

**Calendar No. 361**

108TH CONGRESS }  
*1st Session*

SENATE

{ REPORT  
108-184

**MARITIME ADMINISTRATION  
AUTHORIZATION ACT OF 2003**

---

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND  
TRANSPORTATION

ON

S. 1262



NOVEMBER 3, 2003.—Ordered to be printed

---

U.S. GOVERNMENT PRINTING OFFICE

29-010

WASHINGTON : 2003

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

JOHN MCCAIN, Arizona, *Chairman*

TED STEVENS, Alaska	ERNEST F. HOLLINGS, South Carolina
CONRAD BURNS, Montana	DANIEL K. INOUE, Hawaii
TRENT LOTT, Mississippi	JOHN D. ROCKEFELLER IV, West Virginia
KAY BAILEY HUTCHISON, Texas	JOHN F. KERRY, Massachusetts
OLYMPIA J. SNOWE, Maine	JOHN B. BREAUX, Louisiana
SAM BROWNBACK, Kansas	BYRON L. DORGAN, North Dakota
GORDON SMITH, Oregon	RON WYDEN, Oregon
PETER G. FITZGERALD, Illinois	BARBARA BOXER, California
JOHN ENSIGN, Nevada	BILL NELSON, Florida
GEORGE ALLEN, Virginia	MARIA CANTWELL, Washington
JOHN E. SUNUNU, New Hampshire	FRANK LAUTENBERG, New Jersey

JEANNE BUMPUS, *Staff Director and General Counsel*

ANN BEGEMAN, *Deputy Staff Director*

ROBERT W. CHAMBERLIN, *Chief Counsel*

KEVIN D. KAYES, *Democratic Staff Director and Chief Counsel*

GREGG ELIAS, *Democratic General Counsel*

(II)

## Calendar No. 361

108TH CONGRESS }  
*1st Session* }

SENATE

{ REPORT  
108-184

### MARITIME ADMINISTRATION AUTHORIZATION ACT OF 2003

---

NOVEMBER 3, 2003.—Ordered to be printed

---

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

### R E P O R T

[To accompany S. 1262]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1262) to authorize appropriations for fiscal years 2004, 2005, and 2006 for certain maritime programs of the Department of Transportation, and for other purposes, having considered the same, reports favorably thereon with amendments and an amendment to the title and recommends that the bill (as amended) do pass.

#### PURPOSE OF THE BILL

The purpose of the bill is to authorize appropriations for Maritime Administration (MARAD) operations and training, administrative costs associated with the shipbuilding loan guarantee program authorized by title XI of the Merchant Marine Act of 1936, and for the disposal of vessels in the National Defense Reserve Fleet (NDRF) that have been identified by the Secretary of Transportation as obsolete. The bill includes provisions designed to reform how MARAD manages the Title XI Maritime Loan Guarantee Program.

The bill also would authorize funding for the Maritime Security Program (MSP) through fiscal year (FY) 2015 and establish a National Defense Tank Vessel Construction Assistance program providing subsidies to domestic shipbuilders in order to build five tank vessels for inclusion into the Maritime Security Fleet. The bill would establish new cargo guidelines for vessels receiving MSP funds while participating in the Cargo Preference Program.

## BACKGROUND AND NEEDS

MARAD's mission is to promote the development and maintenance of an adequate, well-balanced United States merchant marine, sufficient to carry the Nation's domestic waterborne commerce and a substantial portion of its waterborne foreign commerce, and capable of serving as a naval and military auxiliary in times of war or national emergency. It also seeks to ensure that the United States has adequate shipbuilding and repair service, efficient ports, effective intermodal water and land transportation systems, and reserve shipping capacity in times of national emergency.

To meet its mission, MARAD administers various United States merchant marine support programs within the Department of Transportation (DOT). These programs include MSP, the Title XI Maritime Loan Guarantee Program, various cargo preference programs, maintenance of the Ready Reserve Force (RRF) and NDRF, and operation of the United States Merchant Marine Academy (USMMA) at Kings Point, New York. MARAD has approximately 960 employees (including RRF and USMMA staff).

The MSP is an element of the United States maritime transportation system providing funded operating agreements to privately-owned, United States-flag, and United States-crewed liner fleet in international trade. The MSP participant vessels, ship capacity, and intermodal assets are committed to Department of Defense contingency contracts to support national defense and other security requirements. The MSP is designed to support the labor base of skilled American seafarers who are available to crew the United States Government-owned and/or controlled strategic sealift ships as well as the United States commercial fleet, both during times of peace and war. Currently, the MSP is authorized through FY 2005 and subject to a separate annual appropriation.

The purpose of the Title XI Maritime Loan Guarantee Program is to promote the growth and modernization of the United States merchant marine and United States shipyards. The program enables owners of eligible vessels and eligible shipyards to obtain long-term financing with attractive terms by using the credit of the United States government to guarantee commercial loans. Recently, both the DOT Inspector General and the United States General Accounting Office (GAO) have found that MARAD has failed to provide effective oversight in receiving and approving loan guarantees; has failed to closely monitor the financial condition of borrowers during the term of a loan; and has failed to adequately monitor the condition of projects subject to guarantees. They also found that MARAD was flagrant in its use of authority in granting waivers to its own regulations governing the program without taking steps to better secure the taxpayer against defaults. The bill includes reform provisions to address these findings.

MARAD's operations and training account funds the administration and staffing of MARAD programs (other than the Title XI Maritime Loan Guarantee Program and RRF costs), the USMMA, State maritime school costs associated with Federal training ships, training courses for merchant mariners, various operating programs, and research and development. The USMMA educates young men and women to become officers in the American merchant marine.

MARAD appropriations do not include funding for cargo preference or RRF/NDRF maintenance funding. RRF/NDRF maintenance is funded by the Department of Defense and administered by MARAD.

#### SUMMARY OF PROVISIONS

S. 1262 would authorize funding for MARAD activities for fiscal years 2004 through 2008 as follows: \$104,400,000 for FY 2004; \$106,000,000 for FY 2005; \$109,000,000 for FY 2006; \$111,000,000 for FY 2007; and \$113,000,000 for FY 2008. These funding levels cover multiple appropriated accounts: operations and training; the Maritime Loan Guarantee Program authorized by title XI of the Merchant Marine Act of 1936; administration of the MSP; the tank vessel construction program; and the disposal of vessels in the NDRF that have been identified by the Secretary of Transportation as obsolete.

For administrative expenses under the Title XI Maritime Loan Guarantee Program, the bill would authorize \$6,000,000 for each of fiscal years 2004 through 2008 and \$50,000,000 for each of fiscal years 2004 through 2008 for loan guarantees. The bill also includes provisions designed to reform how MARAD manages the Title XI Maritime Loan Guarantee Program through increased oversight diligence and a variety of administrative and financial mechanisms proposed by the DOT IG and GAO.

The bill would extend the authorization of the MSP from FY 2005 through FY 2015. The Department of Defense (DOD) has expressed a desire to exercise more flexibility in determining the composition of the Fleet, and the bill establishes a prudent balance between the commercial interests of participating vessels and the DOD's military sealift needs. Further, the citizenship requirements of MSP participation have been modified to accommodate the realities of the international ocean carrier industry.

The bill would establish a new program, the National Defense Tank Vessel Construction Assistance program, and would authorize \$250,000,000 for the domestic construction of five new tank vessels. In Operation Iraqi Freedom, the Department of Defense Transportation Command found itself forced to charter foreign-owned vessels in order to satisfy the war's tank vessel needs. This provision is designed to encourage the development of a domestic tank vessel construction program in United States shipyards.

Additionally, the bill would authorize \$92,532,000 in ship disposal funding for fiscal years 2004 through 2008. As outlined in testimony during a July 7, 2003, Subcommittee on Surface Transportation and Merchant Marine Field Hearing, obsolete NDRF vessels pose environmental risks that require immediate attention. Further, the bill would amend the Merchant Marine Act to give the Secretary of Transportation the authority to convey obsolete NDRF vessels to nonprofit organizations, a State, Commonwealth, or possession of the United States or any municipal corporation or political subdivision thereof or the District of Columbia for their use and to United States territories and foreign governments for use as artificial reefs.

The bill would amend requirements for enforcement of the commitment agreements for students at the USMMA and students at the State maritime academies who receive student incentive pay-

ments (SIP); allow MARAD to use funds received from an insurance settlement for legally authorized purposes, including completion of repairs to the Merchant Marine Academy Fitch Building; provide the Secretary with the authority to also exclude vessels from the carriage of government impelled cargoes that have been detained for violations of security standards contained within international agreements to which the United States is a party; allow MARAD to retain funds received as a result of final judgments and settlements in the Vessel Operations Revolving Fund; and clarify the decades-old authority of the Saint Lawrence Seaway Development Corporation (SLSDC) to carry out the provisions of the Ports and Waterways Safety Act (PWSA) in the case of the Saint Lawrence Seaway.

#### LEGISLATIVE HISTORY

S. 1262 was introduced by Senator McCain on June 13, 2003, and referred to the Committee on Commerce, Science, and Transportation. A hearing was held on Title XI Maritime Loan Guarantee Program reform on June 5, 2003.

On June 19, 2003, the Committee on Commerce, Science, and Transportation met to consider S. 1262. The Committee approved an amendment offered by Senators McCain and Hollings to reauthorize appropriations for two additional years for MARAD training and operations, title XI administration, and ship scrapping, expiring at the end of FY 2008. The Committee also approved an amendment offered by Senator Hollings to make technical corrections regarding the use of foreign-built launch barges in the domestic trade and an amendment offered by Senator Lott to authorize funding for the Title XI Maritime Loan Guarantee Program and to provide direct construction subsidies for tank vessel construction. S. 1262 was ordered reported as amended by voice vote.

#### ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, July 31, 2003.*

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

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1262, the Maritime Administration Authorization Act of 2003.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Deborah Reis.

Sincerely,

ROBERT A. SUNSHINE  
(For Douglas Holtz-Eakin, Director).

Enclosure.

*S. 1262—Maritime Administration Authorization Act of 2003*

Summary: S. 1262 would provide a multiyear authorization for the Maritime Administration (MARAD). In addition to amounts authorized under current law, S. 1262 would authorize the appropriation of \$1.4 billion over the 2004–2008 period and \$1.3 billion over the 2009–2015 period. (Another \$280 million is authorized for fiscal years 2004 through 2008 for maritime loan guarantees that are already authorized under existing law.)

CBO estimates that implementing S. 1262 would cost \$95 million in fiscal year 2004 and \$1.3 billion over the 2004–2008 period. (About \$1.4 billion would be spent after 2008, including the \$1.3 billion that would be authorized for fiscal years 2009 through 2015.) Enacting S. 1262 would increase direct spending by \$1 million in 2004 because it would allow MARAD to spend certain funds collected for damages. Under the bill, direct spending of other types of damage awards could increase in later years as well, but by less than \$500,000 a year.

The bill would authorize MARAD to insure more foreign flag vessels against war risks if those vessels are supporting United States alliances with other nations. CBO has no basis for estimating the net budget impact of this provision.

S. 1262 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary effects of S. 1262 are summarized in the following table. The costs of this legislation fall within budget functions 050 (national defense) and 400 (transportation).

	By fiscal year, in millions of dollars—					
	2003	2004	2005	2006	2007	2008
SPENDING SUBJECT TO APPROPRIATION						
MARAD spending for operations and operating subsidies under current law:						
Authorization level <sup>1,2</sup> .....	201	100	100	0	0	0
Estimated outlays .....	195	119	105	8	0	0
Proposed changes:						
MARAD operations:						
Authorization level <sup>2</sup> .....	0	115	117	120	123	125
Estimated outlays .....	0	95	112	119	123	125
Maritime subsidies:						
Authorization level <sup>2</sup> .....	0	0	0	436	186	186
Estimated outlays .....	0	0	0	234	248	248
MARAD spending for operations, operating and construction subsidies under S. 1262:						
Authorization level .....	201	215	217	556	309	311
Estimated outlays .....	195	214	217	361	371	373
CHANGES IN DIRECT SPENDING						
Estimated budget authority .....	0	1	*	*	*	*
Estimated outlays .....	0	1	*	*	*	*

<sup>1</sup> The 2003 level is the amount appropriated for that year for MARAD operations and maritime operating subsidies. In 2004 and 2005, \$100 million is authorized to be appropriated for maritime operating subsidies under existing law.

<sup>2</sup> These figures exclude the bill's authorization of \$56 million a year for maritime loan guarantees and associated administrative costs because those activities are already authorized (in an indefinite amount) under existing law and do not require annual authorization.

Notes.—\* = less than \$500,000.

Basis of estimate: For this estimate, CBO assumes that the amounts authorized will be appropriated for each year. Estimated outlays are based on historical spending patterns for existing or

similar programs. Estimated outlays for tanker construction subsidies are based on information provided by MARAD.

*Spending subject to appropriation*

The proposed changes in the table for title I include between \$115 million and \$125 million annually in authorizations for MARAD operations. Those amounts exclude \$56 million annually for maritime loan guarantees and administrative costs because appropriations for that program are already authorized under existing law.

Beginning in 2006, the table shows new authorizations proposed for maritime subsidies under title II. These authorizations include \$186 million annually through fiscal year 2015 for MARAD's maritime security program (MSP), which expires at the end of fiscal year 2005. The MSP provides operating subsidies to owners or operators of U.S. flag vessels that carry cargo between the United States and foreign ports. The bill would expand the MSP to subsidize 60 ships at a cost of \$3.1 million a year per vessel. (The existing program subsidizes 47 vessels at a cost of \$2.1 million a year per vessel.)

Title II would also authorize MARAD to provide subsidies totaling \$250 million for the construction of five commercial product tankers in a U.S. shipyard after fiscal year 2004. Shipping companies that enter into construction subsidy agreements also would be eligible for MSP payments starting in 2006 for existing (but otherwise ineligible) tankers. Based on information provided by MARAD, CBO expects that all such agreements would be executed at one time—but not until the amended MSP eligibility requirements become effective after fiscal year 2005. Consequently, this estimate assumes appropriation of the \$250 million for fiscal year 2006 and spending of those sums over the 2006–2009 period.

*Direct spending*

S. 1262 would allow MARAD to spend nearly \$1 million received from a settlement for damages from a fire at the Merchant Marine Academy. The bill also would allow the agency to spend damages recovered on accidents that may occur involving vessels of the National Defense Reserve Fleet. CBO estimates that enacting those changes would increase direct spending by \$1 million in fiscal year 2004 and by less than \$500,000 a year thereafter.

The bill would expand the authority of MARAD, acting on behalf of the Department of Defense (DoD), to insure foreign vessels under the agency's war-risk insurance program. This provision would allow DoD to participate in international risk-sharing arrangements that would cover vessels that support operations of alliances such as the North Atlantic Treaty Organization, regardless of the ships' registration or ownership.

The effects of this provision are uncertain. On the one hand, entering such agreements could make the federal government liable for a share of any damages sustained by foreign vessels, some of which the federal government might not have been able to insure under existing authority. On the other hand, such agreements could allow the government to share its risk of damage on some vessels for which it would normally bear all such risk. In the 50-year history of the existing war-risk insurance program, MARAD



has never paid any claim against the United States involving vessels damaged in hostile actions. Based on this experience, CBO expects that providing DoD with authority to share such risks with other countries in the future would not lead to significant savings. CBO has no information on the experience of war-risk insurance programs administered by other NATO members. In the absence of such information, CBO has no basis for determining the cost of absorbing some of the risks of those programs.

The bill would allow MARAD to charge fees to applicants for maritime loan guarantees in order to recover the costs of hiring independent contractors to assess certain applications. The agency would be able to spend any amounts collected. Based on information provided by MARAD, CBO estimates that amounts collected and spent as a result of this provision would be less than \$500,000 and would offset each other.

Intergovernmental and private-sector impact: S. 1262 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Previous CBO estimate: On May 16, 2003, CBO transmitted a cost estimate for H.R. 1588, the National Defense Authorization Act for Fiscal Year 2004, as ordered reported by the House Committee on Armed Services on May 14, 2003. S. 1262 contains provisions very similar to those of title XXXV of H.R. 1588. H.R. 1588 and S. 1262 would authorize different funding levels for MARAD activities, and the CBO estimates reflect the higher authorization levels in S. 1262.

Estimate prepared by: Federal Costs: Deborah Reis. Impact on State, Local, and Tribal Governments: Gregory Waring. Impact on the Private Sector: Cecil McPherson.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

#### REGULATORY IMPACT STATEMENT

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

The bill would create a new grant program, the National Defense Tank Vessel Construction Assistance program, designed to assist domestic vessel operators through competitively issued grants of up to \$50 million for the construction of tank vessels in the United States. This program would not create new mandatory paperwork or reporting requirements, nor would it effect the number of people subject to regulation or impact privacy issues. The grants in the program are intended to have a positive economic impact on United States maritime interests by subsidizing the cost of construction in United States shipyards.

The bill also would reform the Title XI Maritime Loan Guarantee Program, and could have an economic and regulatory impact, as MARAD is given authority to determine if an application needs the added oversight of a contractually retained third party expert to review technical and financial aspects of a loan guarantee application. There is a potential for some applicants to incur additional expenses as part of the application process.

The bill would grant enhanced discretion to the Secretary of Transportation to enforce the terms of the commitment agreements

signed between students that have received SIP, at either the USMMA or State maritime academies. The bill would give the Secretary the ability to require students that have attended either the USMMA or a State academy for two years or more and have received SIP to either serve on active duty or reimburse the government for education expenses. This policy could have an economic impact on students or former students of these academies.

This legislation should have no further effect on the number or types of individuals and businesses regulated, the economic impact of such regulation, the personal privacy of affected individuals, or the paperwork required from such individuals or businesses.

#### SECTION-BY-SECTION ANALYSIS

##### *Section 1. Short Title*

Section 1 states the short title of the legislation, the “Maritime Administration Authorization Act of 2003”.

##### *TITLE I—MARAD REAUTHORIZATION*

##### *Sec. 101. Authorization of Appropriations for Fiscal Years 2004, 2005, 2006, 2007, and 2008*

This section would authorize \$104,400,000 for FY 2004; \$106,000,000 for FY 2005; \$109,000,000 for FY 2006; \$111,000,000 for FY 2007; and \$113,000,000 for FY 2008 for expenses necessary for MARAD operations and training activities. These activities include the costs incurred by headquarters and regional staffs in the administration and direction of the various MARAD programs, which cut across the American maritime industries, including the following—

- emergency planning and operations, including administration of the MSP agreements;
- negotiation of agreements, understandings, and arrangements to reduce barriers that restrict American access to foreign ports and markets;
- port, intermodal, and environmental activities;
- labor, training, and safety activities;
- administration of the capital construction fund/construction reserve fund; and
- monitoring compliance with cargo reservation statutes.

Operations and training funds also allow MARAD to continue to carry out its duties regarding citizenship verification of certain fishing vessels pursuant to the American Fisheries Act (P.L. 105–277). Among other things, the measure designates MARAD as the primary agency responsible for ensuring that the proper citizenship requirements are adhered to for ownership of vessels 100 feet or greater that have, or are seeking, a fisheries endorsement to their documentation. In enforcing citizenship standards, MARAD is required to scrutinize transfers of ownership or control rigorously, with particular attention to leases, charters, mortgages, and financing arrangements for fishing vessels. Further, MARAD approves qualified trustees to hold mortgages where vessel financing is procured through foreign lenders. MARAD also is required to determine, upon request, whether an individual or an entity has exceeded the statutory limitation on harvesting or processing of pollock in the pollock fishery.

This section of the bill also would authorize \$6,000,000 annually to cover the administrative costs associated with the existing portfolio of loan guarantees under the Title XI Maritime Loan Guarantee Program. Title XI authorizes the Secretary of Transportation (delegated to the Maritime Administrator) to enter into commitments to guarantee private-sector debt financing for the construction or reconstruction of United States-flag vessels and export vessels in United States shipyards, and for United States shipyard modernization and improvement projects. Additional funding of \$50,000,000 for fiscal years 2004 through 2008 is authorized for the Title XI Maritime Loan Guarantees Program.

This section also would authorize \$11,422,000 annually for ship disposal for fiscal years 2004 through 2006, and \$12,000,000 annually for fiscal years 2007 and 2008. This funding would enable MARAD to dispose of vessels in the NDRF that pose the highest risk to the environment. Included in these funds are staff and support costs associated with program implementation. MARAD will contract with dismantling facilities seeking best-value disposal consistent with P.L. 106-398, the Department of Defense Authorization Act for Fiscal Year 2001 and P.L. 107-314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003.

*Sec. 102. Conveyance of Obsolete Vessels Under Title V, Merchant Marine Act, 1936*

This section would amend the Merchant Marine Act to give the Secretary of Transportation the authority to convey obsolete NDRF vessels to nonprofit organizations, a State, Commonwealth, or possession of the United States or any municipal corporation or political subdivision thereof or the District of Columbia. This provision would end the need for special legislation each time a veteran's group, museum, historical association or other nonprofit organization, State, or municipality seeks to obtain an obsolete vessel from the NDRF. It also would provide the Secretary of Transportation with administrative authority to oversee the conveyance of such vessels to nonprofit groups.

Under this section, vessel recipients must agree not to use the vessel for commercial transportation purposes; to make the vessel available to the government when needed; and, to hold the government harmless for exposure to hazardous substances. Prior to conveyance, the Secretary would approve conveyance and business plans of the recipient and ascertain that the recipient has sufficient resources to accomplish the transfer and commence with the intended use of the vessel. The Secretary also would be authorized to provide to the recipient additional equipment from other obsolete vessels to assist the recipient with maintenance, repairs or modifications. If at any time prior to delivery of the vessel the Secretary determines that a different use of the vessel would better serve the interests of the government, the Secretary may terminate the proposed transfer without liability.

*Sec. 103. Cargo Preference*

This section would amend section 901(b)(c)(2) of the Merchant Marine Act, 1936, to make the cargo preference year coincide with the Federal government fiscal year for determining compliance with title IX. This would simplify record keeping and management

of the program without an adverse effect on involved agencies or shippers and is supported by government and industry stakeholders.

*Sec. 104. Equity Payments by Obligor for Disbursement Prior to Termination of Escrow Agreement Under Title XI*

This section would amend the Merchant Marine Act and would require the Secretary of Transportation to establish a system of controls to ensure that no loan or portion of a loan is disbursed to a ship owner or shipyard owner before the obligor of a loan guarantee has met the cost-sharing obligation (25 percent or 12½ percent depending of the type of vessel) to the actual total cost of the project. The section further would require the Secretary to establish by regulation a transparent, independent, and risk-based process for verifying and documenting the progress of projects under construction before disbursing guaranteed loan funds.

This section also would amend the Merchant Marine Act to define “total actual cost” to include all amounts paid by or for the account of the obligor.

*Sec. 105. Waivers of Program Requirements Under Title XI*

This section would amend the Merchant Marine Act to require the Secretary of Transportation to establish regulations governing the circumstances under which MARAD may waive regulatory requirements concerning the financial condition of the applicant. It specifically requires that a waiver of a regulatory requirement be made only with the documented concurrence of program offices; that the economic soundness requirements of the program be met after the waiver of the financial condition requirement; and that the waiver provide for the imposition of other requirements on the obligor designed to compensate for the increased risk associated with the obligor’s failure to meet regulatory requirements regarding the obligor’s financial condition.

*Sec. 106. Project Monitoring Under Title XI*

This section would amend the Merchant Marine Act to require the Secretary to monitor the financial condition and operation of the obligor on a regular basis during the term of the guarantee and to document the results of the monitoring on a quarterly or monthly basis depending upon the condition of the obligor. It also would require the Secretary to take appropriate action to limit potential losses in connection with a default, if the Secretary determines that the financial condition of the obligor warrants additional protections.

This section also would amend the Merchant Marine Act to require the Secretary, prior to committing to a guarantee, to certify that a full and fair consideration of all the regulatory requirements, including economic soundness and financial requirements applicable to the potential obligor and related parties, has been made through a documented independent assessment conducted by offices with expertise in technical, economic, and financial aspects of the loan application process.

This section further would amend the Merchant Marine Act to require the Secretary to include in loan guarantee agreements provisions that provide additional authority to the Secretary to take

appropriate action to limit potential losses in connection with defaulted loans or loans that are in jeopardy due to the deteriorating financial condition of obligors.

*Sec. 107. Defaults Under Title XI*

This section would amend the Merchant Marine Act to require the Secretary of Transportation, in the event of default on an obligation, to take actions to: maximize the net present value return from the sale or disposition of assets associated with the obligation; minimize the amount of any loss realized in the resolution of the guarantee; ensure adequate competition and minimize the amount of any loss realized in the resolution of the guarantee; ensure adequate competition and fair and consistent treatment of offerors; and require an appraisal of assets by an independent appraiser.

*Sec. 108. Decision Period*

This section would require the Secretary of Transportation to approve or deny an application for a loan guarantee within 270 days after the date on which the signed application is received by the Secretary. It also would grant authority to the Secretary of Transportation to extend the 270-day period for up to two years.

*Sec. 109. Loan Guarantees Under Title XI*

This section would amend the Merchant Marine Act to give the Secretary of Transportation the authority to require an independent analysis to be conducted by third party experts if the Secretary determines that risk factors associated with markets, technology, financial structures, or other factors need such analysis prior to making a determination on a loan guarantee application. Any independent analysis conducted pursuant to this provision would be performed by a party chosen by the Secretary. The section also would give the Secretary the authority to make a determination that an application under this title requires additional equity prior to approval because of increased risk factors associated with markets, technology, financial structures, or other risk factors identified by the Secretary.

The section also would provide the Secretary the authority to charge and collect fees to cover the costs of any independent analysis required under this section. Any fee collected under this section would be credited as an offsetting collection to the account that finances the administration of the loan guarantee program and would be available for expenditure only to pay the costs of the analysis.

*Sec. 110. Annual Report on Title XI Program*

This section would require the Secretary of Transportation to report to Congress annually on the loan guarantee program under title XI of the Merchant Marine Act, including the size, in dollars, of the portfolio of loans guaranteed; the size, in dollars, of projects in the portfolio facing financial difficulty; the number and type of projects covered; a profile of pending loan applications; the amount of appropriations available for new guarantees; a profile of each project approved since the last report; and a profile of any defaults since the last report.

*Sec. 111. Review of Title XI Loan Guarantee Program*

This section would require the Secretary of Transportation to conduct a comprehensive assessment of the personnel and other resource needs in connection with the Title XI Maritime Loan Guarantee Program under the Merchant Marine Act and to develop an organizational framework for the program offices that ensures that a clear separation of duties is established among the loan application, project monitoring, and default management functions.

This section would amend the Merchant Marine Act to require that the loan guarantee program risk categories, and associated subsidy rates, be updated annually. It also would require the Secretary to use a risk category system that is based on historical analysis of program data and statistical evidence concerning the likely costs of defaults or other costs and to ensure that each risk category is comprised of loans that are relatively homogenous in cost and share characteristics predictive of defaults and other costs, given the facts known at the time of obligation or commitment. Finally, the section would amend the Merchant Marine Act to require the Secretary to consider the risk presented by an unduly large percentage of loans outstanding by any one borrower or group of affiliated borrowers prior to making an obligation or commitment.

This section would require the Secretary to report by January 2, 2004, to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Armed Services on the results of the development of an organizational framework under this section.

*Sec. 112. War Risk Insurance*

This section would enable the DOT to support shared logistics operations with the North Atlantic Treaty Organization (NATO) or similar international organizations or alliances. The statutory ability to pay the United States' portion of a shared loss pursuant to an agreement with these organizations would allow the sharing of risk of loss between multiple countries. Such a provision could allow greater use of foreign vessels and distribute the risk of the loss of a ship during a contingency. Currently there is a disproportionate reliance on U.S.-flag carriers, and thus an increased risk of loss to the United States.

The proposed changes also would allow the receipt of contributions from other countries within the NATO or other similar international organizations to offset losses sustained by U.S.-flag carriers participating in shared logistics operations that are insured under this program. These contributions would be deposited in the fund and would relieve the DOD or another United States department or agency, of the obligation to reimburse the fund to the extent of any contributions received.

*Sec. 113. Maritime Education and Training*

This section would amend enforcement of the commitment agreements for students at the USMMA and students at the State maritime academies who receive SIP. Currently, students have an obligation to complete the course of instruction at USMMA or the State academy unless the individual is separated by the Academy. Students that leave USMMA voluntarily after spending two years at the Academy may be required to serve on active duty in the

Navy. This section would amend current law such that USMMA students and SIP recipients who have attended an academy for two or more years may be required to serve on active duty or reimburse the government for educational expenses if the Secretary of Transportation determines that such individual has breached their service agreement. If for any reason the individual is not ordered to active duty, the Secretary may seek to recover the educational costs provided. This statutory change would bring the service obligation of maritime academy students more in line with the requirements of students at the other Federal service academies.

This section also would amend current law with respect to the enforcement of the postgraduate service obligation for graduates of the USMMA and State academy graduates who received SIP payments. This section makes it clear that if a graduate fails to fulfill the service obligation agreed to, that individual may either be ordered to active duty in one of the armed services or may be required to reimburse MARAD for educational costs covered. Under this section, the Secretary of Transportation would have the option of either recovering educational costs or seeking to have the individual ordered to active duty, whichever better serves the interest of the United States. If for any reason the individual is not ordered to active duty, the Secretary may seek to recover the educational costs in an amount proportionate to the unfulfilled portion of the service agreement as determined by the Secretary. This amendment will bring the service obligation of maritime academy students more in line with the requirements of students at the other Federal service academies.

Additionally, this section would expand the options available to the Secretary for recovery of the educational expenses provided to an individual that has breached a service agreement. Currently, the Secretary is authorized only to request the Attorney General to commence court proceedings to recover such costs. New language under this section would, in order to aid in the recovery of educational expenses, authorize the Secretary to seek the assistance of the Attorney General or use Federal debt collection procedures or other applicable administrative remedies.

This section also would amend the postgraduate commitment for USMMA and State academy SIP recipient graduates to require them to maintain a valid license with appropriate endorsements and certification as required by the Coast Guard for service aboard vessels on domestic or international voyages. Currently, USMMA graduates and SIP recipients are required only to maintain a license as an officer in the merchant marine. The additional requirement imposed by this section has become necessary in light of the International Convention for the Standards of Training Certification and Watch-keeping (STCW). Under STCW, mariners must possess, in addition to their license, an STCW certificate for service aboard vessels on international voyages. Mandating this certification will ensure that Academy graduates possess the license and any additional certification necessary to meet the economic and national security sealift needs of the United States.

This section also expands the options available to Merchant Marine Academy graduates and State academy SIP recipients to allow them to fulfill their service obligation by accepting, for a minimum of five years, Federal maritime related employment. The focus of

such employment must be to serve the national security interests of the United States. Such employment would be considered equivalent to sea service or active service in the armed forces or National Oceanic and Atmospheric Administration (NOAA).

This section would change the amount of SIP made to State maritime academy students from \$3,000 to \$4,000 annually. The increase would help to offset the increasing costs of higher education and serve as an additional incentive for students at State maritime academies to commit themselves to an obligation to serve the maritime and national security needs of the United States. This increase would have no effect on the Department's overall budget, however, because increased payments would be allocated to a fewer number of recipients.

This section also would authorize the Superintendent of the USMMA to confer a masters degree upon any individual who has met the regulatory conditions for a particular masters program administered by the Academy. Any such program must be accredited by the appropriate accreditation entity.

Finally, this section would authorize the Secretary to establish a medals and awards program as part of the existing United States Maritime Service. The awards program would supplement existing programs and allow the Secretary to recognize distinguished service and other commendable achievements by personnel of the United States Maritime Service.

*Sec. 114. Prohibition Against Carrying Government Impelled Cargoes for Vessels With Substandard Security Measures*

Current law prevents vessels that have been detained by the United States Coast Guard for violations of international safety agreements from being allowed to carry United States government impelled cargoes for up to one year after the detention. This section would provide the Secretary with the authority to also exclude vessels from the carriage of government-impelled cargoes that have been detained for violations of security standards contained within international agreements to which the United States is a party.

*Sec. 115. Authority To Convey Obsolete Vessels to U.S. Territories and Foreign Countries for Reefing*

The section would extend to the Secretary of Transportation the authority to convey to United States territories and foreign governments obsolete vessels for use as artificial reefs. Currently, this authority is limited to the individual States of the United States. MARAD has been contacted by several foreign countries interested in obtaining obsolete vessels for use as artificial reefs. Due to the existing statutory constraints, MARAD has been unable to explore the possibility of conveying obsolete vessels to other countries for this use. This section also sets forth the information that a State, Commonwealth, or foreign government would be required to provide when applying for the use of a vessel as an artificial reef, and the determinations that would need to be made prior to conveyance of a vessel. This section builds upon the existing framework for similar conveyances to States and presents broader opportunities for MARAD to dispose of its fleet of obsolete vessels at no cost to the government.



The section also would direct the Administrator of the Environmental Protection Agency and the Secretary of Transportation, in consultation with other interested Federal and State agencies, to jointly develop guidance recommending environmental best management practices to be used in the preparation of vessels to be used as artificial reefs. The guidance developed would serve as national guidance for Federal agencies preparing vessels for use as artificial reefs. The Secretary of Transportation would report on the environmental best practices developed through the existing ship disposal reporting requirements.

*Sec. 116. Maintenance of Current Saint Lawrence Seaway Development Corporation Safety Responsibilities*

This section would clarify the decades-old authority of the SLSDC to carry out the provisions of the PWSA in the case of the Saint Lawrence Seaway. The PWSA specifies that certain authorities over vessel operations in the Seaway, which are vested with the Secretary of the Department in which the Coast Guard is operating, shall not be delegated "to any agency other than the Saint Lawrence Seaway Development Corporation" (33 U.S.C. 1229). This delegation underlies enforcement of the joint United States-Canadian Seaway regulations governing vessel operations in the Seaway, operations of the SLSDC Vessel Traffic Center, and the SLSDC civil and criminal penalty referral authority. This amendment would clarify the SLSDC's continuing authority under the delegation and statute to regulate vessel traffic in the Seaway, in conjunction with the 1954 agreement between Canada and the United States governing vessel traffic in the Seaway, and subsequent agreements. The amendment would retain the current definition for most purposes, with the exception of those specific authorities for which only the SLSDC may be designated. The authority of the Coast Guard for security matters under the PWSA (33 U.S.C. 1226) would not be affected by the proposed amendment, which is intended to maintain the status quo.

*Sec. 117. Use of Insurance Proceeds for Repairs at the Merchant Marine Academy*

This section would allow MARAD to use funds received from an insurance settlement for legally authorized purposes, including completion of repairs to the Merchant Marine Academy, Fitch Building which suffered fire damage on December 16, 1996. The damages were estimated to be in excess of \$1,100,000 to the building and a loss of materials stored at the building. MARAD contended that a contractor working on the building was at fault. After unsuccessful negotiations and commencement of litigation, a settlement was reached for \$708,100.

To date, the USMMA has only been able to repair a portion of the damages through appropriated funds, preventing the Academy from financing other projects. If the contractor had repaired the damage to the Fitch Building without the need for litigation, there would be no need to return the funds received to the Treasury as a miscellaneous receipt. Allowing MARAD to use the settlement funds to repair the Fitch Building would allow for the repair of damage for which the funds were meant to compensate.

*Sec. 118. Availability to the Vessel Operations Revolving Fund of Funds from Lawsuits and Settlements*

The VORF was created in 1951 to carry 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. This provision would allow MARAD to retain funds received as a result of final judgments and settlements in the VORF. It would thus provide a potential funding stream for the VORF to cover expenses that arise from time to time as a result of damage incurred to NDRF vessels at the hands of other parties.

*Sec. 119. Eligibility of Tank Vessels for the Maritime Security Program*

This section would allow foreign-built tank vessels to be included in the Maritime Security Fleet if the owner enters into a binding contract that requires the owner to replace the tank vessel with a new tank vessel built in the United States within four years.

*Sec. 120. Correction of 2002 Coastwise Trade Authorization Provision*

This section would make a technical correction to section 213(b) of the Maritime Policy Improvement Act of 2002 in order to restrict coastwise trade authority of certain foreign-built launch barge operations.

**TITLE II—MARITIME SECURITY FLEET PROGRAM**

*Sec. 201. Short Title*

This section would establish that this title may be referred to as the “Maritime Security Fleet Program Reauthorization Act of 2003”.

*Sec. 202. Amendment of Merchant Marine Act, 1936*

This section would establish that except when otherwise stated, this Act modifies only the Merchant Marine Act, 1936.

*Sec. 203. Changes to Maritime Security Fleet Establishment Provisions*

This section would amend 46 U.S.C. App. 1187 to reestablish and enhance the MSP fleet. The Secretary of Transportation, in conjunction with the Secretary of Defense in a consultative role, is directed to establish an “active, commercially viable, militarily useful” fleet of privately-owned, United States-documented, oceangoing vessels, and to specifically include “tank vessels” as eligible for membership in the fleet.

This section would set forth citizenship eligibility requirements for charters and owners in the following manner—

- (1) vessels owned and operated by section 2 citizens (as defined by section 2 of the Shipping Act of 1916);
- (2) vessels owned by documentation citizen and chartered to section 2 citizen;
  - if the vessel is demise chartered to a section 2 citizen;
  - if the vessel is owned by a person eligible to document the vessel under chapter 121 of title 46 U.S.C.;

(3) vessels owned by section 2 citizen and chartered to documentation citizen;

- if the vessel is demise chartered to a person who is eligible to document the vessel under chapter 121 of title 46, U.S.C.;
- if the management and ownership of the documentation citizen organization are appointed and removed only with approval by the Secretary of Transportation;
- the contractor certifies that there are no legal restrictions or treaties that would prevent the contractor from fulfilling the terms of an operating agreement;
- the Secretaries of Transportation and Defense certify to the House of Representatives Armed Services Committee and the Senate Committee on Commerce, Science, and Transportation that they concur with the previous certification
- if a vessel is chartered to a person who is controlled by a non-section 2 citizen, this person must enter into an agreement with the secretary of transportation not to influence the operation of the vessel in a manner that would adversely affect the United States.

**DEEMED OWNERSHIP.** If a vessel is owned by a trust and demise chartered to a person who meets the requirements of a documentation citizen, the vessel is deemed for eligibility purposes to be owned by a section 2 citizen, only if the trust meets the requirements of 12102(d) of title 46 U.S.C., as qualified by paragraph (3) of that section.

The section would add vessel standards to the criteria for participation, allowing the Secretary of Transportation to determine if a non-documented vessel is eligible for a certificate of inspection. The standards under which the Secretary makes a determination are:

- the vessel is classed and designed in accordance with the rule of the American Bureau of Shipping, or another classification society accepted by the Secretary;
- the vessel complies with international guidelines as determined by the country in which the vessel was immediately previously documented; and
- that country has not been identified by the Secretary as inadequately enforcing international vessel regulations.

If the vessel fails to meet these standards, then the certification of inspection does not apply to the vessel. Also, the Secretary may accept the standards of a foreign classification society if the society maintains records and offices in the United States and provides reciprocal access to records with the American Bureau of Shipping.

#### *Sec. 204. Changes to Operating Agreements Requirements*

This section would eliminate references to the expired Operating Differential Subsidy program, which were required to prevent subsidy overlaps with the ODS and the original MSP. Also, the term “foreign trade” is defined in reference to section 905(a) of the Merchant Marine Act which describes foreign trade and commerce as being between the United States and a foreign country. Participation in the “coastwise trade” is not allowed for MSP vessels.

This section deems a vessel’s communication equipment to meet Federal Communications Commission requirements as long as the

equipment complies with applicable international agreements and guidelines, and was immediately previously documented in a country that has not been identified by the Secretary as inadequately enforcing international vessel regulations.

This section also extends the authorization of the MSP until 2015. It also eliminates specific reference to Lighter Abroad Ship (LASH) vessels.

This section also would change the threshold for transporting civilian bulk or bagged preference cargos to 2,500 tons. If a MSP ship carries more than 2,500 tons of bagged or bulk preference cargo, it is ineligible for MSP payment. However, vessels that are owned and operated by section 2 citizens are exempt from these cargo restrictions to MSP payments.

*Sec. 205. Participating Fleet Vessel Defined*

This section would amend section 654 (46 U.S.C. App. 1187c) by adding a definition of “Participating Fleet Vessel”. The term would be defined to mean any vessel that on October 1, 2005, will meet the citizenship eligibility requirements of this Act and will be less than 25 years of age or, if the vessel is a LASH vessel, will be less than 30 years of age. Further, on April 30, 2005, the vessel must be covered by an operating agreement under subtitle B of title VI of the Merchant Marine Act, 1936, and—

- is a replacement vessel described in this Act;
- is controlled by the person that controls such replaced vessel;
- is eligible to be included in the Fleet; and
- is approved by the Secretaries of Transportation and Defense.

*Sec. 206. Authorization of Appropriations*

This section would authorize \$100,000,000 for each of fiscal years 1997 through 2005 for the MSP, and such sums as may be necessary not to exceed \$186,000,000 for each fiscal year thereafter through fiscal year 2015.

*Sec. 207. Noncontiguous Domestic Trade*

Section 207 would prohibit Jones Act vessels that operate in the noncontiguous trade from receiving MSP payments while operating in that trade, yet provides for a hearing and written waiver from the Secretary for MSP vessels to participate in the noncontiguous domestic trade. Vessel operators that serve the noncontiguous domestic trade at the time of enactment of this Act would not be prohibited from receiving MSP payments.

*Sec. 208. Regulations*

This section would amend subtitle B of title VI of the Merchant Marine Act by adding a new section 657, authorizing the Secretary of Transportation, in consultation with the Secretary of Defense, to prescribe interim rules and final rules as necessary. All interim rules expire no later than 270 days after the enactment of this Act.

*TITLE III—NATIONAL DEFENSE TANK VESSEL CONSTRUCTION ASSISTANCE*

*Sec. 301. National Defense*

This section would require the Secretary of Transportation to establish a program to provide financial assistance for the construction in the United States of a fleet of five privately-owned tank vessels for enrollment in an emergency preparedness agreement.

Further, the section would require the Secretary to establish procedures to obtain competitive proposals for the construction of new tank vessels to meet the commercial and national security needs of the United States. This section also would require the Secretary to give priority consideration to a proposal submitted 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).

The section also would allow the Secretary to enter into a contract to provide assistance for the construction of a new tank vessel in the United States in an amount up to 75 percent of the actual construction cost of the vessel, but in no case more than \$50 million per vessel. This section also provides that a vessel constructed under this section is not eligible for a certificate of documentation with a coastwise endorsement. A vessel constructed under this section also must enter into an emergency preparedness agreement under this title.

Additionally, the section would require the Secretary of Transportation to give priority to guarantees and commitments for new product tank vessels that are otherwise eligible for a guarantee under this section 1103 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1273).

Finally, the section would authorize a total of \$250 million after fiscal year 2004 to carry out this subtitle.

ROLLCALL VOTES IN COMMITTEE

Senator Lott offered an amendment, to the amendment (in the nature of a substitute) offered by Senator McCain, to authorize funds for title XI of the Merchant Marine Act, 1936, to provide direct subsidies for ship construction and for other purposes. By roll-call vote of 18 yeas and 5 nays as follows, the amendment was adopted:

YEAS—18

Mr. Stevens<sup>1</sup>  
Mr. Burns<sup>1</sup>  
Mr. Lott  
Mrs. Hutchison  
Ms. Snowe<sup>1</sup>  
Mr. Smith<sup>1</sup>  
Mr. Allen<sup>1</sup>  
Mr. Hollings  
Mr. Inouye<sup>1</sup>  
Mr. Rockefeller<sup>1</sup>  
Mr. Kerry<sup>1</sup>  
Mr. Breaux<sup>1</sup>  
Mr. Dorgan<sup>1</sup>  
Mr. Wyden<sup>1</sup>

NAYS—5

Mr. Brownback<sup>1</sup>  
Mr. Fitzgerald<sup>1</sup>  
Mr. Ensign<sup>1</sup>  
Mr. Sununu<sup>1</sup>  
Mr. McCain

Mrs. Boxer<sup>1</sup>  
 Mr. Nelson<sup>1</sup>  
 Ms. Cantwell  
 Mr. Lautenberg<sup>1</sup>

<sup>1</sup>By proxy

#### CHANGES IN EXISTING LAW

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

#### PUBLIC LAW 92-402

[16 U.S.C. 1220]

【SEC. 3. (a) Any State may apply to the Secretary of Transportation (hereafter referred to in this Act as the “Secretary”) for obsolete ships which, but for the operation of this Act, would be designated by the Secretary for scrapping if the State intends to sink such ships for use as an offshore artificial reef for the conservation of marine life.

【(b) A State shall apply for obsolete ships under this Act in such manner and form as the Secretary shall prescribe, but such application shall include at least (1) the location at which the State proposes to sink the ships, (2) a certificate from the Administrator, Environmental Protection Agency, that the proposed use of the particular vessel or vessels requested by the State will be compatible with water quality standards and other appropriate environmental protection requirements, and (3) statements and estimates with respect to the conservation goals which are sought to be achieved by use of the ships.

【(c) Before taking any action with respect to an application submitted under this Act, the Secretary shall provide copies of the application to the Secretary of the Interior, the Secretary of Defense, and any other appropriate Federal officer, and shall consider comments and views of such officers with respect to the application.】

#### **SEC. 3. PREPARATION OF VESSELS FOR USE AS ARTIFICIAL REEFS.**

##### *(a) GUIDANCE.—*

*(1) IN GENERAL.—Not later than September 30, 2003, the Administrator of the Environmental Protection Agency and the Secretary of Transportation, acting through the Maritime Administration, shall jointly develop guidance recommending environmental best management practices to be used in the preparation of vessels for use as artificial reefs. Before issuing the guidance, the Administrator and the Secretary shall consult with interested Federal and State agencies.*

##### *(2) REQUIREMENTS.—The guidance shall—*

*(A) recommend environmental best management practices for the preparation of vessels that would ensure that the use of vessels so prepared as artificial reefs would be environmentally beneficial;*

*(B) promote the nationally consistent use of such practices; and*

(C) provide a basis for estimating the costs associated with the preparation of vessels for use as artificial reefs.

(3) *USE BY FEDERAL AGENCIES.*—The guidance shall serve as national guidance for Federal agencies preparing vessels for use as artificial reefs.

(4) *REPORT.*—The Secretary of Transportation shall submit to Congress a report on the environmental best management practices developed under paragraph (1) through the existing ship disposal reporting requirements in section 3502 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (16 U.S.C. 5405 note). The report shall describe such practices, and may include such other matters as the Secretary considers appropriate.

(b) *APPLICATION REQUIRED.*—

(1) *IN GENERAL.*—A State, commonwealth, possession of the United States or foreign government may apply for any vessel of the National Defense Reserve Fleet that has been identified by the Secretary as an obsolete vessel of insufficient value to warrant its further preservation in such a manner and form as the Secretary shall prescribe. At a minimum, the application shall state—

(A) the location at which the applicant proposes to sink the vessel or vessels;

(B) the environmental goals to be achieved by the use of the vessel or vessels; and

(C) that the applicant agrees to hold the Government harmless for any claims arising from exposure to asbestos, polychlorinated biphenyls, lead paint, or other hazardous substances after conveyance of the vessel, except for claims arising from use of the vessel by the Government.

(2) *STATES.*—

(A) *ADDITIONAL DOCUMENTATION REQUIRED.*—A State, commonwealth, or possession of the United States shall also provide to the Secretary and the Administrator in its application documentation that the proposed use of the particular vessel or vessels requested will comply with all applicable water quality standards and will benefit the environment in the vicinity of the proposed reef, taking into account the guidance issued under subsection (a) and other appropriate environmental considerations.

(B) *EPA CERTIFICATION.*—Before any vessel may be used as an artificial reef, the State, commonwealth, or possession of the United States shall demonstrate to the Environmental Protection Agency, and that Agency shall determine in writing, that the use of the vessel as an artificial reef at the proposed location will be environmentally beneficial.

(3) *FOREIGN GOVERNMENTS.*—A foreign government shall also provide to the Secretary and the Administrator in its application—

(A) documentation of—

(i) how the proposed use of the vessel or vessels will benefit the environment; and

(ii) remediation that the vessel will undergo prior to use as an artificial reef; and

(B) certification that such remediation shall take into account the guidance issued under subsection (a).

(4) *DETERMINATION OF ENVIRONMENTAL BENEFIT.*—No obsolete vessel shall be conveyed unless the Maritime Administration and the Environmental Protection Agency jointly determine, in writing, that the proposed remediation measures will ensure that use of the vessel as an artificial reef will be environmentally beneficial. The contract conveying the vessel or vessels from Maritime Administration to the foreign government shall require the use of the remediation measures determined by Maritime Administration and the Environmental Protection Agency to ensure that use of the vessel or vessels as an artificial reef will be environmentally beneficial.

(c) *APPLICATION WITH OTHER LAW.*—Nothing in this section shall be construed as affecting in any manner the application of any other provision of law, including laws relating to the conveyance of obsolete vessels, their distribution in commerce, or their use as artificial reefs.

## PORTS AND WATERWAYS SAFETY ACT

[33 U.S.C. 1222]

SEC. 3. DEFINITIONS.—As used in this Act, unless the context otherwise requires—

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

(2) “Secretary” means the Secretary of the department in which the Coast Guard is ~~operating.~~ *operating, except that “Secretary” means the Secretary of Transportation with respect to the applicability of this Act to the Saint Lawrence Seaway.*

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

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

(5) “Navigable waters of the United States” includes all waters of the territorial sea of the United States as described in Presidential Proclamation No. 5928 of December 27, 1988.



## TITLE 46. SHIPPING

## SUBTITLE II. VESSELS AND SEAMEN

## PART A. GENERAL PROVISIONS

## CHAPTER 23. OPERATION OF VESSELS GENERALLY

**§ 2302. Penalties for negligent operations and interfering with safe operation**

(a) A person operating a vessel in a negligent manner or interfering with the safe operation of a vessel, so as to endanger the life, limb, or property of a person is liable to the United States Government for a civil penalty of not more than \$5,000 in the case of a recreational vessel, or \$25,000 in the case of any other vessel.

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

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

(1) is liable to the United States Government for a civil penalty of not more than \$5,000; or

(2) commits a class A misdemeanor.

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

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

(2) operated principally for governmental purposes; and

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

(e)(1) A vessel may not transport Government-impelled cargoes if—

(A) the vessel has been detained and determined to be substandard by the Secretary for violation of an international safety convention to which the United States is a party, *including violations for substandard security measures*, and the Secretary has published notice of that detention and determination in an electronic form, including the name of the owner of the vessel; or

(B) the operator of the vessel has on more than one occasion had a vessel detained and determined to be substandard by the Secretary for violation of an international safety convention to which the United States is a party, *including violations for substandard security measures*, and the Secretary has published notice of that detention and determination in an electronic form, including the name of the owner of the vessel.

(2) The prohibition in paragraph (1) expires for a vessel on the earlier of—

(A) 1 year after the date of the publication in electronic form on which the prohibition is based; or

(B) any date on which the owner or operator of the vessel prevails in an appeal of the violation of the relevant international convention on which the detention is based.

(3) As used in this subsection, the term “Government-impelled cargo” means cargo for which a Federal agency contracts directly for shipping by water or for which (or the freight of which) a Fed-

eral agency provides financing, including financing by grant, loan, or loan guarantee, resulting in shipment of the cargo by water.

## MERCHANT MARINE ACT, 1936

### TITLE V—CONSTRUCTION-DIFFERENTIAL SUBSIDY

#### SUBTITLE A—GENERAL SUBSIDY FOR NEW VESSEL CONSTRUCTION

#### SEC. 508. DISPOSITION OF VESSELS TRANSFERRED TO MARITIME ADMINISTRATION OF DEPARTMENT OF TRANSPORTATION.

[46 U.S.C. APP. 1158]

(a) *AUTHORITY TO SCRAP OR SELL OBSOLETE VESSELS.*—If the Secretary 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.

(b) *AUTHORITY TO CONVEY VESSELS.*—

(1) *IN GENERAL.*—*Notwithstanding section 510(j) of this Act, the Secretary of Transportation may convey the right, title, and interest of the United States Government in any vessel of the National Defense Reserve Fleet that has been identified by the Secretary as an obsolete vessel of insufficient value to warrant its further preservation, if—*

(A) *the recipient is a non-profit organization, a State, Commonwealth, or possession of the United States or any municipal corporation or political subdivision thereof, or the District of Columbia;*

(B) *the recipient agrees not to use, or allow others to use, the vessel for commercial transportation purposes;*

(C) *the recipient agrees to make the vessel available to the Government whenever the Secretary indicates that it is needed by the Government;*

(D) *the recipient agrees to hold the Government harmless for any claims arising from exposure to asbestos, polychlorinated biphenyls, lead paint, or other hazardous substances after conveyance of the vessel, except for claims arising from use of the vessel by the Government;*

(E) *the recipient has a conveyance plan and a business plan, each of which have been submitted to and approved by the Secretary; and*

(F) *the recipient has provided proof, as determined by the Secretary, of resources sufficient to accomplish the transfer,*

*necessary repairs and modifications, and initiation of the intended use of the vessel.*

(2) *OTHER EQUIPMENT.*—*At the Secretary’s discretion, additional equipment from other obsolete vessels of the National Defense Reserve Fleet may be conveyed to assist the recipient with maintenance, repairs, or modifications.*

(3) *ADDITIONAL TERMS.*—*The Secretary may require any additional terms the Secretary considers appropriate.*

(4) *DELIVERY OF VESSEL.*—*If conveyance is made under this subsection the vessel shall be delivered to the recipient at a time and place to be determined by the Secretary. The vessel shall be conveyed in an ‘as is’ condition.*

(5) *LIMITATIONS.*—*If at any time prior to delivery of the vessel to the recipient, the Secretary determines that a different disposition of a vessel would better serve the interests of the Government, the Secretary shall pursue the more favorable disposition of the obsolete vessel and shall not be liable for any damages that may result from an intended recipient’s reliance upon a proposed transfer.*

\* \* \* \* \*

#### SUBTITLE B—NATIONAL DEFENSE TANK VESSEL CONSTRUCTION ASSISTANCE

##### **SEC. 521. NATIONAL DEFENSE TANK VESSEL CONSTRUCTION PROGRAM.**

*The Secretary of Transportation shall establish a program for the provision of financial assistance for the construction in the United States of a fleet of up to 5 privately owned product tank vessels—*

*(1) to be operated in commercial service in foreign commerce; and*

*(2) to be available for national defense purposes in time of war or national emergency pursuant to an Emergency Preparedness Plan approved by the Secretary of Defense pursuant to section 523(e) of this subtitle.*

##### **SEC. 522. APPLICATION PROCEDURE.**

(a) *REQUEST FOR PROPOSALS.*—*Within 90 days after the date of the enactment of this subtitle, and on an as-needed basis thereafter, the Secretary of Transportation, in consultation with the Secretary of Defense, shall publish in the Federal Register a request for competitive proposals for the construction of new product tank vessels necessary to meet the commercial and national security needs of the United States and to be built with assistance under this subtitle.*

(b) *QUALIFICATION.*—*Any citizen of the United States or any shipyard in the United States may submit a proposal to the Secretary of Transportation for purposes of constructing a product tank vessel with assistance under this subtitle.*

(c) *REQUIREMENT.*—*The Secretary of Transportation, with the concurrence of the Secretary of Defense, may enter into an agreement with the submitter of a proposal for assistance under this subtitle if the Secretary of Transportation determines that—*

*(1) the plans and specifications call for construction of a new product tank vessel of not less than 35,000 deadweight tons and not greater than 60,000 deadweight tons, that—*

*(A) will meet the requirements of foreign commerce;*

(B) is capable of carrying militarily useful petroleum products, and will be suitable for national defense or military purposes in time of war, national emergency, or other military contingency; and

(C) will meet the construction standards necessary to be documented under the laws of the United States;

(2) the shipyard in which the vessel will be constructed has the necessary capacity and expertise to successfully construct the proposed number and type of product tank vessels in a reasonable period of time as determined by the Secretary of Transportation, taking into consideration the recent prior commercial shipbuilding history of the proposed shipyard in delivering a vessel or series of vessels on time and in accordance with the contract price and specifications; and

(3) the person proposed to be the operator of the proposed vessel possesses the ability, experience, financial resources, and any other qualifications determined to be necessary by the Secretary for the operation and maintenance of the vessel.

(d) **PRIORITY.**—The Secretary of Transportation—

(1) subject to paragraph (2), shall give priority consideration to a proposal submitted 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); and

(2) may give priority to consideration of proposals that provide the best value to the Government, taking into consideration—

(A) the costs of vessel construction; and

(B) the commercial and national security needs of the United States.

#### **SEC. 523. AWARD OF ASSISTANCE.**

(a) **IN GENERAL.**—If after review of a proposal, the Secretary of Transportation determines that the proposal fulfills the requirements under this subtitle, the Secretary may enter into a contract with the proposed purchaser and the proposed shipyard for the construction of a product tank vessel with assistance under this subtitle.

(b) **AMOUNT OF ASSISTANCE.**—The contract shall provide that the Secretary of Transportation shall pay, subject to the availability of appropriations, up to 75 percent of the actual construction cost of the vessel, but in no case more than \$50,000,000 per vessel.

(c) **CONSTRUCTION IN UNITED STATES.**—A contract under this section shall require that construction of a vessel with assistance under this subtitle shall be performed in a shipyard in the United States.

(d) **DOCUMENTATION OF VESSEL.**—

(1) **CONTRACT REQUIREMENT.**—A contract under this section shall require that, upon delivery of a vessel constructed with assistance under the contract, the vessel shall be documented under chapter 121 of title 46, United States Code, with a registry endorsement only.

(2) **RESTRICTION ON COASTWISE ENDORSEMENT.**—A vessel constructed with assistance under this subtitle shall not be eligible for a certificate of documentation with a coastwise endorsement.

(3) **AUTHORITY TO REFLAG NOT APPLICABLE.**—Section 9(g) of the Shipping Act, 1916, (46 App. U.S.C. 808(g)) shall not apply to a vessel constructed with assistance under this subtitle.

(e) *EMERGENCY PREPAREDNESS AGREEMENT.*—

(1) *IN GENERAL.*—A contract under this section shall require that the person who will be the operator of a vessel constructed with assistance under the contract shall enter into an *Emergency Preparedness Agreement* for the vessel under section 653.

(2) *TREATMENT AS CONTRACTOR.*—For purposes of the application, under paragraph (1), of section 653 to a vessel constructed with assistance under this subtitle, the term ‘contractor’ as used in section 653 means the person who will be the operator of a vessel constructed with assistance under this subtitle.

(f) *ADDITIONAL TERMS.*—The Secretary of Transportation shall incorporate in the contract the requirements set forth in this subtitle, and may incorporate in the contract any additional terms the Secretary considers necessary.

\* \* \* \* \*

## TITLE VI—VESSEL OPERATING ASSISTANCE PROGRAM

## SUBTITLE B—MARITIME SECURITY FLEET PROGRAM

## SEC. 651. ESTABLISHMENT OF FLEET.

[46 U.S.C. APP. 1187]

(a) *IN GENERAL.*—The Secretary of [Transportation] *Transportation, in consultation with the Secretary of Defense,* shall establish a fleet of active, *commercially viable,* 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 (*including a tank 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;] *in oceangoing transportation;*

[(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]

(B) *is in commercial service, on charter to the Department of Defense, or in other employment;*

(C) any other type of vessel that [is determined by the Secretary to be] *the Secretary, in conjunction with the Secretary of Defense, has determined to be commercially viable and 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

[(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]

(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 15 years of age or less; except that the Secretary of Transportation may waive the application of clause (ii) if the Secretary, in conjunction with the Secretary of Defense, determines that the waiver—*

*(I) is in the national interest;*

*(II) is appropriate to allow the maintenance of the economic viability of the vessel and any associated operating network;*

*(III) is necessary due to the availability of appropriate vessels that meet the operations and commercial requirements; and*

*(IV) is consistent with such other factors as the Secretaries consider appropriate; 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 a United States presence in international commercial shipping [or, after consultation] *and, in conjunction 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.] Code; *and*

*(5) meets the requirements of paragraph (1), (2), (3), or (4) of subsection (c).*

(c) *REQUIREMENTS REGARDING CITIZENSHIP OF OWNERS AND CHARTERERS.—*

*(1) VESSEL OWNED AND OPERATED BY SECTION 2 CITIZENS.—A vessel meets the requirements of this paragraph if, during the period of an operating agreement under this subtitle that applies to the vessel, the vessel will be owned and operated by a person that is a citizen of the United States under section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802).*

*(2) VESSEL OWNED BY DOCUMENTATION CITIZEN AND CHARTERED TO SECTION 2 CITIZEN.—A vessel meets the requirements of this paragraph if, during the period of an operating agreement under this subtitle that applies to the vessel, the vessel will be—*

*(A) owned by a person that is eligible to document a vessel under chapter 121 of title 46, United States Code; and*

*(B) demise chartered to a person that is a citizen of the United States under section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802).*

(3) *VESSEL OWNED AND OPERATED BY DEFENSE CONTRACTOR.*—A vessel meets the requirements of this paragraph if—

(A) during the period of an operating agreement under this subtitle that applies to the vessel, the vessel will be owned and operated by a person that—

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

(ii) operates or manages other United States-documented vessels for the Secretary of Defense, or charters other vessels to the Secretary of Defense;

(iii) has entered into a special security agreement for purposes of this paragraph with the Secretary of Defense;

(iv) makes the certification described in paragraph (4)(A)(ii)(III); and

(v) in the case of a vessel described in paragraph (2)(B), enters into an agreement referred to in that paragraph; and

(B) the Secretary and the Secretary of Defense certify to the House Armed Services Committee and the Senate Commerce, Science and Transportation Committee that they concur with the certification, and have reviewed and agree that there are no other legal, operational, or other impediments that would prohibit the contractor for the vessel from performing its obligations under an operating agreement under this subtitle.

(4) *VESSEL OWNED BY SECTION 2 CITIZEN AND CHARTERED TO DOCUMENTATION CITIZEN.*—A vessel meets the requirements of this paragraph if—

(A) during the period of an operating agreement under this subtitle that applies to the vessel, the vessel will be—

(i) owned by a person that is a citizen of the United States under section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802); and

(ii) demise chartered to a person—

(I) that is eligible to document the vessel under chapter 121 of title 46, United States Code;

(II) the chairman of the board of directors, chief executive officer, and a majority of the members of the board of directors of which are United States citizens, are appointed and subjected to removal only upon approval by the Secretary;

(III) that certifies that there are no treaties, statutes, regulations, or other laws that would prohibit the contractor for the vessel from performing its obligations under an operating agreement under this subtitle; and

(IV) the Secretary and the Secretary of Defense certify to the House Armed Services Committee and the Senate Commerce, Science, and Transportation Committee that they concur with the certification, and have reviewed and agree that there are no other legal, operational, or other impediments that would prohibit the contractor for the vessel from

*performing its obligations under an operating agreement under this subtitle; and*

*(B) in the case of a vessel that will be chartered to a person that is owned or controlled by another person that is not a citizen of the United States under section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802), the other person enters into an agreement with the Secretary not to influence the operation of the vessel in a manner that will adversely affect the interests of the United States.*

*(d) DEEMED OWNERSHIP.—Notwithstanding section 12102(d)(4) of title 46, United States Code, in the case of a vessel that is owned by a trust and that is demise chartered to a person meeting the requirements of subsection (c)(4), the vessel is deemed, for purposes of the eligibility requirements of this section, to be owned and operated by a person that is a citizen of the United States under section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802) if the trust meets the requirements of paragraph (2) of section 12102(d) of title 46, United States Code, as qualified by paragraph (4) of that section.*

*(e) VESSEL STANDARDS.—*

*(1) CERTIFICATE OF INSPECTION.—A vessel used to provide oceangoing transportation which the Secretary of the department in which the Coast Guard is operating determines meets the criteria of subsection (b) of this section but which, on the date of enactment of the Maritime Security Fleet Program Reauthorization Act of 2003, is not a documented vessel (as that term is defined in section 12101 of title 46, United States Code) shall be eligible for a certificate of inspection if the Secretary determines that—*

*(A) 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;*

*(B) 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*

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

*(2) CONTINUED ELIGIBILITY FOR CERTIFICATE.—Paragraph (1) 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 paragraph (1)(B).*

*(3) RELIANCE ON CLASSIFICATION SOCIETY.—*

*(A) IN GENERAL.—The Secretary may rely on a certification from the American Bureau of Shipping or, subject to subparagraph (B), another classification society accepted by the Secretary to establish that a vessel is in compliance with the requirements of paragraphs (1) and (2).*

*(B) FOREIGN CLASSIFICATION SOCIETY.—The Secretary may accept certification from a foreign classification society under subparagraph (A) only—*

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

**SEC. 652. OPERATING AGREEMENTS.**

[46 U.S.C. APP. 1187A]

(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] *trade, as that term is defined in section 905(a) of this Act (without regard to “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,”), 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.**—

(1) **IN GENERAL.**—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. The restrictions of section 901(b)(1) of this Act concerning the building, rebuilding, or documentation of a vessel in a foreign country shall not apply to a vessel for any day the operator of that vessel is receiving payments under an operating agreement under this subtitle.

(2) **TELECOMMUNICATIONS EQUIPMENT.**—*The telecommunications and other electronic equipment on an existing vessel that is redocumented under the laws of the United States for operation under an operating agreement under this subtitle shall be deemed to satisfy all Federal Communications Commission equipment certification requirements, if—*

(A) *such equipment complies with all applicable international agreements and associated guidelines as determined by the country in which the vessel was documented immediately before becoming documented under the laws of the United States;*

*(B) that country has not been identified by the Secretary as inadequately enforcing international regulations as to that vessel; and*

*(C) at the end of its useful life, such equipment will be replaced with equipment that meets Federal Communications Commission equipment certification standards.*

(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 agreement 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.] 2015.**

(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]** 1996, \$2,100,000 *for each of fiscal years 1997 through 2005, and* \$3,100,000 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.]**

*(3) beyond its economic life, as determined by the Secretary.*

(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】~~ 2,500 tons of civilian bulk *or bagged* preference cargoes pursuant to section 901(a), 901(b), or 901b that is bulk *or bagged* ~~【cargo; and】~~ *cargo unless the vessel is owned and operated by persons that are citizens of the United States under section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802); 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; 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

(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, 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) AWARDING NEW AGREEMENTS.—*Subject to the availability of appropriations and without regard to subsection (i), the Secretary of Transportation shall enter into operating agreements according to a priority determined by the applicant's record of owning and operating vessels in accordance with section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802) under the United States flag and its capability to provide a sufficient level of military utility to the United States, as determined jointly by the Secretary of Transportation and the Secretary of Defense, based on the type and number of vessels, and non-vessel assets the applicant offers to the program.*

(k) REISSUANCE OF OPERATING AGREEMENTS.—*Subject to the availability of appropriations the Secretary of Transportation, in conjunction with the Secretary of Defense, may reissue operating agreements for participating fleet vessels. If the Secretary fails to reissue an operating agreement, or if the Secretary does not receive an application for reissuance of an operating agreement for a participating fleet vessel, the operating agreement will be awarded subject to subsection (j).*

[(j)] (l) 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] *Secretary and the Secretary of Defense 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)] (m) REVERSION OF UNUSED AUTHORITY.—(1) 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)] (A) 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)] (B) within 30 months after the effective date of the operating agreement, in the case of a vessel to be constructed after that effective date.

(2) *If the Secretary of Transportation makes a determination that the requirements set forth in this section are not fulfilled while an operating agreement is in effect, the Secretary may terminate the agreement and the Secretary shall be free to enter into an operating agreement with another party capable of fulfilling the requirements for an operating agreement under this subtitle.*

(n) *REPLACEMENT VESSEL.—The Secretary shall require the replacement of any participating fleet vessel that does not meet the requirements of section 651(b), and the Secretary, in conjunction with the Secretary of Defense, may approve the replacement of any participating vessel if the replacement vessel is eligible under section 651(b).*

[(1)] (o) **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 applications 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.

(3) **PROCEDURES FOR NEW AWARDS.**—*No later than 60 days after the date of issuance of interim final rules (or, if earlier, 60 days after the date of issuance of the final rule under section 657), the Secretary shall accept applications for enrollment of 13 additional 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.*

(4) **PROCEDURES FOR REISSUANCE OF OPERATING AGREEMENTS.**—*Not later than 60 days after the date of issuance of interim final rules (or, if earlier, 60 days after the date of issuance of the final rule under section 657), the Secretary shall accept applications, from any person that is eligible to enter into an operating agreement for a participating fleet vessel as of October 1, 2005, for the reissuance of an operating agreement for a participating fleet vessel. Within 90 days after receipt of an application for such a reissuance, the Secretary shall enter*

*into an agreement with the applicant, or provide in writing a reason for the denial.*

(5) *LIMITATION.*—*The Secretary may not award operating agreements under this subtitle that require payments under this section for more than 60 vessels in any fiscal year.*

(6) *EFFECTIVE DATE.*—*The effective date for an operating agreement under paragraph (3) or (4) shall be October 1, 2005, except for a vessel which is, on the date of entry into an operating agreement, on charter to the United States Government, other than a charter under section 653, the effective date shall be the expiration or termination date of the Government charter covering the vessel, or any earlier date the vessel is withdrawn from that contract or charter.*

[(m)] (p) *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)] (q) *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)] (r) *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).

(5) LIMITATIONS.—*With respect to the eligibility of a tank vessel that was not built in the United States—*

*(A) the Secretary may award an operating agreement for such vessel if—*

*(i) a binding contract for construction in the United States of a replacement vessel to be operated under the operating agreement is executed prior to the award of such operating agreement; and*

*(ii) the replacement vessel is eligible to be included in the fleet under this section; and*

*(B) no payment under this subtitle may be made for an existing tank vessel for which an operating agreement is awarded under this paragraph after the earlier of—*

*(i) the date that is 4 years after the award of the operating agreement for such tank vessel; or*

*(ii) the date of delivery of the replacement tank vessel.*

**[(p)]** (s) 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.

#### **SEC. 653. NATIONAL SECURITY REQUIREMENTS.**

[46 U.S.C. APP. 1187B]

(a) EMERGENCY PREPAREDNESS AGREEMENT.—

(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 Transpor-

tation shall include in each operating agreement 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 nonvessel resources for activation as the [Secretary] *Secretary, in conjunction with the Secretary of Defense*, 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] *Transportation, in conjunction with the Secretary of Defense*, 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 or other person that commits to make available a vessel or vessel capacity under the Emergency Preparedness Program or another primary sealift readiness program approved by the Secretary of Defense may, during the activation of that vessel or capacity under that program, operate or employ in foreign commerce a foreign-flag vessel or foreign-flag vessel capacity as a temporary replacement for the activated vessel or capacity; 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 U.S.C. APP. 1187C]

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.

[(7) **PARTICIPATING FLEET VESSEL.**—The term “participating fleet vessel” means—

[(A) any vessel that—

[(i) on October 1, 2005

[(I) will meet the requirements of paragraph (1), (2), (3) of section 1187(c); and

[(II) will be less than 25 years of age, or less than 30 years of age in the case of a LASH vessel; and

[(ii) on December 31, 2003, is covered by an operating agreement under subtitle B of title VI of the Merchant Marine Act, 1936 (46 App. U.S.C. 1187 et seq.); and

[(B) any vessel that—

[(i) is a replacement for a vessel described in subparagraph (A);

[(ii) is controlled by the person that controls such replaced vessel;

[(iii) is eligible to be included in the Fleet under section 1187(b);

[(iv) is approved by the Secretary and the Secretary of Defense; and

[(v) begins operation under an operating agreement under subtitle B by not later than the end of the 30-month period beginning on the date the operating agreement is entered into by the Secretary.]

(7) *PARTICIPATING FLEET VESSEL.*—*The term “participating fleet vessel” means—*

*(A) any vessel that is owned or demise chartered and that—*

*(i) on October 1, 2005—*

*(I) will meet the requirements of paragraph (1), (2), (3), or (4) of section 651(c); and*

*(II) will be less than 25 years of age, or less than 30 years of age in the case of a LASH vessel; and*

*(ii) on April 30, 2005, is covered by an operating agreement under subtitle B of title VI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1187 et seq.); or*

*(B) any vessel that—*

*(i) is a replacement for a vessel described in subparagraph (A);*

*(ii) is controlled by the person that controls such replaced vessel;*

*(iii) is eligible to be included in the Fleet under section 651(b); and*

*(iv) is approved by the Secretary and the Secretary of Defense.”.*

#### **SEC. 655. AUTHORIZATION OF APPROPRIATIONS.**

[46 U.S.C. APP. 1187D]

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] 1996, such sums as may be necessary, not to exceed [\$100,000,000, for each fiscal year thereafter through fiscal year 2005.] \$100,000,000 for each of fiscal years 1997 through 2005, and such sums as may be necessary, not to exceed \$186,000,000, for each fiscal year thereafter through fiscal year 2015.

#### **[SEC. 656. NONCONTIGUOUS DOMESTIC TRADES.**

[46 U.S.C. APP. 1187E]

[(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)(1) 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).

[(2) Subsection (a) shall not apply to operation by a contractor of a self-propelled tank vessel in a noncontiguous domestic trade, or to ownership by a contractor of an interest in a self-propelled tank vessel that operates in a noncontiguous domestic trade.

[(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 noncontiguous 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 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), 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 non-contiguous 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).]

**SEC. 656. NONCONTIGUOUS DOMESTIC TRADES.**

(a) *IN GENERAL.*—*Except as otherwise provided in this section, no contractor or related party shall receive payments pursuant to this part during a period when it participates in a noncontiguous domestic trade, except upon written permission of the Secretary of Transportation that is granted after a hearing on the record under section 554 of title 5, United States Code, and that states the capacity that may be offered in that trade. The Secretary may grant such written permission pursuant to written application of such contractor or related party unless the Secretary finds that—*

*(1) existing service in that trade is adequate; or*

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

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

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

(b) **GRANDFATHER.**—

*(1) Subsection (a) shall not apply to provision by a contractor of service within the level of service provided by that contractor as of the date of enactment of the Maritime Security Fleet Program Reauthorization Act of 2003, adjusted for increases in the real gross product of the State or Commonwealth served since that date.*

*(2) Subsection (a) shall not apply to operation by a contractor of a self-propelled tank vessel in a noncontiguous domestic trade, or to ownership by a contractor of an interest in a self-propelled tank vessel that operates in a noncontiguous domestic trade.*

(c) **DEFINITIONS.**—*In this section:*

*(1) PARTICIPATES IN A NONCONTIGUOUS DOMESTIC TRADE.*—*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.*

(2) *RELATED PARTY.*—*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 part; and*

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

**SEC. 657. REGULATIONS.**

(a) *IN GENERAL.*—*The Secretary of Transportation, in consultation with the Secretary of Defense, may prescribe rules as necessary to carry out this subtitle and the amendments made by this subtitle.*

(b) *INTERIM RULES.*—*The Secretary of Transportation, in consultation with the Secretary of Defense, may prescribe interim rules necessary to carry out this subtitle. For this purpose the Secretary is excepted from compliance with the notice and comment requirements of section 553 of title 5, United States Code. All interim rules prescribed under the authority of this subsection that are not superseded by final rules shall expire no later than 270 days after the date of enactment of the Maritime Security Fleet Program Reauthorization Act of 2003.*

\* \* \* \* \*

**SEC. 901b. SHIPMENT REQUIREMENTS FOR CERTAIN EXPORTS SPONSORED BY DEPARTMENT OF AGRICULTURE.**

[46 U.S.C. APP. 1241F]

(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 Bill Emerson Humanitarian Trust Act (7 U.S.C. 1736f-1 et seq.);

(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.]** *1986, the 18-month period beginning April 1, 2002, and the 12-month period beginning October 1, 2003, and each year thereafter.*

(3)(A) 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 documentation 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 regulation, 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.

\* \* \* \* \*

#### TITLE XI—FEDERAL SHIP FINANCING GUARANTEE PROGRAM

##### SEC. 1101. DEFINITIONS.

[46 U.S.C. APP. 1271]

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;

(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 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;

(f) *ACTUAL COST DEFINED.*—*The term “actual cost” means the sum of—*

*(1) all amounts paid by or for the account of the obligor as of the date on which a determination is made under section 1108(g)(1); and*

*(2) all amounts that the Secretary reasonably estimates that the obligor will become obligated to pay from time to time thereafter, for the construction, reconstruction, or reconditioning of the vessel, including guarantee fees that will become payable under section 1104A(e) in connection with all obligations issued for construction, reconstruction, or reconditioning of the vessel or equipment to be delivered, and all obligations issued for the delivered vessel or equipment.*

(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 Magnuson-Stevens 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. 1103. AUTHORIZATION OF SECRETARY TO GUARANTEE OBLIGATIONS.**

[46 U.S.C. APP. 1273]

(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 87½ 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 87½ 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) **[(1)] RISK FACTOR DETERMINATIONS.—**

(1) The Secretary shall—

(A) establish in accordance with this [subsection] *subsection, and update annually*, 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) *annually* 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.] *category; and*

(C) *ensure that each risk category is comprised of loans that are relatively homogenous in cost and share characteristics predictive of defaults and other costs, given the facts known at the time of obligation or commitment, using a risk category system that is based on historical analysis of program data and statistical evidence concerning the likely costs of defaults or other costs that expected to be associated with the loans in the category.*

(2)(A) Before making a guarantee under this section for an obligation, *and annually for projects subject to a guarantee*, 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).

(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.
- (K) *A risk factor for concentration risk reflecting the risk presented by an unduly large percentage of loans outstanding by any 1 borrower or group of affiliated borrowers.*

(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).

*(i) PRIORITY.—In guaranteeing and entering commitments to guarantee under this section, the Secretary shall give priority to guarantees and commitments for vessels that are otherwise eligible for a guarantee under this section and that are constructed with assistance under subtitle B of title V of this Act.*

#### **SEC. 1104A. ELIGIBILITY FOR GUARANTEE.**

[46 U.S.C. APP. 1274]

(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 guar-



antee, 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 intercoastal 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;

(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; or

(7) financing or refinancing, including, but not limited to, the reimbursement of obligors for expenditures previously made, for the purchase of individual fishing quotas in accordance with section 303(d)(4) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1853(d)(4)).

Any obligation guaranteed under paragraphs (6) and (7) 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 not to exceed 80 percent 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  $87\frac{1}{2}$  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 encumbrances, 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, and 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.

(C) *The Secretary may make a determination that aspects of an application under this title require independent analysis to be conducted by third party experts due to risk factors associated with markets, technology, financial structures, or other risk factors identified by the Secretary. Any independent anal-*

ysis conducted pursuant to this provision shall be performed by a party chosen by the Secretary.

(D) Notwithstanding any other provision of this title, the Secretary may make a determination that an application under this title requires additional equity because of increased risk factors associated with markets, technology, financial structures, or other risk factors identified by the Secretary.

(E) The Secretary may charge and collect fees to cover the costs of independent analysis under subparagraph (C). Notwithstanding section 3302 of title 31, United States Code, any fee collected under this subparagraph shall—

(i) be credit as an offsetting collection to the account that finances the administration of the loan guarantee program;

(ii) shall be available for expenditure only to pay the costs of activities and services for which the fee is imposed; and

(iii) shall remain available until expended.

(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.

(4) The Secretary shall promulgate regulations concerning circumstances under which waivers of or exceptions to otherwise applicable regulatory requirements concerning financial condition can be made. The regulations shall require that—

(A) the economic soundness requirements set forth in paragraph (1)(A) of this subsection are met after the waiver of the financial condition requirement; and

(B) the waiver shall provide for the imposition of other requirements on the obligor designed to compensate for the increased risk associated with the obligor's failure to meet regulatory requirements applicable to financial condition.

[(4)] (5) The Secretary may obtain independent analysis of an application for a guarantee or commitment to guarantee under this title.

(e) GUARANTEE FEES.—

(1) 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 [(including for obtaining independent analysis under subsection (d)(4)),] 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 87½ 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 security 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).

(k) *MONITORING.*—*The Secretary shall monitor the financial conditions and operations of the obligor on a regular basis during the term of the guarantee. The Secretary shall document the results of the monitoring on an annual or quarterly basis depending upon the condition of the obligor. If the Secretary determines that the financial condition of the obligor warrants additional protections to the Secretary, then the Secretary shall take appropriate action under subsection (m) of this section. If the Secretary determines that the financial condition of the obligor jeopardizes its continued ability to perform its responsibilities in connection with the guarantee of obligations by the Secretary, the Secretary shall make an immediate determination whether default should take place and whether further measures described in subsection (m) should be taken to protect the interests of the Secretary while insuring that program objectives are met.*

(l) *REVIEW OF APPLICATIONS.*—*No commitment to guarantee, or guarantee of, an obligation shall be made by the Secretary unless the Secretary certifies that a full and fair consideration of all the regulatory requirements, including economic soundness and financial requirements applicable to obligors and related parties, and a thorough assessment of the technical, economic, and financial aspects of the loan application has been made.*

(m) *AGREEMENT WITH OBLIGOR.*—*The Secretary shall include provisions in loan agreements with obligors that provide additional authority to the Secretary to take action to limit potential losses in connection with defaulted loans or loans that are in jeopardy due to the deteriorating financial condition of obligors. Provisions that the Secretary shall include in loan agreements include requirements for additional collateral or greater equity contributions that are effective upon the occurrence of verifiable conditions relating to the obligors financial condition or the status of the vessel or shipyard project.*

(n) *DECISION PERIOD.*—

(1) *IN GENERAL.*—*The Secretary of Transportation shall approve or deny an application for a loan guarantee under this title within 270 days after the date on which the signed application is received by the Secretary.*

(2) *EXTENSION.*—*Upon request by an applicant, the Secretary may extend the 270-day period in paragraph (1) to a date not later than 2 years after the date on which the signed application for the loan guarantee was received by the Secretary.*



**SEC. 1105. DEFAULTS.**

[46 U.S.C. APP. 1275]

(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, 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 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.

(f) *DEFAULT RESPONSE.*—*In the event of default on a obligation, the Secretary shall conduct operations under this title in a manner which—*

- (1) *maximizes the net present value return from the sale or disposition of assets associated with the obligation;*

- (2) *minimizes the amount of any loss realized in the resolution of the guarantee;*
- (3) *ensures adequate competition and fair and consistent treatment of offerors; and*
- (4) *requires appraisal of assets by an independent appraiser.*

\* \* \* \* \*

#### SEC. 1108. ESCROW FUND.

[46 U.S.C. APP. 1279A]

(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 87½ 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 87½ 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.

(g) **PAYMENTS REQUIRED BEFORE DISBURSEMENT.**—

*(1) IN GENERAL.*—No disbursement shall be made under subsection (b) to any person until the total amount paid by or for the account of the obligor from sources other than the proceeds of the obligation equals at least 25 per centum or 12½ per centum, whichever is applicable under section 1104A, of the actual cost of the vessel. The Secretary shall establish a system of controls, including automated controls, to ensure that no loan funds are disbursed to a shipowner or shipyard owner before the shipowner or shipyard owner meets the requirement of the preceding sentence.

*(2) DOCUMENTED PROOF OF PROGRESS REQUIREMENT.*—The Secretary shall, by regulation, establish a transparent, independent, and risk-based process for verifying and documenting the progress of projects under construction before disbursing guaranteed loan funds. At a minimum, the process shall require documented proof of progress in connection with the construction, reconstruction, or reconditioning of a vessel or vessels before disbursements are made from the escrow fund. The Secretary may require that the obligor provide a certificate from an independent party certifying that the requisite progress in construction, reconstruction, or reconditioning has taken place.

\* \* \* \* \*

## TITLE XII—WAR RISK INSURANCE

### [SEC. 1205. INSURANCE ON PROPERTY OF GOVERNMENT DEPARTMENTS AND AGENCIES.]

[46 U.S.C. APP. 1285]

### **SEC. 1205. INSURANCE ON PROPERTY OF GOVERNMENT DEPARTMENTS, AGENCIES AND INTERNATIONAL ORGANIZATIONS.**

(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. The signature of the President (or of an official des-

ignated by the President) on the agreement shall be treated as an expression of the approval required under section 1202(a) to provide the insurance.

(c) *INSURING INTERNATIONAL OPERATIONS.*—*The Secretary of Transportation is authorized, upon the request of the Secretary of Defense or any other agency, with the approval of the President, to make payments on behalf of the United States with regard to an international sharing of risk agreement or any lesser obligation on the part of the United States for vessels supporting operations of the North Atlantic Treaty Organization or similar international organization or alliance in which the United States is involved, regardless of registration or ownership, and without regard to whether the vessels are under contract with a department or agency of the United States. In order to segregate moneys received and disbursed in connection with an agreement authorized under this subsection, the Secretary of Transportation shall establish a subaccount within the insurance fund established under section 1208 of this Act.*

(d) *RECEIPT OF CONTRIBUTIONS.*—

(1) *IN GENERAL.*—*Notwithstanding the provisions of section 3302(b) of title 31, United States Code, if the international agreements referenced in subsection (c) of this section provide for the sharing of risks involved in mutual or joint operations, contributions for losses incurred by the fund subaccount or financed pursuant to section 1208 that are received from foreign entities, may be deposited in the fund subaccount.*

(2) *INDEMNITY AGREEMENT.*—*Such risk sharing agreements shall not affect the requirement that the Secretary of Defense or a head of a department, agency, or instrumentality designated by the President make an indemnity agreement with the Secretary of Transportation under subsection (b) for a waiver of premium on insurance obtained by a department, agency or instrumentality of the United States Government.*

(3) *CREDITING OF CONTRIBUTORY PAYMENTS.*—*If the Secretary of Defense, or a designated head of a department, agency or instrumentality, has made a payment to the Secretary of Transportation on account of a loss, pursuant to an indemnification agreement under subsection (b), and the Secretary of Transportation subsequently receives from an entity a contributory payment on account of the same loss, pursuant to a risk sharing agreement referred to in paragraph (1), the amount of the contribution shall be deemed to be a credit in favor of the indemnifying department, agency, or instrumentality against any amount that such department, agency, or instrumentality owes or may owe to the Secretary of Transportation under a subsequent indemnification agreement.*

\* \* \* \* \*

#### **SEC. 1208. INSURANCE FUND; INVESTMENTS; APPROPRIATIONS.**

[46 U.S.C. APP. 1288]

(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.

(c) *AUTHORIZATION OF APPROPRIATIONS.—To the extent that the fund balance is insufficient to fund current obligations arising under this chapter, there are authorized to be appropriated to the Secretary of Transportation such sums as may be necessary to pay such obligations.*

\* \* \* \* \*

#### TITLE XIII—MARITIME EDUCATION AND TRAINING

##### SEC. 1302. DEFINITIONS.

[46 U.S.C. APP. 1295A]

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.] *States; and*

(5) *the term “cost of education provided” means the financial costs incurred by the Federal Government for providing training or financial assistance to students at the United States Merchant Marine Academy and the State maritime academies, including direct financial assistance, room, board, classroom academics, and other training activities.*

## SEC. 1303. MAINTENANCE OF ACADEMY.

[46 U.S.C. APP. 1295B]

(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 Trea-

ty 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 residents 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.—

(1) Any citizen of the United States who is appointed as a cadet at the Academy shall 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).

(2) The Secretary of the Navy shall provide for cadets of the Academy who are midshipmen in the United States Naval Reserve to be issued an identification card (referred to as a “military ID card”) and to be entitled to all rights and privileges in accordance with the same eligibility criteria as apply to other members of the Ready Reserve of the reserve components of the Armed Forces.

(3) The Secretary of the Navy shall carry out paragraphs (1) and (2) in coordination with the Secretary.

(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;]

(C) *to maintain a valid 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, accompanied by the appropriate national and international endorsements and certification as required by the United States Coast Guard for service aboard vessels on domestic and international voyages;*

(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]

*(iii) as a commissioned officer on active duty in an armed force of the United States, as a commissioned officer in the National Oceanic and Atmospheric Administration, or other maritime-related employment with the Federal Government which serves the national security interests of the United States, as determined by the Secretary; 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).]

(2)(A) *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)(A), such individual may be ordered by the Secretary of Defense to active duty in one of the armed forces of the United States 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 provision in whole or in part.*

*(B) If the Secretary of the Navy is unable or unwilling to order an individual to active duty under subparagraph (A), or if the Secretary of Transportation determines that reimbursement of the cost of education provided would better serve the interests of the United States, the Secretary may recover from the individual the cost of education provided by the Federal Government.*

(3)(A) *If the Secretary determines that an individual has failed to fulfill any part of the agreement required by paragraph (1), as described in subparagraphs (1)(B), (C), (D), (E), or (F), 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 paragraph (1)(E). 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 provision in whole or in part.*

*(B) If the Secretary of Defense is unable or unwilling to order an individual to active duty under subparagraph (A), or if the Secretary of Transportation determines that reimbursement of the cost of education provided would better serve the interests of the United States, the Secretary may recover from the individual the cost of education provided in an amount proportionate to the unfulfilled portion of the service obligation as determined by the Secretary. In cases of hardship the Secretary may waive this provision in whole or in part.*

*(4) To aid in the recovery of the cost of education provided by the Federal Government pursuant to a commitment agreement under this section, the Secretary may request the Attorney General to begin court proceedings, or the Secretary may make use of the Federal debt collection procedures in chapter 176 of title*

28, *United States Code*, or other applicable administrative remedies.

[(4)] (5) 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.]

(g) DEGREES AWARDED.—

(1) BACHELOR'S DEGREE.—*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.*

(2) MASTER'S DEGREE.—*The Superintendent of the Academy may confer a master's degree upon any individual who has met the conditions prescribed by the Secretary. Any master's degree program may be funded through non-appropriated funds. In order to maintain the appropriate academic standards, the program shall be accredited by the appropriate accreditation body. The Secretary may make regulations necessary to administer such a program.*

(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 U.S.C. APP. 1295C]

(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.—

(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—

(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) agree in writing to require, as a condition for graduation, that each individual who is a citizen of the United



States and who is attending the academy in a merchant marine officer preparation program 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.—

(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]~~ \$4,000 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;~~ *attending;*

(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;]~~

*(C) to maintain a valid license as an officer in the merchant marine of the United States for at least 6 years fol-*

*lowing the date of graduation from such State maritime academy of such individual, accompanied by the appropriate national and international endorsements and certification as required by the United States Coast Guard for service aboard vessels on domestic and international voyages;*

(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]

*(iii) as a commissioned officer on active duty in an armed force of the United States, as a commissioned officer in the National Oceanic and Atmospheric Administration, or in other maritime-related employment with the Federal Government which serves the national security interests of the United States, as determined by the Secretary; 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.】

(4)(A) *If the Secretary determines that an individual who has accepted the payment described in paragraph (1) for a minimum of 2 academic years has failed to fulfill the part of the agreement required by paragraph (1) and 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 provision in whole or in part.*

(B) *If the Secretary of the Navy is unable or unwilling to order an individual to active duty under subparagraph (A), or if the Secretary of Transportation determines that reimbursement of the cost of education provided would better serve the interests of the United States, the Secretary may recover from the individual the cost of education provided by the Federal Government.*

(5)(A) *If the Secretary determines that an individual has failed to fulfill any part of the agreement required by paragraph (1), as described in paragraphs (3)(B), (C), (D), (E), or (F), 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 paragraph (3)(E). 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 provision in whole or in part.*

(B) *If the Secretary of Defense is unable or unwilling to order an individual to active duty under subparagraph (A), or if the Secretary of Transportation determines that reimbursement of the cost of education provided would better serve the interests of the United States, the Secretary may recover from the individual the cost of education provided in an amount proportionate to the unfulfilled portion of the service obligation as determined by the Secretary. In cases of hardship the Secretary may waive this provision in whole or in part.*

(6) *To aid in the recovery of the cost of education provided by the Federal Government pursuant to a commitment agreement under this section, the Secretary may request the Attorney General to begin court proceedings, or the Secretary may make use of the Federal debt collection procedures in chapter 176 of title 28, United States Code, or other applicable administrative remedies.*

【(6)】(7) 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 ap-

proved 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)] (8) 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. 1306. UNITED STATES MARITIME SERVICE.

[46 U.S.C. APP. 1295E]

(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.

(d) AWARDS AND MEDALS.—*The Secretary may establish and maintain a medals and awards program to recognize distinguished service, superior achievement, professional performance, and other commendable achievement by personnel of the United States Maritime Service.*

#### MARITIME POLICY IMPROVEMENT ACT OF 2002

[PUBLIC LAW 107–295; 116 STAT. 2099]

#### SEC. 213. COASTWISE TRADE AUTHORIZATION.

(a) IN GENERAL.—Notwithstanding section 207 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), or any other provision of law restricting the operation of a foreign-built vessel in the coastwise trade of the United States, the following vessels may, subject to subsection (b), engage in the coastwise trade of the United States to transport platform jackets from ports in the Gulf of Mexico to sites on the Outer Continental Shelf for completion of certain offshore projects as follows:

(1) The H-114, H-627, and H-851 for the projects known as Atlantis, Thunderhorse, Holstein, and Mad Dog.

(2) The I-600 for the projects known as Murphy Medusa, Dominion Devil's Tower, and Murphy Front Runner.

(b) PRIORITY FOR U.S.-BUILT VESSELS.—Subsection (a) shall not apply in instances where a United States-built, United States-documented vessel with the capacity to **transport and launch** *transport or launch* the platform jacket involved or its components is available to transport that jacket or its components. In this section, the term “platform jacket” has the meaning given that term under the thirteenth proviso of section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), as amended by subsection (c) of this section.

(c) DEFINITION.—The thirteenth proviso (pertaining to transportation by launch barge) of section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), is amended by striking the period at the end and inserting the following: “; and for the purposes of this proviso, the term ‘platform jacket’ includes any type of offshore drilling or production structure or components, including platform jackets, tension leg or SPAR platform superstructures (including the deck, drilling rig and support utilities, and supporting structure) hull (including vertical legs and connecting pontoons or vertical cylinder), tower and base sections of a platform jacket, jacket structures, and deck modules (known as ‘topsides’) of a hydrocarbon development and production platform.”.