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109TH CONGRESS *2nd Session*	SENATE	REPORT 109–327

MARITIME ADMINISTRATION IMPROVEMENT ACT OF 2006

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

S. 3852

SEPTEMBER 6, 2006.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

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SEPTEMBER 6, 2006.—Ordered to be printed

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

REPORT

[To accompany S. 3852]

The Committee on Commerce, Science, and Transportation reports favorably an original bill to enhance certain maritime programs of the Department of Transportation, and for other purposes, and recommends that the bill do pass.

PURPOSE OF THE BILL

The bill includes several provisions designed to clarify what is expected of cadets and graduates of the USMMA, as well as some of the functions and programs overseen by MARAD. Several provisions of the bill would authorize MARAD to retain a portion of the fees it charges and collects for certain duties the agency performs. In addition, the bill includes technical corrections which would restore vessel transfer authority to the Secretary of Transportation, and would clarify the use of funds in excess of those necessary for merchant marine vessel war risk insurance.

BACKGROUND AND NEEDS

The mission of MARAD is to promote the development and maintenance of an adequate, well-balanced U.S. 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 time of war or national emergency. MARAD also works to ensure that the United States enjoys adequate shipbuilding and repair service, efficient ports, effective intermodal water and land transportation systems, and adequate reserve shipping capacity in times of national emergency.

49–010

To meet its mission, MARAD administers various U.S. merchant marine support programs within the Department of Transportation (DOT). These programs include the Maritime Security Program (MSP), title XI maritime loan guarantee program, a small shipyard and maritime community assistance program, various cargo preference programs, maintenance of the Ready Reserve Force (RRF)—often used in domestic disaster relief efforts—and the National Defense Reserve Force (NDRF), and operation of the USMMA at Kings Point, NY. MARAD has approximately 825 employees, including the RRF and the USMMA staff.

The MSP is an element of the U.S. maritime transportation system, which provides funded operating agreements to privately owned, U.S.-flagged, and U.S.-crewed vessels in international trade. This fleet also is available to support the Department of Defense (DOD) sustainment in a contingency. Currently, the MSP is authorized through fiscal year 2015 and subject to a separate annual appropriation.

MARAD's operations and training account funds the administration and staffing of MARAD programs (other than the title XI guaranteed loan 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 U.S. merchant marine.

The Global Maritime and Transportation School (GMATS) is a private, tuition-funded graduate school housed at the USMMA, which offers advanced mariner training, and logistics and supply chain management courses. The primary mission of GMATS is to offer leading edge education and training programs that will benefit maritime and transportation professionals from government agencies, the military, and private industry. Funds to operate GMATS are generated through tuition, meal, and lodging fees. It is not an appropriated instrumentality of the DOT. The current process through which some applicants are accepted is cumbersome and this legislation would reduce that burden and clarify GMATS's role.

SUMMARY OF PROVISIONS

Several provisions of the bill are designed to clarify what is expected of cadets at the USMMA, and provide greater choice for its graduates. The bill would require students entering the USMMA to meet the same physical and mental standards required by the DOD to ensure that students admitted to the Academy are capable of fulfilling the requirements of their service commitment agreement upon graduation. The bill also would require DOD, the U.S. Coast Guard, and the National Oceanic and Atmospheric Administration (NOAA) to certify annually to MARAD which Academy graduates have remained on active duty or in ready reserve status, thus confirming the fulfillment of a graduate's service commitment agreement. This would provide MARAD a mechanism to recover tuition from graduates who fail to perform their duties or are found in noncompliance with their commitment agreement.

The bill would exempt Academy graduates who choose to serve on active duty in the Armed Forces from certain requirements otherwise required of graduates who do not serve on active duty.

Those cadets who chose to serve on active duty instead would be obligated to the terms of service of the branch under which they serve. Individuals attending a State maritime academy would be required to enlist in either the U.S. Naval Reserve (including the Merchant Marine Reserve), or the U.S. Coast Guard Reserve as a prerequisite for receiving student incentive payments. An additional provision clarifies that GMATS is a non-appropriated fund instrumentality which is operated under the jurisdiction of DOT.

The bill would authorize MARAD to retain fees collected to process applications for deepwater port licenses, as well as those collected on its administrative process for coastwise trade law waivers, subject to certain limits.

The bill would authorize MARAD to use a portion of the fees collected for the operation of the NDRF vessels and proceeds recovered from vessel accident litigation and arbitration to cover the costs of vessel maintenance, repairs, and replacements. The bill also would provide an alternative approach for operators of the MSP product tankers to meet U.S.-built replacement vessel requirements. The alternative approach would include the construction and operation of equivalent domestic trade tank vessels. Certain non-resident alien visa holders also would be authorized for temporary employment on U.S.-flag large passenger vessels.

In addition, the bill would include several technical corrections, including a provision to restore vessel transfer authority to the DOT, which was inadvertently stripped when the Coast Guard was transferred to the Department of Homeland Security (DHS) with enactment of the Homeland Security Act of 2002, P.L. 107–296, and reinserts an improperly deleted sentence which would clarify the Secretary of Transportation's role in the investment of funds in excess of that necessary for war risk insurance for merchant marine vessels.

LEGISLATIVE HISTORY

The original Committee bill was ordered reported to the Senate by voice vote on July 19, 2006, in the presence of a quorum.

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:

AUGUST 17, 2006.

Hon. TED STEVENS,
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 the Maritime Administration Enhancement Act of 2005.

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

Sincerely,

DONALD B. MARRON,
Acting Director.

Enclosure.

Maritime Administration Improvement Act of 2006

Summary: The Maritime Administration Improvement Act would amend various laws governing the activities of the Maritime Administration (MARAD). Several provisions of the bill would allow MARAD to spend, without further appropriation actions, certain collections from regulatory fees and legal damages. CBO estimates that enacting these provisions would increase direct spending by $5 million over the 2007–2011 period and by $10 million over the 2007–2016 period. We estimate that implementing other provisions would have no significant impact on the federal budget because they would not change MARAD's responsibilities under maritime laws.

The legislation 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 the legislation are shown in the following table. The costs of this legislation fall within budget function 400 (transportation).

	By fiscal year, in millions of dollars—									
	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
CHANGES IN DIRECT SPENDING										
Estimated budget authority	1	1	1	1	1	1	1	1	1	1
Estimated outlays	1	1	1	1	1	1	1	1	1	1

Note: Enacting the bill also would change the classification of about $1 million a year in revenues by directing that those collections be recorded in the budget as an offset to spending. Following scorekeeping rule 13, such reclassifications in legislation are not counted for purposes of Congressional scorekeeping.

Basis of estimate: Several provisions of the legislation would provide a total of about $1 million of new budget authority for MARAD each year by allowing the agency to spend, without further appropriation, certain amounts it currently collects and deposits in the U.S. Treasury as revenues.

Section 11 would allow MARAD to spend payments for damages received for accidents that involve vessels that it owns or manages. Based on recent judgments and settlements for damages collected as a result of such incidents, CBO estimates that this new authority would increase direct spending by an average of $500,000 a year.

Sections 9 and 10 would authorize the agency to spend, without further appropriations action, certain administrative and regulatory fees. Amounts collected each year from such fees, including up to $400,000 annually from licences on deepwater port applications and up to $50,000 annually on waivers of coastwise trade restrictions, would be spent by MARAD on related regulatory programs. Based on the level of historical collections, CBO estimates that enacting these provisions would increase annual direct spending by less than $500,000 a year.

The bill also would change the budgetary classification of those administrative and regulatory fees. Such collections are currently considered revenues but under the legislation would become offsetting receipts (an offset to direct spending). The resulting decrease in revenues and corresponding decrease in outlays are not counted for purposes of Congressional consideration, however, pursuant to scorekeeping rule 13, which states that reclassifications are not counted for purposes of enforcing the budget resolution (see House Report 105–217, the conference report on the Balanced Budget Act of 1997, page 1011).

Intergovernmental and private-sector impact: The legislation contains no intergovernmental or private-sector mandates as defined in UMRA. Section 14 would provide Hawaii with additional flexibility in spending federal funds. Other provisions of the bill would not affect the budgets of state, local, or tribal governments.

Previous CBO Estimate: On November 15, 2005, CBO transmitted a cost estimate for the Maritime Administration Enhancement Act of 2005, as ordered reported by the Senate Committee on Commerce, Science, and Transportation on July 21, 2006. The 2005 bill would authorize appropriations for MARAD programs for 2006; the 2006 bill contains no authorizations. Also, the 2005 bill would exempt MARAD from paying ad valorem taxes on certain materials and repairs for vessels that it operates, while the 2006 bill would not. Other provisions of the two bills are similar, as are the CBO cost estimates.

Estimate prepared by: Federal spending: Deborah Reis; Impact on state, local, and tribal governments: Sarah Puro; Impact on the private sector: Craig Cammarata.

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

REGULATORY IMPACT STATEMENT

Because S. 3852 does not create any new programs, the legislation will have no additional regulatory impact, and will result in no additional reporting requirements. The legislation will 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 and businesses.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title; table of contents

Section 1 states the short title of the legislation, the "Maritime Administration Improvement Act of 2006".

Section 2. Vessel transfer authority

This section would restore vessel transfer authority to DOT that was inadvertently lost when the Coast Guard was transferred to DHS.

Section 3. War risk insurance for merchant marine vessels

This is a technical correction to section 3502(b) of P.L. 108–375, the National Defense Authorization Act for Fiscal Year 2005.

Section 4. Requirements for admission to the USMMA

This section would require students entering the USMMA to meet the same physical and mental standards required by DOD. Any cadet not meeting such standards could be expelled. This change is necessary to ensure that students admitted to the Academy are capable of fulfilling the requirements of their commitment agreements upon graduation. If students do not meet these DOD standards, they would not be eligible to obtain a Merchant Marine license or to accept an appointment in a reserve unit of the Armed Forces of the United States, two key commitment agreement service requirements.

Section 5. Reserve training compliance and Armed Forces performance reporting requirements for graduates

Current law requires Academy graduates to become commissioned officers on active duty in an armed force of the United States or to become commissioned officers in the reserves of the Armed Forces for at least 6 years following graduation. The Privacy Act impedes MARAD from readily verifying with DOD, the Coast Guard, and NOAA that graduates are serving their commitment to the Armed Forces. This section would require DOD, the U.S. Coast Guard, and NOAA to certify annually to MARAD that Academy graduates have remained on active duty or in ready reserve status, thus confirming the fulfillment of a graduate's service commitment agreement. In addition, this provision would provide a mechanism for MARAD to recover tuition from graduates who fail to perform their duties and that are found in noncompliance with their commitment agreement.

Section 6. Service in the Armed Forces and alternate service requirements

This section would require Academy graduates who serve on active duty in the Armed Forces to abide by the obligations of service of the branch under which they serve, and exempts them from having to maintain a U.S. Coast Guard-issued merchant mariner li-

cense and from having to fulfill an armed service reserve service requirement. This provision is intended to exempt graduates from the reserve requirement of the commitment agreement they sign as a condition to admission to the Academy. It would not exempt graduates from any reserve obligation imposed on them by the Armed Forces branch in which they serve on active duty. Finally, this section would provide the Secretary with waiver and alternate service requirement authority for individuals who may be unable to perform their service requirements.

Section 7. Qualifying reserve duty for receipt of student incentive payments

This provision would require individuals attending a State Maritime Academy to accept enlisted reserve status in either the U.S. Naval Reserve, including the Merchant Marine Reserve, or the U.S. Coast Guard Reserve as a prerequisite for receiving student incentive payments.

Section 8. GMATS

This section would clarify the role of GMATS located on the campus at Kings Point as a non-appropriated fund instrumentality operating under the jurisdiction of DOT.

Section 9. Availability of funds from application fees for deepwater port licenses

This section would allow MARAD to retain fees assessed pursuant to applications for licenses for ownership, construction, and operation of deepwater ports, up to $400,000 per fiscal year.

Section 10. Availability of funds from administrative waivers of coastwise trade restrictions

This section would authorize MARAD to retain funds routinely collected through the agency's program for the Administrative Waiver of Coastwise Trade Laws for Eligible Vessels, up to $50,000 per fiscal year.

Section 11. Amendments to the Vessel Operations Revolving Fund (VORF)

The VORF was created in 1951 to carry out vessel operating functions under the jurisdiction of the Secretary of Transportation, including the charter, operation, maintenance, repair, reconditioning, and betterment of merchant vessels. At present, such functions come at the expense of the operating repairs and maintenance budgeted for other NDRF vessels. In addition, all recoveries from litigation are deposited into the Treasury after payment to the Department of Justice for the costs of litigation. This section would allow MARAD to use a portion of the fee paid for the operation of the NDRF vessels and proceeds recovered from vessel accident litigation and arbitration. Funds would be placed in a reserve fund to cover the costs of vessel maintenance, repairs, and replacements.

Section 12. Right to use MARAD decoration

Current law allows for the Secretary to sanction the use, manufacture, sale, possession, or display of a decoration or medal, such as the merchant marine seal. This provision would permit the Sec-

retary, through the Maritime Administrator, to authorize the use of maritime emblems for purposes and events he deems meritorious, such as commemorative ceremonies or events. This section would make a technical correction to current law (46 U.S.C. App 2007) to clarify the Secretary means the Secretary of Transportation.

Section 13. MSP tank vessels

This section would provide an alternative approach for operators of the MSP product tankers to meet U.S.-built replacement vessel requirements. The alternative approach would include the construction and operation of equivalent domestic trade tank vessels.

Section 14. Intermodal centers

This provision would authorize funding provided under section 5833 (m)(6)(B) from Public Law 109–59 to be used for projects. Public Law 109–59 also authorizes MARAD to set the requirements for the Hawaii Port Intermodal Expansion Pilot Project.

Section 15. Large passenger ship crew requirements

This section would expand the pool of non-citizens that can be employed on U.S.-flag large passenger vessels to include certain non-resident alien visa holders.

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):

UNITED STATES CODE

TITLE 10. ARMED FORCES

SUBTITLE A. GENERAL MILITARY LAW

PART IV. SERVICE, SUPPLY, AND PROCUREMENT

CHAPTER 153. EXCHANGE OF MATERIAL AND DISPOSAL OF OBSOLETE, SURPLUS, OR UNCLAIMED PROPERTY

[§ 2578. Vessels: transfer between departments

[A vessel under the jurisdiction of a military department may be transferred or otherwise made available without reimbursement to another military department or to the Department of Homeland Security, and a vessel under the jurisdiction of the Department of Homeland Security may be transferred or otherwise made available without reimbursement to a military department. Any such transfer may be made only upon the request of the Secretary of the military department concerned or the Secretary of Homeland Security, as the case may be, and with the approval of the Secretary of the department having jurisdiction of the vessel.**]**

§ 2578. Transfer of vessels between departments

A vessel under the jurisdiction of a military department may be transferred or otherwise made available without reimbursement to another military department, the Department of Transportation, or the Department of Homeland Security. Notwithstanding the provisions of the section 11 of the Foreign Ship Sales Act of 1946, (50 App. U.S.C. 1744), a vessel under the jurisdiction of the Department of Transportation may be transferred or otherwise made available with or without reimbursement to any military department or the Department of Homeland Security. A vessel under the jurisdiction of the Department of Homeland Security may be transferred or otherwise made available without reimbursement to any military department or the Department of Transportation. Any such transfer shall be made only upon the request of the Secretary of the military department to receive the vessel, the Secretary of Transportation, or the Secretary of Homeland Security, and with the approval of the Secretary of the department having jurisdiction of the vessel.

UNITED STATES CODE

TITLE 46. SHIPPING

SUBTITLE II. VESSELS AND SEAMEN

PART F. MANNING OF VESSELS

CHAPTER 81. GENERAL

§ 8103. Citizenship and Navy Reserve requirements

(a) Only a citizen of the United States may serve as master, chief engineer, radio officer, or officer in charge of a deck watch or engineering watch on a documented vessel.

(b)(1) Except as otherwise provided in this section, on a documented vessel—

(A) each unlicensed seaman must be—

(i) a citizen of the United States;

(ii) an alien lawfully admitted to the United States for permanent residence; or

(iii) a foreign national who is enrolled in the United States Merchant Marine Academy.

(B) not more than 25 percent of the total number of unlicensed seamen on the vessel may be aliens lawfully admitted to the United States for permanent residence.

(2) Paragraph (1) of this subsection does not apply to—

(A) a yacht;

(B) a fishing vessel fishing exclusively for highly migratory species (as that term is defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802)); and

(C) a fishing vessel fishing outside of the exclusive economic zone.

(3) The Secretary may waive a citizenship requirement under this section, other than a requirement that applies to the master of a documented vessel, with respect to—

(A) an offshore supply vessel or other similarly engaged vessel of less than 1,600 gross tons as measured under section

14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title that operates from a foreign port;

(B) a mobile offshore drilling unit or other vessel engaged in support of exploration, exploitation, or production of offshore mineral energy resources operating beyond the water above the outer Continental Shelf (as that term is defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a)); and

(C) any other vessel if the Secretary determines, after an investigation, that qualified seamen who are citizens of the United States are not available.

(c) On each departure of a vessel (except a passenger vessel) for which a construction or operating differential subsidy has been granted, all of the seamen of the vessel must be citizens of the United States.

(d)(1) On each departure of a passenger vessel for which a construction or operating differential subsidy has been granted, at least 90 percent of the entire complement (including licensed individuals) must be citizens of the United States.

(2) An individual not required by this subsection to be a citizen of the United States may be engaged only if the individual has a declaration of intention to become a citizen of the United States or other evidence of admission to the United States for permanent residence. An alien may be employed only in the steward's department of the passenger vessel.

(e) If a documented vessel is deprived for any reason of the services of an individual (except the master and the radio officer) when on a foreign voyage and a vacancy consequently occurs, until the vessel's return to a port at which in the most expeditious manner a replacement who is a citizen of the United States can be obtained, an individual not a citizen of the United States may serve in—

(1) the vacancy; or

(2) a vacancy resulting from the promotion of another individual to fill the original vacancy.

(f) A person employing an individual in violation of this section or a regulation prescribed under this section is liable to the United States Government for a civil penalty of $500 for each individual so employed.

(g) A deck or engineer officer employed on a vessel on which an operating differential subsidy is paid, or employed on a vessel (except a vessel of the Coast Guard or Saint Lawrence Seaway Development Corporation) owned or operated by the Department of Transportation or by a corporation organized or controlled by the Department, if eligible, shall be a member of the Navy Reserve.

(h) The President may—

(1) suspend any part of this section during a proclaimed national emergency; and

(2) when the needs of commerce require, suspend as far and for a period the President considers desirable, subsection (a) of this section for crews of vessels of the United States documented for foreign trade.

(i)(1) Except as provided in paragraph (3) of this subsection, each unlicensed seaman on a fishing, fish processing, or fish tender ves-

sel that is engaged in the fisheries in the navigable waters of the United States or the exclusive economic zone must be—

(A) a citizen of the United States;

(B) an alien lawfully admitted to the United States for permanent residence;

(C) any other alien allowed to be employed under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.); or

(D) an alien allowed to be employed under the immigration laws of the Commonwealth of the Northern Mariana Islands if the vessel is permanently stationed at a port within the Commonwealth and the vessel is engaged in the fisheries within the exclusive economic zone surrounding the Commonwealth or another United States territory or possession.

(2) Not more than 25 percent of the unlicensed seamen on a vessel subject to paragraph (1) of this subsection may be aliens referred to in clause (C) of that paragraph.

(3) This subsection does not apply to a fishing vessel fishing exclusively for highly migratory species (as that term is defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802)).

(j) Riding gang member. This section does not apply to an individual who is a riding gang member.

(k)(1) Each unlicensed seaman on a passenger vessel of more than 70,000 gross tons as measured under section 14302 of this title, with capacity for at least 2,000 passengers and documented with a coastwise endorsement under chapter 121 of this title, shall be—

(A) a citizen of the United States;

(B) an alien lawfully admitted to the United States for permanent residence,

(C) an alien allowed to be employed under the Immigration and Nationality Act (8 U.S.C. 1101 et. seq.), including an alien crewman under Section 1101 (15)(D) (i) of that Act; or

(D) a foreign national who is enrolled in the United States Merchant Marine Academy.

(2) Not more than 25 percent of the unlicensed seamen on a vessel subject to paragraph (1) of this subsection may be aliens referred to in subparagraph (B) or (C) of that paragraph.

(3) An unlicensed seaman referred to in paragraph (1)(C) of this subsection—

(A) shall have been employed, for a period of not less than 1 year, on a passenger vessel under the same common ownership or control as the vessel referred to in paragraph (1) of this subsection, as certified by the owner or managing operator of such vessel;

(B) may be employed only in the steward's department, as defined in the vessel security plan approved by the Secretary pursuant to section 70103(c) of this title, of the vessel; and

(C) shall have successfully completed a security check of the relevant domestic and international databases, as appropriate, or any other national security-related information or database.

SEC. 3543. AWARD OF ASSISTANCE.

[46 U.S.C. 53101 note]

(a) IN GENERAL.—If after review of a proposal, the Secretary determines that the proposal fulfills the requirements under this subtitle, the Secretary [shall, to the extent of the availability of appropriations,] *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 shall pay, subject to the availability of appropriations, 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 U.S.C. App. 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 53107 of title 46, United States Code, as amended by this Act.

(2) TREATMENT AS CONTRACTOR.—For purposes of the application, under paragraph (1), of section 53107 of title 46, United States Code, to a vessel constructed with assistance under this subtitle, the term "contractor" as used in that section means the person who will be the operator of a vessel constructed with assistance under this subtitle.

(f) ADDITIONAL TERMS.—The Secretary 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.

§ 53103. Award of operating agreements

(a) IN GENERAL.—The Secretary shall require, as a condition of including any vessel in the Fleet, that the person that is the owner or operator of the vessel for purposes of section 53102(c) enter into an operating agreement with the Secretary under this section.

(b) PROCEDURE FOR APPLICATIONS.—

(1) ACCEPTANCE OF APPLICATIONS.—Beginning no later than 30 days after the effective date of this chapter, the Secretary shall accept applications for enrollment of vessels in the Fleet.

(2) ACTION ON APPLICATIONS.—Within 90 days after receipt of an application for enrollment of a vessel in the Fleet, the Secretary shall approve the application in conjunction with the Secretary of Defense, and shall enter into an operating agreement with the applicant, or provide in writing the reason for denial of that application.

(3) PARTICIPATING FLEET VESSELS.—

(A) IN GENERAL.—The Secretary shall accept an application for an operating agreement for a participating fleet vessel under the priority under subsection (c)(1)(B) only from a person that has authority to enter into an operating agreement for the vessel with respect to the full term of the operating agreement.

(B) VESSEL UNDER DEMISE CHARTER.—For purposes of subparagraph (A), in the case of a vessel that is subject to a demise charter that terminates by its terms on September 30, 2005 (without giving effect to any extension provided therein for completion of a voyage or to effect the actual redelivery of the vessel), or that is terminable at will by the owner of the vessel after such date, only the owner of the vessel shall be treated as having the authority referred to in paragraph (1).

(C) VESSEL OWNED BY UNITED STATES CITIZEN TRUST.—For purposes of subparagraph (B), in the case of a vessel owned by a United States citizen trust, the term "owner of the vessel" includes a beneficial owner of the vessel with respect to such trust.

(c) PRIORITY FOR AWARDING AGREEMENTS.—

(1) IN GENERAL.—Subject to the availability of appropriations, the Secretary shall enter into operating agreements according to the following priority:

(A) NEW TANK VESSELS.—First, for any tank vessel that—

(i) is constructed in the United States after the effective date of this chapter;

(ii) is eligible to be included in the Fleet under section 53102(b); and

(iii) during the period of an operating agreement under this chapter that applies to the vessel, will be owned and operated by one or more persons that are

citizens of the United States under section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802), except that the Secretary shall not enter into operating agreements under this subparagraph for more than 5 such vessels.

(B) PARTICIPATING FLEET VESSELS.—Second, to the extent amounts are available after applying subparagraphs (A), for any participating fleet vessel, except that the Secretary shall not enter into operating agreements under this subparagraph for more than 47 vessels.

(C) CERTAIN VESSELS OPERATED BY SECTION 2 CITIZENS.—Third, to the extent amounts are available after applying subparagraphs (A) and (B), for any other vessel that is eligible to be included in the Fleet under section 53102(b), and that, during the period of an operating agreement under this chapter that applies to the vessel, will be—

(i) owned and operated by one or more persons that are citizens of the United States under section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802); or

(ii) owned by a person that is eligible to document the vessel under chapter 121 of this title, 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).

(D) OTHER ELIGIBLE VESSELS.—Fourth, to the extent amounts are available after applying subparagraphs (A), (B), and (C), for any other vessel that is eligible to be included in the Fleet under section 53102(b).

(2) REDUCTION IN NUMBER OF SLOTS FOR PARTICIPATING FLEET VESSELS.—The number in paragraph (1)(B) shall be reduced by 1—

(A) for each participating fleet vessel for which an application for enrollment in the Fleet is not received by the Secretary within the 90-day period beginning on the effective date of this chapter; and

(B) for each participating fleet vessel for which an application for enrollment in the Fleet received by the Secretary is not approved by the Secretary and the Secretary of Defense within the 90-day period beginning on the date of such receipt.

(3) DISCRETION WITHIN PRIORITY.—The Secretary—

(A) subject to subparagraph (B), may award operating agreements within each priority under paragraph (1) as the Secretary considers appropriate; and

(B) shall award operating agreement within a priority—

(i) in accordance with operational requirements specified by the Secretary of Defense;

(ii) in the case of operating agreements awarded under subparagraph (C) or (D) of paragraph (1), according to applicants' records of owning and operating vessels; and

(iii) subject to the approval of the Secretary of Defense.

(4) TREATMENT OF TANK VESSEL TO BE REPLACED.—

(A) For purposes of the application of paragraph (1)(A) with respect to the award of an operating agreement, the Secretary may treat an existing tank vessel that is eligible to be included in the Fleet under section 53102(b) as a vessel that is constructed in the United States after the effective date of this chapter, if—

[(i)**]** *(i)(I)* a binding contract for construction in the United States of a replacement vessel to be operated under the operating agreement is executed by not later than 9 months after the first date amounts are available to carry out this chapter; and

[(ii)**]** *(II)* the replacement vessel is eligible to be included in the Fleet under section **[**53102(b).**]** *53102(b); or*

(ii)(I) not later than 9 months after the first date amounts are to available to carry out this chapter, the operator of the existing tank vessel enters into an agreement to charter one or more tank vessels to be built in the United States and operated as a documented vessel or documented vessels; and

(II) the combined tonnage of the documented vessel or vessels to be constructed under clause (I) is equal to or greater than the tonnage of the existing tank vessel subject to an operating agreement.

If the person that is the owner or operator of the existing tank vessel owns or operates more than one existing tank vessel subject to an operating agreement, the combined tonnage of all documented vessels to be built under clause (ii)(I) for that owner or operator shall be equal to or greater than the combined tonnage of all such existing tank vessels owned or operated by such person that are subject to operating agreements. For the purpose of clause (ii), tonnage shall be measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title.

(B) No payment under this chapter may be made for an existing tank vessel *subject to subparagraph (A)(i)* for which an operating agreement is awarded under this paragraph after the earlier of—

(i) 4 years after the first date amounts are available to carry out this chapter; or

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

(C) Subparagraph (A)(ii) applies only for the period that the operator of the existing tank vessel charters the United States-built vessel or vessels described in such subparagraph. No payment under this chapter may be made for an existing tank vessel subject to subparagraph (A)(ii) for any period that the United States-built vessel or vessels described in such subparagraph are not chartered by the operator of the existing tank vessel.

(d) LIMITATION.—The Secretary may not award operating agreements under this chapter that require payments under section 53106 for a fiscal year for more than 60 vessels.

ACT OF JUNE 2, 1951

[SEC. 801. VESSEL OPERATIONS REVOLVING FUND; ESTABLISHMENT; USES; LIMITATIONS.

[46 U.S.C. App. 1241a]

[For working capital for the "Vessel Operations Revolving Fund", which is hereby created for the purpose of carrying out vessel operating functions of the Secretary of Transportation, including charter, operation, maintenance, repair, reconditioning, and betterment of merchant vessels under the jurisdiction of the Secretary of Transportation, $20,000,000, to remain available until expended. Notwithstanding any other provision of law, rates for shipping services rendered under said Fund shall be prescribed by the Secretary of Transportation and the Fund shall be credited with all receipts from vessel operating activities conducted thereunder: *Provided,* That the provisions of sections 1(a), 1(c), 3(c) and 4 of Public Law 17, Seventy-eighth Congress (57 Stat. 45), as amended, shall be applicable in connection with such operations and to seamen employed through general agents as employees of the United States, who may be employed in accordance with customary commercial practices in the maritime industry, notwithstanding the provisions of any law applicable in terms to the employment of persons by the United States: *Provided further,* That such sums as may be determined to be necessary by the Secretary of Transportation, with the approval of the Bureau of the Budget, but not exceeding 2 per centum of vessel operating expenses, may be advanced from this Fund to the appropriation "Salaries and expenses" for the purposes of that appropriation in connection with vessel operating functions, but without regard to the limitations on amounts as stated therein: *Provided further,* That notwithstanding any other provisions of law, the unexpended balances of any working funds or of allocation accounts established, subsequent to January 1, 1951, for the activities provided for under this appropriation, together with receipts heretofore and hereafter received from such activities, may be transferred to and consolidated with this Fund, which shall be available for the purposes of such working funds or allocation accounts. No money made available to the Department of Transportation, for Maritime Activities, by this or any other Act shall be used in payment for a vessel the title to which is acquired by the Government either by requisition or purchase, or the use of which is taken either by requisition or agreement, or which is insured by the Government and lost while so insured, unless the price or hire to be paid therefor, (except in cases where section 802 of the Merchant Marine Act, 1936, as amended, is applicable) is computed in accordance with subsection 902(a) of said Act, as that subsection is interpreted by the General Accounting Office.]

SEC. 801. VESSEL OPERATIONS REVOLVING FUND.

(a) IN GENERAL.—There is established in the Treasury, for the purposes set forth in subsection (b), a Vessel Operations Revolving Fund which shall be available without appropriation to the Secretary of Transportation. All amounts and all receipts and proceeds

received by the Fund shall be deposited into the Fund, become available for the purposes of the Fund, and shall remain available until expended.

(b) USES.—Amounts in the Fund shall be available for—

(1) all expenses and charges relating to the maintenance, repair, and operation of vessels under the jurisdiction of the Secretary;

(2) all expenses and charges relating to the maintenance, repair, and operation of the facilities necessary to preserve and maintain such vessels;

(3) payment of all costs of, and indirect costs that are reasonably related to, contracting, procurement, inspection, storage, management, distribution, and accountability of vessels under the jurisdiction of the Secretary and such property, facilities, and nonpersonal services as the Secretary deems necessary for the operation and maintenance of such vessels;

(4) expenses incurred in activating, repairing, and deactivating vessels under the jurisdiction of the Secretary;

(5) the acquisition of such vessels for the National Defense Reserve Fleet as both the Secretary and the Secretary of Navy deem necessary;

(6) necessary expenses incurred in the protection, preservation, maintenance, acquisition, or use of vessels of the National Defense Reserve Fleet involved in mortgage foreclosure or forfeiture proceedings instituted by the United States Government, including payment of prior claims and liens, expenses of sale, and other related charges; and

(7) costs and expenses incurred to repair damages to Government property under the jurisdiction or control of the Secretary that is used in connection with the National Defense Reserve Fleet.

(c) CREDITS TO THE FUND.—

(1) IN GENERAL.—There shall be credited to and retained by the Fund—

(A) all amounts received in connection with vessel operations for vessels under the jurisdiction of the Secretary; except that there shall be no surcharge on charter hire or similar collection in connection with vessel operations for the purpose of the reserve described in subsection (c)(2); and

(B) any reimbursements, advances, setoffs, refunds, or recoveries arising out of or relating to the operation and maintenance of vessels of the National Defense Reserve Fleet under the jurisdiction of the Secretary, including any recoveries from litigation, arbitration, or otherwise.

(2) RESERVE.—There shall be established and retained in the Fund from litigation and arbitration recoveries a reserve, not to exceed $30,000,000 at any one time, for use as a reserve for unscheduled repairs and other necessary expenses in connection with casualties to vessels in the National Reserve Fleet.

(d) LAWS RELATING TO SEAMEN.—Subject to the provisions of sections 1(a) and (c), 3(c), and 4 of the Act of March 24, 1943 (50 U.S.C. App. 1291(a) and (c), 1293(c), 1294), seamen employed on vessels in the custody of the Secretary and operated through the Secretary's ship managers or general agents may be so employed by

such ship managers or agents in accordance with customary commercial practices in the maritime industry without regard to any of the laws on employment of persons by the United States.

(e) ADVANCEMENTS.—With the approval of the Director of the Office of Management and Budget, the Secretary may advance amounts the Secretary considers necessary from the Fund to the Maritime Administration Operations and Training appropriation account for purposes of carrying out duties and powers related to the maintenance, repair, and operation of vessels under the jurisdiction of the Secretary, without regard to the limitations on amounts stated in the Operations and Training appropriation."

(f) LIMITATIONS.—

(1) IN GENERAL.—Amounts made available to the Secretary for purposes of this section or any other law may not be used to pay for a vessel described in paragraph (2) unless the compensation to be paid is computed under section 56303 of title 46, United States Code, as that section is interpreted by the Comptroller General.

(2) APPLICABLE VESSELS.—Paragraph (1) applies to a vessel—

(A) the title to which is acquired by the Government by requisition or purchase;

(B) the use of which is taken by requisition or agreement; or

(C) that is lost while insured by the Government.

(3) NONAPPLICABLE VESSELS.—Subparagraph (1) of this section does not apply to a vessel operating under a construction-differential subsidy contract.

MERCHANT MARINE ACT

TITLE XII—WAR RISK INSURANCE

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. The Secretary of Transportation may request the Secretary of the Treasury to invest such portion of the Fund as is not, in the judgment of the Secretary of Transportation, required to meet the current needs of the fund. Such investments shall be made by the Secretary of the Treasury in public debt securities of the United States, with maturities suitable to the needs of the fund, and bearing interest rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturity. ❙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 Secretary of Transportation may request the Secretary of the Treasury to invest such portion of the fund as is not, in the judgment of the Secretary of Transportation, required to meet the current needs of the fund. Such investments*

shall be made by the Secretary of the Treasury in public debt securities of the United States, with maturities suitable to the needs of the fund, and bearing interest rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturity. 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.

MERCHANT MARINE ACT, 1936

TITLE XIII—MARITIME EDUCATION AND TRAINING

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.

(C) Notwithstanding the Rehabilitation Act (29 U.S.C. 701 et seq.) or any other provision of the Merchant Marine Act, 1936 (46 U.S.C. App. 1101 et seq.), an individual appointed as a cadet may not be admitted to the Academy as a student, unless at the time of the taking of the official oath upon entry into the Merchant Marine Academy, that individual satisfies the physical and mental requirements of the Department of Defense to be appointed or enlisted as a Midshipman, United States Naval Reserve. Following admission to the Academy, notwithstanding the Rehabilitation Act or any other provision of the Merchant Marine Act, 1936 (46 U.S.C. App. 1101 et seq.), such individual may continue as a student only if that individual continues to satisfy the physical and mental standards set forth in this subparagraph unless the Secretary of Transportation waives the standards for such individual upon good cause shown. The decision of the Secretary as to whether to grant such waiver shall be final.

(3)(A) Qualified individuals nominated pursuant to paragraph (1) shall be selected each year for appointment as cadets at the Academy to fill positions allocated as follows:

(i) Positions shall be allocated each year for individuals who are residents of each State and are nominated by the Members of the Congress from such State in proportion to the representation in Congress from that State.

(ii) Two positions shall be allocated each year for individuals nominated by the Panama Canal Commission who are sons or daughters of residents of any area or installation located in the Republic of Panama which is made available to the United States pursuant to the Panama Canal Treaty of 1977, the agreements relating to and implementing that Treaty, signed September 7, 1977, and the Agreement Between the United States of America and the Republic of Panama Concerning Air Traffic Control and Related Services, concluded January 8, 1979, and sons or daughters of personnel of the United States Government and the Panama Canal Commission residing in the Republic of Panama, nominated by the Panama Canal Commission.

(iii) One position shall be allocated each year for an individual who is a resident of Guam and is nominated by the Delegate to the House of Representatives from Guam.

(iv) One position shall be allocated each year for an individual who is a resident of the Virgin Islands and is nominated by the Delegate to the House of Representatives from the Virgin Islands.

(v) One position shall be allocated each year for an individual who is a resident of the Northern Mariana Islands and is nominated by the Governor of the Northern Mariana Islands.

(vi) One position shall be allocated each year for an individual who is a resident of American Samoa and is nominated by the Delegate to the House of Representatives from American Samoa.

(vii) Four positions shall be allocated each year for individuals who are residents of the District of Columbia and

are nominated by the Delegate to the House of Representatives from the District of Columbia.

(viii) One position shall be allocated each year for an individual who is a resident of the Commonwealth of Puerto Rico and is nominated by the Resident Commissioner to the United States from Puerto Rico.

(B) The Secretary shall make appointments of qualified individuals to fill the positions allocated pursuant to subparagraph (A) (from among the individuals nominated pursuant to paragraph (1)) in the order of merit determined pursuant to paragraph (2)(B) among 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 Navy Reserve (including the Merchant Marine Reserve, United States Navy 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 NAVY 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 Navy Reserve (including the Merchant Marine Reserve, United States Navy Reserve).

(2) The Secretary of the Navy shall provide for cadets of the Academy who are midshipmen in the United States Navy 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;

(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 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 Navy Reserve (including the Merchant Marine Reserve, United States Navy 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;**]**

(D) in the case of an individual who executes a commitment agreement under this subsection after January 1, 2007, to serve and perform all required duties and comply with all the requirements of a commissioned officer in the Selective Reserve of the United States Navy (including the Merchant Marine Reserve), the U.S. Public Health Service, or the National Oceanic and Atmospheric Administration for a period of at least 5 years following the date of appointment, followed by from 1 to 3 years in the Selective Reserve or Inactive Ready Reserve, as provided by regulations prescribed by the Secretary of Defense, (for a total of service no greater than 8 years) or, with the approval of the Secretary of Defense, to accept an appointment in any other Reserve component of an armed force of the United States or perform such substitute service as determined by the Secretary of Defense to be the equivalent thereof;

(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, as a commissioned officer in the National Oceanic and Atmospheric [Administration, or] *Administration or the U.S. Public Health Service, 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.

(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 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 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 paragraph (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 and may reduce the amount to be recovered from such individual to reflect partial performance of service obligations and such other factors as the Secretary determines merit such a reduction.

(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, and 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.

(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.

(6)(A) In order to meet the requirements of paragraph (1)(D), a graduate of the Academy shall perform all directed training and obey all orders and directions required by the relevant Reserve Component and remain qualified in Ready Reserve classification for a period of not less than 6 years, as required by the regulations of the applicable armed service unless such compliance is waived by the Secretary of Defense or the Secretary of the Department in which the United States Coast Guard is operating.

(B) Notwithstanding section 552a of title 5, United States Code, the Secretary of Defense or the Secretary of the Department in which the Coast Guard is operating, and the Administrator of the National Oceanic and Atmospheric Administration—

(i) shall report the status of obligated service of an individual graduate upon request of the Maritime Administration; and

(ii) may, in their discretion, notify the Maritime Administration of the default in performance of a graduate in the performance of the graduate's duties, either on active duty or in the Ready Reserve Component of their respective service, or as a commissioned officer of the National Oceanic and Atmospheric Administration.

(C) A report or notice under subparagraph (B) shall identify the graduate determined to have failed to comply with service obligation requirements and provide all required information as to why such graduate has failed to comply. Upon receipt of such a report or notice, such graduate may be considered to be in default of the graduate's service obligations by the Maritime Administration, and be subject to all remedies the Maritime Administration may have with respect to such a default.

(7) An individual who graduates from the U. S. Merchant Marine Academy after June 30, 2007, and meets the service commitment described in paragraph (1)(E)(iii) of this subsection shall be excused from meeting the requirements of subparagraphs (1)(C) and (1)(D).

(8) The Secretary may modify or waive any of the terms and conditions set forth in paragraph (1) through the imposition of alternative service requirements.

(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;

(3) in shipyards or plants and with any industrial or educational organizations; and

(4) on any other vessel considered by the Secretary to be necessary or appropriate or in the national interest.

(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.

(j) Limitation on Charges and Fees for Attendance.—

(1) Except as provided in paragraph (2), no charge or fee for tuition, room, or board for attendance at the Academy may be imposed unless the charge or fee is specifically authorized by a law enacted after October 5, 1994.

(2) The prohibition specified in paragraph (1) does not apply with respect to any item or service provided to cadets for which a charge or fee is imposed as of October 5, 1994. The Secretary of Transportation shall notify Congress of any change made by the Academy in the amount of a charge or fee authorized under this paragraph.

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) (A) The Secretary shall, subject to the availability of appropriations, pay to each 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.

(B) The amount of the payment to a State maritime academy under this paragraph shall not exceed—

(i) $100,000 for fiscal year 2006;

(ii) $200,000 for fiscal year 2007; and

(iii) $300,000 for fiscal year 2008 and each fiscal year thereafter.

(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) $300,000 for fiscal year 2006, $400,000 for fiscal year 2007, and $500,000 for fiscal year 2008 and each fiscal year thereafter 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 $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 Navy Reserve (including the Merchant Marine Reserve, United States Navy Reserve) before receiving any student incentive payments under this subsection.]

(2) Each agreement entered into under paragraph (1) shall require the individual to accept enlisted reserve status in the United States Naval Reserve (including the Merchant Marine Reserve, United States Naval Reserve) or the United States Coast Guard 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;

(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 valid 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, 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 Navy Reserve (including the Merchant Marine Reserve, United States Navy 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, 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)(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 Defense to active duty in 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 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—(i) subject to clause (ii), may recover from the individual the amount of student incentive payments, plus interest and attorneys fees; and (ii) may reduce the amount to be recovered from such individual to reflect partial performance of service obligations and such other factors as the Secretary determines merit such reduction.

(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 paragraph (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—

(i) subject to clause (ii), may recover from the individual the amount of student incentive payments, plus interest and attorneys fees; and

(ii) may reduce the amount to be recovered from such individual to reflect partial performance of service obligations and such other factors as the Secretary determines merit such reduction.

(6) To aid in the recovery of student incentive payments plus interest and attorneys fees the Secretary may request the Attorney General to begin court proceedings, and the Secretary may make use of the Federal debt collection procedures in chapter 176 of title 28, United States Code, and other applicable administrative remedies.

(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 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.

(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 NAVY 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 Navy Reserve (including the Merchant Marine Reserve, United States Navy Reserve).

MERCHANT MARINE ACT, 1936

TITLE XIII—MARINE EDUCATION AND TRAINING

SEC. 1309. OPERATION OF THE GLOBAL MARITIME AND TRANSPORTATION SCHOOL.

(a) OPERATION AS NONAPPROPRIATED FUND INSTRUMENTALITY.—After the date of enactment of the Maritime Administration Improvement Act of 2006, the Global Maritime and Transportation School shall continue to operate as a nonappropriated fund instrumentality of the United States under the jurisdiction of the Department of Transportation, Maritime Administration.

(b) ACTIVITIES.—

(1) IN GENERAL.—Under the general supervision of the Department of Transportation, Maritime Administration, the school shall develop, administer, and provide educational, training, and professional development activities, including educational activities, for Federal agencies, Federal employees, nonprofit organizations, other entities, and members of the general public, as well as carry out such other projects and activities that may be authorized by the Superintendent.

(2) TRAINING SERVICES.—The training services and educational activities provided by the school shall be available to the Armed Forces of the United States and Commissioned Officers of the National Oceanic and Atmospheric Administration, Federal and State agencies, Federal and State employees, nonprofit organizations, private companies or organizations, and private individuals of the United States or foreign countries friendly to the United States.

(c) FEES AND DONATIONS.—

(1) COLLECTION OF FEES.—The school may charge and retain fair and reasonable fees for the activities provided.

(2) ACCEPTANCE AND MAKING OF DONATIONS.—

(A) The school may not accept any gifts of services or other items from the United States of America. The school may accept, use, hold, dispose, and administer gifts, bequests, and devises of money, securities, and other real or personal property made for the benefit of, or in connection with the school from parties other than the United States of America.

(B) The school shall not accept a donation from a person that is actively engaged in a procurement activity with the school or has an interest that may be substantially affected by the performance or nonperformance of an official duty of a member of the Board or an employee of the school.

(C) The school is authorized to make gifts to the Department of Transportation and the Secretary is authorized to accept gifts from the school for any purpose.

(3) NOT FEDERAL FUNDS.—Fees collected under paragraph (1) and amounts received under paragraph (2) shall not be considered to be Federal funds and shall not be required to be deposited in the Treasury of the United States. The school shall not be funded by appropriated funds.

(d) USE OF USMMA FACULTY AND STAFF.—

(1) PAYMENT.—The school may provide payment to United States Merchant Marine Academy faculty and staff for teaching and other services for the school, but only to the extent that the provision of such teaching or services does not interfere or conflict with the official duties of the faculty and staff and are approved by the Superintendent.

(2) CONTRACTING AUTHORITY.—The Academy may enter into contracts with the school to provide faculty and staff of the Academy for teaching and other services and, to the extent of the actual costs incurred by the Academy under said contracts, credit such funds received under such contracts to the Academy's appropriations, notwithstanding those provisions of law relating to the deposit of miscellaneous receipts into the Treasury.

(e) GENERAL ADMINISTRATION.—

(1) AUTHORITY OF SUPERINTENDENT.—The Superintendent is responsible for the overall supervision and administration of the school and the determination of its policies. In implementing this responsibility, the Superintendent shall appoint members to the Board and shall designate one member as the Senior Managing Director and may designate other Managing Directors as necessary.

(2) AUTHORITY OF THE BOARD.—The Superintendent may delegate to the Board the Superintendent's responsibility to advise and oversee the supervision and administration of the school. The Board may consist of both United States Merchant Marine Academy employees and non-Academy employees, as determined by the Superintendent. The Board shall be subject to regulation by the Secretary and shall report to the Superintendent.

(3) AUTHORITY OF THE SENIOR MANAGING DIRECTOR.—The Superintendent may delegate to the Senior Managing Director of the school the authority to manage, administer, and operate the school.

(4) DUTIES OF THE MANAGING DIRECTORS.—The Senior Managing Director shall be responsible, subject to the supervision and direction of the Board and the Superintendent, for carrying out the functions of the school. All other Managing Directors shall be responsible, subject to the supervision and direction of the Senior Managing Director, for carrying out the functions of the school.

(5) BORROWING AND INVESTMENT AUTHORITY.—The Board, with the approval of the Superintendent, may authorize the Senior Managing Director—

(A) to borrow money on the credit of the school; and

(B) to invest funds held in excess of the current operating requirements of the school for purposes of maintaining a reasonable reserve.

(6) LIABILITY.—The Managing Directors and the other members of the Board shall not be held personally liable for any loss

or damage that may accrue to the school as the result of any act performed within the scope of their duties under this section.

(f) EMPLOYEES.—Employees of the school are employees of a nonappropriated fund instrumentality of the United States.

(g) NOT A FEDERAL AGENCY.—The the school shall not be considered a Federal agency for purposes of—

(1) the Federal Advisory Committee Act; or

(2) sections 552 and 552a of title 5, United States Code.

(h) ACQUISITION AND DISPOSAL OF PROPERTY.—In order to carry out the activities of the school, the school may—

(1) acquire goods, services, and real property by lease, purchase, or otherwise;

(2) maintain, enlarge, or remodel any such property;

(3) have sole control of any such personal or real property; and

(4) dispose of real and personal property without regard to the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 101 et seq.).

(i) CONTRACT AUTHORITY.—The school may enter into contracts and leases without regard to the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 101 et seq.) or any other law that prescribes procedures for the procurement of property or service by an executive agency.

(j) USE OF DEPARTMENT FACILITIES AND RESOURCES.—The school may use the facilities and resources of the Department of Transportation, with the approval of the Superintendent, but only if any costs incurred by the Department that are attributable solely to the school operations and all costs incurred by the school arising out of such operations are paid using funds of the school or the Department of Transportation receives other adequate consideration for paying for such costs. Any reimbursement may be retained by the United States Merchant Marine Academy and credited to the charged appropriations account.

(k) AUDITS OF RECORDS.—The financial records of the school shall be made available to the Department of Transportation Inspector General, upon request, for purposes of conducting an audit.

(l) DEFINITIONS.—In this section:

(1) BOARD.—The term "Board" means the school Board of Directors.

(2) DIRECTOR.—The term "Director" means a member of the school's Board of Directors.

(3) MANAGING DIRECTOR.—The term "Managing Director" means a member of the Board who is an employee of the school with operational responsibility for the organization, but not a Federal employee.

(4) SENIOR MANAGING DIRECTOR.—The term "Senior Managing Director" means the Managing Director designated the "Senior Managing Director" by the Superintendent, as set forth in subsection (e) of this section.

(5) SECRETARY.—The term "Secretary" means the Secretary of Transportation.

(6) SUPERINTENDENT.—The term "Superintendent" means the Superintendent of the United States Merchant Marine Academy at Kings Point, New York, operated by the Maritime Adminis-

tration, United States Department of Transportation or, in the absence of the Superintendent, the Superintendent's authorized designee or such other person as the Secretary may designate.

MERCHANT MARINE DECORATIONS AND MEDALS ACT

SEC. 8. EXCLUSIVENESS OF RIGHT TO DECORATION OR MEDAL; CIVIL PENALTY FOR VIOLATION.

[46 U.S.C. App. 2007]

Except as authorized by this Act, *or the Secretary of Transportation,* a person may not manufacture, sell, possess, or display a decoration or medal provided for in this Act. A person violating this section is liable to the United States Government for a civil penalty of $2,000.

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