet changing market demands and the diverse requirements of the shipping and traveling public;

(E) allow the most productive use of equipment and energy resources;

(F) enable efficient and well-managed carriers to earn adequate profits, attract capital, and maintain fair wages and working conditions;

\* \* \* \* \*

(K) promote intermodal transportation;

\* \* \* \* \*

(4) in overseeing transportation by water carrier, to encourage and promote service and price competition in the noncontiguous domestic trade.

(b) **Administration to Carry out Policy.** This part shall be administered and enforced to carry out the policy of this section and to promote the public interest.

**49 U.S.C. 13102 (1996). DEFINITIONS.** In this part, the following definitions shall apply:

(1) **Board.** The term “Board” means the Surface Transportation Board.

(2) **Broker.** The term “broker” means a person, other than a motor carrier or an employee or agent of a motor carrier, that as a principal or agent sells, offers for sale, negotiates for, or holds itself out by solicitation, advertisement, or otherwise as selling, providing, or arranging for, transportation by motor carrier for compensation.

(3) **Carrier.** The term “carrier” means a motor carrier, a water carrier, and a freight forwarder.

(4) **Contract Carriage.** The term “contract carriage” means—

(A) for transportation provided before January 1, 1996, service provided pursuant to a permit issued under section 10923, as in effect on December 31, 1995; and

(B) for transportation provided after December 31, 1995, service provided under an agreement entered into under section 14101(b).

(5) **Control.** The term “control”, when referring to a relationship between persons, includes actual control, legal control, and the power to exercise control, through or by—

(A) common directors, officers, stockholders, a voting trust, or a holding or investment company, or

(B) any other means.

\* \* \* \* \*

(8) **Freight Forwarder.** The term “freight forwarder” means a person holding itself out to the general public (other than as a pipeline,

rail, motor, or water carrier) to provide transportation of property for compensation and in the ordinary course of its business—

(A) assembles and consolidates, or provides for assembling and consolidating, shipments and performs or provides for break-bulk and distribution operations of the shipments;

(B) assumes responsibility for the transportation from the place of receipt to the place of destination; and

(C) uses for any part of the transportation a carrier subject to jurisdiction under this subtitle. The term does not include a person using transportation of an air carrier subject to part A of subtitle VII.

\* \* \* \* \*

(10) **Household Goods.** The term “household goods”, as used in connection with transportation, means personal effects and property used or to be used in a dwelling, when a part of the equipment or supply of such dwelling, and similar property if the transportation of such effects or property is—

(A) arranged and paid for by the householder, including transportation of property from a factory or store when the property is purchased by the householder with intent to use in his or her dwelling, or

(B) arranged and paid for by another party.

(11) **Household Goods Freight Forwarder.** The term “household goods freight forwarder” means a freight forwarder of one or more of the following items: household goods, unaccompanied baggage, or used automobiles.

\* \* \* \* \*

(15) **Noncontiguous Domestic Trade.** The term “noncontiguous domestic trade” means transportation subject to jurisdiction under chapter 135 involving traffic originating in or destined to Alaska, Hawaii, or a territory or possession of the United States.

(16) **Person.** The term “person”, in addition to its meaning under section 1 of title 1, includes a trustee, receiver, assignee, or personal representative of a person.

(17) **Secretary.** The term “Secretary” means the Secretary of Transportation.

(18) **State.** The term “State” means the 50 States of the United States and the district of Columbia.

(19) **Transportation.** The term “transportation” includes—

(A) a motor vehicle, vessel, warehouse, wharf, pier, dock, yard, property, facility, instrumentality, or equipment of any kind related to

the movement of passengers or property, or both, regardless of ownership or an agreement concerning use; and

(B) services related to that movement, including arranging for, receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, packing, unpacking, and interchange of passengers and property.

(20) **United States.** The term “United States” means the States of the United States and the District of Columbia.

(21) **Vessel.** The term “vessel” means a watercraft or other artificial contrivance that is used, is capable of being used, or is intended to be used, as a means of transportation by water.

(22) **Water carrier.** The term “water carrier” means a person providing water transportation for compensation.

#### **49 U.S.C. 13103 (1996). REMEDIES AS CUMULATIVE.**

Except as otherwise provided in this part, the remedies provided under this part are in addition to remedies existing under another law or common law.

### **CHAPTER 133. ADMINISTRATIVE PROVISIONS.**

#### **49 U.S.C. 13301 (1996). POWERS.**

(a) **General Powers of Secretary.** Except as otherwise specified, the Secretary shall carry out this part. Enumeration of a power of the Secretary in this part does not exclude another power the Secretary may have in carrying out this part. The Secretary may prescribe regulations in carrying out this part.

(b) **Obtaining Information.** The Secretary may obtain from carriers providing, and brokers for, transportation and service subject to this part, and from persons controlling, controlled by, or under common control with those carriers or brokers to the extent that the business of that person is related to the management of the business of that carrier or broker, information the Secretary decides is necessary to carry out this part.

(c) **Subpoena Power.**

(1) *By Secretary.* The Secretary may subpoena witnesses and records related to a proceeding under this part from any place in the United States, to the designated place of the proceeding. If a witness disobeys a subpoena, the Secretary, or a party to a proceeding under this part, may petition a court of the United States to enforce that subpoena.

(2) *Enforcement.* The district courts of the United States have jurisdiction to enforce a subpoena issued under this section. Trial is in the

district in which the proceeding is conducted. The court may punish a refusal to obey a subpoena as a contempt of court.

(d) **Testimony of witnesses.**

(1) *Procedure for Taking Testimony.* In a proceeding under this part, the Secretary may take the testimony of a witness by deposition and may order the witness to produce records. A party to a proceeding pending under this part may take the testimony of a witness by deposition and may require the witness to produce records at any time after a proceeding is at issue on petition and answer.

(2) *Subpoena.* If a witness fails to be deposed or to produce records under paragraph (1) of this subsection, the Secretary may subpoena the witness to take a deposition, produce the records, or both.

(3) *Depositions.* A deposition may be taken before a judge of a court of the United States, a United States magistrate judge, a clerk of a district court, or a chancellor, justice, or judge of a supreme or superior court, mayor or chief magistrate of a city, judge of a county court, or court of common pleas of any State, or a notary public who is not counsel or attorney of a party or interested in the proceeding.

(4) *Notice of Deposition.* Before taking a deposition, reasonable notice must be given in writing by the party or the attorney of that party proposing to take a deposition to the opposing party or the attorney of record of that party, whoever is nearest. The notice shall state the name of the witness and the time and place of taking the deposition.

(5) *Transcript.* The testimony of a person deposed under this subsection shall be taken under oath. The person taking the deposition shall prepare, or cause to be prepared, a transcript of the testimony taken. The transcript shall be subscribed by the deponent.

(6) *Foreign Country.* The testimony of a witness who is in a foreign country may be taken by deposition before an officer or person designated by the Secretary or agreed on by the parties by written stipulation filed with the Secretary. A deposition shall be filed with the Secretary promptly.

(e) **Witness Fees.** Each witness summoned before the Secretary or whose deposition is taken under this section and the individual taking the deposition are entitled to the same fees and mileage paid for those services in the courts of the United States.

(f) **Powers of Board.** For those provisions of this part that are specified to be carried out by the Board, the Board shall have the same powers as the Secretary has under this section.

**49 U.S.C. 13302 (1996). INTERVENTION.** Under regulations of the Secretary, reasonable notice of, and an opportunity to intervene and participate in, a proceeding under this part related to transportation sub-

ject to jurisdiction under subchapter I of chapter 135 shall be given to interested persons.

**49 U.S.C. 13303 (1996). SERVICE OF NOTICE IN PROCEEDINGS.**

(a) **Agents for Service of Process.** A carrier, a broker, or a freight forwarder providing transportation or service subject to jurisdiction under chapter 135 shall designate, in writing, an agent by name and post office address on whom service of notices in a proceeding before, and of actions of, the Secretary may be made.

\* \* \* \* \*

(c) **Notice.** A notice to a motor carrier, freight forwarder, or broker shall be served personally or by mail on the motor carrier, freight forwarder, or broker or on its designated agent. Service by mail on the designated agent shall be made at the address filed for the agent. When notice is given by mail, the date of mailing is considered to be the time when the notice is served. If a motor carrier, freight forwarder, or broker does not have a designated agent, service may be made by posting a copy of the notice at the headquarters of the Department of Transportation.

\* \* \* \* \*

**CHAPTER 135. JURISDICTION**

\* \* \* \* \*

**SUBCHAPTER II. WATER CARRIER TRANSPORTATION**

**49 U.S.C. 13521 (1996). GENERAL JURISDICTION.**

(a) **General Rules.** The Secretary and the Board have jurisdiction over transportation insofar as water carriers are concerned—

(1) by water carrier between a place in a State and a place in another State, even if part of the transportation is outside the United States;

(2) by water carrier and motor carrier from a place in a State to a place in another State; except that if part of the transportation is outside the United States, the Secretary only has jurisdiction over that part of the transportation provided—

(A) by motor carrier that is in the United States; and

(B) by water carrier that is from a place in the United States to another place in the United States; and

(3) by water carrier or by water carrier and motor carrier between a place in the United States and a place outside the United States, to the extent that—

(A) when the transportation is by motor carrier, the transportation is provided in the United States;

(B) when the transportation is by water carrier to a place outside the United States, the transportation is provided by water carrier from a place in the United States to another place in the United States before transshipment from a place in the United States to a place outside the United States; and

(C) when the transportation is by water carrier from a place outside the United States, the transportation is provided by water carrier from a place in the United States to another place in the United States after transshipment to a place in the United States from a place outside the United States.

(b) **Definitions.** In this section, the terms “State” and “United States” include the territories and possessions of the United States.

\* \* \* \* \*

### **SUBCHAPTER III. FREIGHT FORWARDER SERVICE**

#### **49 U.S.C. 13531 (1996). GENERAL JURISDICTION.**

(a) **In General.** The Secretary and the Board have jurisdiction, as specified in this part, over service that a freight forwarder undertakes to provide, or is authorized or required under this part to provide, to the extent transportation is provided in the United States and is between—

(1) a place in a State and a place in another State, even if part of the transportation is outside the United States;

(2) a place in a State and another place in the same State through a place outside the State; or

(3) a place in the United States and a place outside the United States.

### **SUBCHAPTER IV. AUTHORITY TO EXEMPT.**

#### **49 U.S.C. 13541. Authority to Exempt Transportation or Services.**

(a) **In General.** In any matter subject to jurisdiction under this part, the Secretary or the Board, as applicable, shall exempt a person, class of persons, or a transaction or service from the application, in whole or in part, of a provision of this part, or use this exemption authority to modify the application of a provision of this part as it applies to such person, class, transaction, or service, when the Secretary or Board finds that the application of that provision—

(1) is not necessary to carry out the transportation policy of section 13101;

(2) is not needed to protect shippers from the abuse of market power or that the transaction or service is of limited scope; and

(3) is in the public interest.

(b) **Initiation of Proceeding.** The Secretary or Board, as applicable, may, where appropriate, begin a proceeding under this section on the

Secretary's or Board's own initiative or on application by an interested party.

(c) **Period of Exemption.** The Secretary or Board, as applicable, may specify the period of time during which an exemption granted under this section is effective.

(d) **Revocation.** The Secretary or Board, as applicable, may revoke an exemption, to the extent specified, on finding that application of a provision of this part to the person, class, or transportation is necessary to carry out the transportation policy of section 13101.

(e) **Limitations.**

(1) *In General.* The exemption authority under this section may not be used to relieve a person from the application of, and compliance with, any law, rule, regulation, standard, or order pertaining to cargo loss and damage, insurance, safety fitness, or activities approved under section 13703 or 14302 or not terminated under section 13907(d)(2).

(2) *Water Carriers.* The Secretary or Board, as applicable, may not exempt a water carrier from the application of, or compliance with, section 13701 or 13702 for transportation in the non-contiguous domestic trade.

(f) **Continuation of Certain Existing Exemptions for Water Carriers.** The Secretary or Board, as applicable, shall not regulate or exercise jurisdiction under this part over the transportation by water carrier in the non-contiguous domestic trade of any cargo or type of cargo or service which was not subject to regulation by, or under the jurisdiction of, either the Federal Maritime Commission or Interstate Commerce Commission under Federal law in effect on November 1, 1995.

## CHAPTER 137. RATES AND THROUGH ROUTES

### 49 U.S.C. 13701 (1996). REQUIREMENTS FOR REASONABLE RATES, CLASSIFICATIONS, THROUGH ROUTES, RULES, AND PRACTICES FOR CERTAIN TRANSPORTATION.

(a) **Reasonableness.**

(1) *Certain Household Goods Transportation; Joint Rates Involving Water Transportation.* A rate, classification, rule, or practice related to transportation or service provided by a carrier subject to jurisdiction under chapter 135 for transportation or service involving—

(A) a movement of household goods,

(B) a rate for a movement by or with a water carrier in noncontiguous domestic trade, or

(C) rates, rules, and classifications made collectively by motor carriers under agreements approved pursuant to section 13703, must be reasonable.

(2) *Through Routes and Divisions of Joint Rates.* Through routes and divisions of joint rates for such transportation or service must be reasonable.

(b) **Prescription by Board for Violations.** When the Board finds it necessary to stop or prevent a violation of subsection (a), the Board shall prescribe the rate, classification, rule, practice, through route, or division of joint rates to be applied for such transportation or service.

(c) **Filing of Complaint.** A complaint that a rate, classification, rule, or practice in noncontiguous domestic trade violates subsection (a) may be filed with the Board.

(d) **Zone of Reasonableness.**

(1) *In General.* For purposes of this section, a rate or division of a motor carrier for service in noncontiguous domestic trade or water carrier for port-to-port service in that trade is reasonable if the aggregate of increases and decreases in any such rate or division is not more than 7.5 percent above, or more than 10 percent below, the rate or division in effect 1 year before the effective date of the proposed rate or division.

(2) *Adjustments to the Zone.* The percentage specified in paragraph (1) shall be increased or decreased, as the case may be, by the percentage change in the Producers Price Index, as published by the Department of Labor, that has occurred during the most recent 1-year period before the date the rate or division in question first took effect.

(3) *Determinations after Complaint.* The Board shall determine whether any rate or division of a carrier or service in noncontiguous domestic trade which is not within the range described in paragraph (1) is reasonable if a complaint is filed under subsection (c) or section 13702(b)(6).

(4) *Reparations.* Upon a finding of violation of subsection (a), the Board shall award reparations to the complaining shipper or shippers in an amount equal to all sums assessed and collected that exceed the determined reasonable rate, division, rate structure, or tariff. Upon complaint from any governmental agency or authority and upon a finding or violation of subsection (a), the Board shall make such orders as are just and shall require the carrier to return, to the extent practicable, to shippers all amounts plus interest, which the Board finds to have been assessed and collected in violation of subsection (a).

#### **49 U.S.C. 13702 (1996). TARIFF REQUIREMENT FOR CERTAIN TRANSPORTATION.**

(a) **In General.** Except when providing transportation for charitable purposes without charge, a carrier subject to jurisdiction under chapter 135 may provide transportation or service that is—

(1) in noncontiguous domestic trade, except with regard to bulk cargo, forest products, recycled metal scrap, waste paper, and paper waste; or

(2) for movement of household goods; only if the rate for such transportation or service is contained in a tariff that is in effect under this section. The carrier may not charge or receive a different compensation for the transportation or service than the rate specified in the tariff, whether by returning a part of that rate to a person, giving a person a privilege, allowing the use of a facility that affects the value of that transportation or service, or another device. A rate contained in a tariff shall be stated in money of the United States.

**(b) Tariff Requirements for Noncontiguous Domestic Trade.**

(1) *Filing.* A carrier providing transportation or service described in subsection (a)(1) shall publish and file with the Board tariffs containing the rates established for such transportation or service. The carriers shall keep such tariffs available for public inspection. The Board shall prescribe the form and manner of publishing, filing, and keeping tariffs available for public inspection under this subsection.

(2) *Contents.* The Board may prescribe any specific information and charges to be identified in a tariff, but at a minimum tariffs must identify plainly—

- (A) the carriers that are parties to it;
- (B) the places between which property will be transported;
- (C) terminal charges if a carrier provides transportation or service subject to jurisdiction under subchapter III of chapter 135;
- (D) privileges given and facilities allowed; and
- (E) any rules that change, affect, or determine any part of the published rate.

(3) *Inland Divisions.* A carrier providing transportation or service described in subsection (a)(1) under a joint rate for a through movement shall not be required to state separately or otherwise reveal in tariff filings the inland divisions of that through rate.

(4) *Time-Volume Rates.* Rates in tariffs filed under this subsection may vary with the volume of cargo offered over a specified period of time.

(5) *Changes.* The Board may permit carriers to change rates, classifications, rules, and practices without filing complete tariffs under this subsection that cover matter that is not being changed when the Board finds that action to be consistent with the public interest. Those carriers may either—

- (A) publish new tariffs that incorporate changes, or
- (B) plainly indicate the proposed changes in the tariffs then in effect and make the tariffs as changed available for public inspection.

(6) *Complaints.* A complaint that a rate or related rule or practice maintained in a tariff under this subsection violates section 13701(a) may be submitted to the Board for resolution.

(c) **Tariff Requirements for Household Goods Carriers.**

(1) *In General.* A carrier providing transportation described in subsection (a)(2) shall maintain rates and related rules and practices in a published tariff. The tariff must be available for inspection by the Board and be made available for inspection by shippers upon reasonable request.

(2) *Notice of Availability.* A carrier that maintains a tariff under this subsection may not enforce the provisions of the tariff unless the carrier has given notice that the tariff is available for inspection in its bill of lading or by other actual notice to individuals whose shipments are subject to the tariff.

(3) *Requirements.* A carrier that maintains a tariff under this subsection is bound by the tariff except as otherwise provided in this part. A tariff that does not comply with this subsection may not be enforced against any individual shipper.

(4) *Incorporation by Reference.* A carrier may incorporate by reference the rates, terms, and other conditions of a tariff in agreements covering the transportation of household goods.

(5) *Complaints.* A complaint that a rate or related rule or practice maintained in a tariff under this subsection violates section 13701(a) may be submitted to the Board for resolution.

(d) **Invalidation.** The Board may invalidate a tariff prepared by a carrier or carriers under this section if that tariff violates this section or a regulation of the Board carrying out this section.

\* \* \* \* \*

**49 U.S.C. 13707 (1996). PAYMENT OF RATES.**

(a) **Transfer of Possession upon Payment.** Except as provided in subsection (b), a carrier providing transportation or service subject to jurisdiction under this part shall give up possession at the destination of the property transported by it only when payment for the transportation or service is made.

(b) **Exceptions.**

(1) *Regulations.* Under regulations of the Secretary governing the payment for transportation and service and preventing discrimination, those carriers may give up possession at destination of property transported by them before payment for the transportation or service. The regulations of the Secretary may provide for weekly or monthly payment for transportation provided by motor carriers and for periodic payment for transportation provided by water carriers.

(2) *Extensions of Credit to Governmental Entities.* Such a carrier (including a motor carrier being used by a household goods freight forwarder) may extend credit for transporting property for the United

States Government, a State, a territory or possession of the United States, or a political subdivision of any of them.

\* \* \* \* \*

**49 U.S.C. 13712 (1996). GOVERNMENT TRAFFIC.** A carrier providing transportation or service for the United States Government may transport property or individuals for the United States Government without charge or at a rate reduced from the applicable commercial rate. Section 3709 of the Revised Statutes (41 U.S.C. 5) does not apply when transportation for the United States Government can be obtained from a carrier lawfully operating in the area where the transportation would be provided.

## **CHAPTER 141. OPERATIONS OF CARRIERS**

### **SUBCHAPTER I. GENERAL REQUIREMENTS**

**49 U.S.C. 14101 (1996). PROVIDING TRANSPORTATION AND SERVICE.**

(a) **On Reasonable Request.** A carrier providing transportation or service subject to jurisdiction under chapter 135 shall provide the transportation or service on reasonable request. In addition, a motor carrier shall provide safe and adequate service, equipment, and facilities.

(b) **Contracts with Shippers.**

(1) *In General.* A carrier providing transportation or service subject to jurisdiction under chapter 135 may enter into a contract with a shipper, other than for the movement of household goods described in section 13102(10)(A), to provide specified services under specified rates and conditions. If the shipper and carrier, in writing, expressly waive any or all rights and remedies under this part for the transportation covered by the contract, the transportation provided under the contract shall not be subject to the waived rights and remedies and may not be subsequently challenged on the ground that it violates the waived rights and remedies. The parties may not waive the provisions governing registration, insurance, or safety fitness.

(2) *Remedy for Breach of Contract.* The exclusive remedy for any alleged breach of a contract entered into under this subsection shall be an action in an appropriate State court or United States district court, unless the parties otherwise agree.

\* \* \* \* \*

**49 U.S.C. 14121 (1996). DEFINITIONS.** In this subchapter, the following definitions apply:

(1) **Carrier and Broker.** The terms “carrier” and “broker” include a receiver or trustee of a carrier and broker, respectively.

(2) **Association.** The term “association” means an organization maintained by or in the interest of a group of carriers or brokers providing transportation or service subject to jurisdiction under chapter 135 that performs a service, or engages in activities, related to transportation under this part.

\* \* \* \* \*

## SUBCHAPTER II. REPORTS AND RECORDS

### 49 U.S.C. 14122 (1996). RECORDS; FORM; INSPECTION; PRESERVATION.

(a) **Form of Records.** The Secretary or the Board, as applicable, may prescribe the form of records required to be prepared or compiled under this subchapter by carriers and brokers, including records related to movement of traffic and receipts and expenditures of money.

(b) **Right of Inspection.** The Secretary or Board, or an employee designated by the Secretary or Board, may on demand and display of proper credentials—

(1) inspect and examine the lands, buildings, and equipment of a carrier or broker; and

(2) inspect and copy any record of—

(A) a carrier, broker, or association; and

(B) a person controlling, controlled by, or under common control with a carrier if the Secretary or Board, as applicable, considers inspection relevant to that person’s relation to, or transaction with, that carrier.

(c) **Period for Preservation of Records.** The Secretary or Board, as applicable, may prescribe the time period during which operating, accounting, and financial records must be preserved by carriers and brokers.

\* \* \* \* \*

### 49 U.S.C. 14123 (1996). FINANCIAL REPORTING.

\* \* \* \* \*

(2) **Other Reports.** The Secretary may require motor carriers, freight forwarders, brokers, lessors, and associations, or classes of them as the Secretary may prescribe, to file quarterly, periodic, or special reports with the Secretary and to respond to surveys concerning their operations.

(b) **Matters to be Covered.** In determining the matters to be covered by any reports to be filed under subsection (a), the Secretary shall consider—

- (1) safety needs;
- (2) the need to preserve confidential business information and trade secrets and prevent competitive harm;
- (3) private sector, academic, and public use of information in the reports; and
- (4) the public interest.

(c) **Exemptions.**

(1) *From filing.* The Secretary may exempt upon good cause shown any party from the financial reporting requirements of subsection (a). Any request for such exemption must demonstrate, at a minimum, that an exemption is required to avoid competitive harm and preserve confidential business information that is not otherwise publicly available.

(2) *From Public Release.*

(A) In General. The Secretary shall allow, upon request, a filer of a report under subsection (a) that is not a publicly held corporation or that is not subject to financial reporting requirements of the Securities and Exchange Commission, an exemption from the public release of such report.

(B) Procedure. After a request under subparagraph (A) and notice and opportunity for comment but no event later than 90 days after the date of such request, the Secretary shall approve such request if the Secretary finds that the exemption requested is necessary to avoid competitive harm and to avoid the disclosure of information that qualifies as a trade secret or privileged or confidential information under section 552(b)(4) of title 5.

(C) Use of Data for Internal DOT Purposes. If an exemption is granted under this paragraph, nothing shall prevent the Secretary from using data from reports filed under this subsection for internal purposes of the Department of Transportation or including such data in aggregate industry statistics released for publication if such inclusion would not render the filer's data readily identifiable.

(D) Pending Requests. The Secretary shall not release publicly the report of a carrier making a request under subparagraph (A) while such request is pending.

(3) *Period of Exemptions.* Exemptions granted under this subsection shall be for 3-year periods.

(d) **Streamlining and Simplification.** The Secretary shall streamline and simplify, to the maximum extent practicable, any reporting requirements the Secretary imposes under this section.

\* \* \* \* \*

## CHAPTER 147. ENFORCEMENT; INVESTIGATIONS; RIGHTS; REMEDIES.

### 49 U.S.C. 14701 (1996). GENERAL AUTHORITY.

(a) **Investigations.** The Secretary or the Board, as applicable, may begin an investigation under this part on the Secretary's or the Board's own initiative or on complaint. If the Secretary or Board, as applicable, finds that a carrier or broker is violating this part, the Secretary or Board, as applicable, shall take appropriate action to compel compliance with this part. If the Secretary finds that a foreign motor carrier or foreign motor private carrier is violating chapter 139, the Secretary shall take appropriate action to compel compliance with that chapter. The Secretary or Board, as applicable, may take action under this subsection only after giving the carrier or broker notice of the investigation and an opportunity for a proceeding.

(b) **Complaints.** A person, including a governmental authority, may file with the Secretary or Board, as applicable, a complaint about a violation of this part by a carrier providing, or broker for, transportation or service subject to jurisdiction under this part or a foreign motor carrier or foreign motor private carrier providing transportation registered under section 13902 of this title. The complaint must state the facts that are the subject of the violation. The Secretary or Board, as applicable, may dismiss a complaint that it determines does not state reasonable grounds for investigation and action.

(c) **Deadline.** A formal investigative proceeding begun by the Secretary or Board under subsection (a) of this section is dismissed automatically unless it is concluded with administrative finality by the end of the 3d year after the date on which it was begun.

\* \* \* \* \*

**49 U.S.C. 14703 (1996). ENFORCEMENT BY THE ATTORNEY GENERAL.** The Attorney General may, and on request of either the Secretary or the Board shall, bring court proceedings—

- (1) to enforce this part or a regulation or order of the Secretary or Board or terms of registration under this part; and
- (2) to prosecute a person violating this part or a regulation or order of the Secretary or Board or term of registration under this part.

### 49 U.S.C. 14704 (1996). RIGHTS AND REMEDIES OF PERSONS INJURED BY CARRIERS OR BROKERS.

#### (a) In General.

(1) *Enforcement of Order.* A person injured because a carrier or broker providing transportation or service subject to jurisdiction under chapter 135 does not obey an order of the Secretary or the Board, as

applicable, under this part, except an order for the payment of money, may bring a civil action to enforce that order under this subsection. A person may bring a civil action for injunctive relief for violations of sections 14102 and 14103.

(2) *Damages for Violations.* A carrier or broker providing transportation or service subject to jurisdiction under chapter 135 is liable for damages sustained by a person as a result of an act or omission of that carrier or broker in violation of this part.

(b) **Liability and Damages for Exceeding Tariff Rate.** A carrier providing transportation or service subject to jurisdiction under chapter 135 is liable to a person for amounts charged that exceed the applicable rate for transportation or service contained in a tariff in effect under section 13702.

(c) **Election.**

(1) *Complaint to DOT or Board; Civil Action.* A person may file a complaint with the Board or the Secretary, as applicable, under section 14701(b) or bring a civil action under subsection (b) to enforce liability against a carrier or broker providing transportation or service subject to jurisdiction under chapter 135.

(2) Order of DOT or Board.

(A) In General. When the Board or Secretary, as applicable, makes an award under subsection (b) of this section, the Board or Secretary, as applicable, shall order the carrier to pay the amount awarded by a specific date. The Board or Secretary, as applicable, may order a carrier or broker providing transportation or service subject to jurisdiction under chapter 135 to pay damages only when the proceeding is on complaint.

(B) Enforcement by Civil Action. The person for whose benefit an order of the Board or Secretary requiring the payment of money is made may bring a civil action to enforce that order under this paragraph if the carrier or broker does not pay the amount awarded by the date payment was ordered to be made.

(d) **Procedure.**

(1) *In General.* When a person begins a civil action under subsection (b) of this section to enforce an order of the Board or Secretary requiring the payment of damages by a carrier or broker providing transportation or service subject to jurisdiction under chapter 135 of this title, the text of the order of the Board or Secretary must be included in the complaint. In addition to the district courts of the United States, a State court of general jurisdiction having jurisdiction of the parties has jurisdiction to enforce an order under this paragraph. The findings and order of the Board or Secretary are competent evidence of the facts stated in them. Trial in a civil action brought in a district court of the

United States under this paragraph is in the judicial district in which the plaintiff resides or in which the principal operating office of the carrier or broker is located. In a civil action under this paragraph, the plaintiff is liable for only those costs that accrue on an appeal taken by the plaintiff.

(2) *Parties.* All parties in whose favor the award was made may be joined as plaintiffs in a civil action brought in a district court of the United States under this subsection and all the carriers that are parties to the order awarding damages may be joined as defendants. Trial in the action is in the judicial district in which any one of the plaintiffs could bring the action against any one of the defendants. Process may be served on a defendant at its principal operating office when that defendant is not in the district in which the action is brought. A judgment ordering recovery may be made in favor of any of those plaintiffs against the defendant found to be liable to that plaintiff.

(e) **Attorney's Fees.** The district court shall award a reasonable attorney's fee under this section. The district court shall tax and collect that fee as part of the costs of the action.

#### **49 U.S.C. 14705. LIMITATION ON ACTIONS BY AND AGAINST CARRIERS.**

(a) **In General.** A carrier providing transportation or service subject to jurisdiction under chapter 135 must begin a civil action to recover charges for transportation or service provided by the carrier within 18 months after the claim accrues.

(b) **Overcharges.** A person must begin a civil action to recover overcharges within 18 months after the claim accrues. If the claim is against a carrier providing transportation subject to jurisdiction under chapter 135 and an election to file a complaint with the Board or Secretary, as applicable, is made under section 14704(c)(1), the complaint must be filed within 3 years after the claim accrues.

(c) **Damages.** A person must file a complaint with the Board or Secretary, as applicable, to recover damages under section 14704(b) within 2 years after the claim accrues.

(d) **Extensions.** The limitation periods under subsection (b) of this section are extended for 6 months from the time written notice is given to the claimant by the carrier of disallowance of any part of the claim specified in the notice if a written claim is given to the carrier within those limitation periods. The limitation periods under subsections (b) and (c) of this section are extended for 90 days from the time the carrier begins a civil action under subsection (a) to recover charges related to the same transportation or service, or collects (without beginning a civil action under that subsection) the charge for that transportation or

service if that action is begun or collection is made within the appropriate period.

(e) **Payment.** A person must begin a civil action to enforce an order of the Board or Secretary against a carrier within 1 year after the date of the order.

(f) **Government Transportation.** This section applies to transportation for the United States Government. The time limitations under this section are extended, as related to transportation for or on behalf of the United States Government, for 3 years from the later of the date of—

- (1) payment of the rate for the transportation or service involved;
- (2) subsequent refund for overpayment of that rate; or
- (3) deduction made under section 3726 of title 31.

(g) **Accrual Date.** A claim related to a shipment of property accrues under this section on delivery or tender of delivery by the carrier.

#### **49 U.S.C. 14706 (1996). LIABILITY OF CARRIERS UNDER RECEIPTS AND BILLS OF LADING.**

\* \* \* \* \*

(c) **Special Rules.**

\* \* \* \* \*

(2) *Water Carriers.* If loss or injury to property occurs while it is in the custody of a water carrier, the liability of that carrier is determined by its bill of lading and the law applicable to water transportation. The liability of the initial or delivering carrier is the same as the liability of the water carrier.

(d) **Civil Actions.**

(1) *Against Delivering Carrier.* A civil action under this section may be brought against a delivering carrier in a district court of the United States or in a State court. Trial, if the action is brought in a district court of the United States is in a judicial district, and if in a State court, is in a State through which the defendant carrier operates.

(2) *Against Carrier Responsible for Loss.* A civil action under this section may be brought against the carrier alleged to have caused the loss or damage, in the judicial district in which such loss or damage is alleged to have occurred.

(3) *Jurisdiction of Courts.* A civil action under this section may be brought in a United States district court or in a State court.

(4) *Judicial District Defined.* In this section, “judicial district” means—

(A) in the case of a United States district court, a judicial district of the United States; and

(B) in the case of a State court, the applicable geographic area over which such court exercises jurisdiction.

**(e) Minimum Period for Filing Claims.**

(1) *In General.* A carrier may not provide by rule, contract, or otherwise, a period of less than 9 months for filing a claim against it under this section and a period of less than 2 years for bringing a civil action against it under this section. The period for bringing a civil action is computed from the date the carrier gives a person written notice that the carrier has disallowed any part of the claim specified in the notice.

(2) *Special Rules.* For the purposes of this subsection—

(A) an offer of compromise shall not constitute a disallowance of any part of the claim unless the carrier, in writing, informs the claimant that such part of the claim is disallowed and provides reasons for such disallowance; and

(B) communications received from a carrier’s insurer shall not constitute a disallowance of any part of the claim unless the insurer, in writing, informs the claimant that such part of the claim is disallowed, provides reason for such disallowance, and informs the claimant that the insurer is acting on behalf of the carrier.

\* \* \* \* \*

**(g) Modifications and Reforms.**

(1) *Study.* The Secretary shall conduct a study to determine whether any modifications or reforms should be made to the loss and damage provisions of this section, including those related to limitation of liability by carriers.

(2) *Factors to Consider.* In conducting the study, the Secretary, at a minimum, shall consider—

- (A) the efficient delivery of transportation services;
- (B) international and intermodal harmony;
- (C) the public interest; and
- (D) the interest of carriers and shippers.

(3) *Report.* Not later than 12 months after January 1, 1996, the Secretary shall submit to Congress a report on the results of the study, together with any recommendations of the Secretary (including legislative recommendations) for implementing modifications or reforms identified by the Secretary as being appropriate.

**CHAPTER 149. CIVIL AND CRIMINAL PENALTIES**

**49 U.S.C. 14901 (1996). GENERAL CIVIL PENALTIES.**

\* \* \* \* \*

**(g) Business Entertainment Expenses.**

(1) *In General.* Any business entertainment expense incurred by a water carrier providing transportation subject to this part shall not con-

stitute a violation of this part if that expense would not be unlawful if incurred by a person not subject to this part.

(2) *Cost of Service.* Any business entertainment expense subject to paragraph (1) that is paid or incurred by a water carrier providing transportation subject to this part shall not be taken into account in determining the cost of service or the rate base for purposes of section 13702.

#### **49 U.S.C. 14902 (1996). CIVIL PENALTY FOR ACCEPTING REBATES FROM CARRIER.** A person—

(1) delivering property to a carrier providing transportation or service subject to jurisdiction under chapter 135 for transportation under this part or for whom that carrier will transport the property as consign- or or consignee for that person from a State or territory or possession of the United States to another State or possession, territory, or to a foreign country; and

(2) knowingly accepting or receiving by any means a rebate or offset against the rate for transportation for, or service of, that property contained in a tariff required under section 13702; is liable to the United States for a civil penalty in an amount equal to 3 times the amount of money that person accepted or received as a rebate or offset and 3 times the value of other consideration accepted or received as a rebate or offset. In a civil action under this section, all money or other consideration received by the person during a period of 6 years before an action is brought under this section may be included in determining the amount of the penalty, and if that total amount is included, the penalty shall be 3 times that total amount.

#### **49 U.S.C. 14903 (1996). TARIFF VIOLATIONS.**

(a) **Civil Penalty for Undercharging and Overcharging.** A person that offers, grants, gives, solicits, accepts, or receives by any means transportation or service provided for property by a carrier subject to jurisdiction under chapter 135 at a rate different than the rate in effect under section 13702 is liable to the United States for civil penalty of not more than \$100,000 for each violation.

(b) **General Criminal Penalty.** A carrier providing transportation or service subject to jurisdiction under chapter 135 or an officer, director, receiver, trustee, lessee, agent, or employee of a corporation that is subject to jurisdiction under that chapter, that willfully does not observe its tariffs as required under section 13702, shall be fined under title 18 or imprisoned not more than 2 years, or both.

(c) **Actions of Agents and Employees.** When acting in the scope of their employment, the actions and omissions of persons acting for or employed by a carrier or shipper that is subject to this section are considered to be the actions and omissions of that carrier or shipper as well as that person.

(d) **Venue.** Trial in a criminal action under this section is in the judicial district in which any part of the violation is committed or through which the transportation is conducted.

\* \* \* \* \*

**49 U.S.C. 14906 (1996). EVASION OF REGULATION OF CARRIERS AND BROKERS.** A person, or an officer, employee, or agent of that person, that by any means tries to evade regulation provided under this part for carriers or brokers is liable to the United States for a civil penalty of \$200 for the first violation and at least \$250 for a subsequent violation.

\* \* \* \* \*

**49 U.S.C. 14908 (1996). UNLAWFUL DISCLOSURE OF INFORMATION.**

(a) **Disclosure of Shipment and Routing Information.**

(1) *Violations.* A carrier or broker providing transportation subject to jurisdiction under subchapter I, II, or III of chapter 135 or an officer, receiver, trustee, lessee, or employee of that carrier or broker, or another person authorized by that carrier or broker to receive information from that carrier or broker may not disclose to another person, except the shipper or consignee, and a person may not solicit, or receive, information about the nature, kind, quantity, destination, consignee, or routing of property tendered or delivered to that carrier or broker for transportation provided under this part without the consent of the shipper or consignee if that information may be used to the detriment of the shipper or consignee or may disclose improperly to a competitor the business transactions of the shipper or consignee.

(2) *Penalty.* A person violating paragraph (1) of this subsection is liable to the United States for a civil penalty of not more than \$2,000.

(b) **Limitation on Statutory Construction.** This part does not prevent a carrier or broker providing transportation subject to jurisdiction under chapter 135 from giving information—

(1) in response to legal process issued under authority of a court of the United States or a State;

(2) to an officer, employee, or agent of the United States Government, a State, or a territory or possession of the United States; or

(3) to another carrier or its agent to adjust mutual traffic accounts in the ordinary course of business.

**49 U.S.C. 14909 (1996). DISOBEDIENCE TO SUBPOENAS.**

Whoever does not obey a subpoena or requirement of the Secretary or the Board to appear and testify or produce records shall be fined under title 18 or imprisoned not more than 1 year, or both.

**49 U.S.C. 14910 (1996). GENERAL CIVIL PENALTY WHEN SPECIFIC PENALTY NOT PROVIDED.** When another civil penalty is not provided under this chapter, a person that violates a provision of this part or a regulation or order prescribed under this part, or a condition of a registration under this part related to transportation that is subject to jurisdiction under subchapter I or III of chapter 135 or a condition of a registration of a foreign motor carrier or foreign motor private carrier under section 13902, is liable to the United States for a civil penalty of \$500 for each violation. A separate violation occurs each day the violation continues.

**49 U.S.C. 14911 (1996). PUNISHMENT OF CORPORATION FOR VIOLATIONS COMMITTED BY CERTAIN INDIVIDUALS.** An act or omission that would be a violation of this part if committed by a director, officer, receiver, trustee, lessee, agent, or employee of a carrier providing transportation or service subject to jurisdiction under chapter 135 that is a corporation is also a violation of this part by that corporation. The penalties of this chapter apply to that violation. When acting in the scope of their employment, the actions and omissions of individuals acting for or employed by that carrier are considered to be the actions and omissions of that carrier as well as that individual.

\* \* \* \* \*

**49 U.S.C. 14913 (1996). CONCLUSIVENESS OF RATES IN CERTAIN PROSECUTIONS.** When a carrier publishes or files a particular rate under section 13702 or participates in such a rate, the published or filed rate is conclusive proof against that carrier, its officers, and agents that it is the legal rate for that transportation or service in a proceeding begun under section 14902 or 14903. A departure, or offer to depart, from that published or filed rate is a violation of those sections.

**49 U.S.C. 14914 (1996). CIVIL PENALTY PROCEDURES.**

(a) **In General.** After notice and an opportunity for a hearing, a person found by the Surface Transportation Board to have violated a provision of law that the Board carries out or a regulation prescribed under that law by the Board that is related to transportation which occurs under subchapter II of chapter 135 for which a civil penalty is provided, is liable to the United States for the civil penalty provided. The amount of the civil penalty shall be assessed by the Board by written notice. In determining the amount of the penalty, the Board shall consider the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other matters that justice requires.

(b) **Compromise.** The Board may compromise, modify, or remit, with or without consideration, a civil penalty until the assessment is referred to the Attorney General.

(c) **Collection.** If a person fails to pay an assessment of a civil penalty after it has become final, the Board may refer the matter to the Attorney General for collection in an appropriate district court of the United States.

(d) **Refunds.** The Board may refund or remit a civil penalty collected under this section if—

(1) application has been made for refund or remission of the penalty within 1 year from the date of payment; and

(2) the Board finds that the penalty was unlawfully, improperly, or excessively imposed.

\* \* \* \* \*

# GAMBLING

## GAMBLING SHIPS.

### GAMBLING SHIPS (18 U.S.C. 1082 (1996)).

(a) It shall be unlawful for any citizen or resident of the United States, or any other person who is on an American vessel or is otherwise under or within the jurisdiction of the United States, directly or indirectly—

(1) to set up, operate, or own or hold any interest in any gambling ship or any gambling establishment on any gambling ship; or

(2) in pursuance of the operation of any gambling establishment on any gambling ship, to conduct or deal any gambling game, or to conduct or operate any gambling device, or to induce, entice, solicit, or permit any person to bet or play at any such establishment, if such gambling ship is on the high seas, or is an American vessel or otherwise under or within the jurisdiction of the United States, and is not within the jurisdiction of any State.

(b) Whoever violates the provisions of subsection (a) of this section shall be fined under this title or imprisoned not more than two years, or both.

(c) Whoever, being (1) the owner of an American vessel, or (2) the owner of any vessel under or within the jurisdiction of the United States, or (3) the owner of any vessel and being an American citizen, shall use, or knowingly permit the use of, such vessel in violation of any provision of this section shall, in addition to any other penalties provided by this chapter, forfeit such vessel, together with her tackle, apparel, and furniture, to the United States.

### TRANSPORTATION BETWEEN SHORE AND SHIP; PENALTIES (18 U.S.C. 1083 (1996)).

(a) It shall be unlawful to operate or use, or to permit the operation or use of, a vessel for the carriage or transportation, or for any part of the carriage or transportation, either directly or indirectly, of any passengers, for hire or otherwise, between a point or place within the United States and a gambling ship which is not within the jurisdiction of any State. This section does not apply to any carriage or transportation to or from a vessel in case of emergency involving the safety or protection of life or property.

(b) The Secretary of the Treasury shall prescribe necessary and reasonable rules and regulations to enforce this section and to prevent violations of its provisions. For the operation or use of any vessel in violation of this section or of any rule or regulation issued hereunder, the owner or charterer of such vessel shall be subject to a civil penalty of \$200 for each passenger carried or transported in violation of such provisions, and the master or other person in charge of such vessel shall be

subject to a civil penalty of \$300. Such penalty shall constitute a lien on such vessel, and proceedings to enforce such lien may be brought summarily by way of libel in any court of the United States having jurisdiction thereof. The Secretary of the Treasury may mitigate or remit any of the penalties provided by this section on such terms as he deems proper.

**TRANSMISSION OF WAGERING INFORMATION; PENALTIES (18 U.S.C. 1084 (1996)).**

(a) Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined under this title or imprisoned not more than two years, or both.

(b) Nothing in this section shall be construed to prevent the transmission in interstate or foreign commerce of information for use in news reporting of sporting events or contests, or for the transmission of information assisting in the placing of bets or wagers on a sporting event or contest from a State or foreign country where betting on that sporting event or contest is legal into a State or foreign country in which such betting is legal.

(c) Nothing contained in this section shall create immunity from criminal prosecution under any laws of any State.

(d) When any common carrier, subject to the jurisdiction of the Federal Communications Commission, is notified in writing by a Federal, State, or local law enforcement agency, acting within its jurisdiction, that any facility furnished by it is being used or will be used for the purpose of transmitting or receiving gambling information in interstate or foreign commerce in violation of Federal, State or local law, it shall discontinue or refuse, the leasing, furnishing, or maintaining of such facility, after reasonable notice to the subscriber, but no damages, penalty or forfeiture, civil or criminal, shall be found against any common carrier for any act done in compliance with any notice received from a law enforcement agency. Nothing in this section shall be deemed to prejudice the right of any person affected thereby to secure an appropriate determination, as otherwise provided by law, in a Federal court or in a State or local tribunal or agency, that such facility should not be discontinued or removed, or should be restored.

(e) As used in this section, the term "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a commonwealth, territory or possession of the United States.

## **GAMBLING DEVICES - THE JOHNSON ACT.<sup>1</sup>**

### **SEC. 1. DEFINITIONS (15 U.S.C. 1171 (1996)).**

As used in this Act—

(a) The term “gambling device” means—

(1) any so-called “slot machine” or any other machine or mechanical device an essential part of which is a drum or reel with insignia thereon, and (A) which when operated may deliver, as the result of the application of an element of chance, any money or property, or (B) by the operation of which a person may become entitled to receive, as the result of the application of an element of chance, any money or property; or

(2) any other machine or mechanical device (including, but not limited to, roulette wheels and similar devices) designed and manufactured primarily for use in connection with gambling, and (A) which when operated may deliver, as the result of the application of an element of chance, any money or property, or (B) by the operation of which a person may become entitled to receive, as the result of the application of an element of chance, any money or property; or

(3) any subassembly or essential part intended to be used in connection with any such machine or mechanical device, but which is not attached to any such machine or mechanical device as a constituent part.

(b) The term “State” includes the District of Columbia, Puerto Rico, the Virgin Islands, and Guam.

(c) The term “possession of the United States” means any possession of the United States which is not named in paragraph (b) of this section.

(d) The term “interstate or foreign commerce” means commerce (1) between any State or possession of the United States and any place outside of such State or possession, or (2) between points in the same State or possession of the United States but through any place outside thereof.

(e) The term “intrastate commerce” means commerce wholly within one State or possession of the United States.

(f) The term “boundaries” has the same meaning given that term in section 2 of the Submerged Lands Act.

### **SEC. 2. TRANSPORTATION OF GAMBLING DEVICES AS UNLAWFUL; EXCEPTIONS; AUTHORITY OF FEDERAL TRADE COMMISSION (15 U.S.C. 1172 1996)).**

(a) **General Rule.** It shall be unlawful knowingly to transport any gambling device to any place in a State or a possession of the United States from any place outside of such State, the District of Columbia, or possession: Provided, That this section shall not apply to transportation

---

<sup>1</sup> The Act of January 2, 1951, as amended (15 U.S.C. 1171-1178).

of any gambling device to a place in any State which has enacted a law providing for the exemption of such State from the provisions of this section, or to a place in any subdivision of a State if the State in which such subdivision is located has enacted a law providing for the exemption of such subdivision from the provisions of this section, nor shall this section apply to any gambling device used or designed for use at and transported to licensed gambling establishments where betting is legal under applicable State laws: Provided further, That it shall not be unlawful to transport in interstate or foreign commerce any gambling device into any State in which the transported gambling device is specifically enumerated as lawful in a statute of that State.

(b) **Authority of Federal Trade Commission.** Nothing in this Act shall be construed to interfere with or reduce the authority, or the existing interpretations of the authority, of the Federal Trade Commission under the Federal Trade Commission Act, as amended (15 U.S.C. 41—58).

(c) **Exception.** This section does not prohibit the transport of a gambling device to a place in a State or a possession of the United States on a vessel on a voyage, if—

(1) use of the gambling device on a portion of that voyage is, by reason of subsection (b) of section 5, not a violation of that section; and

(2) the gambling device remains on board that vessel while in that State.

### **SEC. 3. REGISTRATION OF MANUFACTURERS AND DEALERS (15 U.S.C. 1173 (1996)).**

#### **(a) Activities Requiring Registration; Contents of Registration Statement.**

(1) It shall be unlawful for any person engaged in the business of manufacturing gambling devices, if the activities of such business in any way affect interstate or foreign commerce, to manufacture any gambling device during any calendar year, unless, after November 30 of the preceding calendar year, and before the date on which such device is manufactured, such person has registered with the Attorney General under this subsection, regardless of whether such device ever enters interstate or foreign commerce.

(2) It shall be unlawful for any person during any calendar year to engage in the business of repairing, reconditioning, buying, selling, leasing, using, or making available for use by others any gambling device, if in such business he sells, ships, or delivers any such device knowing that it will be introduced into interstate or foreign commerce after the effective date of the Gambling Devices Act of 1962, unless, after November 30 of the preceding calendar year, and before the date

such sale, shipment, or delivery occurs, such person has registered with the Attorney General under this subsection.

(3) It shall be unlawful for any person during any calendar year to engage in the business of repairing, reconditioning, buying, selling, leasing, using, or making available for use by others any gambling device, if in such business he buys or receives any such device knowing that it has been transported in interstate or foreign commerce after the effective date of the Gambling Devices Act of 1962, unless, after November 30 of the preceding calendar year and before the date on which he buys or receives such device, such person has registered with the Attorney General under this subsection.

(4) Each person who registers with the Attorney General pursuant to this subsection shall set forth in such registration (A) his name and each trade name under which he does business, (B) the address of each of his places of business in any State or possession of the United States, (C) the address of a place, in a State or possession of the United States in which such a place of business is located, where he will keep all records, required to be kept by him by subsection (c) of this section, and (D) each activity described in paragraph (1), (2), or (3) of this subsection which he intends to engage in during the calendar year with respect to which such registration is made.

**(b) Numbering of Devices.**

(1) Every manufacturer of a gambling device defined in paragraph (a)(1) or (a)(2) of the first section of this Act shall number seriatim each such gambling device manufactured by him and permanently affix on each such device, so as to be clearly visible, such number, his name, and, if different, any trade name under which he does business, and the date of manufacture of such device.

(2) Every manufacturer of a gambling device defined in paragraph (a)(3) of the first section of this Act shall, if the size of such device permits it, number seriatim each such gambling device manufactured by him and permanently affix on each such device, so as to be clearly visible, such number, his name, and, if different, any trade name under which he does business, and the date of manufacture of such device.

**(c) Records; Required Information.**

(1) Every person required to register under subsection (a) of this section for any calendar year shall, on and after the date of such registration or the first day of such year (whichever last occurs), maintain a record by calendar month for all periods thereafter in such year of—

(A) each gambling device manufactured, purchased, or otherwise acquired by him,

(B) each gambling device owned or possessed by him or in his custody, and

(C) each gambling device sold, delivered, or shipped by him in intrastate, interstate, or foreign commerce.

(2) Such record shall show—

(A) in the case of each such gambling device defined in paragraph (a)(1) or (a)(2) of the first section of this Act, the information which is required to be affixed on such gambling device by subsection (b)(1) of this section; and

(B) in the case of each such gambling device defined in paragraph (a)(3) of the first section of this Act, the information required to be affixed on such gambling device by subsection (b)(2) of this section, or, if such gambling device does not have affixed on it any such information, its catalog listing, description, and, in the case of each such device owned or possessed by him or in his custody, its location.

Such record shall also show (i) in the case of any such gambling device described in paragraph (1)(A) of this subsection, the name and address of the person from whom such device was purchased or acquired and the name and address of the carrier; and (ii) in the case of any such gambling device described in paragraph (1)(C) of this subsection, the name and address of the buyer and consignee thereof and the name and address of the carrier.

(d) **Retention of Records.** Each record required to be maintained under this section shall be kept by the person required to make it at the place designated by him pursuant to subsection (a)(4)(C) of this section for a period of at least five years from the last day of the calendar month of the year with respect to which such record is required to be maintained.

(e) **Dealing in, Owning, Possessing or Having Custody of Devices Not Marked or Numbered; False Entries in Records.**

(1) It shall be unlawful (A) for any person during any period in which he is required to be registered under subsection (a) of this section to sell, deliver, or ship in intrastate, interstate, or foreign commerce or own, possess, or have in his custody any gambling device which is not marked and numbered as required by subsection (b) of this section; or (B) for any person to remove, obliterate, or alter any mark or number on any gambling device required to be placed thereon by such subsection (b).

(2) It shall be unlawful for any person knowingly to make or cause to be made, any false entry in any record required to be kept under this section.

(f) **Authority of Federal Bureau of Investigation.** Agents of the Federal Bureau of Investigation shall; at any place designated pursuant

to subsection (a)(4)(C) of this section by any person required to register by subsection (a) of this section, at all reasonable times, have access to and the right to copy any of the records required to be kept by this section, and, in case of refusal by any person registered under such subsection (a) to allow inspection and copying of such records, the United States district court for the district in which such place is located shall have jurisdiction to issue an order compelling production of such records for inspection or copying.

**SEC. 4. LABELING AND MARKING OF SHIPPING PACKAGES (15 U.S.C. 1174 (1996)).** All gambling devices, and all packages containing any such, when shipped or transported shall be plainly and clearly labeled or marked so that the name and address of the shipper and of the consignee, and the nature of the article or the contents of the package may be readily ascertained on an inspection of the outside of the article or package.

**SEC. 5. SPECIFIC JURISDICTION WITHIN WHICH MANUFACTURING, REPAIRING, SELLING, POSSESSING, ETC., PROHIBITED (15 U.S.C. 1175 (1996)).**

(a) **General Rule.** It shall be unlawful to manufacture, recondition, repair, sell, transport, possess, or use any gambling device in the District of Columbia, in any possession of the United States, within Indian country as defined in section 1151 of title 18 of the United States Code or within the special maritime and territorial jurisdiction of the United States as defined in section 7 of title 18 of the United States Code, including on a vessel documented under chapter 121 of title 46, United States Code, or documented under the laws of a foreign country.

(b) **Exception.**

(1) *In General.* Except as provided in paragraph (2), this section does not prohibit—

(A) the repair, transport, possession, or use of a gambling device on a vessel that is not within the boundaries of any State or possession of the United States;

(B) the transport or possession, on a voyage, of a gambling device on a vessel that is within the boundaries of any State or possession of the United States, if—

(i) use of the gambling device on a portion of that voyage is, by reason of subparagraph (A), not a violation of this section; and

(ii) the gambling device remains on board that vessel while the vessel is within the boundaries of that State or possession; or

(C) the repair, transport, possession, or use of a gambling device on a vessel on a voyage that begins in the State of Indiana and that does not leave the territorial jurisdiction of that State, including such

a voyage on Lake Michigan.

(2) *Application to Certain Voyages.*

(A) General Rule. Paragraph (1)(A) does not apply to the repair or use of a gambling device on a vessel that is on a voyage or segment of a voyage described in subparagraph (B) of this paragraph if the State or possession of the United States in which the voyage or segment begins and ends has enacted a statute the terms of which prohibit that repair or use on that voyage or segment.

(B) Voyage and Segment Described. A voyage or segment of a voyage referred to in subparagraph (A) is a voyage or segment, respectively—

(i) that begins and ends in the same State or possession of the United States, and

(ii) during which the vessel does not make an intervening stop within the boundaries of another State or possession of the United States or a foreign country.

(C) Exclusion of Certain Voyages and Segments.—Except for a voyage or segment of a voyage that occurs within the boundaries of the State of Hawaii, a voyage or segment of a voyage is not described in subparagraph (B) if it includes or consists of a segment—

(i) that begins and ends in the same State;

(ii) that is part of a voyage to another State or to a foreign country; and

(iii) in which the vessel reaches the other State or foreign country within 3 days after leaving the State in which it begins.

(c) **Exception.**—(1) With respect to a vessel operating in Alaska, this section does not prohibit, nor may the State of Alaska make it a violation of law for there to occur, the repair, transport, possession, or use of any gambling device on board a vessel which provides sleeping accommodations for all of its passengers and that is on a voyage or segment of a voyage described in paragraph (2), except that such State may, within its boundaries—

(A) prohibit the use of a gambling device on a vessel while it is docked or anchored or while it is operating within 3 nautical miles of a port at which it is scheduled to call; and

(B) require the gambling devices to remain on board the vessel.

(2) A voyage referred to in paragraph (1) is a voyage that—

(A) includes a stop in Canada or in a State other than the State of Alaska;

(B) includes stops in at least 2 different ports situated in the State of Alaska; and

(C) is of at least 60 hours duration.

**SEC. 6. PENALTIES (15 U.S.C. 1176 (1996)).** Whoever violates any of the provisions of sections 2, 3, 4, or 5 of this Act shall be fined not more than \$5,000 or imprisoned not more than two years, or both.

**SEC. 7. CONFISCATION OF GAMBLING DEVICES AND MEANS OF TRANSPORTATION; LAWS GOVERNING (15 U.S.C. 1177 (1996)).**

Any gambling device transported, delivered, shipped, manufactured, reconditioned, repaired, sold, disposed of, received, possessed, or used in violation of the provisions of this Act shall be seized and forfeited to the United States. All provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of vessels, vehicles, merchandise, and baggage for violation of the customs laws; the disposition of such vessels, vehicles, merchandise, and baggage or the proceeds from the sale thereof; the remission or mitigation of such forfeitures; and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this Act, insofar as applicable and not inconsistent with the provisions hereof: Provided, That such duties as are imposed upon the collector of customs or any other person with respect to the seizure and forfeiture of vessels, vehicles, merchandise, and baggage under the customs laws shall be performed with respect to seizures and forfeitures of gambling devices under this Act by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General.

**SEC. 8. NONAPPLICABILITY OF CHAPTER TO CERTAIN MACHINES AND DEVICES (15 U.S.C. 1178 (1996)).** None of the provisions of this Act shall be construed to apply—

(1) to any machine or mechanical device designed and manufactured primarily for use at a racetrack in connection with pari-mutuel betting,

(2) to any machine or mechanical device, such as a coin-operated bowling alley, shuffleboard, marble machine (a so-called pinball machine), or mechanical gun, which is not designed and manufactured primarily for use in connection with gambling, and (A) which when operated does not deliver, as a result of the application of an element of chance, any money or property, or (B) by the operation of which a person may not become entitled to receive, as the result of the application of an element of chance, any money or property, or

(3) to any so-called claw, crane, or digger machine and similar devices which are not operated by coin, are actuated by a crank, and are designed and manufactured primarily for use at carnivals or county or State fairs.

# MERCHANT MARINE DECORATIONS AND MEDALS ACT

**SEC. 1. TITLE (46 App. U.S.C. 2001, Note (1996)).** This Act may be cited as the “Merchant Marine Decorations and Medals Act”.

**SEC. 2. AUTHORIZATION OF DECORATIONS, MEDALS, AND OTHER RECOGNITION FOR MERCHANT MARINE SERVICE (46 App. U.S.C. 2001 (1996)).** 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 United States merchant marine.

**SEC. 3. DISTINGUISHED SERVICE MEDAL, MERITORIOUS SERVICE MEDAL, DECORATIONS OR MEDALS FOR WAR OR NATIONAL EMERGENCY, OR CONSPICUOUS GALLANTRY, ETC. (46 App. U.S.C. 2002 (1996)).**

The Secretary of Transportation 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 as would warrant the award of the Merchant Marine Distinguished Service Medal;

(3) a decoration or medal to an individual for service in time of war or national emergency proclaimed by the President or Congress, or during operations by the Armed Forces of the United States 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 of the United States.

**SEC. 4. GALLANT SHIP AWARD AND CITATION (46 App. U.S.C. 2003 (1996)).** The Secretary of Transportation may issue a Gallant Ship Award and a citation to a United States vessel or to a foreign-flag vessel participating in outstanding or gallant action in marine disasters or other emergencies for the purpose of saving life or property at sea. The Secretary may award a plaque to a vessel so cited, and a replica of the plaque may be preserved as a permanent historical record. The Secretary may also award an appropriate citation ribbon bar to the master and each individual serving on board the vessel at the time of the action for which the citation is made. The Secretary shall

consult with the Secretary of State before giving an award or citation to a foreign-flag vessel or its crew under this section.

**SEC. 5. INDIVIDUALS NOT TO RECEIVE MORE THAN ONE OF ANY TYPE OF DECORATION; ACCEPTANCE BY PERSON REPRESENTATIVE; REPLACEMENTS (46 App. U.S.C. 2004 (1996)).**

(a) The Secretary of Transportation may not award more than one of any type of decoration or medal to an individual. 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.

(b) When an individual scheduled to receive a decoration or medal under this Act is unable to accept it, the Secretary may make the award to an appropriate personal representative.

(c) The Secretary may provide at cost, or authorize for the manufacture and sale at reasonable prices by private persons—

(1) the decorations and medals authorized under section 2 of this Act and replacements for those decorations and medals; and

(2) replacements for decorations and medals issued under a prior law.

(d) Decorations and medals authorized under section 2 of this Act may be of similar design as are authorized for members of the Armed Forces of the United States for similar acts or service.

**SEC. 6. AUTHORIZATION FOR FLAG AND GRAVE MARKER FOR DECEASED MERCHANT MARINE MEMBER. (46 App. U.S.C. 2005 (1996)).** 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 United States merchant marine in support of the Armed Forces of the United States or its allies in periods of war or national emergency.

**SEC. 7. CERTIFICATE OF RECOGNITION FOR SERVICE OF CERTAIN OTHER INDIVIDUALS (46 App. U.S.C. 2006 (1996)).**

(a) The Maritime Administrator may issue a special certificate in recognition of service to an individual, or the personal representative of an individual, whose service in the United States merchant marine has been determined to be active duty under section 401 of Public Law 95-202 (38 U.S.C. 106, Note).

(b) Issuance of a certificate to any individual under subsection (a) of this section does not entitle that individual to any rights, privileges, or benefits under any law of the United States.

**SEC. 8. EXCLUSIVENESS OF RIGHT TO DECORATION OR MEDAL; CIVIL PENALTY FOR VIOLATION (46 App. U.S.C. 2007 (1996)).** Except as authorized by this Act, a person may not manufacture, sell, possess, or display a decoration or medal provided for in this Act. A person violating this section is liable to the United States Government for a civil penalty of \$2,000.

# PASSENGER/CRUISE VESSELS

## FINANCIAL RESPONSIBILITY

### FINANCIAL RESPONSIBILITY OF OWNERS AND CHARTERERS FOR DEATH OR INJURY TO PASSENGERS OR OTHER PERSONS (46 App. U.S.C. 817d (1996)).

(a) **Amount; Method of Establishment.** Each owner or charterer of an American or foreign vessel having berth or stateroom accommodations for fifty or more passengers, and embarking passengers at United States ports, shall establish, under regulations prescribed by the Federal Maritime Commission, his financial responsibility to meet any liability he may incur for death or injury to passengers or other persons on voyages to or from United States ports, in an amount based upon the number of passenger accommodations aboard the vessel, calculated as follows:

\$20,000 for each passenger accommodation up to and including five hundred; plus

\$15,000 for each additional passenger accommodation between five hundred and one and one thousand; plus

\$10,000 for each additional passenger accommodation between one thousand and one and one thousand five hundred; plus

\$5,000 for each passenger accommodation in excess of one thousand five hundred:

Provided, however, That if such owner or charterer is operating more than one vessel subject to this section, the foregoing amount shall be based upon the number of passenger accommodations on the vessel being so operated which has the largest number of passenger accommodations. This amount shall be available to pay any judgment for damages, whether in amount less than or more than \$20,000 for death or injury occurring on such voyages to any passenger or other person. Such financial responsibility may be established by any one of, or a combination of, the following methods which is acceptable to the Commission: (1) policies of insurance, (2) surety bonds, (3) qualifications as a self-insurer, or (4) other evidence of financial responsibility.

(b) **Issuance of Bond when Filed with Commission.** If a bond is filed with the Commission, then such bond shall be issued by a bonding company authorized to do business in the United States or any State thereof or the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, or any territory or possession of the United States.

(c) **Civil Penalties for Violations; Remission or Mitigation of Penalties.** Any person who shall violate this section shall be subject to a civil penalty of not more than \$5,000 in addition to a civil penalty of

\$200 for each passage sold, such penalties to be assessed by the Federal Maritime Commission. These penalties may be remitted or mitigated by the Federal Maritime Commission upon such terms as they in their discretion shall deem proper.

(d) **Rules and Regulations.** The Federal Maritime Commission is authorized to prescribe such regulations as may be necessary to carry out the provisions of this section. The provisions of the Shipping Act of 1984, shall apply with respect to proceedings conducted by the Commission under this section.

(e) **Refusal of Departure Clearance.** At the port or place of departure from the United States of any vessel described in subsection (a) of this section, the Customs Service shall refuse the clearance required by section 4197 of the Revised Statutes (46 U.S.C. 91) to any such vessel which does not have evidence furnished by the Federal Maritime Commission that the provisions of this section have been complied with.

### **FINANCIAL RESPONSIBILITY FOR INDEMNIFICATION OF PASSENGERS FOR NONPERFORMANCE OF TRANSPORTATION (46 App. U.S.C. 817e (1996)).**

(a) **Filing of Information or Bond with Commission.** No person in the United States shall arrange, offer, advertise, or provide passage on a vessel having berth or stateroom accommodations for fifty or more passengers and which is to embark passengers at United States ports without there first having been filed with the Federal Maritime Commission such information as the Commission may deem necessary to establish the financial responsibility of the person arranging, offering, advertising, or providing such transportation, or in lieu thereof a copy of a bond or other security, in such form as the Commission, by rule or regulation, may require and accept, for indemnification of passengers for nonperformance of the transportation.

(b) **Issuance of Bond when Filed with Commission; Amount of Bond.** If a bond is filed with the Commission, such bond shall be issued by a bonding company authorized to do business in the United States or any State thereof, or the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands or any territory or possession of the United States.

(c) **Civil Penalties for Violations; Remission or Mitigation of Penalties.** Any person who shall violate this section shall be subject to a civil penalty of not more than \$5,000 in addition to a civil penalty of \$200 for each passage sold, such penalties to be assessed by the Federal Maritime Commission. These penalties may be remitted or mitigated by the Federal Maritime Commission upon such terms as they in their discretion shall deem proper.

(d) **Rules and Regulations.** The Federal Maritime Commission is authorized to prescribe such regulations as may be necessary to carry out the provisions of this section. The provisions of the Shipping Act of 1984, shall apply with respect to proceedings conducted by the Commission under this section.

(e) **Refusal of Departure Clearance.** At the port or place of departure from the United States of any vessel described in subsection (a) of this section, the Customs Service shall refuse the clearance required by section 4197 of the Revised Statutes (46 U.S.C. 91) to any such vessel which does not have evidence furnished by the Federal Maritime Commission that the provisions of this section have been complied with.

## **LIMITATION OF VESSEL OWNER'S LIABILITY**

### **AMOUNT OF LIABILITY (46 App. U.S.C. 183 (1996)).**

(a) **Privity or Knowledge of Owner; Limitation.** The liability of the owner of any vessel, whether American or foreign, for any embezzlement, loss, or destruction by any person of any property, goods, or merchandise shipped or put on board of such vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing, loss, damage, or forfeiture, done, occasioned, or incurred, without the privity or knowledge of such owner or owners, shall not, except in the cases provided for in subsection (b) of this section, exceed the amount or value of the interest of such owner in such vessel, and her freight then pending.

(b) **Seagoing Vessels; Losses Not Covered in Full.** In the case of any seagoing vessel, if the amount of the owner's liability as limited under subsection (a) is insufficient to pay all losses in full, and the portion of such amount applicable to the payment of losses in respect of loss of life or bodily injury is less than \$420 per ton of such vessel's tonnage, such portion shall be increased to an amount equal to \$420 per ton, to be available only for the payment of losses in respect of loss of life or bodily injury. If such portion so increased is insufficient to pay such losses in full, they shall be paid therefrom in proportion to their respective amounts.

(c) **Tonnage of Seagoing Vessels.** For the purposes of this section the tonnage of a seagoing steam or motor vessel shall be her gross tonnage without deduction on account of engine room, and the tonnage of a seagoing sailing vessel shall be her registered tonnage: Provided, That there shall not be included in such tonnage any space occupied by seamen or apprentices and appropriated to their use.

(d) **Loss of Life or Bodily Injury Arising on Distinct Occasions.** The owner of any such seagoing vessel shall be liable in respect of loss

of life or bodily injury arising on distinct occasions to the same extent as if no other loss of life or bodily injury had arisen.

(e) **Privity Imputed to Owner.** In respect of loss of life or bodily injury the privity or knowledge of the master of a seagoing vessel or of the superintendent or managing agent of the owner thereof, at or prior to the commencement of each voyage, shall be deemed conclusively the privity or knowledge of the owner of such vessel.

(f) **“Seagoing Vessel” Defined.** As used in subsections (b), (c), (d), and (e) of this section and in section 4283A, the term “seagoing vessel” shall not include pleasure yachts, tugs, towboats, towing vessels, tank vessels, fishing vessels or their tenders, self-propelled lighters, nondescript self-propelled vessels, canal boats, scows, car floats, barges, lighters, or nondescript non-self-propelled vessels, even though the same may be seagoing vessels within the meaning of such term as used in section 4289 of this chapter, as amended.

(g) **Applicability of Statutory Limitations.** In a suit by any person in which the operator or owner 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, such operator, owner, or employer shall be entitled to rely upon any and all 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.

## **STIPULATIONS LIMITING TIME FOR FILING CLAIMS AND COMMENCING SUIT (46 App. U.S.C. 183b (1996)).**

(a) **Time Periods.** It shall be unlawful for the manager, agent, master, or owner of any sea-going vessel (other than tugs, barges, fishing vessels and their tenders) transporting passengers or merchandise or property from or between ports of the United States and foreign ports to provide by rule, contract, regulation, or otherwise a shorter period for giving notice of, or filing claims for loss of life or bodily injury, than six months, and for the institution of suits on such claims, than one year, such period for institution of suits to be computed from the day when the death or injury occurred.

(b) **Claims Not Barred for Failure to Give Notice.** Failure to give such notice, where lawfully prescribed in such contract, shall not bar any such claim—

(1) If the owner or master of the vessel or his agent had knowledge of the injury, damage, or loss and the court determines that the owner has not been prejudiced by the failure to give such notice; nor

(2) If the court excuses such failure on the ground that for some satisfactory reason such notice could not be given; nor

(3) Unless objection to such failure is raised by the owner.

(c) **Mental Incompetents; Minors; Wrongful Death Actions.** If a person who is entitled to recover on any such claim is mentally incompetent or a minor, or if the action is one for wrongful death, any lawful limitation of time prescribed in such contract shall not be applicable so long as no legal representative has been appointed for such incompetent, minor, or decedent's estate, but shall be applicable from the date of the appointment of such legal representative: Provided, however, That such appointment be made within three years after the date of such death or injury.

### **STIPULATIONS LIMITING LIABILITY FOR NEGLIGENCE INVALID (46 App. U.S.C. 183c (1996)).**

(a) **Unlawful Stipulations.** It shall be unlawful for the manager, agent, master, or owner of any vessel transporting passengers between ports of the United States or between any such port and a foreign port to insert in any rule, regulation, contract, or agreement any provision or limitation (1) purporting, in the event of loss of life or bodily injury arising from the negligence or fault of such owner or his servants, to relieve such owner, master, or agent from liability, or from liability beyond any stipulated amount, for such loss or injury, or (2) purporting in such event to lessen, weaken, or avoid the right of any claimant to a trial by court of competent jurisdiction on the question of liability for such loss or injury, or the measure of damages therefor. All such provisions or limitations contained in any such rule, regulation, contract, or agreement are hereby declared to be against public policy and shall be null and void and of no effect.

(b)(1) **Contract Limitations Allowed.** Subsection (a) shall not prohibit provisions or limitations in contracts, agreements, or ticket conditions of carriage with passengers which relieve a crewmember, manager, agent, master, owner, or operator of a vessel from liability for infliction of emotional distress, mental suffering, or psychological injury so long as such provisions or limitations do not limit such liability if the emotional distress, mental suffering, or psychological injury was—

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

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

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

(2) Nothing in this subsection is intended to limit the liability of a crewmember or the manager, agent, master, owner, or operator of a vessel in a case involving sexual harassment, sexual assault, or rape.

**TAX DEDUCTION FOR CONVENTION ON  
CRUISE SHIPS**

**DISALLOWANCE OF CERTAIN ENTERTAINMENT, ETC.  
EXPENSES (26 U.S.C. 274 (1996)).**

\* \* \* \* \*

**(h) Attendance at Conventions, etc.**

\* \* \* \* \*

(2) *Conventions on Cruise Ships.* In the case of any individual who attends a convention, seminar, or other meeting which is held on any cruise ship, no deduction shall be allowed under section 162 for expenses allocable to such meeting, unless the taxpayer meets the requirements of paragraph (5) and establishes that the meeting is directly related to the active conduct of his trade or business and that—

(A) the cruise ship is a vessel registered in the United States; and

(B) all ports of call of such cruise ship are located in the United States or in possessions of the United States. With respect to cruises beginning in any calendar year, not more than \$2,000 of the expenses attributable to an individual attending one or more meetings may be taken into account under section 162 by reason of the preceding sentence.

(3) *Definitions.* For purposes of this subsection—

(A) North American Area. The term “North American area” means the United States, its possessions, and the Trust Territory of the Pacific Islands, and Canada and Mexico.

(B) Cruise Ship. The term “cruise ship” means any vessel sailing within or without the territorial waters of the United States.

(4) *Subsection to apply to employer as well as to traveler.*

(A) Except as provided in subparagraph (B), this subsection shall apply to deductions otherwise allowable under section 162 to any person, whether or not such person is the individual attending the convention, seminar, or similar meeting.

(B) This subsection shall not deny a deduction to any person other than the individual attending the convention, seminar, or similar meeting with respect to any amount paid by such person to or on behalf of such individual if includible in the gross income of such individual. The preceding sentence shall not apply if the amount is required to be

included in any information return filed by such person under part III of subchapter A of chapter 61 and is not so included.

(5) *Reporting Requirements.* No deduction shall be allowed under section 162 for expenses allocable to attendance at a convention, seminar, or similar meeting on any cruise ship unless the taxpayer claiming the deduction attaches to the return of tax on which the deduction is claimed—

(A) a written statement signed by the individual attending the meeting which includes—

(i) information with respect to the total days of the trip, excluding the days of transportation to and from the cruise ship port, and the number of hours of each day of the trip which such individual devoted to scheduled business activities,

(ii) a program of the scheduled business activities of the meeting, and

(iii) such other information as may be required in regulations prescribed by the Secretary; and

(B) a written statement signed by an officer of the organization or group sponsoring the meeting which includes—

(i) a schedule of business activities of each day of the meeting,

(ii) the number of hours which the individual attending the meeting attended such scheduled business activities, and

(iii) such other information as may be required in regulations prescribed by the Secretary.

\* \* \* \* \*

**(m) Additional Limitations on Travel Expenses.**

**(1) *Luxury Water Transportation.***

(A) In General. No deduction shall be allowed under this chapter for expenses incurred for transportation by water to the extent such expenses exceed twice the aggregate per diem amounts for days of such transportation. For purposes of the preceding sentence, the term “per diem amounts” means the highest amount generally allowable with respect to a day to employees of the executive branch of the Federal Government for per diem while away from home but serving in the United States.

(B) Exceptions. Subparagraph (A) shall not apply to—

(i) any expense allocable to a convention, seminar, or other meeting which is held on any cruise ship, and

(ii) any expense described in paragraph (2), (3), (4), (7), (8), or (9) of subsection (e).

\* \* \* \* \*

## SALE FOREIGN OF U.S.-FLAG PASSENGER SHIPS

### SALE OF INACTIVE PASSENGER VESSELS TO FOREIGNERS; CONDITIONS; REQUISITION IN EMERGENCY; SURETY BOND (46 App. U.S.C. 865a (1996)).<sup>1</sup>

Notwithstanding any other provision of law or of prior contract with the United States, any vessel heretofore operated as a passenger vessel, as defined in section 613(a) of the Merchant Marine Act, 1936, as amended, under an operating-differential subsidy contract with the United States and now in inactive or layup status, except the steamship Independence and the steamship United States, may be sold and transferred to foreign ownership, registry, and flag, with the prior approval of the Secretary of Transportation. Such approval shall require (1) approval of the purchaser; (2) payment of existing debt and private obligations related to the vessel; (3) approval of the price, including terms of payment, for the sale of the vessel; (4) the seller to enter into an agreement with the Secretary whereby an amount equal to the net proceeds received from such sale in excess of existing obligations and expenses incident to the sale shall within a reasonable period not to exceed twelve months of receipt be committed and thereafter be used as equity capital for the construction of new vessels which the Secretary determines are built to effectuate the purposes and policy of the Merchant Marine Act, 1936, as amended; and (5) the purchaser to enter into an agreement with the Secretary, binding upon such purchaser and any later owner of the vessel and running with title to the vessel, that (a) the vessel will not carry passengers or cargo in competition, as determined by the Secretary, with any United States-flag passenger vessel for a period of two years from the date the transferred vessel goes into operation; (b) the vessel will be made available to the United States in time of emergency and just compensation for title or use, as the case may be, shall be paid in accordance with section 902 of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1242); (c) the purchaser will comply with such further conditions as the Secretary may impose as authorized by sections 9, 37, and 41 of the Shipping Act, 1916, as amended (46 U.S.C. 808, 835, and 839); and (d) the purchaser will furnish a surety bond in an amount and with a surety satisfactory to the Secretary to secure performance of the foregoing agreements.

In addition to any other provision such agreements may contain for enforcement of (4) and (5) above, the agreements therein required may be specifically enforced by decree for specific performance or injunction in any district court of the United States. In the agreement with the

---

<sup>1</sup> Enacted as section 1 of Public Law 92-296, approved May 16, 1972 (86 STAT. 140).

Secretary the purchaser shall irrevocably appoint a corporate agent within the United States for service of process upon such purchaser in any action to enforce the agreement.

# **ADMIRALTY/MARITIME JURISDICTION**

**EXTENSION OF ADMIRALTY AND MARITIME JURISDICTION; LIBEL IN REM OR IN PERSONAM; EXCLUSIVE REMEDY; WAITING PERIOD (46 App. U.S.C. 740 (1996)).** The admiralty and maritime jurisdiction of the United States shall extend to and include all cases of damage or injury, to person or property, caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land. In any such case suit may be brought in rem or in personam according to the principles of law and the rules of practice obtaining in cases where the injury or damage has been done and consummated on navigable water: Provided, That as to any suit against the United States for damage or injury done or consummated on land by a vessel on navigable waters, the Public Vessels Act or Suits in Admiralty Act, as appropriate, shall constitute the exclusive remedy for all causes of action arising after the date of the passage of this Act and for all causes of action where suit has not been hitherto filed under the Federal Tort Claims Act: Provided further, That no suit shall be filed against the United States until there shall have expired a period of six months after the claim has been presented in writing to the Federal agency owning or operating the vessel causing the injury or damage.

## **SUITS IN ADMIRALTY ACT**

**SEC. 1. EXEMPTION OF UNITED STATES VESSELS AND CARGOES FROM ARREST OR SEIZURE (46 App. U.S.C. 741 (1996)).** No vessel owned by the United States or by any corporation in which the United States or its representatives shall own the entire outstanding capital stock or in the possession of the United States or of such corporation or operated by or for the United States or such corporation, and no cargo owned or possessed by the United States or by such corporation, shall hereafter, in view of the provision herein made for a libel in personam, be subject to arrest or seizure by judicial process in the United States or its possessions: Provided, That this Act shall not apply to the Panama Railroad Company.

## **GENERAL DEFINITION OF VESSEL**

**VESSEL DEFINITION (1 U.S.C. 3 (1996)).** The word “vessel” includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

# PUBLIC VESSELS ACT

**SEC. 1. LIBEL IN ADMIRALTY AGAINST OR IMPLAIDER OF UNITED STATES (46 App. U.S.C. 781 (1996)).** A libel in personam in admiralty may be brought against the United States, or a petition impleading the United States, for damages caused by a public vessel of the United States, and for compensation for towage and salvage services, including contract salvage, rendered to a public vessel of the United States: Provided, That the cause of action arose after the 6th day of April, 1920.

**SEC. 2. VENUE OF SUIT; APPLICATION OF PROVISIONS OF THE SUITS IN ADMIRALTY ACT (46 App. U.S.C. 782 (1996)).** Such suit shall be brought in the district court of the United States for the district in which the vessel or cargo charged with creating the liability is found within the United States, or if such vessel or cargo be outside the territorial waters of the United States, then in the district court of the United States for the district in which the parties so suing, or any of them, reside or have an office for the transaction of business in the United States; or in case none of such parties reside or have an office for the transaction of business in the United States, and such vessel or cargo be outside the territorial waters of the United States, then in any district court of the United States. Such suits shall be subject to and proceed in accordance with the provisions of an Act entitled "An Act authorizing suits against the United States in admiralty, suits for salvage services, and providing for the release of merchant vessels belonging to the United States from arrest and attachment in foreign jurisdictions, and for other purposes," approved March 9, 1920, or any amendment thereof, in so far as the same are not inconsistent herewith, except that no interest shall be allowed on any claim up to the time of the rendition of judgment unless upon a contract expressly stipulating for the payment of interest.

**SEC. 3. CROSS LIBEL, SET-OFF, OR COUNTERCLAIM (46 App. U.S.C. 783 (1996)).** In the event of the United States filing a libel in rem or in personam in admiralty for damages caused by a privately owned vessel, the owner of such vessel, or his successors in interest, may file a cross libel in personam or claim a set-off or counterclaim against the United States in such suit for and on account of any damages arising out of the same subject matter or cause of action: Provided, That whenever a cross libel is filed for any cause of action for which the original libel is filed by authority of this Act, the respondent in the cross libel shall give security in the usual amount and form to respond to the claim set forth in said cross libel unless the court, for cause shown, shall otherwise direct; and all proceedings on the original libel shall be stayed until such security shall be given.

**SEC. 4. SUBPOENAS TO OFFICERS OR MEMBERS OF CREWS (46 App. U.S.C. 784 (1996)).** No officer or member of the crew of any public vessel of the United States may be subpoenaed in connection with any suit authorized under this Act without the consent of the Secretary of the department or the head of any independent establishment of the Government having control of the vessel at the time the cause of action arose, or of the master or commanding officer of such vessel at the time of the issuance of such subpoena.

**SEC. 5. SUITS BY NATIONALS OF FOREIGN GOVERNMENTS (46 App. U.S.C. 785 (1996)).** No suit may be brought under this Act by a national of any foreign government unless it shall appear to the satisfaction of the court in which suit is brought that said government, under similar circumstances, allows nationals of the United States to sue in its courts.

**SEC. 6. ARBITRATION, COMPROMISE, OR SETTLEMENT (46 App. U.S.C. 786 (1996)).** The Attorney General of the United States is authorized to arbitrate, compromise, or settle any claim on which a libel or cross libel would lie under the provisions of this Act, and for which a libel or cross libel has actually been filed.

**SEC. 7. PAYMENT OF JUDGMENTS OR SETTLEMENTS (46 App. U.S.C. 787 (1996)).** Any final judgment rendered on any libel or cross libel herein authorized, and any settlement had and agreed to under the provisions of section 6 of this Act, shall, upon presentation of a duly authenticated copy thereof, be paid by the proper accounting officer of the United States out of any moneys in the Treasury of the United States appropriated therefor by Congress.

**SEC. 8. LIEN NOT CREATED AGAINST PUBLIC VESSELS (46 App. U.S.C. 788 (1996)).** Nothing contained in this Act shall be construed to recognize the existence of or as creating a lien against any public vessel of the United States.

**SEC. 9. EXEMPTIONS AND LIMITATIONS OF LIABILITY (46 App. U.S.C. 789 (1996)).** The United States shall be entitled to the benefits of all exemptions and of all limitations of liability accorded by law to the owners, charterers, operators or agents of vessels.

**SEC. 10. REPORTS BY ATTORNEY GENERAL (46 App. U.S.C. 790 (1996)).** The Attorney General of the United States shall report to the Congress at each session thereof all claims which shall have been settled under this act.

# EMERGENCY FOREIGN VESSELS ACQUISITION ACT

**SEC. 1. EMERGENCY FOREIGN VESSEL ACQUISITION; PURCHASE OR REQUISITION OF VESSELS LYING IDLE IN UNITED STATES WATERS (50 U.S.C. 196 (1996)).** During any period in which vessels may be requisitioned under section 902 of the Merchant Marine Act, 1936, as amended, the President is authorized and empowered through the Secretary of Transportation to purchase, or to requisition, or for any part of such period to charter or requisition the use of, or to take over the title to or possession of, for such use or disposition as he shall direct, any merchant vessel not owned by citizens of the United States which is lying idle in waters within the jurisdiction of the United States and which the President finds to be necessary to the national defense. Just compensation shall be determined and made to the owner or owners of any such vessel in accordance with the applicable provisions of section 902 of the Merchant Marine Act, 1936, as amended. Such compensation hereunder, or advances on account thereof, shall be deposited with the Treasurer of the United States in a separate deposit fund. Payments for such compensation and also for payment of any valid claim upon such vessel in accord with the provisions of the second paragraph of subsection (d) of such section 902, as amended, shall be made from such fund upon the certificate of the Secretary of Transportation.

**SEC. 2. VOLUNTARY PURCHASE OR CHARTER AGREEMENTS (50 U.S.C. 197 (1996)).** During any period in which vessels may be requisitioned under section 902 of the Merchant Marine Act, 1936, as amended, the President is authorized through the Secretary of Transportation to acquire by voluntary agreement of purchase or charter the ownership or use of any merchant vessel not owned by citizens of the United States.

**SEC. 3. REQUISITIONED VESSELS (50 U.S.C. 198 (1996)).**

(a) **Documentation of Vessels.** Any vessel not documented under the laws of the United States, acquired by or made available to the Secretary of Transportation under this Act, or otherwise, may, notwithstanding any other provision of law, in the discretion of the Secretary of the Treasury be documented as a vessel of the United States under such rules and regulations or orders, and with such limitations, as the Secretary of the Treasury may prescribe or issue as necessary or appropriate to carry out the purposes and provisions of this Act, and in accordance with the provisions of subsection (c) hereof, engage in the coastwise trade when so documented. Any document issued to a vessel

under the provisions of this subsection shall be surrendered at any time that such surrender may be ordered by the Secretary of the Treasury. No vessel, the surrender of the documents of which has been so ordered, shall, after the effective date of such order, have the status of a vessel of the United States unless documented anew.

(b) **Waiver of Compliance.** The President may, notwithstanding any other provisions of law, by rules and regulations or orders, waive compliance with any provision of law relating to masters, officers, members of the crew, or crew accommodations on any vessel documented under authority of this section to such extent and upon such terms as he finds necessary because of the lack of physical facilities on such vessels, and because of the need to employ aliens for their operation. No vessel shall cease to enjoy the benefits and privileges of a vessel of the United States by reason of the employment of any person in accordance with the provisions of this subsection.

(c) **Coastwise Trade; Inspection.** Any vessel while documented under the provisions of this section, when chartered under this Act by the Secretary of Transportation to Government agencies or departments or to private operators, may engage in the coastwise trade under permits issued by the Secretary of Transportation, who is hereby authorized to issue permits for such purpose pursuant to such rules and regulations as he may prescribe. The Secretary of Transportation is hereby authorized to prescribe such rules and regulations as he may deem necessary or appropriate to carry out the purposes and provisions of this section. The second paragraph of section 9 of the Shipping Act, 1916, as amended, shall not apply with respect to vessels chartered to Government agencies or departments or to private operators or otherwise used or disposed of under this Act. Existing laws covering the inspection of steam vessels are hereby made applicable to vessels documented under this section only to such extent and upon such conditions as may be required by regulations of the Secretary of the department in which the Coast Guard is operating: Provided, That in determining to what extent those laws should be made applicable, due consideration shall be given to the primary purpose of transporting commodities essential to the national defense.

(d) **Reconditioning of Vessels.** The Secretary of Transportation without regard to the provisions of section 3709 of the Revised Statutes may repair, reconstruct, or recondition any vessels to be utilized under this Act. The Secretary of Transportation and any other Government department or agency by which any vessel is acquired or chartered, or to which any vessel is transferred or made available under this Act may, with the aid of any funds available and without regard to the provisions of said section 3709, repair, reconstruct, or recondition any such vessels

to meet the needs of the services intended, or provide facilities for such repair, reconstruction, or reconditioning. The Secretary of Transportation may operate or charter for operation any vessel to be utilized under this Act to private operators, citizens of the United States, or to any department or agency of the United States Government, without regard to the provisions of title VII of the Merchant Marine Act, 1936, and any department or agency of the United States Government is authorized to enter into such charters.

(e) **Effective Period.** In case of any voyage of a vessel documented under the provisions of this section begun before the date of termination of an effective period of section 1 hereof, but is completed after such date, the provisions of this section shall continue in effect with respect to such vessel until such voyage is completed.

(f) **Definition.** When used in this Act, the term “documented” means “registered,” “enrolled and licensed,” or “licensed”.

# NATIONAL EMERGENCIES ACT<sup>1</sup>

## **SEC. 101. TERMINATION OF EXISTING DECLARED EMERGENCIES (50 U.S.C. 1601 (1996)).**

(a) All powers and authorities possessed by the President, any other officer or employee of the Federal Government, or any executive agency, as defined in section 105 of title 5, United States Code, as a result of the existence of any declaration of national emergency in effect on the date of enactment of this Act are terminated two years from the date of such enactment. Such termination shall not affect—

- (1) any action taken or proceeding pending not finally concluded or determined on such date;
- (2) any action or proceeding based on any act committed prior to such date; or
- (3) any rights or duties that matured or penalties that were incurred prior to such date.

(b) For the purpose of this section, the words “any national emergency in effect” means a general declaration of emergency made by the President.

## **SEC. 201. DECLARATION OF NATIONAL EMERGENCY BY PRESIDENT; PUBLICATION IN FEDERAL REGISTER; EFFECT ON OTHER LAWS; SUPERSEDING LEGISLATION (50 U.S.C. 1621 (1996)).**

(a) With respect to Acts of Congress authorizing the exercise, during the period of a national emergency, of any special or extraordinary power, the President is authorized to declare such national emergency. Such proclamation shall immediately be transmitted to the Congress and published in the Federal Register.

(b) Any provisions of law conferring powers and authorities to be exercised during a national emergency shall be effective and remain in effect (1) only when the President (in accordance with subsection (a) of this section), specifically declares a national emergency, and (2) only in accordance with this Act. No law enacted after the date of enactment of this Act shall supersede this title unless it does so in specific terms, referring to this title, and declaring that the new law supersedes the provisions of this title.

---

<sup>1</sup> Section numbers refer to Public Law 94-412, approved September 14, 1976 (90 STAT. 1255), the National Emergency Act, as amended.

**SEC. 202. NATIONAL EMERGENCIES (50 U.S.C. 1622 (1996)).**

(a) **Termination Methods.** Any national emergency declared by the President in accordance with this title shall terminate if—

- (1) there is enacted into law a joint resolution terminating the emergency; or
- (2) the President issues a proclamation terminating the emergency.

Any national emergency declared by the President shall be terminated on the date specified in any joint resolution referred to in clause (1) or on the date specified in a proclamation by the President terminating the emergency as provided in clause (2) of this subsection, whichever date is earlier, and any powers or authorities exercised by reason of said emergency shall cease to be exercised after such specified date, except that such termination shall not affect—

(A) any action taken or proceeding pending not finally concluded or determined on such date;

(B) any action or proceeding based on any act committed prior to such date; or

(C) any rights or duties that matured or penalties that were incurred prior to such date.

(b) **Termination Review of National Emergencies by Congress.**

Not later than six months after a national emergency is declared, and not later than the end of each six-month period thereafter that such emergency continues, each House of Congress shall meet to consider a vote on a joint resolution to determine whether that emergency shall be terminated.

(c) **Joint Resolution; Referral to Congressional Committees; Conference Committee in Event of Disagreement; Filing of Report; Termination Procedure Deemed Part of Rules of House and Senate.**

(1) A joint resolution to terminate a national emergency declared by the President shall be referred to the appropriate committee of the House of Representatives or the Senate, as the case may be. One such joint resolution shall be reported out by such committee together with its recommendations within fifteen calendar days after the day on which such resolution is referred to such committee, unless such House shall otherwise determine by the yeas and nays.

(2) Any joint resolution so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents) and shall be voted on within three calendar days after the day on which such resolution is reported, unless such House shall otherwise determine by yeas and nays.

(3) Such a joint resolution passed by one House shall be referred to the appropriate committee of the other House and shall be reported out by such committee together with its recommendations within fifteen calendar days after the day on which such resolution is referred to such committee and shall thereupon become the pending business of such House and shall be voted upon within three calendar days after the day on which such resolution is reported, unless such House shall otherwise determine by yeas and nays.

(4) In the case of any disagreement between the two Houses of Congress with respect to a joint resolution passed by both Houses, conferees shall be promptly appointed and the committee of conference shall make and file a report with respect to such joint resolution within six calendar days after the day on which managers on the part of the Senate and the House have been appointed. Notwithstanding any rule in either House concerning the printing of conference reports or concerning any delay in the consideration of such reports, such report shall be acted on by both Houses not later than six calendar days after the conference report is filed in the House in which such report is filed first. In the event the conferees are unable to agree within forty-eight hours, they shall report back to their respective Houses in disagreement.

(5) Paragraphs (1)—(4) of this subsection, subsection (b) of this section, and section 502(b) of this Act are enacted by Congress—

(A) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in the House in the case of resolutions described by this subsection; and they supersede other rules only to the extent that they are inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

(d) **Automatic Termination of National Emergency; Continuation Notice from President to Congress; Publication in Federal Register.** Any national emergency declared by the President in accordance with this title, and not otherwise previously terminated, shall terminate on the anniversary of the declaration of that emergency if, within the ninety-day period prior to each anniversary date, the President does not publish in the Federal Register and transmit to the Congress a notice stating that such emergency is to continue in effect after such anniversary.

**SEC. 301. DECLARATION OF NATIONAL EMERGENCY BY EXECUTIVE ORDER, AUTHORITY; PUBLICATION IN FEDERAL REGISTER, TRANSMITTAL TO A CONGRESS (50 U.S.C. 1631 (1996)).** When the President declares a national emer-

gency, no powers or authorities made available by statute for use in the event of an emergency shall be exercised unless and until the President specifies the provisions of law under which he proposes that he, or other officers will act. Such specification may be made either in the declaration of a national emergency, or by one or more contemporaneous or subsequent Executive orders published in the Federal Register and transmitted to the Congress.

**SEC. 401. ACCOUNTABILITY AND REPORTING REQUIREMENTS OF THE PRESIDENT (50 U.S.C. 1641 (1996)).**

(a) **Maintenance of File and Index of Presidential Orders, Rules, and Regulations During National Emergency.** When the President declares a national emergency, or Congress declares war, the President shall be responsible for maintaining a file and index of all significant orders of the President, including Executive orders and proclamations, and each Executive agency shall maintain a file and index of all rules and regulations, issued during such emergency or war issued pursuant to such declarations.

(b) **Presidential Orders, Rules and Regulations; Transmittal to Congress.** All such significant orders of the President, including Executive orders, and such rules and regulations shall be transmitted to the Congress promptly under means to assure confidentiality where appropriate.

(c) **Expenditures During National Emergency; Presidential Reports to Congress.** When the President declares a national emergency or Congress declares war, the President shall transmit to Congress, within ninety days after the end of each six-month period after such declaration, a report on the total expenditures incurred by the United States Government during such six-month period which are directly attributable to the exercise of powers and authorities conferred by such declaration. Not later than ninety days after the termination of each such emergency or war, the President shall transmit a final report on all such expenditures.

**SEC. 502. OTHER LAWS, POWERS AND AUTHORITIES CONFERRED THEREBY, AND ACTIONS TAKEN THEREUNDER; CONGRESSIONAL STUDIES (50 U.S.C. 1651 (1996)).**

(a) The provisions of this act shall not apply to the following provisions of law, the powers and authorities conferred thereby, and actions taken thereunder:

- (1) [Repealed]
- (2) Act of April 28, 1942 (40 U.S.C. 278b);
- (3) Act of June 30, 1949 (41 U.S.C. 252);

(4) Section 3477 of the Revised Statutes, as amended (31 U.S.C. 203);

(5) Section 3737 of the Revised Statutes, as amended (41 U.S.C. 15);

(6) Public Law 85-804 (Act of Aug. 28, 1958, 72 Stat. 972; 50 U.S.C. 1431—1435);

(7) [Repealed]

(b) Each committee of the House of Representatives and the Senate having jurisdiction with respect to any provision of law referred to in subsection (a) of this section shall make a complete study and investigation concerning that provision of law and make a report, including any recommendations and proposed revisions such committee may have, to its respective House of Congress within two hundred and seventy days after the date of enactment of this act.

# CIVIL PROCEDURES

## **CIVIL PENALTY PROCEDURES (49 U.S.C. 336 (1996)).**

(a) After notice and an opportunity for a hearing, a person found by the Secretary of Transportation to have violated a provision of law that the Secretary carries out through the Maritime Administrator or the Commandant of the Coast Guard or a regulation prescribed under that law by the Secretary for which a civil penalty is provided, is liable to the United States Government for the civil penalty provided. The amount of the civil penalty shall be assessed by the Secretary by written notice. In determining the amount of the penalty, the Secretary shall consider the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other matters that justice requires.

(b) The Secretary may compromise, modify, or remit, with or without consideration, a civil penalty until the assessment is referred to the Attorney General.

(c) If a person fails to pay an assessment of a civil penalty after it has become final, the Secretary may refer the matter to the Attorney General for collection in an appropriate district court of the United States.

(d) The Secretary may refund or remit a civil penalty collected under this section if—

(1) application has been made for refund or remission of the penalty within one year from the date of payment; and

(2) the Secretary finds that the penalty was unlawfully, improperly, or excessively imposed.

## **ORDER OF FEDERAL AGENCIES, REVIEW—THE HOBBS ACT**

### **REVIEW OF ORDERS; TIME; NOTICE; CONTENTS OF PETITIONS; SERVICE (28 U.S.C. 2344 (1996)).**

On the entry of a final order reviewable under this chapter, the agency shall promptly give notice thereof by service or publication in accordance with its rules. Any party aggrieved by the final order may, within 60 days after its entry, file a petition to review the order in the court of appeals wherein venue lies. The action shall be against the United States. The petition shall contain a concise statement of—

(1) the nature of the proceedings as to which review is sought;

(2) the facts on which venue is based;

(3) the grounds on which relief is sought; and

(4) the relief prayed.

The petitioner shall attach to the petition, as exhibits, copies of the order, report, or decision of the agency. The clerk shall serve a true copy of the petition on the agency and on the Attorney General by registered mail, with request for a return receipt.

**PREHEARING CONFERENCE (28 U.S.C. 2345 (1996)).** The court of appeals may hold a prehearing conference or direct a judge of the court to hold a prehearing conference.

**CERTIFICATION OF RECORD ON REVIEW (28 U.S.C. 2346 (1996)).** Unless the proceeding has been terminated on a motion to dismiss the petition, the agency shall file in the office of the clerk the record on review as provided by section 2112 of this title.

**PETITIONS TO REVIEW, PROCEEDINGS (28 U.S.C. 2347 (1996)).**

(a) Unless determined on a motion to dismiss, petitions to review orders reviewable under this chapter are heard in the court of appeals on the record of the pleadings, evidence adduced, and proceedings before the agency, when the agency has held a hearing whether or not required to do so by law.

(b) When the agency has not held a hearing before taking the action of which review is sought by the petition, the court of appeals shall determine whether a hearing is required by law. After that determination, the court shall—

(1) remand the proceedings to the agency to hold a hearing, when a hearing is required by law;

(2) pass on the issues presented, when a hearing is not required by law and it appears from the pleadings and affidavits filed by the parties that no genuine issue of material fact is presented; or

(3) transfer the proceedings to a district court for the district in which the petitioner resides or has its principal office for a hearing and determination as if the proceedings were originally initiated in the district court, when a hearing is not required by law and a genuine issue of material fact is presented. The procedure in these cases in the district court is governed by the Federal Rules of Civil Procedure.

(c) If a party to a proceeding to review applies to the court of appeals in which the proceeding is pending for leave to adduce additional evidence and shows to the satisfaction of the court that—

(1) the additional evidence is material; and

(2) there were reasonable grounds for failure to adduce the evidence before the agency; the court may order the additional evidence and any

counter evidence the opposite party desires to offer to be taken by the agency. The agency may modify its findings of fact, or make new findings, by reason of the additional evidence so taken, and may modify or set aside its order, and shall file in the court the additional evidence, the modified findings or new findings, and the modified order or the order setting aside the original order.

**REPRESENTATION IN PROCEEDING; INTERVENTION (28 U.S.C. 2348 (1996)).** The Attorney General is responsible for and has control of the interests of the Government in all court proceedings under this chapter. The agency, and any party in interest in the proceeding before the agency whose interests will be affected if an order of the agency is or is not enjoined, set aside, or suspended, may appear as parties thereto of their own motion and as of right, and be represented by counsel in any proceeding to review the order. Communities, associations, corporations, firms, and individuals, whose interests are affected by the order of the agency, may intervene in any proceeding to review the order. The Attorney General may not dispose of or discontinue the proceeding to review over the objection of any party or intervenor, but any intervenor may prosecute, defend, or continue the proceeding unaffected by the action or inaction of the Attorney General.

**JURISDICTION OF THE PROCEEDING (28 U.S.C. 2349 (1996)).**

(a) The court of appeals has jurisdiction of the proceeding on the filing and service of a petition to review. The court of appeals in which the record on review is filed, on the filing, has jurisdiction to vacate stay orders or interlocutory injunctions previously granted by any court, and has exclusive jurisdiction to make and enter, on the petition, evidence, and proceedings set forth in the record on review, a judgment determining the validity of, and enjoining, setting aside, or suspending, in whole or in part, the order of the agency.

(b) The filing of the petition to review does not of itself stay or suspend the operation of the order of the agency, but the court of appeals in its discretion may restrain or suspend, in whole or in part, the operation of the order pending the final hearing and determination of the petition. When the petitioner makes application for an interlocutory injunction restraining or suspending the enforcement, operation, or execution of, or setting aside, in whole or in part, any order reviewable under this chapter, at least 5 days' notice of the hearing thereon shall be given to the agency and to the Attorney General. In a case in which irreparable damage would otherwise result to the petitioner, the court of appeals may, on hearing, after reasonable notice to the agency and to the Attorney General, order a temporary stay or suspension, in whole or in part, of the operation of the order of the agency for not more than 60

days from the date of the order pending the hearing on the application for the interlocutory injunction, in which case the order of the court of appeals shall contain a specific finding, based on evidence submitted to the court of appeals, and identified by reference thereto, that irreparable damage would result to the petitioner and specifying the nature of the damage. The court of appeals, at the time of hearing the application for an interlocutory injunction, on a like finding, may continue the temporary stay or suspension, in whole or in part, until decision on the application.

**REVIEW IN SUPREME COURT ON CERTIORARI OR CERTIFICATION (28 U.S.C. 2350 (1996)).**

(a) An order granting or denying an interlocutory injunction under section 2349(b) of this title and a final judgment of the court of appeals in a proceeding to review under this chapter are subject to review by the Supreme Court on a writ of certiorari as provided by section 1254(1) of this title. Application for the writ shall be made within 45 days after entry of the order and within 90 days after entry of the judgment, as the case may be. The United States, the agency, or an aggrieved party may file a petition for a writ of certiorari.

(b) The provisions of section 1254(2) of this title, regarding certification, and of section 2101(f) of this title, regarding stays, also apply to proceedings under this chapter.

**ENFORCEMENT OF ORDERS BY DISTRICT COURTS (28 U.S.C. 2351 (1996)).** The several district courts have jurisdiction specifically to enforce, and to enjoin and restrain any person from violating any order issued under section 193 of title 7.

# AMERICAN GREAT LAKES VESSELS<sup>1</sup>

## SEC. 1521. EXEMPTION OF AMERICAN GREAT LAKES VESSELS FROM RESTRICTIONS ON CARRIAGE OF PREFERENCE CARGOES (46 App. U.S.C. 1241q (1996)).

(a) **Exemption from Restriction.** The restriction described in subsection (b) shall not apply to an American Great Lakes vessel while it is so designated.

(b) **Restriction Described.** The restriction referred to in subsection (a) is the restriction in section 901(b)(1) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1241(b)(1)), that a vessel that is—

- (1) built outside the United States;
- (2) rebuilt outside the United States; or
- (3) documented under any foreign registry;

shall not be a privately owned United States-flag commercial vessel under that section until the vessel is documented under the laws of the United States for a period of 3 years.

(c) **Subsequent Application of Restriction.** Upon the revocation or termination of a designation of a vessel as an American Great Lakes vessel, the restriction described in subsection (b) shall apply as if the vessel had never been a vessel documented under the laws of the United States.

## SEC. 1522. DESIGNATION OF AMERICAN GREAT LAKES VESSELS (46 App. U.S.C. 1241r (1996)).

(a) **In General.** The Secretary shall designate a vessel as an American Great Lakes vessel for purposes of this subtitle if—

- (1) the vessel is documented under the laws of the United States;
- (2) the Secretary receives an application for such designation submitted in accordance with regulations issued by the Secretary under subsection (d);
- (3) the owner of the vessel enters into an agreement in accordance with subsection (b);
- (4)(A) the vessel is not more than 6 years old, and not less than 1 year old, on the effective date of the designation; or
- (B) the vessel is not more than 11 years old, and not less than 1 year old on the effective date of the designation, and the Secretary determines that suitable vessels are not available for providing the type of service for which the vessel will be used after designation; and

---

<sup>1</sup> Sections 1521 through 1527 are set forth in Subtitle B of Title XV of Public Law 101-624, approved November 28, 1990 (194 STAT. 3665-3668).

(5) the vessel has not been previously designated as an American Great Lakes vessel.

(b) **Construction and Purchase Agreement.** As a condition of designating a vessel as an American Great Lakes vessel under this section, the Secretary shall require the person who will be the owner of the vessel at the time of that designation to enter into an agreement with the Secretary which provides that if the Secretary determines that the vessel is necessary to the defense of the United States, the United States Government shall have, during the 120 day period following the date of any revocation of such designation under section 1524, an exclusive right to purchase the vessel for a price equal to—

- (1) the approximate world market value of the vessel; or
- (2) the cost of the vessel to the owner less an amount representing reasonable depreciation of the vessel; whichever is greater.

(c) **Certain Foreign Registry and Sale Not Prohibited.** Notwithstanding any other provision of law, if the United States does not purchase a vessel in accordance with its right of purchase under a construction and purchase agreement under subsection (b), the owner of the vessel shall not be prohibited from—

- (1) transferring the vessel to a foreign registry; or
- (2) selling the vessel to a person who is not a citizen of the United States.

(d) **Issuance of Regulations.** Not later than 60 days after the date of the enactment of this Act, the Secretary shall issue regulations establishing requirements for submission of applications for designation of vessels as American Great Lakes vessels under this section.

## **SEC. 1523. RESTRICTIONS ON OPERATIONS OF AMERICAN GREAT LAKES VESSELS (46 App. U.S.C. 1241s (1996)).**

(a) **In General.** Subject to subsection (b), an American Great Lakes vessel shall not be used—

- (1) to 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) to carry bulk cargo (as that term is defined in section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702(4)) which is subject to section 901(b) or 901b of the Merchant Marine Act, 1936 (46 U.S.C. App. 1241(b) or 1241f), or section 2631 of title 10, United States Code; or
- (3) to provide any service other than ocean freight service—
  - (A) as a contract carrier; or

(B) as a common carrier on a fixed advertised schedule offering frequent sailings at regular intervals in the foreign commerce of the United States.

**(b) Off-Season Carriage Exception.**

(1) *In General.* Subject to paragraph (2), an American Great Lakes vessel may be used to engage in trade otherwise prohibited by subsection (a)(1)(A) for not more than 90 days during any 12-month period.

(2) *Limitation.* An American Great Lakes vessel shall not be used during the Great Lakes shipping season to engage in trade referred to in paragraph (1).

**SEC. 1524. REVOCATION AND TERMINATION OF DESIGNATION (46 App. U.S.C. 1241t (1996)).**

(a) **Revocation.** The Secretary, after notice and an opportunity for a hearing, may revoke the designation of a vessel under section 1522 as an American Great Lakes vessel if the Secretary determines that—

- (1) the vessel does not meet a requirement for such designation;
- (2) the vessel has been operated in violation of this subtitle; or
- (3) the owner or operator of the vessel has violated a construction and purchase agreement under section 1522(b).

(b) **Civil Penalty.** The Secretary, after notice and an opportunity for a hearing, may assess a civil penalty of not more than \$1,000,000 against the owner of an American Great Lakes vessel, for any act for which the designation of that vessel as an American Great Lakes vessel may be revoked under subsection (a).

(c) **Termination of Designation.** The Secretary may terminate the designation of a vessel as an American Great Lakes vessel under this subtitle upon petition and a showing of good cause for that termination by the owner of the vessel. The Secretary may impose conditions or restrictions in a termination order to prevent significant adverse effects on other United States-flag vessel operators.

**SEC. 1525. ALLOCATION BASED ON LOWEST LANDED COST (46 App. U.S.C. 1241f(c) (1996)).<sup>2</sup>**

**SEC. 1526. STUDY AND REPORT. (46 App. U.S.C. 1241u (1996)).**

(a) **Study.** The Secretary, in consultation with the Secretary of Agriculture, shall conduct a study on the implementation of this subtitle. The study shall include analysis of—

---

<sup>2</sup>Section 1525 amended the Foord Security Act of 1985, and does not directly pertain to American Great Lakes vessels.

(1) the effects of that implementation on diversions of cargo to and from the Great Lakes port range and any resulting effects on the cost of transporting commodities furnished pursuant to title II of the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1751 et seq.); and

(2) whether the authority to designate vessels as American Great Lakes vessels has increased United States-flag vessel service to Great Lakes ports.

(b) **Report.** Not later than December 31, 1994, the Secretary shall submit a report to the Congress on the findings of the study under subsection (a).

## **SEC. 1527. DEFINITIONS (46 App. U.S.C. 1241v (1996)).**

As used in this subtitle—

(1) *American Great Lakes Vessel.* The term “American Great Lakes vessel” means a vessel which is so designated by the Secretary in accordance with section 1522.

(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 of each year during which the Saint Lawrence Seaway is open for navigation by vessels, as declared by the Saint Lawrence Seaway Development Corporation created by the Act of May 13, 1954 (33 U.S.C. 981 et seq.).

(4) *Secretary.* The term “Secretary” means the Secretary of Transportation.

# DOCUMENTATION OF VESSELS

## **46 U.S.C. 12101 (1996). DEFINITION AND RELATED TERMS IN OTHER LAWS.**

(a) In this chapter—

(1) “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.

(2) “rebuilt” has the same meaning as in the second proviso of section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883).

(b) When used in a law, regulation, document, ruling, or other official act referring to the documentation of a vessel—

(1) “certificate of registry”, “register”, and “registry” mean a registry endorsement as provided in section 12105 of this title.

(2) “license”, “enrollment and license”, “license for the coastwise (or coasting) trade”, and “enrollment and license for the coastwise (or coasting) trade” mean a coastwise endorsement as provided in section 12106 of this title.

(4) “yacht” means a recreational vessel even if not documented.

## **46 U.S.C. 12102 (1996). VESSELS ELIGIBLE FOR DOCUMENTATION.**

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

(1) an individual who is a citizen of the United States;<sup>1</sup>

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

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

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

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

(4) a corporation established under the laws of the United States or of a State, whose president or other chief executive officer and chairman

---

<sup>1</sup> Note that 46 U.S.C. 12106(d)(2) provides: “(2) For purpose of ...section 12102(a) of this title, a vessel meeting the criteria of this subsection shall be considered to be owned exclusively by citizens of the United States.” See also 46 U.S.C. 12106(e)(4) providing: “(4) For purposes of section 12102(a) of this title, a vessel meeting the criteria of this subsection is deemed to be owned exclusively by citizens of the United States.”

of its board of directors are citizens of the United States and no more of its directors are noncitizens than a minority of the number necessary to constitute a quorum;

(5) the United States Government; or

(6) the government of a State.

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

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

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

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

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

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

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

(B) If any person that is not a citizen of the United States has authority to direct or participate in directing a trustee for a trust in matters involving any ownership or operation of the vessel that may adversely affect the interests of the United States or in removing a

trustee for a trust without cause, either directly or indirectly through the control of another person, the trust is not qualified under this paragraph unless the trust instrument provides that persons who are not citizens of the United States may not hold more than 25 percent of the aggregate authority to so direct or remove a trustee.

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

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

#### **46 U.S.C. 12103. CERTIFICATES OF DOCUMENTATION.**

(a) Except as provided in section 12123 of this title, on application by the owner of a vessel eligible for documentation, the Secretary of Transportation shall issue a certificate of documentation endorsed with one or more of the endorsements specified in sections 12105-12109 of this title.

(b)(1) The Secretary may prescribe the form of, the manner of filing, and the information to be contained in, applications for certificates of documentation.

(2) The Secretary shall require each person applying to document a vessel to provide—

- (A) the person's social security number; or
- (B) for a person other than an individual—
  - (i) the person's taxpayer identification number; or
  - (ii) if the person 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 person and who signs the application for documentation for the vessels.

---

<sup>2</sup> Section 1136(c) of Public Law 104-326, approved October 19, 1996 (110 STAT. 3987) provides: "(c) **Trust Charterers.**—Notwithstanding section 12102(d)(4) of title 46, United States Code, as amended by this section, for purposes of subtitle B of title VI of the Merchant Marine Act, 1936 a vessel is deemed to be owned and operated by a citizen of the United States (as that term is used in that subtitle) If—(1) the person chartering the vessel from a trust under section 12102(d)(2) of that title is a citizen of the United States under section 2 of the Shipping Act, 1916 (46 App. U.S.C. 802): and (2)(A) the vessel—(i) is delivered by a shipbuilder, following completion of construction, on or after May 1, 1995 and before January 31, 1996; or (ii) is owned by a citizen of the United States under section 2 of the Shipping Act, 1916 on September 1, 1996, or is a replacement for such vessel; or (B) payments have been made with respect to the vessel under subtitle B of title VI of the Merchant Marine Act, 1936 for at least 1 year."

(c) Each 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) The Secretary shall prescribe procedures to ensure, the integrity of, and the accuracy of information contained in, certificates of documentation.

(e) The owner and master of a documented vessel shall make the vessel's certificate of documentation available for examination as the law or Secretary may require.

#### **46 U.S.C. 12104 (1996). EFFECT 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) except for a recreational endorsement, conclusive evidence of qualification to be employed in a specified trade; and
- (3) not conclusive evidence of ownership in a proceeding in which ownership is in issue.

#### **46 U.S.C. 12105 (1996). REGISTRY ENDORSEMENTS.**

(a) A certificate of documentation may be endorsed with a registry endorsement.

(b) A vessel for which a registry endorsement is issued may be employed in foreign trade or trade with Guam, American Samoa, Wake, Midway, or Kingman Reef.

#### **46 U.S.C. 12106 (1996). COASTWISE ENDORSEMENTS.<sup>3</sup>**

(a) A certificate of documentation may be endorsed with a coastwise endorsement for a vessel that—

- (1) is eligible for documentation;

---

<sup>3</sup> Section 1113(f) of Public Law 104-324, approved October 19, 1996 (110 STAT. 3971) provides: “(f) **Study of Report.**—(1) **Study.**—The Secretary of Transportation shall conduct a study of the methods for leasing, demise chartering, and financing of vessels operating in the coastal trades of other countries and whether of laws of other countries provide reciprocity for United States banks, leasing companies, or other financial institutions with respect to the rights granted under the amendment made by subsection (d). The study shall develop recommendations whether additional laws requiring reciprocity should be considered for non-United States banks, leasing companies, or other financial institutions. (2) **Report.**—The Secretary shall submit to the Congress a report 1 year after the date of this Act of the results of the study required under paragraph (1), including recommendations developed in the study.”

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

(B) if not built in the United States, was captured in war by citizens of the United States and lawfully condemned as prize, was adjudged to be forfeited for a breach of the laws of the United States, or qualified for documentation under section 4136 of the Revised Statutes (46 App. U.S.C. 14); and

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

(b) Subject to the laws of the United States regulating the coastwise trade, only a vessel for which a certificate of documentation with a coastwise endorsement is issued may be employed in the coastwise trade.

(c) A coastwise endorsement to engage in the coastwise trade of fisheries products between places in Guam, American Samoa, and the Northern Mariana Islands may be issued for a vessel that—

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

(2) was not built in the United States;

(3) is eligible for documentation; and

(4) otherwise qualifies under the laws of the United States to be employed in the coastwise trade.

(d)(1) A vessel may be issued a certificate of documentation with a coastwise endorsement if—

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

(B) the vessel is at least 50 percent owned by persons or entities described in section 12102(a) of this title;

(C) the vessel otherwise qualifies under section 12106 to be employed in the coastwise trade; and

(D) use of the vessel is restricted to—

(i) the deployment of equipment, supplies, and personnel to recover, contain, or transport oil discharged into the navigable waters of the United States, or within the Exclusive Economic Zone, or

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

(2) For purposes of the first proviso of section 27 of the Merchant Marine Act, 1920, section 2 of the Shipping Act of 1916, and section 12102(a) of this title, a vessel meeting the criteria of this subsection shall be considered to be owned exclusively by citizens of the United States.

(e)(1) A certificate of documentation for a vessel may be endorsed with a coastwise endorsement if-

(A) the vessel is eligible for documentation;

(B) the person that owns the vessel, a parent entity of that person, or a subsidiary of a parent entity of that person, is primarily engaged in leasing or other financing transactions;

(C) 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 for engaging in the coastwise trade under section 2 of the Shipping Act, 1916;

(D) the demise charter is for a period of at least 3 years or a shorter period as may be prescribed by the Secretary; and

(E) the vessel is otherwise eligible for documentation under this section.

(2) The demise charter and any amendments to that charter shall be filed with the certificate required by this subsection, or within 10 days following the filing of an amendment to the charter, and such charter and amendments shall be made available to the public.

(3) Upon termination by a demise charterer required under paragraph (1)(C), the coastwise endorsement of the vessel may, in the sole discretion of the Secretary, be continued after the termination for default of the demise charter for a period not to exceed 6 months on such terms and conditions as the Secretary may prescribe.

(4) For purposes of section 2 of the Shipping Act, 1916, and section 12102(a) of this title, a vessel meeting the criteria of this subsection is deemed to be owned exclusively by citizens of the United States.

#### **46 U.S.C. 12108 (1996). FISHERIES ENDORSEMENTS.**

(a) A certificate of documentation may be endorsed with a fishery endorsement for a vessel that—

(1) is eligible for documentation;

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

(B) if not built in the United States, was captured in war by citizens of the United States and lawfully condemned as prize, was adjudged to be forfeited for a breach of the laws of the United States, or qualified for documentation under section 4136 of the Revised Statutes (46 App. U.S.C. 14);

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

(4) otherwise qualifies under the laws of the United States to be employed in the fisheries.

(b) Subject to the laws of the United States regulating the fisheries, only a vessel for which a certificate of documentation with a fishery endorsement is issued may be employed in the fisheries.

(c) 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 may be issued to a vessel that—

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

(2) was not built or rebuilt in the United States;

(3) is eligible for documentation; and

(4) otherwise qualifies under the laws of the United States to be employed in the fisheries.

(d) A vessel purchased by the Secretary of Commerce through a fishing capacity reduction program under the Magnuson Fishery Conservation Management Act (16 U.S.C. 1801 et seq.) or section 308 of the Interjurisdictional Fisheries Act (16 U.S.C. 4107) is not eligible for a fishery endorsement, and any fishery endorsement issued for that vessel is invalid.

#### **46 U.S.C. 12109 (1996). RECREATIONAL ENDORSEMENTS.**

(a) A certificate of documentation with a recreational endorsement may be issued for a vessel that is eligible for documentation.

(b) A documented vessel with a recreational endorsement may proceed between a port of the United States and a port of a foreign country without entering or clearing with the Customs Service. A recreational vessel must, however, comply with all customs requirements for reporting arrival under section 433 of the Tariff Act of 1930 (19 U.S.C. 1433) and all persons on board that recreational vessel shall be subject to all applicable customs regulations.

(c) A documented vessel operating under a recreational endorsement may be operated only for pleasure.

#### **46 U.S.C. 12110 (1996). LIMITATIONS ON OPERATIONS AUTHORIZED BY CERTIFICATES.**

(a) A vessel may not be employed in a trade except a trade covered by the endorsement issued for that vessel.

(b) A barge qualified to be employed in the coastwise trade may be employed, without being documented, in that trade on rivers, harbors, lakes (except the Great Lakes), canals, and inland waters.

(c) A vessel with only a recreational endorsement may not be operated other than for pleasure.

(d) A documented vessel, other than a vessel with only a recreational endorsement, may be placed under the command only of a citizen of the United States.

## **46 U.S.C. 12111 (1996). SURRENDER AND INVALIDATION OF CERTIFICATES OF DOCUMENTATION.**

(a) A certificate of documentation 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 that certificate of documentation; or

(2) is placed under the command of a person not a citizen of the United States in violation of section 12110(d) of this title.

(b) An invalid certificate of documentation must be surrendered as provided by regulations prescribed by the Secretary of Transportation.

(c)(1) Notwithstanding subsection (a) of this section, 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 9 and 37(b) of the Shipping Act, 1916 (46 App. U.S.C. 808, 835(b));

(C) section 902 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1242); and

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

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

(3) The Secretary may approve the surrender of the certificate of documentation of a documented vessel covered by a mortgage filed or recorded under section 31321 of this title only if the mortgagee consents.

## **46 U.S.C. 12112 (1996). VESSELS PROCURED OUTSIDE THE UNITED STATES.**

(a) The Secretary of Transportation 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 meeting the ownership requirements of section 12102 of this title.

(b) Subject to limitations the Secretary of Transportation may prescribe, a vessel for which a document is issued under this section may proceed to the United States and engage en route in the foreign trade or trade with Guam, American Samoa, Wake, Midway, or Kingman Reef.

On the vessel's arrival in the United States, the document shall be surrendered as provided by regulations prescribed by the Secretary.

(c) A vessel for which a document is issued under this section is subject to the jurisdiction and laws of the United States. However, the Secretary of Transportation 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 if the Secretary considers the suspension to be in the public interest.

\* \* \* \* \*

**46 U.S.C. 12117 (1996). RECORDING OF UNITED STATES BUILT VESSELS.** The Secretary of Transportation may provide for the recording and certifying of information about vessels built in the United States that the Secretary considers to be in the public interest.

\* \* \* \* \*

**46 U.S.C. 12119 (1996). LIST OF DOCUMENTED VESSELS.** The Secretary of Transportation 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.

**46 U.S.C. 12120 (1996). REPORTS.** To ensure compliance with this chapter and laws governing the qualifications of vessels to engage in the coastwise trade and the fisheries, the Secretary of Transportation may require owners and masters of documented vessels to submit reports in any reasonable form and manner the Secretary may prescribe.

\* \* \* \* \*

**46 U.S.C. 12122 (1996). PENALTIES.**

(a) 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 continuing violation is a separate violation.

(b) A vessel and its equipment are liable to seizure by and forfeiture to the United States Government-

(1) when the owner of a 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 or when applying for documentation of the vessel;

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

(3) when a vessel is operated after its endorsement has been denied or revoked under section 12123 of this title;

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

(5) when a documented vessel with only a recreational endorsement is operated other than for pleasure; or

(6) when a documented vessel, other than a vessel with only a recreational endorsement, is placed under the command of a person not a citizen of the United States.

**46 U.S.C. 12123<sup>4</sup> (1996). DENIAL AND REVOCATION OF ENDORSEMENTS.** When the owner of a vessel fails to pay a civil penalty assessed by the Secretary, the Secretary may deny the issuance or renewal of an endorsement or revoke the endorsement on a certificate of documentation issued under this chapter.

---

<sup>4</sup> Prior to the enactment of Public Law 104-324, there were two sections 12123.

The first, added by section 348(a) of Public Law 102-388, approved October 6, 1992 (106 STAT. 1554), provided: “**46 U.S.C. 12123 (1996). DENIAL AND REVOCATION OF ENDORSEMENTS.** The Secretary of Transportation is authorized to deny the issuance or renewal of a trade or recreational endorsement on a certificate of documentation issued under this chapter and to revoke such endorsement if that vessel’s owner has not paid an assessment of a civil penalty after final agency action for a violation of law for which an assessment has been made by the Secretary.”

The Second, added by section 5213(a)(3) of Public Law 102-587, approved November 4, 1992 (106 STAT. 5077), provided: “**46 U.S.C. 12123 (1996). DENIAL AND REVOCATION OF ENDORSEMENTS.** When the owner of a vessel fails to pay a civil penalty assessed by the Secretary, the Secretary may deny the issuance or renewal of an endorsement or revoke the endorsement on a certificate of documentation issued under this chapter.”

Section 746(a) of Public Law 104-324, approved October 19, 1996 (110 STAT. 3342) provides in part: “(a) Title 46, United States Code, is amended— (1) by striking the first section 12123 in chapter 121; (2) by striking the first item relating to section 12123 in the table of sections of such chapter 121.”

# MANNING OF VESSELS

## 46 U.S.C. 8101 (1996). COMPLEMENT OF INSPECTED VESSELS.

(a) The certificate of inspection issued to a vessel under part B of this subtitle shall state the complement of licensed individuals and crew (including lifeboatmen) considered by the Secretary to be necessary for safe operation. A manning requirement imposed on—

(1) a sailing school vessel shall consider the participation of sailing school instructors and sailing school students in the operation of that vessel;

(2) a mobile offshore drilling unit shall consider the specialized nature of the unit; and

(3) a tank vessel shall consider the navigation, cargo handling, and maintenance functions of that vessel for protection of life, property, and the environment.

(b) The Secretary may modify the complement, by endorsement on the certificate, for reasons of changed conditions or employment.

(c) A requirement made under this section by an authorized official may be appealed to the Secretary under prescribed regulations.

(d) A vessel to which this section applies may not be operated without having in its service the complement required in the certificate of inspection.

(e) When a vessel is deprived of the service of a member of its complement without the consent, fault, or collusion of the owner, charterer, managing operator, agent, master, or individual in charge of the vessel, the master shall engage, if obtainable, a number of members equal to the number of those of whose services the master has been deprived. The replacements must be of the same or a higher grade or rating than those whose places they fill. If the master finds the vessel is sufficiently manned for the voyage, and replacements are not available to fill all the vacancies, the vessel may proceed on its voyage. Within 12 hours after the vessel arrives at its destination, the master shall report in writing to the Secretary the cause of each deficiency in the complement. A master failing to make the report is liable to the United States Government for a civil penalty of \$1,000 for each deficiency.

(f) The owner, charterer, or managing operator of a vessel not manned as required by this section is liable to the Government for a civil penalty of \$10,000.

(g) A person may not employ an individual as, and an individual may not serve as, a master, mate, engineer, radio officer, or pilot of a vessel

to which this part applies or which is subject to inspection under chapter 33 of this title if the individual is not licensed by the Secretary. A person (including an individual) violating this subsection is liable to the Government for a civil penalty of not more than \$10,000. Each day of a continuing violation is a separate offense.

(h) The owner, charterer, or managing operator of a freight vessel of less than 100 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title, a small passenger vessel, or a sailing school vessel not manned as required by this section is liable to the Government for a civil penalty of \$1,000. The vessel also is liable in rem for the penalty.

(i) When the 2 next most senior licensed officers on a vessel reasonably believe that the master or individual in charge of the vessel is under the influence of alcohol or a dangerous drug and is incapable of commanding the vessel, the next most senior master, mate, or operator licensed under section 7101(c)(1) or (3) of this title shall—

- (1) temporarily relieve the master or individual in charge;
- (2) temporarily take command of the vessel;
- (3) in the case of a vessel required to have a log under chapter 113 of this title, immediately enter the details of the incident in the log; and
- (4) report those details to the Secretary—
  - (A) by the most expeditious means available; and
  - (B) in written form transmitted within 12 hours after the vessel arrives at its next port.

#### **46 U.S.C. 8102 (1996). WATCHMEN.**

(a) The owner, charterer, or managing operator of a vessel carrying passengers during the nighttime shall keep a suitable number of watchmen in the vicinity of the cabins or staterooms and on each deck to guard against and give alarm in case of a fire or other danger. An owner, charterer, or managing operator failing to provide watchmen required by this section is liable to the United States Government for a civil penalty of \$1,000.

(b) The owner, charterer, managing operator, agent, master, or individual in charge of a fish processing vessel of more than 100 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title shall keep a suitable number of watchmen trained in firefighting on board when hot work is being done to guard against and give alarm in case of a fire.

**46 U.S.C. 8103 (1996). CITIZENSHIP AND NAVAL RESERVE REQUIREMENTS.**

(a) Only a citizen of the United States may serve as master, chief engineer, radio officer, or officer in charge of a deck watch or engineering watch on a documented vessel.

(b)(1) Except as otherwise provided in this section, on a documented vessel—

(A) each unlicensed seaman must be a citizen of the United States or an alien lawfully admitted to the United States for permanent residence; and

(B) not more than 25 percent of the total number of unlicensed seamen on the vessel may be aliens lawfully admitted to the United States for permanent residence.

(2) Paragraph (1) of this subsection does not apply to—

(A) a yacht;

(B) a fishing vessel fishing exclusively for highly migratory species (as that term is defined in section 3 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1802)); and

(C) a fishing vessel fishing outside of the exclusive economic zone.

(3) The Secretary may waive a citizenship requirement under this section, other than a requirement that applies to the master of a documented vessel, with respect to—

(A) an offshore supply vessel or other similarly engaged vessel of less than 1,600 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title that operates from a foreign port;

(B) a mobile offshore drilling unit or other vessel engaged in support of exploration, exploitation, or production of offshore mineral energy resources operating beyond the water above the Outer Continental Shelf (as that term is defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a)); and

(C) any other vessel if the Secretary determines, after an investigation, that qualified seamen who are citizens of the United States are not available.

(c) On each departure of a vessel (except a passenger vessel) for which a construction or operating differential subsidy has been granted, all of the seamen of the vessel must be citizens of the United States.

(d)(1) On each departure of a passenger vessel for which a construction or operating differential subsidy has been granted, at least 90 percent of the entire complement (including licensed individuals) must be citizens of the United States.

(2) An individual not required by this subsection to be a citizen of the United States may be engaged only if the individual has a declaration of intention to become a citizen of the United States or other evidence of admission to the United States for permanent residence. An alien may be employed only in the steward's department of the passenger vessel.

(e) If a documented vessel is deprived for any reason of the services of an individual (except the master and the radio officer) when on a foreign voyage and a vacancy consequently occurs, until the vessel's return to a port at which in the most expeditious manner a replacement who is a citizen of the United States can be obtained, an individual not a citizen of the United States may serve in—

(1) the vacancy; or

(2) a vacancy resulting from the promotion of another individual to fill the original vacancy.

(f) A person employing an individual in violation of this section or a regulation prescribed under this section is liable to the United States Government for a civil penalty of \$500 for each individual so employed.

(g) A deck or engineer officer employed on a vessel on which an operating differential subsidy is paid, or employed on a vessel (except a vessel of the Coast Guard or Saint Lawrence Seaway Development Corporation) owned or operated by the Department of Transportation or by a corporation organized or controlled by the Department, if eligible, shall be a member of the Naval Reserve.

(h) The President may—

(1) suspend any part of this section during a proclaimed national emergency; and

(2) when the needs of commerce require, suspend as far and for a period the President considers desirable, subsection (a) of this section for crews of vessels of the United States documented for foreign trade.

(i)(1) Except as provided in paragraph (3) of this subsection, each unlicensed seaman on a fishing, fish processing, or fish tender vessel that is engaged in the fisheries in the navigable waters of the United States or the exclusive economic zone must be—

(A) a citizen of the United States;

(B) an alien lawfully admitted to the United States for permanent residence;

(C) any other alien allowed to be employed under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.); or

(D) an alien allowed to be employed under the immigration laws of the Commonwealth of the Northern Mariana Islands if the vessel is

permanently stationed at a port within the Commonwealth and the vessel is engaged in the fisheries within the exclusive economic zone surrounding the Commonwealth or another United States territory or possession.

(2) Not more than 25 percent of the unlicensed seamen on a vessel subject to paragraph (1) of this subsection may be aliens referred to in clause (C) of that paragraph.

(3) This subsection does not apply to a fishing vessel fishing exclusively for highly migratory species (as that term is defined in section 3 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1802)).

#### **46 U.S.C. 8104 (1996). WATCHES.**

(a) An owner, charterer, managing operator, master, individual in charge, or other person having authority may permit an officer to take charge of the deck watch on a vessel when leaving or immediately after leaving port only if the officer has been off duty for at least 6 hours within the 12 hours immediately before the time of leaving.

(b) On an oceangoing or coastwise vessel of not more than 100 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title (except a fishing, fish processing, or fish tender vessel), a licensed individual may not be required to work more than 9 of 24 hours when in port, including the date of arrival, or more than 12 of 24 hours at sea, except in an emergency when life or property are endangered.

(c) On a towing vessel (except a towing vessel operated only for fishing, fish processing, fish tender, or engaged in salvage operations) operating on the Great Lakes, harbors of the Great Lakes, and connecting or tributary waters between Gary, Indiana, Duluth, Minnesota, Niagara Falls, New York, and Ogdensburg, New York, a licensed individual or seaman in the deck or engine department may not be required to work more than 8 hours in one day or permitted to work more than 15 hours in any 24-hour period, or more than 36 hours in any 72-hour period, except in an emergency when life or property are endangered.

(d) On a merchant vessel of more than 100 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title (except a vessel only operating on rivers, harbors, lakes (except the Great Lakes), bays, sounds, bayous, and canals, a fishing, fish tender, or whaling vessel, a fish processing vessel of not more than 5,000 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as pre-

scribed by the Secretary under section 14104 of this title, yacht, or vessel engaged in salvage operations), the licensed individuals, sailors, coal passers, firemen, oilers, and water tenders shall be divided, when at sea, into at least 3 watches, and shall be kept on duty successively to perform ordinary work incident to the operation and management of the vessel. The requirement of this subsection applies to radio officers only when at least 3 radio officers are employed. A licensed individual or seaman in the deck or engine department may not be required to work more than 8 hours in one day.

(e) On a vessel designated by subsection (d) of this section—

(1) a seaman may not be—

(A) engaged to work alternately in the deck and engine departments; or

(B) required to work in the engine department if engaged for deck department duty or required to work in the deck department if engaged for engine department duty;

(2) a seaman may not be required to do unnecessary work on Sundays, New Year's Day, July 4th, Labor Day, Thanksgiving Day, or Christmas Day, when the vessel is in a safe harbor, but this clause does not prevent dispatch of a vessel on a voyage; and

(3) when the vessel is in a safe harbor, 8 hours (including anchor watch) is a day's work.

(f) Subsections (d) and (e) of this section do not limit the authority of the master or other officer or the obedience of the seamen when, in the judgment of the master or other officer, any part of the crew is needed for—

(1) maneuvering, shifting the berth of, mooring, or unmooring, the vessel;

(2) performing work necessary for the safety of the vessel, or the vessel's passengers, crew, or cargo;

(3) saving life on board another vessel in jeopardy; or

(4) performing fire, lifeboat, or other drills in port or at sea.

(g) On a towing vessel, an offshore supply vessel, or a barge to which this section applies, that is engaged on a voyage of less than 600 miles, the licensed individuals and crewmembers (except the coal passers, firemen, oilers, and water tenders) may be divided, when at sea, into at least 2 watches.

(h) On a vessel to which section 8904 of this title applies, an individual licensed to operate a towing vessel may not work for more than 12 hours in a consecutive 24-hour period except in an emergency.

(i) A person violating subsection (a) or (b) of this section is liable to the United States Government for a civil penalty of \$10,000.

(j) The owner, charterer, or managing operator of a vessel on which a violation of subsection (c), (d), (e), or (h) of this section occurs is liable to the Government for a civil penalty of \$10,000. The seaman is entitled to discharge from the vessel and receipt of wages earned.

(k) On a fish processing vessel subject to inspection under part B of this subtitle, the licensed individuals and deck crew shall be divided, when at sea, into at least 3 watches.

(l) Except as provided in subsection (k) of this section, on a fish processing vessel, the licensed individuals and deck crew shall be divided, when at sea, into at least 2 watches if the vessel—

(1) entered into service before January 1, 1988, and is more than 1,600 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; or

(2) entered into service after December 31, 1987, and has more than 16 individuals on board primarily employed in the preparation of fish or fish products.

(m) This section does not apply to a fish processing vessel—

(1) entered into service before January 1, 1988, and not more than 1,600 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; or

(2) entered into service after December 31, 1987, and having not more than 16 individuals on board primarily employed in the preparation of fish or fish products.

(n) On a tanker, a licensed individual or seaman may not be permitted to work more than 15 hours in any 24-hour period, or more than 36 hours in any 72-hour period, except in an emergency or a drill. In this subsection, “work” includes any administrative duties associated with the vessel whether performed on board the vessel or onshore.

(o)(1) Except as provided in paragraph (2) of this subsection, on a fish tender vessel of not more than 500 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title engaged in the Aleutian trade, the licensed individuals and crewmembers shall be divided, when at sea, into at least 3 watches.

(2) On a fish tender vessel of not more than 500 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title engaged in the Aleutian trade, the licensed

individuals and crewmembers shall be divided, when at sea, into at least 2 watches, if the vessel—

(A) before September 8, 1990, operated in that trade; or

(B)(i) before September 8, 1990, was purchased to be used in that trade; and

(ii) before June 1, 1992, entered into service in that trade.

(p) The Secretary may prescribe the watchstanding and work hours requirements for an oil spill response vessel.

## APPENDIX

### **PUBLIC AND PRIVATE LAWS OF THE 104TH CONGRESS, PROVIDING OR AMENDING MARITIME LAWS OF PARTICULAR INTEREST.**

**TERMINATION OF THE MERCHANT MARINE & FISHERIES COMMITTEE.** Section 1(b)(3) of Public Law 104-14, approved June 3, 1995 (109 STAT. 186, 187), the References in Law to Committees and Officers of the House of Representatives Act, abolished the House Merchant Marine & Fisheries Committee at the commencement of the 104th Congress, and transferred its functions to the House Committees on Agriculture, National Security, Resources, Science, and Transportation and Infrastructure.

**OCEAN FREIGHT DIFFERENTIAL FY 1996.** Public Law 104-37, approved October 21, 1995 (109 STAT. 299, 325), the Agriculture, Etc. Appropriations Act for fiscal year 1996, appropriated funds for ocean freight differential costs for the shipment of agricultural commodities pursuant to Title I of said Act and the Food for Progress Act of 1985.

**EXPORT OF ALASKAN NORTH SLOPE OIL.** Title II of Public Law 104-58, approved November 28, 1995 (109 STAT. 557, 560), amended Section 28(s) of the Mineral Leasing Act (30 U.S.C. 185) to authorize the export of Alaska oil in U.S.-flag tankers, unless the President finds that such exports are not in the national interest.

**DEPARTMENT OF DEFENSE APPROPRIATIONS FY 1996.** Public Law 104-61, approved December 1, 1995 (109 STAT. 636, 649), the Department of Defense Appropriations Act, 1996, appropriated funds for National Defense Sealift Fund programs, and expenses of the National Defense Reserve Fleet.

**INTERSTATE WATER CARRIER TRANSPORTATION.** Public Law 104-88, approved December 29, 1995 (109 STAT. 803), the ICC Termination Act of 1995, abolished the Interstate Commerce Commission and transferred its functions to the Secretary of Transportation or the Surface Transportation Board, repealed the Intercoastal Shipping Act, made substantial amendments made to the Shipping Act, 1916, Merchant Marine Act, 1920, Merchant Marine Act, 1936, and the Shipping Act of 1984.

## **NATIONAL DEFENSE AUTHORIZATION ACT FY 1996.**

Public Law 104-106, approved February 10, 1996 (110 STAT. 186), contains the following provisions of particular interest:

### **A. NATIONAL DEFENSE SEALIFT FUND.**

1. **Funds Authorized.** Section 302 of Public Law 104-106, authorized funds for the National Defense Sealift Fund, the installation of National Defense Features, and the modification of certain Ready Reserve Force RO/RO vessels.

2. **National Defense Reserve Fleet.** Section 1014(a) of Public Law 104-106, amended Subsections (c)(1) and (i) of 10 U.S.C. 2218, to provide that funds from the National Defense Sealift Fund can be used for the National Defense Reserve Fleet.

3. **Conversion of two NDRF vessels.** Section 1014(c) of Public Law 104-106, provided funds for the conversion two RO/RO vessels acquired in 1995.

**B. NDRF DOUBLE HULL REQUIREMENT.** Section 1014(b) of Public Law 104-106, amended Section 11 of the Merchant Ship Sales Act of 1946, to exclude vessels in the NDRF from the Double Hull requirement.

**C. WAR RISK INSURANCE.** Section 1094 of Public Law 104-106, amended Section 1214 of the Merchant Marine Act, 1936, to extend the War Risk Insurance Program from June 30, 1995, to June 30, 2000. An identical amendment is contained in section 12 of Public Law 104-239.

### **D. DEFENSE EXPORT LOAN GUARANTEE PROGRAM.**

Section 1321 of Public Law 104-106, amended Subtitle VI of Title 10, United States Code, by the addition of Sections 2540 through 2540d, establishing this export loan guarantee program for certain defense articles.

### **E. CARGO PREFERENCE.**

1. **Commissary and Exchange Services.** Section 334 of Public Law 104-106, added 10 U.S.C. 2643, to decentralize the responsibility for negotiation the ocean transportation of such supplies.

2. **Inapplicability to Subcontracts.** Section 809 of Public Law 104-104, in concert with a DOD regulation, exempts from the cargo preference laws all DOD subcontracts for the acquisition of commercial items.

3. **Inapplicability to Commercially Available Off-The-Shelf Acquisitions.** Section 4203 of Public Law 104-106, amended the Office of Federal Procurement Policy Act (41 U.S.C. 401 et

seq.)(OFPPA), by the addition of a “**SEC. 35. Commercially Available Off-The-Shelf Item Acquisitions: Lists of Inapplicable Laws in Federal Acquisition Regulations.**” Section 35 of the OFPPA requires that the Federal Acquisition Regulation (FAR) include a list of laws that are inapplicable to contracts for the procurement of commercially available off-the-shelf items. It is anticipated that the cargo preference laws will be included on the required FAR list, just as they were for subcontracts.

**GREAT LAKES FOREIGN-FLAG FEEDERS.** Section 215 of Public Law 104-127, approved April 4, 1996 (110 STAT. 888, 957), the Federal Agriculture Improvement and Reform Act of 1996, amended Section 406 of Public Law 480 (7 U.S.C. 1736), to authorize the Department of Agriculture to pay the cost of the foreign-flag Great Lakes transit leg for transshipment in Canadian ports to U.S.-flag vessels for overseas shipment.

**MARAD APPROPRIATIONS FY 1996.** Public Law 104-134, approved April 26, 1996 (110 STAT. 1321, 1321-46), the Omnibus Consolidate Rescissions and Appropriations Act of 1996, appropriated Maritime Administration funds for fiscal year 1996.

**OCEAN FREIGHT DIFFERENTIAL FY 1997.** Public Law 104-180, approved August 6, 1996 (110 STAT. 1569, 1591) the Agriculture Etc. Appropriations Act for fiscal year 1997, appropriated funds for ocean freight differential costs for the shipment of agricultural commodities pursuant to Title I of said Act and the Food for Progress Act of 1985.

**NATIONAL DEFENSE AUTHORIZATION ACT FY 1997.** Public Law 104-201, approved September 23, 1996 (110 STAT. 2422) contains the following provisions of particular interest:

**A. NATIONAL DEFENSE SEALIFT FUND.** Section 302 of Public Law 104-201, authorized funds for the National Defense Sealift Fund.

**B. INDEMNIFICATION FOR TITLE XII LOSSES.** Section 1079(b) of Public Law 104- 201, provides for the indemnification of the Department of Transportation for losses covered by Vessel War Risk Insurance under certain circumstances. This provision is set forth in the Compilation of Laws after Section 1214 of the Merchant Marine Act, 1936.

**OMNIBUS CONSOLIDATED APPROPRIATIONS ACT, 1997.** Public Law 104-208, approved September 30, 1996 (110 STAT. 3009), contains the following provisions of particular interest:

**A. MARAD APPROPRIATIONS FY 1997.** Funds for the Maritime Administration are set forth at 110 STAT. 3009-55.

**B. DOD APPROPRIATIONS.** Funds for the National Defense Sealift Fund and expenses of the National Defense Reserve Fleet are set forth at 110 STAT. 3009-85.

**MARITIME SECURITY ACT OF 1996.** Public Law 104-239, approved October 6, 1996 (110 STAT. 3118) contains the following provisions of particular interest:

**A. MARITIME SECURITY PROGRAM.** Sections 2 and 4 of Public Law 104-239, amended the Merchant Marine Act, 1936 (Act), to insert a Subtitle B in Title VI providing for the new Maritime Security Program, and designated the existing Title VI as Subtitle A of Title VI.

**B. TERMINATION OF ODS PROGRAM.** Section 3 of Public Law 104-239, amended section 605(b) and added a section 616 to the Act to: (1) provide for the termination of the ODS Program, (2) eliminate from the ODS Program essential service requirements, hearings on additional service, and equitable service to all ports, and (3) eliminate approval under Section 9 of the Shipping Act, 1916 (Section 9) for the transfer and registry under an Effective U.S. Controlled flag of certain vessels.

**C. USE OF FOREIGN-FLAG VESSELS.** Section 5 of Public Law 104-239, amended section 804 of the Act to authorize Maritime Security Program and ODS Program contractors to use foreign-flag vessels under specified conditions.

**D. FOREIGN TRANSFER.** Section 6 of Public Law 104-239 amended Section 9 to eliminate the requirement for approval by the Secretary of Transportation (Secretary) for vessel transfer to foreign registry under specified conditions.

**E. CDS RESTRICTIONS.** Section 7 of Public Law 104-239, added section 512 to Title V of the Act providing that all restrictions and requirements under sections 503, 506, and 802 of the Act applicable to liner vessels constructed, reconstructed or reconditioned with the aid of CDS shall terminate 25 years after the date of delivery from the shipyard.

**F. REGULATIONS.** Section 8 of Public Law 104-239 authorized the Secretary to prescribe the necessary rules and regulations to carry out the legislation.

**G. NDRF MATTERS.** Section 9 of Public Law 104-239, substitutes the Secretary of Defense for the Secretary of the Navy as the authorized

party to request use of NDRF/RRF ships for readiness testing and defense sealift functions. Also, the Secretary's authority to require performance and payments bonds from NDRF/RRF contractors is restored.

#### **H. REEMPLOYMENT RIGHTS FOR CERTAIN SEAMEN.**

Section 10 of Public Law 104-239 added section 302 to Title III of the Act, to authorize the Secretary to certify merchant marine employment in the activation or operation of NDRF/RRF and U.S.-owned, chartered, or controlled ships in time of need or war. Such certification will enable an individual to be entitled to reemployment rights and benefits substantially equivalent to the rights and benefits provided for by chapter 43 of Title 38, United States Code, for any member of a Reserve component of the Armed Forces who is ordered to active duty.

#### **I. TITLE XI GUARANTEE PROGRAM.**

1. **Citizenship.** Section 11 of Public Law 104-239 amended sections 1101, 1104B and 1110 of the Act, to permit non-U.S. citizens to be the owners of Title XI vessels.

2. **Risk Factor Determinations.** Section 13 of Public Law 104-239 amended 1103 of the Act to shift the risk factor for the Title XI Guarantee Program from a fixed risk factor system to a loan-by-loan risk factor system.

**J. TITLE XII WAR RISK INSURANCE.** Section 12 of Public Law 104-239, amended section 1214 of the Act to extend the Title XII War Risk Insurance Program until June 30, 2000. This amendment is identical to Section 1094 of Public Law 104-106.

**K. VESSEL M & R REPAIR PILOT PROGRAM.** Section 16 of Public Law 104-239, authorizes the Secretary, subject to available appropriations, to conduct a pilot program to evaluate the feasibility of using renewable contracts for the maintenance and repair of outported RRF vessels.

**L. GREAT LAKES CARGO EQUITY.** Section 17 of Public Law 104-239 amended section 901b(c)(3) of the Act to establish a new contracting procedure so that Great Lakes ports are now authorized to bid on 100 percent of Public Law 480, Title II cargoes, without diminishing the 75 percent cargo preference requirement for this food aid program.

**COAST GUARD AUTHORIZATION ACT OF 1966.** Public Law 104-324, approved October 19, 1996 (110 STAT. 3901) contains the following provisions of particular interest:

**A. VESSEL FINANCING.** In order to promote vessel financing, section 1113 of Public Law 104-324:

1. Amended 46 U.S.C. 31322 to eliminate all restrictions on persons that can be mortgagees for U.S.-flag vessels, and repealed the existing provision for “Westhampton Trusts” in 46 U.S.C. 31322(b).

2. Amended Section 9 of the Shipping Act, 1916 (Section 9), to eliminate the need to obtain the permission of the Secretary of Transportation (Secretary) before using a foreign mortgagee.

3. Amended 46 U.S.C. 12106 to promote lease financing for vessels engaged in the coastwise trade by eliminating citizenship requirements for leasing companies.

## **B. CROSS-BORDER FINANCING.**

To further promote vessel financing, section 1136 of Public Law 104-324:

1. Amended 46 U.S.C. 12102 to permit the documentation of vessels subject to ownership trusts under which not all of the beneficiaries are U.S. citizens, but control remains in U.S. citizens. A vessel chartered by the trust to a U.S. citizen under section 2 of the Shipping Act, 1916, (Section 2 Citizen) is deemed to be a U.S. citizen for purposes of the section and related laws such as the Capital Construction Fund, but not the Maritime Security Program.

2. Amended Section 9 to permit the Secretary to grant, prior to the documentation of the vessel, approval for the prospective sale or transfer foreign of a vessel owned by these trusts.

3. Provides that for purposes of determining whether a vessel is owned and operated by a U.S. citizen for participation in the Maritime Security Program:

a. a vessel chartered by a trust under 46 U.S.C. 12102(d)(2) is a Section 2 Citizen, if the statutory conditions of Section 1136(c) of Public Law 104-324 are met.

b. a vessel is deemed to be owned and operated by a Section 2 Citizen if the vessel is owned “directly or indirectly” by a Section 2 Citizen and meets the statutory conditions of section 1136(d) of Public Law 104-324.

**C. EXTRAJUDICIAL REMEDIES.** Section 1124(a) of Public Law 104-324, amended **46 U.S.C. 31325, Preferred Mortgage Liens and Enforcement.** That section provides for the foreclosure of a preferred mortgage on a documented vessel by an in rem arrest action against the vessel within the district court’s admiralty jurisdiction. Under the Uniform Commercial Code a secured creditor may take possession of the collateral security for the loan upon a default and sell it in foreclosure of the creditors lien; a so-called Self-Help Remedy. Prior to *Bank of America National Trust and Savings Association v. Fogle*, 637 F. Supp. 305 (N.D. Ca., 1985), lenders holding preferred mortgages on

documented vessels regularly exercised this Self-Help Remedy to sell mortgaged vessels upon a loan default. The *Fogle* case held that in providing for an in rem admiralty remedy in law, Congress must have intended to preclude a Self-Help Remedy. Section 1124(a) of Public Law 104-324 amended 46 U.S.C. 31325 by the addition of a new paragraph (b)(3), to clarify that the remedies currently available under 46 U.S.C. 31325(b) do not preclude the exercise of other lawful rights and remedies available to mortgagees, including extrajudicial Self-Help Remedies, and also permits a preferred mortgage on a U.S.-flag vessel to be foreclosed in a foreign court having jurisdiction over the vessel.

Section 1124(b) of public Law 104-324 amended 46 U.S.C. 31225 by the addition of a subsection (f), generally requiring that before title to the vessel is transferred by a extrajudicial Self-Help Remedy, the person exercising the remedy is required to give notice to the Secretary, to the mortgagee of any vessel mortgage, and to any recorded lien holder.

**D. SHIPYARD REACTIVATION.** Section 1139 provides for the use of the Title XI Guarantee Program to assist in the reactivation of the Fore River Shipyard.