

UPDATE AND IMPROVE THE CODIFICATION OF TITLE 46,
UNITED STATES CODE

NOVEMBER 8, 2007.—Referred to the House Calendar and ordered to be printed

Mr. CONYERS, from the Committee on the Judiciary, submitted the
following

R E P O R T

[To accompany H.R. 3387]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3387) to update and improve the codification of title 46, United States Code, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

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THE AMENDMENTS

The amendments are as follows:

Page 2, line 2, strike “(a) IN GENERAL.—”.

Page 2, strike lines 13 and 14.

Page 2, strike line 16 through page 3, line 13 and insert the following:

- (a) AMENDMENT.—Section 30104 of title 46, United States Code, is amended by—
 (1) striking “(a) CAUSE OF ACTION.—”; and
 (2) striking subsection (b).

Page 3, line 14, strike “(c)” and insert “(b)”.

Page 11, line 18, insert “such” before “section”.

Page 12, after line 2, insert the following:

- (D) Subsection (h)(1) of such section 54101 is amended by striking “632)” and inserting “632))”.

Page 12, line 3, strike “(D)” and insert “(E)”.

Page 17, line 25, strike “subparagraph (A)” and insert “paragraph (1)”.

Page 21, line 11, strike “App. U.S.C.” and insert “U.S.C. App.”.

Page 21, line 14, strike “App. U.S.C.” and insert “U.S.C. App.”.

Page 22, after line 3, insert the following:

- (d) LARGE PASSENGER VESSEL CREW REQUIREMENTS.—Section 8103(k)(3)(C)(iv) of title 46, United States Code, is amended by inserting “and section 252 of the Immigration and Nationality Act (8 U.S.C. 1282)” after “of such section”.

PURPOSE AND SUMMARY

The purpose of H.R. 3387 is to update and improve the codification of title 46, United States Code. It was prepared by the Law Revision Counsel of the House of Representatives in accordance with 2 U.S.C. 285b.

BACKGROUND AND NEED FOR THE LEGISLATION

On October 6, 2006, Congress enacted Public Law 109–304, which was an Act to complete the codification of title 46, United States Code, “Shipping”, as positive law. As with all codification laws, that law restated and replaced existing law as in effect on a particular date, in this case April 30, 2005. It also provided that any amendments after that date to the provisions being replaced shall be given superseding effect. See section 18(a) of Public Law 109–304 (120 Stat. 1709).

After that so-called “cutoff date”, Congress amended certain of the provisions being replaced. Thus, those amendments do not appear in the newly codified version of those provisions. This bill updates the newly codified version to reflect those subsequent amendments. It also makes certain improvements based on public comments that were submitted too late to be reflected in Public Law 109–304 and makes technical corrections to that law.

Except for the changes reflecting post-codification enactments to the laws codified in title 46, the provisions of this bill are not intended to make any substantive changes to the laws now codified in that title. Like the codification itself, these changes are intended to restate the law without substantive change, including applicable case law interpreting the earlier, pre-codification provisions. In a few instances, changes herein respond to comments, received too late to be incorporated into the codification, recommending clarifications to more clearly reflect the prior law.

HEARINGS

No hearings were held on H.R. 3387.

COMMITTEE CONSIDERATION

On October 10, 2007, the Committee met in open session and ordered the bill H.R. 3387 favorably reported with amendments, by a voice vote, a quorum being present.

COMMITTEE VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee notes that there were no recorded votes during the Committee consideration of H.R. 3387.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 3387, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 22, 2007

Honorable John Conyers Jr.
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3387, a bill to update and improve the codification of title 46, United States Code.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Deborah Reis, who can be reached at 226-2860.

Sincerely,

PETER R. ORSZAG

Enclosure

cc: Honorable Lamar S. Smith
Ranking Member

*H.R. 3387—A bill to update and improve the codification of title 46,
United States Code*

*As ordered reported by the House Committee on the Judiciary on
October 10, 2007*

H.R. 3387 would update and amend the codification of title 46, United States Code, and would make technical changes to various shipping laws enforced by the Maritime Administration and the U.S. Coast Guard. CBO estimates that enacting this legislation would result in no cost to the federal government and would not affect direct spending or revenues.

H.R. 3387 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no cost on state, local, or tribal governments.

On August 24, 2007, CBO transmitted a cost estimate for S. 1778, the Maritime Administration Authorities Act of 2007, as ordered reported by the Senate Committee on Commerce, Science, and Transportation on July 19, 2007. The provisions of H.R. 3387 are nearly identical to those of title II of S. 1778, and CBO's estimate of the costs of both versions is the same.

The CBO staff contact for this estimate is Deborah Reis, who can be reached at 226-2860. This estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

PERFORMANCE GOALS AND OBJECTIVES

In compliance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee reports that the bill, H.R. 3387, updates and improves the codification of title 46, United States Code.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 8 of the Constitution.

ADVISORY ON EARMARKS

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 3387 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of rule XXI.

SECTION-BY-SECTION ANALYSIS

SECTION 1—TABLE OF CONTENTS

Section 1 provides a table of contents.

SECTION 2—PURPOSE

Section 2 provides a statement of purpose.

SECTION 3—PERSONAL INJURY TO OR DEATH OF SEAMEN

Section 3 repeals the venue provision for legal actions based on the injury or death of a seaman in the course of employment, now found in subsection (b) of 46 U.S.C 30104, as codified by Public Law 109–304. Section 30104 was intended as a codification without substantive change of section 20(a) of the Act of March 4, 1915, as amended by section 33 of the Act of June 5, 1920 (former 46 U.S.C. App. 688(a)), commonly known as the Jones Act. This subsection is being repealed to make clearer that the prior law regarding venue, including the holding of *Pure Oil Co. v. Suarez*, 384 U.S. 202 (1966) and cases following it, remains in effect, so that the action may be brought wherever the seaman’s employer does business. Because the codified provision could be read to be inconsistent with that holding, the Committee believes it should be repealed, retroactive to the date of codification, to ensure that the codification has not inadvertently resulted, even temporarily, in a substantive change.

Subsection (a) of codified section 30104 is left unchanged. Similar language in the earlier, pre-codification statute was interpreted to provide that seamen and their survivors not only could elect to bring an action at law, with right of trial by jury, but also retained an option to proceed in admiralty. E.g., *Panama R.R. Co. v. Johnson*, 264 U.S. 375 (1924). This interpretation, like other case law interpreting the earlier provision, remains applicable to the codified provision. Because the codified provision, like the earlier statute, is not inconsistent with this interpretation, the Committee believes it unnecessary to make any further clarification.

SECTION 4—AMENDMENTS TO CHAPTER 537 BASED ON PUBLIC LAW
109–163

Section 4 updates chapter 537 of title 46, United States Code, relating to ship mortgage loans and guarantees, to reflect the amendments made by section 3507 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109–163).

SECTION 5—ADDITIONAL AMENDMENTS BASED ON PUBLIC LAW 109–163

Section 5 updates various provisions codified in title 46, United States Code, to reflect the amendments made by sections 515(g)(2), 3502, 3509, and 3510 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109–163). It also adds a new section 54101 to title 46 based on section 3506 of that Act.

SECTION 6—AMENDMENTS BASED ON PUBLIC LAW 109–171

Section 6 updates section 60301 of title 46, United States Code, to reflect the amendments made by section 4001 of the Deficit Reduction Act of 2005 (Public Law 109–171).

SECTION 7—AMENDMENTS BASED ON PUBLIC LAW 109–241

Section 7 updates various provisions codified in title 46, United States Code, to reflect the amendments made by sections 303, 307, 308, 310, 901(q), and 902(o) of the Coast Guard and Maritime Transportation Act of 2006 (Public Law 109–241).

SECTION 8—AMENDMENTS BASED ON PUBLIC LAW 109–364

Section 8 updates cross references in section 1017(b)(2) of the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law 109-364, 10 U.S.C. 2631 note) to reflect the codification in title 46, United States Code, of the provisions referenced.

This section also updates various provisions codified in title 46, United States Code, to reflect the amendments made by sections 3505, 3506, 3508, and 3510(a) and (b) of that Act.

SECTION 9—MISCELLANEOUS AMENDMENTS

Subsection (a) deletes the reference to Canton Island in section 55101(b) of title 46, United States Code, because Canton Island is no longer a territory or possession of the United States.

Subsection (b) amends section 55110 of title 46, United States Code, to improve the heading.

SECTION 10—APPLICATION OF SUNSET PROVISION TO CODIFIED PROVISION

Section 301(a)(2)(E) of the Jobs and Growth Tax Relief Reconciliation Act of 2003 (Public Law 108-27) amended the second sentence of section 607(h)(6)(A) of the Merchant Marine Act, 1936 (former 46 U.S.C. App. 1177(h)(6)(A)), by striking “20 percent” and inserting “15 percent”. However, section 303 of that amending law provided that the amendment shall not apply to taxable years beginning after December 31, 2008, and that the Internal Revenue Code of 1986 shall be applied to such years as if the amendment had never been enacted. The second sentence of section 607(h)(6)(A) of the Merchant Marine Act, 1936, was codified in section 53511(f)(2) of title 46, United States Code. The purpose of this section is to ensure that the tax rate in section 53511(f)(2) is the same as it would have been under former section 607(h)(6)(A). This section does not amend section 53511(f)(2) directly in case of any further amendment to section 303 of Public Law 108-27.

SECTION 11—TECHNICAL CORRECTIONS

Subsections (a) to (c) make technical corrections to Public Law 109-304 and to provisions enacted or amended by that law.

Subsection (d) amends section 8103(k)(3)(C)(iv) of title 46, United States Code, to clarify that the provision applies notwithstanding the section added to the cross reference.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

As required by clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law proposed by the bill are shown below. Existing law to be stricken is shown in ~~strikeout~~, new law to be inserted is shown in *italic*, and existing law in which no change is proposed is shown in roman.

Title 46, United States Code

* * *

Subtitle II—Vessels and Seamen

* * *

PART A—GENERAL PROVISIONS

* * *

CHAPTER 21—GENERAL

Sec.
2108. Refund of penalties.

* * *

PART F—MANNING OF VESSELS

* * *

CHAPTER 81—GENERAL

* * *

§ 8103. Citizenship and Navy Reserve requirements

* * *

(k) CREW REQUIREMENTS FOR LARGE PASSENGER VESSELS.—

* * *

(3) SPECIAL RULES FOR CERTAIN LICENSED SEAMEN.—

* * *

(C) STATUS, DOCUMENTATION, AND EMPLOYMENT.—An unlicensed seaman described in subparagraph (C) or (D) of paragraph (1) of this subsection—

* * *

(iv) may be employed for a period of service on board not to exceed 36 months in the aggregate as a non-immigrant crewman described in section 101(a)(15)(D)(i) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(D)(i)) on vessels engaged in domestic voyages notwithstanding the departure requirements and time limitations of such section *and section 252 of the Immigration and Nationality Act (8 U.S.C. 1282)* and the regulations and rules promulgated thereunder.

* * *

PART H—IDENTIFICATION OF VESSELS

* * *

CHAPTER 121—DOCUMENTATION OF VESSELS

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§ 12111. Registry endorsement

* * *

(d) *ACTIVITIES INVOLVING MOBILE OFFSHORE DRILLING UNITS.—*
 (1) *IN GENERAL.—Only a vessel for which a certificate of documentation with a registry endorsement is issued may engage in—*

(A) the setting, relocation, or recovery of the anchors or other mooring equipment of a mobile offshore drilling unit that is located over the outer Continental Shelf (as defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a))); or

(B) the transportation of merchandise or personnel to or from a point in the United States from or to a mobile offshore drilling unit located over the outer Continental Shelf that is not attached to the seabed.

(2) *COASTWISE TRADE NOT AUTHORIZED.—Nothing in paragraph (1) authorizes the employment in the coastwise trade of a vessel that does not meet the requirements of section 12112 of this title.*

* * *

§ 12113. Fishery endorsement

* * *

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

* * *

§ 12131. Command of documented vessels

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

* * *

§ 12139. Reports

(a) *IN GENERAL.—To ensure compliance with this chapter and laws governing the qualifications of vessels to engage in the coast-*

wise trade and the fisheries, the Secretary may require owners, masters, and charterers *charterers, and mortgagees* of documented vessels to submit reports in any reasonable form and manner the Secretary may prescribe.

* * *

Subtitle III—Maritime Liability

* * *

CHAPTER 301—GENERAL LIABILITY PROVISIONS

* * *

§ 30104. Personal injury to or death of seamen

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

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

* * *

Subtitle V—Merchant Marine

* * *

PART C—FINANCIAL ASSISTANCE PROGRAMS

“531. Maritime Security Fleet	53101
“533. Construction Reserve Funds	53301
“535. Capital Construction Funds	53501
“537. Loans and Guarantees	53701
“539. War Risk Insurance	53901
541. Miscellaneous	54101

* * *

PART B—MERCHANT MARINE SERVICE

* * *

CHAPTER 513—UNITED STATES MERCHANT MARINE ACADEMY

Sec.
51311. Midshipman status in the ~~Naval~~ Navy Reserve.

* * *

§ 51306. Cadet commitment agreements

(a) **AGREEMENT REQUIREMENTS.**—A citizen of the United States appointed as a cadet at the United States Merchant Marine Academy must sign, as a condition of the appointment, an agreement to—

* * *

(4) apply for, and accept if tendered, an appointment as a commissioned officer in the ~~Naval~~ Navy Reserve (including the Merchant Marine Reserve, ~~Naval~~ Navy Reserve), the Coast Guard Reserve, or any other reserve unit of an armed force of the United States, and, if tendered the appointment, to serve for at least 6 years after graduation from the Academy;

* * *

(e) **ALTERNATE SERVICE.**—

(1) **SERVICE AS COMMISSIONED OFFICER.**—*An individual who, for the 5-year period following graduation from the Academy, serves as a commissioned officer on active duty in an armed force of the United States or as a commissioned officer of the National Oceanic and Atmospheric Administration or the Public Health Service shall be excused from the requirements of subsection (a)(3)–(5).*

(2) **MODIFICATION OR WAIVER.**—*The Secretary may modify or waive any of the terms and conditions set forth in subsection (a) through the imposition of alternative service requirements.*

(f) **SERVICE OBLIGATION PERFORMANCE REPORTING REQUIREMENT.**—

(1) **IN GENERAL.**—*Subject to any otherwise applicable restrictions on disclosure in section 552a of title 5, the Secretary of Defense, the Secretary of the department in which the Coast Guard is operating, the Administrator of the National Oceanic and Atmospheric Administration, and the Surgeon General of the Public Health Service—*

(A) *shall report the status of obligated service of an individual graduate of the Academy upon request of the Secretary; and*

(B) *may, in their discretion, notify the Secretary of any failure of the graduate to perform 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 or the Public Health Service, respectively.*

(2) **INFORMATION TO BE PROVIDED.**—*A report or notice under paragraph (1) shall identify any graduate determined to have failed to comply with service obligation requirements and provide all required information as to why such graduate failed to comply.*

(3) **CONSIDERED AS IN DEFAULT.**—*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 Secretary, and sub-*

ject to all remedies the Secretary may have with respect to such a default.

* * *

§ 51307. Places of training

The Secretary of Transportation may provide for the training of cadets at the United States Merchant Marine Academy—

- (1) on vessels owned or subsidized by the United States Government;
- (2) on other documented vessels, with the permission of the owner; ~~and~~
- (3) in shipyards or plants and with industrial or educational organizations; *and*
- (4) *on any other vessel considered by the Secretary to be necessary or appropriate or in the national interest.*

* * *

§ 51311. Midshipman status in the Naval Navy Reserve

(a) APPLICATION REQUIREMENT.—Before being appointed as a cadet at the United States Merchant Marine Academy, a citizen of the United States must agree to apply for midshipman status in the ~~Naval Navy Reserve~~ (including the Merchant Marine Reserve, ~~Naval Navy Reserve~~).

(b) APPOINTMENT.—

- (1) IN GENERAL.—A citizen of the United States appointed as a cadet at the Academy shall be appointed by the Secretary of the Navy as a midshipman in the ~~Naval Navy Reserve~~ (including the Merchant Marine Reserve, ~~Naval Navy Reserve~~).
- (2) RIGHTS AND PRIVILEGES.—The Secretary of the Navy shall provide for cadets of the Academy who are midshipmen in the United States ~~Naval Navy Reserve~~ to be—

* * *

CHAPTER 515—STATE MARITIME ACADEMY SUPPORT PROGRAM

Sec.

51511. Midshipman status in the ~~Naval Navy Reserve~~.

* * *

§ 51504. Use of training vessels

* * *

(f) FUEL COSTS.—The Secretary may pay to a State maritime academy the costs of fuel used by a vessel provided under this section while used for training.

(f) FUEL COSTS.—

- (1) IN GENERAL.—*Subject to the availability of appropriations, the Secretary shall pay to each State maritime academy the costs of fuel used by a vessel provided under this section while used for training.*

(2) *MAXIMUM AMOUNTS.*—*The amount of the payment to a State maritime academy under paragraph (1) may not exceed—*
(A) \$100,000 for fiscal year 2006;
(B) \$200,000 for fiscal year 2007; and
(C) \$300,000 for fiscal year 2008 and each fiscal year thereafter.

* * *

§ 51505. Annual payments for maintenance and support

* * *

(b) *PAYMENTS.*—

* * *

(2) *MAXIMUM.*—*The amount under paragraph (1) may not be more than \$25,000. However, if the academy satisfies section 51506(b) of this title, the amount shall be—*
(A) \$100,000 for a State maritime academy; and
(B) ~~\$200,000~~ \$300,000 for fiscal year 2006, \$400,000 for fiscal year 2007, and \$500,000 for fiscal year 2008 and each fiscal year thereafter for a regional maritime academy.

* * *

§ 51509. Student incentive payment agreements

* * *

(c) ~~MIDSHIPMAN AND ENLISTED RESERVE STATUS.~~—*An agreement under this section shall require the student to accept ~~midshipman and~~ enlisted reserve status in the ~~Naval~~ Navy Reserve (including the Merchant Marine Reserve, ~~Naval~~ Navy Reserve) or the Coast Guard Reserve before receiving any payments under the agreement.*

(d) *AGREEMENT REQUIREMENTS.*—*An agreement under this section shall require the student to—*

* * *

(4) *accept, if tendered, an appointment as a commissioned officer in the ~~Naval~~ Navy Reserve (including the Merchant Marine Reserve, ~~Naval~~ Navy Reserve), the Coast Guard Reserve, or any other reserve unit of an armed force of the United States, and, if tendered the appointment, to serve for at least 6 years after graduation from the academy;*

* * *

§ 51511. Midshipman status in the Naval Navy Reserve

A citizen of the United States attending a State maritime academy may be appointed by the Secretary of the Navy as a midshipman in the ~~Naval~~ Navy Reserve (including the Merchant Marine Reserve, ~~Naval~~ Navy Reserve).

* * *

**CHAPTER 517—OTHER SUPPORT FOR MERCHANT
MARINE TRAINING**

* * *

§ 51701. United States Maritime Service

(a) GENERAL AUTHORITY.—The Secretary of Transportation may establish and maintain a voluntary organization, to be known as the United States Maritime Service, for the training of citizens of the United States to serve on merchant vessels of the United States *and to perform functions to assist the United States merchant marine, as determined necessary by the Secretary.*

* * *

CHAPTER 519—MERCHANT MARINE AWARDS

Sec.

51907. *Manufacture and sale of awards and replacements.*

51907. *Provision of decorations, medals, and replacements.*

* * *

§ 51907. Manufacture and sale of awards and replacements

The Secretary of Transportation may—

- (1) authorize private persons to manufacture decorations and medals authorized under this chapter or a prior law; and
- (2) provide at cost, or authorize private persons to sell at reasonable prices, replacements for those decorations and medals.

§ 51907. *Provision of decorations, medals, and replacements*

The Secretary of Transportation may provide—

- (1) the decorations and medals authorized by this chapter and replacements for those decorations and medals; and*
- (2) replacements for decorations and medals issued under a prior law.*

§ 51908. Prohibition against unauthorized manufacture, sale, possession, or display of awards

(a) PROHIBITION.—Except as authorized under this chapter *by this chapter or the Secretary of Transportation*, a person may not manufacture, sell, possess, or display a decoration or medal provided for in this chapter.

* * *

PART C—FINANCIAL ASSISTANCE PROGRAMS

* * *

CHAPTER 531—MARITIME SECURITY FLEET

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§ 53105. Obligations and rights under operating agreements

* * *

(e) TRANSFER OF OPERATING AGREEMENTS.—

* * *

(2) LIMITATION.—The Secretary of Defense may not approve under paragraph (1) transfer of an operating agreement to a person that is not a citizen of the United States under section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802), *section 50501 of this title* unless the Secretary of Defense determines that there is no person who is a citizen of the United States under such section and is interested in obtaining the operating agreement for a vessel that is otherwise eligible to be included in the Fleet under section 53102(b) and meets the requirements of the Department of Defense.

* * *

CHAPTER 537—LOANS AND GUARANTEES

SUBCHAPTER I—GENERAL

Sec.

- 53701. Definitions.
- 53702. General authority.
- 53703. Application procedures.
- 53704. Funding limits.
- 53705. Pledge of United States Government.
- 53706. Eligible purposes of obligations.
- 53707. Findings related to obligors and operators.
- 53708. Findings related to economic soundness.
- 53709. Amount of obligations.
- 53710. Contents of obligations.
- 53711. Security interest.
- 53712. Monitoring financial condition and operations of obligor.
- 53713. Administrative fees.
- 53714. Guarantee fees.
- 53715. Escrow fund.
- 53716. Deposit fund.
- 53717. Management of funds in the Treasury.
- 53718. Annual report to Congress.

SUBCHAPTER II—DEFAULT PROVISIONS

- 53721. Rights of obligee.
- 53722. Actions by Secretary *or Administrator*.
- 53723. Payments by Secretary *or Administrator* and issuance of obligations.

- 53724. Rights to secured property.
- 53725. Actions against obligor.

SUBCHAPTER III—PARTICULAR PROJECTS

- 53731. Commercial demonstration ocean thermal energy conversion facilities and plantships.
- 53732. Eligible export vessels.
- 53733. Shipyard modernization and improvement.
- 53734. Replacement of vessels because of changes in operating standards.
- 53735. Fisheries financing and capacity reduction.

SUBCHAPTER I—GENERAL

§ 53701. Definitions

In this chapter:

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

(A) all amounts paid by or for the account of the obligor as of the date on which a determination is made under section 53715(d)(1) of this title; and

(B) all amounts that the Secretary *or Administrator* reasonably estimates the obligor will become obligated to pay from time to time thereafter, for the construction, reconstruction, or reconditioning of the vessel, including guarantee fees that will become payable under section 53714 of this title in connection with all obligations issued for construction, reconstruction, or reconditioning of the vessel or equipment to be delivered, and all obligations issued for the delivered vessel or equipment.

(2) **ADMINISTRATOR.**—*The term “Administrator” means the Administrator of the Maritime Administration.*

~~(2)~~ (3) **CONSTRUCTION, RECONSTRUCTION, AND RECONDITIONING.**—The terms “construction”, “reconstruction”, and “reconditioning” include designing, inspecting, outfitting, and equipping.

~~(3)~~ (4) **DEPRECIATED ACTUAL COST.**—The term “depreciated actual cost” of a vessel means—

(A) if the vessel was not reconstructed or reconditioned, the actual cost of the vessel depreciated on a straight line basis over the useful life of the vessel as determined by the Secretary *or Administrator*, not to exceed 25 years from the date of delivery by the builder; or

(B) if the vessel was reconstructed or reconditioned, the sum of—

(i) the actual cost of the vessel depreciated on a straight line basis from the date of delivery by the builder to the date of the reconstruction or reconditioning, using the original useful life of the vessel, and from the date of the reconstruction or reconditioning, using a useful life of the vessel determined by the Secretary *or Administrator*; and

(ii) any amount paid or obligated to be paid for the reconstruction or reconditioning, depreciated on a straight line basis using a useful life of the vessel determined by the Secretary *or Administrator*.

~~(4)~~ (5) **ELIGIBLE EXPORT VESSEL.**—The term “eligible export vessel” means a vessel that—

(A) is constructed, reconstructed, or reconditioned in the United States for use in world-wide trade; and

(B) will, on delivery or redelivery, become or remain documented under the laws of a country other than the United States.

~~(5)~~ (6) FISHERY FACILITY.—

(A) IN GENERAL.—Subject to subparagraph (B), the term “fishery facility” means—

(i) for operations on land—

(I) a structure or appurtenance thereto designed for the unloading and receiving from vessels, the processing, the holding pending processing, the distribution after processing, or the holding pending distribution, of fish from a fishery;

(II) the land necessary for the structure or appurtenance; and

(III) equipment that is for use with the structure or appurtenance and that is necessary for performing a function referred to in subclause (I);

(ii) for operations not on land, a vessel built in the United States and used for, equipped to be used for, or of a type normally used for, the processing of fish; or

(iii) for aquaculture, including operations on land or elsewhere—

(I) a structure or appurtenance thereto designed for aquaculture;

(II) the land necessary for the structure or appurtenance;

(III) equipment that is for use with the structure or appurtenance and that is necessary for performing a function referred to in subclause (I); and

(IV) a vessel built in the United States and used for, equipped to be used for, or of a type normally used for, aquaculture.

(B) REQUIRED OWNERSHIP.—Under subparagraph (A), the structure, appurtenance, land, equipment, or vessel must be owned by—

(i) an individual who is a citizen of the United States; or

(ii) an entity that is a citizen of the United States under section 50501 of this title and that is at least 75 percent owned (as determined under that section) by citizens of the United States.

~~(6)~~ (7) FISHING VESSEL.—The term “fishing vessel” has the meaning given that term in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802), and any reference in this chapter to a vessel designed principally for commercial use in the fishing trade or industry is deemed to be a reference to a fishing vessel.

~~(7)~~ (8) MORTGAGE.—The term “mortgage” includes—

(A) a preferred mortgage as defined in section 31301 of this title; and

- (B) a mortgage on a vessel that will become a preferred mortgage when filed or recorded under chapter 313 of this title.
- ~~(8)~~ (9) OBLIGATION.—The term “obligation” means an instrument of indebtedness issued for a purpose described in section 53706 of this title, except—
- (A) an obligation issued by the Secretary *or Administrator* under section 53723 of this title; and
- (B) an obligation eligible for investment of funds under section 53715(f) or 53717 of this title.
- ~~(9)~~ (10) OBLIGEE.—The term “obligee” means the holder of an obligation.
- ~~(10)~~ (11) OBLIGOR.—The term “obligor” means a party primarily liable for payment of the principal of or interest on an obligation.
- ~~(11)~~ (12) OCEAN THERMAL ENERGY CONVERSION FACILITY OR PLANTSHIP.—The term “ocean thermal energy conversion facility or plantship” means an at-sea facility or vessel, whether mobile, floating unmoored, moored, or standing on the seabed, that uses temperature differences in ocean water to produce electricity or another form of energy capable of being used directly to perform work, and includes—
- (A) equipment installed on the facility or vessel to use the electricity or other form of energy to produce, process, refine, or manufacture a product;
- (B) a cable or pipeline used to deliver the electricity, freshwater, or product to shore; and
- (C) other associated equipment and appurtenances of the facility or vessel to the extent they are located seaward of the high water mark.
- ~~(12)~~ ~~(13)~~ SECRETARY.—The term “Secretary” means—
- (A) the Secretary of Commerce with respect to fishing vessels and fishery facilities; and
- (B) the Secretary of Transportation with respect to other vessels and general shipyard facilities (as defined in section 53733(a) of this title).
- (13) SECRETARY.—*The term “Secretary” means the Secretary of Commerce with respect to fishing vessels and fishery facilities.*
- ~~(13)~~ (14) VESSEL.—The term “vessel” means any type of vessel, whether in existence or under construction, including—
- (A) a cargo vessel;
- (B) a passenger vessel;
- (C) a combination cargo and passenger vessel;
- (D) a tanker;
- (E) a tug or towboat;
- (F) a barge;
- (G) a dredge;
- (H) a floating drydock with a capacity of at least 35,000 lifting tons and a beam of at least 125 feet between the wing walls;
- (I) an oceanographic research vessel;
- (J) an instruction vessel;
- (K) a pollution treatment, abatement, or control vessel;

(L) a fishing vessel whose ownership meets the citizenship requirements under section 50501 of this title for documenting vessels to operate in the coastwise trade; and

(M) an ocean thermal energy conversion facility or plantship that is or will be documented under the laws of the United States.

§ 53702. General authority

(a) IN GENERAL.—The Secretary *or Administrator*, on terms the Secretary *or Administrator* may prescribe, may guarantee or make a commitment to guarantee the payment of the principal of and interest on an obligation eligible to be guaranteed under this chapter. A guarantee or commitment to guarantee shall cover 100 percent of the principal and interest.

(b) DIRECT LOANS FOR FISHERIES.—

(1) IN GENERAL.—Notwithstanding any other provision of this chapter, any obligation involving a fishing vessel, fishery facility, aquaculture facility, individual fishing quota, or fishing capacity reduction program issued under this chapter after October 11, 1996, shall be a direct loan obligation for which the Secretary shall be the obligee, rather than an obligation issued to an obligee other than the Secretary and guaranteed by the Secretary. A direct loan obligation under this subsection shall be treated in the same manner and to the same extent as an obligation guaranteed under this chapter except with respect to provisions of this chapter that by their nature can only be applied to obligations guaranteed under this chapter.

(2) INTEREST RATE.—Notwithstanding any other provision of this chapter, the annual rate of interest an obligor shall pay on a direct loan obligation under this subsection is 2 percent plus the additional percent the Secretary must pay as interest to borrow from the Treasury the funds to make the loan.

§ 53703. Application procedures

(a) TIME FOR DECISION.—

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

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

(b) CERTIFICATION OF REVIEW.—The Secretary *or Administrator* may not guarantee or make a commitment to guarantee an obligation under this chapter unless the Secretary *or Administrator* certifies that a full and fair consideration of all the regulatory requirements, including economic soundness and financial requirements applicable to the obligor and related parties, and a thorough assessment of the technical, economic, and financial aspects of the loan application, has been made.

§ 53704. Funding limits

(a) GENERAL LIMITATIONS.—The total unpaid principal amount of obligations guaranteed under this chapter and outstanding at one time may not exceed \$12,000,000,000. Of that amount—

(1) \$850,000,000 shall be limited to obligations related to fishing vessels and fishery facilities; and

(2) \$3,000,000,000 shall be limited to obligations related to eligible export vessels.

(b) ADDITIONAL LIMITATIONS.—Additional limitations may not be imposed on new commitments to guarantee loans for any fiscal year, except in amounts established in advance by annual authorization laws. A vessel eligible for a guarantee under this chapter may not be denied eligibility because of its type.

(c) LIMITS BASED ON RISK FACTORS.—

(1) DEFINITION.—In this subsection, the term “cost” has the meaning given that term in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a).

(2) SYSTEM OF RISK CATEGORIES.—The Secretary *or Administrator* shall—

(A) establish, and update annually, a system of risk categories for obligations guaranteed under this chapter that categorizes the relative risk of guarantees based on the risk factors set forth in paragraph (4);

(B) determine annually for each risk category a subsidy rate equivalent to the cost of obligations in the category, expressed as a percentage of the amount guaranteed for obligations in the category; and

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

(3) USE OF SYSTEM.—

(A) PLACING OBLIGATION IN CATEGORY.—Before making a guarantee under this chapter for an obligation, and annually for projects subject to a guarantee, the Secretary *or Administrator* shall apply the risk factors specified in paragraph (4) to place the obligation in a risk category established under paragraph (2).

(B) REDUCTION OF AVAILABLE AMOUNT.—The Secretary *or Administrator* shall consider the total amount available to the Secretary *or Administrator* for making guarantees under this chapter to be reduced by the amount determined by multiplying—

(i) the amount guaranteed under this chapter for an obligation; by

(ii) the subsidy rate for the category in which the obligation is placed under subparagraph (A).

(C) ESTIMATED COST.—The estimated cost to the United States Government of a guarantee under this chapter for an obligation is deemed to be the amount determined under subparagraph (B) for the obligation.

(D) RESTRICTION ON FURTHER GUARANTEES.—The Secretary or Administrator may not guarantee obligations under this chapter after the total amount available to the Secretary or Administrator under appropriations laws for the cost of loan guarantees is considered to be reduced to zero under subparagraph (B).

(4) RISK FACTORS.—The risk factors referred to in this subsection are—

(A) if applicable, the country risk for each eligible export vessel financed or to be financed by an obligation;

(B) the period for which an obligation is guaranteed or to be guaranteed;

(C) the amount of an obligation guaranteed or to be guaranteed in relation to the total cost of the project financed or to be financed by the obligation;

(D) the financial condition of an obligor or applicant for a guarantee;

(E) if applicable, other guarantees related to the project;

(F) if applicable, the projected employment of each vessel or equipment to be financed with an obligation;

(G) if applicable, the projected market that will be served by each vessel or equipment to be financed with an obligation;

(H) the collateral provided for a guarantee for an obligation;

(I) the management and operating experience of an obligor or applicant for a guarantee;

(J) whether a guarantee under this chapter is or will be in effect during the construction period of the project; and

(K) the concentration risk presented by an unduly large percentage of loans outstanding by any one borrower or group of affiliated borrowers.

§ 53705. Pledge of United States Government

(a) FULL FAITH AND CREDIT.—The full faith and credit of the United States Government is pledged to the payment of a guarantee made under this chapter, for both principal and interest, including interest (as may be provided for in the guarantee) accruing between the date of default under a guaranteed obligation and the date of payment in full of the guarantee.

(b) INCONTESTABILITY.—A guarantee or commitment to guarantee made under this chapter is conclusive evidence of the eligibility of the obligation for the guarantee. The validity of a guarantee or commitment to guarantee made under this chapter is incontestable.

§ 53706. Eligible purposes of obligations

(a) IN GENERAL.—To be eligible for a guarantee under this chapter, an obligation must aid in any of the following:

(1)(A) Financing (including reimbursement of an obligor for expenditures previously made for) the construction, reconstruction, or reconditioning of a vessel (including an eligible export vessel) designed principally for research, or for commercial use—

(i) in the coastwise or intercoastal trade;

- (ii) on the Great Lakes, or on bays, sounds, rivers, harbors, or inland lakes of the United States;
 - (iii) in foreign trade as defined in section 109(b) of this title;
 - (iv) as an ocean thermal energy conversion facility or plantship;
 - (v) as a floating drydock in the construction, reconstruction, reconditioning, or repair of vessels; or
 - (vi) as an eligible export vessel in worldwide trade.
- (B) A guarantee under subparagraph (A) may not be made more than one year after delivery of the vessel (or redelivery if the vessel was reconstructed or reconditioned) unless the proceeds of the obligation are used to finance the construction, reconstruction, or reconditioning of a vessel or of facilities or equipment related to marine operations.
- (2) Financing (including reimbursement of an obligor for expenditures previously made for) the construction, reconstruction, reconditioning, or purchase of a vessel owned by citizens of the United States and designed principally for research, or for commercial use in the fishing industry.
- (3) Financing the purchase, reconstruction, or reconditioning of a vessel or fishery facility—
- (A) for which an obligation was guaranteed under this chapter; and
 - (B) that, under subchapter II of this chapter—
 - (i) is a vessel or fishery facility for which an obligation was accelerated and paid;
 - (ii) was acquired by the Federal Ship Financing Fund or successor account under section 53717 of this title; or
 - (iii) was sold at foreclosure begun or intervened in by the Secretary or Administrator.
- (4) Financing any part of the repayment to the United States Government of any amount of a construction-differential subsidy paid for a vessel.
- (5) Refinancing an existing obligation (regardless of whether guaranteed under this chapter) issued for a purpose described in paragraphs (1)–(4), including a short-term obligation incurred to obtain temporary funds with the intention of refinancing.
- (6) Financing or refinancing (including reimbursement of an obligor for expenditures previously made for) the construction, reconstruction, reconditioning, or purchase of a fishery facility.
- (7) Financing or refinancing (including reimbursement of an obligor for expenditures previously made for) the purchase of an individual fishing quota in accordance with section 303(d)(4) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1853(d)(4)).
- (b) NON-VESSELS TREATED AS VESSELS.—An obligation guaranteed under subsection (a)(6) or (7) shall be treated, for purposes of this chapter, in the same manner and to the same extent as an obligation that aids in financing the construction, reconstruction, reconditioning, or purchase of a vessel, except with respect to provisions that by their nature can only be applied to vessels.

(c) **PRIORITIES FOR CERTAIN VESSELS.**—In guaranteeing or making a commitment to guarantee an obligation under this chapter, the Secretary shall give priority to—

(1) a vessel that is otherwise eligible for a guarantee and is constructed with assistance under subtitle D of the Maritime Security Act of 2003 (46 U.S.C. 53101 note); and

(2) after applying paragraph (1), a vessel that is otherwise eligible for a guarantee and that the Secretary of Defense determines—

(A) is suitable for service as a naval auxiliary in time of war or national emergency; and

(B) meets a shortfall in sealift capacity or capability.

(c) **PRIORITIES FOR CERTAIN VESSELS.**—

(1) **VESSELS.**—*In guaranteeing or making a commitment to guarantee an obligation under this chapter, the Administrator shall give priority to—*

(A) *a vessel that is otherwise eligible for a guarantee and is constructed with assistance under subtitle D of the Maritime Security Act of 2003 (46 U.S.C. 53101 note); and*

(B) *after applying subparagraph (A), a vessel that is otherwise eligible for a guarantee and that the Secretary of Defense determines—*

(i) *is suitable for service as a naval auxiliary in time of war or national emergency; and*

(ii) *meets a shortfall in sealift capacity or capability.*

(2) **TIME FOR DETERMINATION.**—*The Secretary of Defense shall determine whether a vessel satisfies paragraph (1)(B) not later than 30 days after receipt of a request from the Administrator for such a determination.*

§ 53707. Findings related to obligors and operators

(a) **RESPONSIBLE OBLIGOR.**—The Secretary or Administrator may not guarantee or make a commitment to guarantee an obligation under this chapter unless the Secretary or Administrator finds that the obligor is responsible and has the ability, experience, financial resources, and other qualifications necessary for the adequate operation and maintenance of each vessel that will serve as security for the guarantee.

(b) **OPERATORS OF LINER VESSELS.**—The Secretary of Transportation Administrator may not guarantee or make a commitment to guarantee a loan for the construction, reconstruction, or reconditioning of a liner vessel under this chapter unless the Chairman of the Federal Maritime Commission certifies that the operator of the vessel has not been found by the Commission to have committed, within the previous 5 years—

(1) a violation of part A of subtitle IV of this title that involves unjust or unfair discriminatory treatment or undue or unreasonable prejudice or disadvantage with respect to a United States shipper, ocean transportation intermediary, ocean common carrier, or port; or

(2) a violation of part B of subtitle IV of this title.

(c) **OPERATORS OF FISHING VESSELS.**—The Secretary of Commerce may not guarantee or make a commitment to guarantee a loan for the construction, reconstruction, or reconditioning of a fishing vessel under this chapter if the operator of the vessel has been—

(1) held liable, or the vessel has been held liable in rem, for a civil penalty under section 308 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1858) and the operator has not paid the penalty;

(2) found guilty of an offense under section 309 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1859) and not paid the assessed fine or served the assessed sentence;

(3) held liable for a civil or criminal penalty under section 105 of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1375) and not paid the assessed fine or served the assessed sentence; or

(4) held liable for a civil penalty by the Coast Guard under this title or title 33 and not paid the assessed fine.

(d) **WAIVERS CONCERNING FINANCIAL CONDITION.**—The Secretary or Administrator shall prescribe regulations concerning circumstances under which waivers of, or exceptions to, otherwise applicable regulatory requirements concerning financial condition can be made. The regulations shall require that—

(1) the economic soundness requirements in section 53708(a) of this title are met after the waiver of the financial condition requirement; and

(2) if the Secretary or Administrator considers necessary, the waiver shall provide for the imposition of other requirements on the obligor designed to compensate for the increased any significant increase in risk associated with the obligor's failure to meet regulatory requirements applicable to financial condition.

§ 53708. Findings related to economic soundness

(a) ~~BY SECRETARY OF TRANSPORTATION ADMINISTRATOR.~~—The Secretary of Transportation Administrator may not guarantee or make a commitment to guarantee an obligation under this chapter unless the Secretary Administrator finds that the property or project for which the obligation will be executed will be economically sound. In making that finding, the Secretary Administrator shall consider—

(1) the need in the particular segment of the maritime industry for new or additional capacity, including any impact on existing equipment for which a guarantee under this chapter is in effect;

(2) the market potential for employment of the vessel over the life of the guarantee;

(3) projected revenues and expenses associated with employment of the vessel;

(4) any charter, contract of affreightment, transportation agreement, or similar agreement or undertaking relevant to the employment of the vessel;

(5) other relevant criteria; and

(6) for inland waterways, the need for technical improvements, including increased fuel efficiency or improved safety.

(b) ~~BY SECRETARY OF COMMERCE.~~—The Secretary of Commerce may not guarantee or make a commitment to guarantee an obligation under this chapter unless the Secretary finds, at or prior to the time the commitment is made or the guarantee becomes effective, that—

(1) the property or project for which the obligation will be executed will be economically sound; and

(2) for a fishing vessel, the purpose of the financing or refinancing is consistent with—

(A) the wise use of the fisheries resources and the development, advancement, management, conservation, and protection of the fisheries resources; or

(B) the need for technical improvements, including increased fuel efficiency or improved safety.

(c) USED FISHING VESSELS AND FACILITIES.—The Secretary of Commerce may not guarantee or make a commitment to guarantee an obligation under this chapter for the purchase of a used fishing vessel or used fishery facility unless the vessel or facility will be—

(1) reconstructed or reconditioned in the United States and will contribute to the development of the United States fishing industry; or

(2) used—

(A) in the harvesting of fish from an underused fishery; or

or

(B) for a purpose described in the definition of “fishery facility” in section 53701 of this title with respect to an underused fishery.

(d) INDEPENDENT ANALYSIS.—The Secretary or Administrator may make a determination that aspects of an application under this chapter require independent analysis to be conducted by third party experts due to risk factors associated with markets, technology, financial structures, or other risk factors identified by the Secretary. Any independent analysis conducted under this subsection shall be performed by a party chosen by the Secretary. *or financial structures. A third party independent analysis conducted under this subsection shall be performed by a private sector expert in assessing such risk factors who is selected by the Secretary or Administrator.*

(e) ADDITIONAL EQUITY BECAUSE OF INCREASED RISKS.—Notwithstanding any other provision of this chapter, the Secretary or Administrator may make a determination that an application under this title requires additional equity because of increased risk factors associated with markets, technology, financial structures, or other risk factors identified by the Secretary or financial structures.

§ 53709. Amount of obligations

(a) IN GENERAL.—The principal of an obligation may not be guaranteed in an amount greater than the amount determined by multiplying the percentage applicable under subsection (b) by—

(1) the amount paid by or for the account of the obligor (as determined by the Secretary or Administrator, which determination shall be conclusive) for the construction, reconstruction, or reconditioning of the vessel used as security for the guarantee; or

(2) if the obligor creates an escrow fund under section 53715 of this title, the actual cost of the vessel.

(b) LIMITATIONS ON AMOUNT BORROWED.—

(1) IN GENERAL.—Except as otherwise provided, the principal amount of an obligation guaranteed under this chapter may not exceed 75 percent of the actual cost or depreciated actual

cost, as determined by the Secretary or Administrator, of the vessel used as security for the guarantee.

(2) CERTAIN APPROVED VESSELS.—The principal amount may not exceed 87.5 percent of the actual cost or depreciated actual cost if—

(A) the size and speed of the vessel are approved by the Secretary or Administrator;

(B) the vessel is or would have been eligible for mortgage aid for construction under section 509 of the Merchant Marine Act, 1936, or would have been eligible except that the vessel was built with a construction-differential subsidy and the subsidy has been repaid; and

(C) the vessel is of a type described in that section for which the minimum down payment required by that section is 12.5 percent of the cost of the vessel.

(3) BARGES.—For a barge constructed without a construction-differential subsidy or for which the subsidy has been repaid, the principal amount may not exceed 87.5 percent of the actual cost or depreciated actual cost.

(4) FISHING VESSELS AND FISHERY FACILITIES.—For a fishing vessel or fishery facility, the principal amount may not exceed 80 percent of the actual cost or depreciated actual cost. However, debt for the vessel or facility may not be placed through the Federal Financing Bank.

(5) OTEC.—For an ocean thermal energy conversion facility or plantship constructed without a construction-differential subsidy, the principal amount may not exceed 87.5 percent of the actual cost or depreciated actual cost of the facility or plantship.

(6) ELIGIBLE EXPORT VESSELS.—For an eligible export vessel, the principal amount may not exceed 87.5 percent of the actual cost or depreciated actual cost.

(c) SECURITY INVOLVING MULTIPLE VESSELS.—The principal amount of an obligation having more than one vessel as security for the guarantee may not exceed the sum of the principal amounts allowable for all the vessels.

(d) PROHIBITION ON UNIFORM PERCENTAGE LIMITATIONS.—The Secretary or Administrator may not establish a percentage under any provision of subsection (b) that is to be applied uniformly to all guarantees or commitments to guarantee made under that provision.

(e) PROHIBITION ON MINIMUM PRINCIPAL AMOUNT.—The Secretary may not establish, as a condition of eligibility for a guarantee under this chapter, a minimum principal amount for an obligation covering the reconstruction or reconditioning of a fishing vessel or fishery facility. For purposes of this chapter, the reconstruction or reconditioning of a fishing vessel or fishery facility does not include the routine minor repair or maintenance of the vessel or facility.

§ 53710. Contents of obligations

(a) IN GENERAL.—An obligation guaranteed under this chapter must—

(1) provide for payments by the obligor satisfactory to the Secretary or Administrator;

(2) provide for interest (exclusive of guarantee fees and other fees) at a rate not more than the annual rate on the unpaid principal that the Secretary or Administrator determines is reasonable, considering the range of interest rates prevailing in the private market for similar loans and the risks assumed by the Secretary or Administrator;

(3) have a maturity date satisfactory to the Secretary or Administrator, but—

(A) not more than 25 years after the date of delivery of the vessel used as security for the guarantee; or

(B) if the vessel has been reconstructed or reconditioned, not more than the later of—

(i) 25 years after the date of delivery of the vessel;

or

(ii) the remaining years of useful life of the vessel as determined by the Secretary or Administrator; and

(4) provide, or a related agreement must provide, that if the vessel used as security for the guarantee is a delivered vessel, the vessel shall be—

(A) in class A-1, American Bureau of Shipping, or meet other standards acceptable to the Secretary or Administrator, with all required certificates, including marine inspection certificates of the Coast Guard or, in the case of an eligible export vessel, of the appropriate foreign authorities under a treaty, convention, or other international agreement to which the United States is a party, and with all outstanding requirements and recommendations necessary for class retention accomplished, unless the Secretary or Administrator permits a deferment of repairs necessary to meet these requirements; and

(B) well equipped, in good repair, and in every respect seaworthy and fit for service.

(b) PROVISIONS FOR CERTAIN PASSENGER VESSELS.—

(1) IN GENERAL.—With the Secretary's Administrator's approval, if the vessel used as security for the guarantee is a passenger vessel having the tonnage, speed, passenger accommodations, and other characteristics described in section 503 of the Merchant Marine Act, 1936, an obligation guaranteed under this chapter or a related agreement may provide that—

(A) the only recourse by the United States Government against the obligor for payments under the guarantee will be repossession of the vessel and assignment of insurance claims; and

(B) the obligor's liability for payments under the guarantee will be satisfied and discharged by the surrender of the vessel and all interest in the vessel to the Government in the condition described in paragraph (2).

(2) SURRENDER OF VESSEL.—

(A) IN GENERAL.—On surrender, the vessel must be—

(i) free and clear of all liens and encumbrances except the security interest conveyed to the Secretary Administrator under this chapter;

(ii) in class; and

(iii) in as good order and condition (ordinary wear and tear excepted) as when acquired by the obligor.

(B) COVERING DEFICIENCIES BY INSURANCE.—To the extent covered by insurance, a deficiency related to a requirement in subparagraph (A) may be satisfied by assignment of the obligor's insurance claims to the Government.

(c) OTHER PROVISIONS TO PROTECT SECURITY INTERESTS.—An obligation guaranteed under this chapter and any related agreement must contain other provisions for the protection of the security interests of the Government (including acceleration, assumption, and subrogation provisions and the issuance of notes by the obligor to the Secretary or Administrator), liens and releases of liens, payment of taxes, and other matters that the Secretary or Administrator may prescribe.

§ 53711. Security interest

(a) IN GENERAL.—The Secretary or Administrator may guarantee an obligation under this chapter only if the obligor conveys or agrees to convey to the Secretary or Administrator a security interest the Secretary or Administrator considers necessary to protect the interest of the United States Government.

(b) MULTIPLE VESSELS AND TYPES OF SECURITY.—The security interest may relate to more than one vessel and may consist of more than one type of security. If the security interest relates to more than one vessel, the obligation may have the latest maturity date allowable under section 53710(a)(3) of this title for any of the vessels used as security for the guarantee. However, the Secretary or Administrator may require such payments of principal prior to maturity, with respect to all related obligations, as the Secretary or Administrator considers necessary to maintain adequate security for the guarantee.

§ 53712. Monitoring financial condition and operations of obligor

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

(b) CONTRACT PROVISIONS TO PROTECT SECRETARY OR ADMINISTRATOR.—The Secretary or Administrator shall include provisions in a loan agreement with an obligor that provides additional authority to the Secretary or Administrator to take action to limit potential losses in connection with a defaulted loan or a loan that is in jeopardy due to the deteriorating financial condition of the obli-

gor. These provisions include requirements for additional collateral or greater equity contributions that are effective upon the occurrence of verifiable conditions relating to the obligor's financial condition or the status of the vessel or shipyard project. *If the Secretary or Administrator has waived a requirement under section 53707(d) of this title, the loan agreement shall include requirements for additional payments, collateral, or equity contributions to meet the waived requirement upon the occurrence of verifiable conditions indicating that the obligor's financial condition enables the obligor to meet the waived requirement.*

§ 53713. Administrative fees

(a) IN GENERAL.—The Secretary or Administrator shall charge and collect from the obligor fees the Secretary or Administrator considers reasonable for—

- (1) investigating an application for a guarantee;
- (2) appraising property offered as security for a guarantee;
- (3) issuing a commitment;
- (4) providing services related to an escrow fund under section 53715 of this title; and
- (5) inspecting property during construction, reconstruction, or reconditioning.

(b) TOTAL FEE LIMITATION.—The total fees under subsection (a) may not exceed 0.5 percent of the original principal amount of the obligations to be guaranteed.

(c) FEES FOR INDEPENDENT ANALYSIS.—The Secretary or Administrator may charge and collect fees to cover the costs of independent analysis under section 53708(d) of this title. Notwithstanding section 3302 of title 31, any fee collected under this subsection shall—

- (1) be credited as an offsetting collection to the account that finances the administration of the loan guarantee program;
- (2) be available for expenditure only to pay the costs of activities and services for which the fee is imposed; and
- (3) remain available until expended.

§ 53714. Guarantee fees

(a) REGULATIONS.—Subject to this section, the Secretary or Administrator shall prescribe regulations to assess a fee for guaranteeing an obligation under this chapter.

(b) COMPUTATION OF FEE.—

(1) IN GENERAL.—The amount of the fee for a guarantee under this chapter shall be equal to the sum of the amounts determined under paragraph (2) for the years in which the guarantee is in effect.

(2) PRESENT VALUE FOR EACH YEAR.—The amount referred to in paragraph (1) for a year in which the guarantee is in effect is the present value of the amount calculated under paragraph (3). To determine the present value, the Secretary or Administrator shall apply a discount rate determined by the Secretary of the Treasury, considering current market yields on outstanding obligations of the United States Government having periods to maturity comparable to the period to maturity for the guaranteed obligation.

(3) CALCULATION OF AMOUNT.—The amount referred to in paragraph (2) shall be calculated by multiplying—

(A) the estimated average unpaid principal amount of the obligation that will be outstanding during the year (excluding the average amount, other than interest, on deposit during the year in an escrow fund under section 53715 of this title); by

(B) the fee rate set under paragraph (4).

(4) SETTING FEE RATES.—To set the fee rate referred to in paragraph (3)(B), the Secretary *or Administrator* shall establish a formula that—

(A) takes into account the security provided for the guaranteed obligation; and

(B) is a sliding scale based on the creditworthiness of the obligor, using—

(i) the lowest allowable rate under paragraph (5) for the most creditworthy obligors; and

(ii) the highest allowable rate under paragraph (5) for the least creditworthy obligors.

(5) PERMISSIBLE RANGE OF RATES.—The fee rate set under paragraph (4) shall be—

(A) for a delivered vessel or equipment, at least 0.5 percent and not more than 1 percent; and

(B) for a vessel to be constructed, reconstructed, or reconditioned or equipment to be delivered, at least 0.25 percent and not more than 0.5 percent.

(c) WHEN FEE COLLECTED.—A fee for the guarantee of an obligation under this chapter shall be collected not later than the date on which an amount is first paid on the obligation.

(d) FINANCING THE FEE.—A fee paid under this section is eligible to be financed under this chapter and shall be included in the actual cost of the obligation guaranteed.

(e) NOT REFUNDABLE.—A fee paid under this section is not refundable. However, an obligor shall receive credit for the amount paid for the remaining term of the obligation if the obligation is refinanced and guaranteed under this chapter after the refinancing.

§ 53715. Escrow fund

(a) IN GENERAL.—If the proceeds of an obligation guaranteed under this chapter are to be used to finance the construction, reconstruction, or reconditioning of a vessel that will serve as security for a guarantee under this chapter, the Secretary *or Administrator* may accept and hold in escrow, under an escrow agreement with the obligor, a portion of the proceeds of all obligations guaranteed under this chapter whose proceeds are to be so used which is equal to—

(1) the excess of—

(A) the principal amount of all obligations whose proceeds are to be so used; over

(B) 75 percent or 87.5 percent, whichever is applicable under section 53709(b) of this title, of the amount paid by or for the account of the obligor for the construction, reconstruction, or reconditioning of the vessel; plus

(2) any interest the Secretary *or Administrator* may require on the amount described in paragraph (1).

(b) SECURITY INVOLVING BOTH UNCOMPLETED AND DELIVERED VESSELS.—If the security for the guarantee of an obligation relates both to a vessel to be constructed, reconstructed, or reconditioned and to a delivered vessel, the principal amount of the obligation shall be prorated for purposes of subsection (a) under regulations prescribed by the Secretary *or Administrator*.

(c) DISBURSEMENT BEFORE TERMINATION OF AGREEMENT.—

(1) PURPOSES.—The Secretary *or Administrator* shall disburse amounts in the escrow fund, as specified in the escrow agreement, to—

(A) pay amounts the obligor is obligated to pay for—

(i) the construction, reconstruction, or reconditioning of a vessel used as security for the guarantee; and
(ii) interest on the obligations;

(B) redeem the obligations under a refinancing guaranteed under this chapter; and

(C) pay any excess interest deposits to the obligor at times provided for in the escrow agreement.

(2) MANNER OF PAYMENT.—If a payment becomes due under the guarantee before the termination of the escrow agreement, the amount in the escrow fund at the time the payment becomes due, including realized income not yet paid to the obligor, shall be paid into the appropriate account under section 53717 of this title. The amount shall be credited against amounts due or to become due from the obligor to the Secretary *or Administrator* on the guaranteed obligations or, to the extent not so required, be paid to the obligor.

(d) PAYMENTS REQUIRED BEFORE DISBURSEMENT.—

(1) IN GENERAL.—No disbursement shall be made under subsection (c) to any person until the total amount paid by or for the account of the obligor from sources other than the proceeds of the obligation equals at least 25 percent or 12.5 percent, whichever is applicable under section 53709(b) of this title, of the aggregate actual cost of the vessel, as previously approved by the Secretary *or Administrator*. If the aggregate actual cost of the vessel has increased since the Secretary's *or Administrator's* initial approval or if it increases after the first disbursement is permitted under this subsection, then no further disbursements shall be made under subsection (c) until the total amount paid by or for the account of the obligor from sources other than the proceeds of the obligation equals at least 25 percent or 12.5 percent, as applicable, of the increase, as determined by the Secretary *or Administrator*, in the aggregate actual cost of the vessel. This paragraph does not require the Secretary *or Administrator* to consent to finance any increase in actual cost unless the Secretary *or Administrator* determines that such an increase in the obligation meets all the terms and conditions of this chapter or other applicable law.

(2) DOCUMENTED PROOF OF PROGRESS REQUIREMENT.—The Secretary *or Administrator* shall, by regulation, establish a transparent, independent, and risk-based process for verifying and documenting the progress of projects under construction before disbursing guaranteed loan funds. At a minimum, the process shall require documented proof of progress in connection with the construction, reconstruction, or reconditioning of

a vessel or vessels before disbursements are made from the escrow fund. The Secretary *or Administrator* may require that the obligor provide a certificate from an independent party certifying that the requisite progress in construction, reconstruction, or reconditioning has taken place.

(e) DISBURSEMENT ON TERMINATION OF AGREEMENT.—

(1) IN GENERAL.—If a payment has not become due under the guarantee before the termination of the escrow agreement, the balance of the escrow fund at the time of termination shall be disbursed to—

(A) prepay the excess of—

(i) the principal amount of all obligations whose proceeds are to be used to finance the construction, reconstruction, or reconditioning of the vessel used or to be used as security for the guarantee; over

(ii) 75 percent or 87.5 percent, whichever is applicable under section 53709(b) of this title, of the actual cost of the vessel to the extent paid; and

(B) pay interest on that prepaid amount of principal.

(2) REMAINING BALANCE.—Any remaining balance of the escrow fund shall be paid to the obligor.

(f) INVESTMENT.—The Secretary *or Administrator* may invest and reinvest any part of an escrow fund in obligations of the United States Government with maturities such that the escrow fund will be available as required for purposes of the escrow agreement. Investment income shall be paid to the obligor when received.

(g) TERMS TO PROTECT GOVERNMENT.—The escrow agreement shall contain other terms the Secretary *or Administrator* considers necessary to protect fully the interests of the Government.

§ 53716. Deposit fund

(a) IN GENERAL.—There is a deposit fund in the Treasury for purposes of this section. The Secretary *or Administrator*, in accordance with an agreement under subsection (b), may deposit into and hold in the fund cash belonging to an obligor to serve as collateral for a guarantee made under this chapter with respect to the obligor.

(b) AGREEMENT.—The Secretary *or Administrator* and an obligor shall make a reserve fund or other collateral account agreement to govern the deposit, withdrawal, retention, use, and reinvestment of cash of the obligor held in the fund. The agreement shall contain—

(1) terms and conditions required by this section;

(2) terms that grant to the United States Government a security interest in all amounts deposited into the fund; and

(3) any additional terms considered by the Secretary *or Administrator* to be necessary to protect fully the interests of the Government.

(c) INVESTMENT.—The Secretary *or Administrator* may invest and reinvest any part of the amounts in the fund in obligations of the Government with maturities such that amounts in the fund will be available as required for purposes of the agreement under subsection (b). Cash balances in the fund in excess of current requirements shall be maintained in a form of uninvested funds, and the Secretary of the Treasury shall pay interest on these funds.

(d) WITHDRAWALS.—

(1) IN GENERAL.—Cash deposited into the fund may not be withdrawn without the consent of the Secretary *or Administrator*.

(2) USE OF INCOME.—Subject to paragraph (3), the Secretary *or Administrator* may pay any income earned on cash of an obligor deposited into the fund in accordance with the agreement with the obligor under subsection (b).

(3) RETENTION AGAINST DEFAULT.—The Secretary *or Administrator* may retain and offset any or all of the cash of an obligor in the fund, and any income realized thereon, as part of the Secretary's *or Administrator's* recovery against the obligor in case of a default by the obligor on an obligation.

§ 53717. Management of funds in the Treasury

(a) DEFINITION.—In this section, the term “FCRA” means the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.).

(b) LOAN GUARANTEES BY SECRETARY OF TRANSPORTATION ADMINISTRATOR.—

(1) WHEN NOT SUBJECT TO FCRA.—The Secretary of Transportation *Administrator* shall account for payments and disbursements involving obligations guaranteed under this chapter and not subject to FCRA in an account in the Treasury entitled the Federal Ship Financing Fund Liquidating Account (a liquidating account as defined in FCRA).

(2) WHEN SUBJECT TO FCRA.—The Secretary of Transportation *Administrator* shall account for payments and disbursements involving obligations guaranteed under this chapter and subject to FCRA in a separate account in the Treasury entitled the Federal Ship Financing Guaranteed Loan Financing Account (a financing account as defined in FCRA).

(c) LOAN GUARANTEES BY SECRETARY OF COMMERCE.—

(1) WHEN NOT SUBJECT TO FCRA.—The Secretary of Commerce shall account for payments and disbursements involving obligations guaranteed under this chapter and not subject to FCRA in a separate account in the Treasury established for this purpose.

(2) WHEN SUBJECT TO FCRA.—The Secretary of Commerce shall account for payments and disbursements involving obligations guaranteed under this chapter and subject to FCRA in a separate account in the Treasury established for this purpose.

(d) DIRECT LOANS BY SECRETARY OF COMMERCE.—The Secretary of Commerce shall account for payments and disbursements involving direct loans made under this chapter in a separate account in the Treasury established for this purpose.

§ 53718. Annual report to Congress

The Secretary of Transportation *Administrator* shall report to Congress annually on the loan guarantee program under this chapter. Each report shall include—

- (1) the size, in dollars, of the portfolio of loans guaranteed;
- (2) the size, in dollars, of projects in the portfolio facing financial difficulties;
- (3) the number and type of projects covered;
- (4) a profile of pending loan applications;

- (5) the amount of appropriations available for new guarantees;
- (6) a profile of each project approved since the last report;
- and
- (7) a profile of any defaults since the last report.

SUBCHAPTER II—DEFAULT PROVISIONS

§ 53721. Rights of obligee

(a) DEMANDS BY OBLIGEEES.—Except as provided in subsection (c), if an obligor has continued in default for 30 days in the payment of principal or interest on an obligation guaranteed under this chapter, the obligee or the obligee's agent may demand that the Secretary or Administrator pay the unpaid principal amount of the obligation and the unpaid interest on the obligation to the date of payment. The demand must be made within the earlier of—

- (1) a period that may be specified in the guarantee or a related agreement; or
- (2) 90 days from the date of the default.

(b) PAYMENTS BY SECRETARY OR ADMINISTRATOR.—

(1) IN GENERAL.—If a demand is made under subsection (a), the Secretary or Administrator shall pay to the obligee or the obligee's agent the unpaid principal amount of the obligation and the unpaid interest on the obligation to the date of payment. Payment shall be made within the earlier of—

- (A) a period that may be specified in the guarantee or a related agreement; or
- (B) 30 days from the date of the demand.

(2) IF NO EXISTING DEFAULT.—The Secretary or Administrator is not required to make payment under this subsection if, within the appropriate period under paragraph (1), the Secretary or Administrator finds that the obligor was not in default or that the default was remedied before the demand.

(c) ASSUMPTION OF RIGHTS AND OBLIGATIONS BEFORE DEMAND.—An obligee or the obligee's agent may not demand payment under this section if the Secretary or Administrator, before the demand and on terms that may be provided in the obligation or a related agreement, has assumed the obligor's rights and duties under the obligation and any related agreement and made any payment in default. However, the guarantee of the obligation remains in effect after the Secretary's or Administrator's assumption.

§ 53722. Actions by Secretary or Administrator

(a) GENERAL AUTHORITY.—On default under an obligation or related agreement between the Secretary or Administrator and the obligor, the Secretary or Administrator, on terms that may be provided in the obligation or agreement, may—

- (1) assume the obligor's rights and duties under the obligation or agreement, make any payment in default, and notify the obligee or the obligee's agent of the default and the Secretary's or Administrator's assumption; or
- (2) notify the obligee or the obligee's agent of the default.

(b) DEMANDS BY OBLIGEEES.—

(1) DEMAND.—If the Secretary or Administrator proceeds under subsection (a)(2), the obligee or the obligee's agent may

demand that the Secretary *or Administrator* pay the unpaid principal amount of the obligation and the unpaid interest on the obligation. The demand must be made within the earlier of—

(A) a period that may be specified in the guarantee or a related agreement; or

(B) 60 days from the date of the Secretary's *or Administrator's* notice.

(2) PAYMENT.—If a demand is made under paragraph (1), the Secretary *or Administrator* shall pay to the obligee or the obligee's agent the unpaid principal amount of the obligation and the unpaid interest on the obligation to the date of payment. Payment shall be made within the earlier of—

(A) a period that may be specified in the guarantee or a related agreement; or

(B) 30 days from the date of the demand.

(c) CONTINUED EFFECT OF GUARANTEE.—A guarantee of an obligation remains in effect after an assumption of the obligation by the Secretary *or Administrator*.

(d) ADDITIONAL RESPONSES.—If there is a default on an obligation, the Secretary *or Administrator* shall conduct operations under this chapter in a manner that—

(1) maximizes the net present value return from the sale or disposition of assets associated with the obligation, including prompt referral to the Attorney General for collection as appropriate;

(2) minimizes the amount of any loss realized in the resolution of the guarantee;

(3) ensures adequate competition and fair and consistent treatment of offerors; and

(4) requires appraisal of assets by an independent appraiser.

§ 53723. Payments by Secretary *or Administrator* and issuance of obligations

(a) CASH PAYMENT.—Amounts required to be paid by the Secretary *or Administrator* under section 53721 or 53722 of this title shall be paid in cash.

(b) ISSUANCE OF OBLIGATIONS.—If amounts in the appropriate account under section 53717 of this title are not sufficient to make a payment required under section 53721 or 53722 of this title, the Secretary *or Administrator* may issue obligations to the Secretary of the Treasury. The Secretary *or Administrator*, with the approval of the Secretary of the Treasury, shall prescribe the form, denomination, maturity, and other terms (except the interest rate) of the obligations. The Secretary of the Treasury shall set the interest rate for the obligations, considering the current average market yield on outstanding marketable obligations of the United States Government of comparable maturities during the month before the obligations are issued.

(c) PURCHASE OF OBLIGATIONS.—The Secretary of the Treasury shall purchase the obligations issued under this section. To purchase the obligations, the Secretary of the Treasury may use as a public debt transaction the proceeds from the sale of securities issued under chapter 31 of title 31. The purposes for which securities may be issued under that chapter are extended to include the

purchase of obligations under this subsection. The Secretary of the Treasury may sell obligations purchased under this section. A redemption, purchase, or sale of the obligations by the Secretary of the Treasury is a public debt transaction of the Government.

(d) DEPOSITS AND REDEMPTIONS.—The Secretary or Administrator shall deposit amounts borrowed under this section in the appropriate account under section 53717 of this title and make redemptions of the obligations from that account.

§ 53724. Rights to secured property

(a) ACQUISITION OF SECURITY RIGHTS.—When the Secretary or Administrator makes a payment on, or assumes, an obligation under section 53721 or 53722 of this title, the Secretary or Administrator acquires the rights under the security agreement with the obligor in the security held by the Secretary or Administrator to guarantee the obligation.

(b) USE AND DISPOSITION OF SECURED PROPERTY.—Notwithstanding any other law relating to the acquisition, handling, or disposal of property by the United States Government, the Secretary or Administrator has the right, in the Secretary's or Administrator's discretion, to complete, reconstruct, recondition, renovate, repair, maintain, operate, charter, or sell any property acquired under a security agreement with an obligor, or to place a vessel so acquired in the National Defense Reserve Fleet. The terms of a sale under this subsection shall be as approved by the Secretary or Administrator.

§ 53725. Actions against obligor

(a) IN GENERAL.—For a default under a guaranteed obligation or related agreement, the Secretary or Administrator may take any action against the obligor or another liable party that the Secretary or Administrator considers necessary to protect the interests of the United States Government. A civil action may be brought in the name of the United States or the obligee. The obligee shall make available to the Government all records and evidence necessary to prosecute the action.

(b) TITLE, POSSESSION, AND PURCHASE.—

(1) IN GENERAL.—The Secretary or Administrator may—

(A) accept a conveyance of title to and possession of property from the obligor or another party liable to the Secretary or Administrator; and

(B) purchase the property for an amount not greater than the unpaid principal amount of the obligation and interest thereon.

(2) PAYMENT OF EXCESS.—If, through the sale of property, the Secretary or Administrator receives an amount of cash greater than the unpaid principal amount of the obligation, the unpaid interest on the obligation, and the expenses of collecting those amounts, the Secretary or Administrator shall pay the excess to the obligor.

SUBCHAPTER III—PARTICULAR PROJECTS

§ 53731. Commercial demonstration ocean thermal energy conversion facilities and plantships

(a) **IN GENERAL.**—Under subchapter I of this chapter, the ~~Secretary~~ *Administrator* may guarantee or make a commitment to guarantee the payment of the principal of and interest on an obligation that aids in financing (including reimbursement of an obligor for expenditures previously made for) the construction, reconstruction, or reconditioning of a commercial demonstration ocean thermal energy conversion facility or plantship. This section may be used to guarantee obligations for a total of not more than 5 separate facilities and plantships or a demonstrated 400 megawatt capacity, whichever comes first.

(b) **APPLICABILITY OF OTHER PROVISIONS.**—Except as otherwise provided in this section, a guarantee or commitment to guarantee under this section is subject to all the provisions applicable to a guarantee or commitment to guarantee under subchapter I of this chapter.

(c) **ECONOMIC SOUNDNESS.**—The required determination of economic soundness under section 53708 of this title applies to a guarantee or commitment to guarantee for that portion of a facility or plantship not to be supported with appropriated Federal funds.

(d) **REASONABLENESS OF RISK.**—A guarantee or commitment to guarantee may not be made under this section unless the Secretary of Energy, in consultation with the ~~Secretary~~ *Administrator*, certifies to the ~~Secretary~~ *Administrator* that, for the facility or plantship for which the guarantee or commitment to guarantee is sought, there is sufficient guarantee of performance and payment to lower the risk to the United States Government to a reasonable level. In deciding whether to issue such a certification, the Secretary of Energy shall consider—

- (1) the successful demonstration of the technology to be used in the facility at a scale sufficient to establish the likelihood of technical and economic viability in the proposed market; and
- (2) the need of the United States to develop new and renewable sources of energy and the benefits to be realized from the construction and successful operation of the facility or plantship.

(e) **AMOUNT OF OBLIGATION.**—The total principal amount of an obligation guaranteed under this section may not exceed 87.5 percent of—

- (1) the actual cost or depreciated actual cost of the facility or plantship; or
- (2) if the facility or plantship is supported with appropriated Federal funds, the total principal amount of that portion of the actual cost or depreciated actual cost for which the obligor is obligated to secure financing under the agreement between the obligor and the Department of Energy or other Federal agency.

(f) **OTEC DEMONSTRATION FUND.**—

(1) **IN GENERAL.**—There is a special subaccount, known as the OTEC Demonstration Fund, in the account established under section 53717(b)(1) of this title.

(2) **USE AND OPERATION.**—The OTEC Demonstration Fund shall be used for obligation guarantees authorized under this

section that do not qualify under subchapter I of this chapter. Except as otherwise provided in this section, the OTEC Demonstration Fund shall be operated in the same manner as the parent account. However—

(A) amounts received by the ~~Secretary~~ *Administrator* under subchapter I of this chapter related to guarantees or commitments to guarantee made under this section shall be deposited only in the OTEC Demonstration Fund; and

(B) when obligations issued by the ~~Secretary~~ *Administrator* under section 53723 of this title related to the OTEC Demonstration Fund are outstanding, any amount received by the ~~Secretary~~ *Administrator* under subchapter I of this chapter related to ocean thermal energy conversion facilities or plantships shall be deposited in the OTEC Demonstration Fund.

(3) TRANSFERS.—Assets in the OTEC Demonstration Fund may be transferred to the parent account when and to the extent the balance in the OTEC Demonstration Fund exceeds the total guarantees or commitments to guarantee made under this section then outstanding, plus obligations issued by the ~~Secretary~~ *Administrator* under section 53723 of this title related to the OTEC Demonstration Fund.

(4) LIABILITY.—The parent account is not liable for a guarantee or commitment to guarantee made under this section.

(5) MAXIMUM UNPAID PRINCIPAL AMOUNT.—The total unpaid principal amount of the obligations guaranteed with the backing of the OTEC Demonstration Fund and outstanding at any one time may not exceed \$1,650,000,000.

(g) ISSUANCE AND PAYMENT OF OBLIGATIONS.—Section 53723 of this title applies to the OTEC Demonstration Fund. However, obligations issued by the ~~Secretary~~ *Administrator* under that section related to the OTEC Demonstration Fund shall be payable only from proceeds realized by the OTEC Demonstration Fund.

(h) TAXATION OF INTEREST.—Interest on an obligation guaranteed under this section shall be included in gross income under chapter 1 of the Internal Revenue Code of 1986 (26 U.S.C. ch. 1).

§ 53732. Eligible export vessels

(a) APPLICABLE TERMS.—The ~~Secretary~~ *Administrator* may guarantee an obligation for an eligible export vessel in accordance with—

(1) the terms applicable under this chapter for vessels documented under the laws of the United States; or

(2) other terms the ~~Secretary~~ *Administrator* determines are more favorable than those terms and compatible with export credit terms offered by foreign governments for the sale of vessels built in foreign shipyards.

(b) INTERAGENCY COUNCIL.—

(1) ESTABLISHMENT.—There is an interagency council to carry out this section.

(2) COMPOSITION.—The council is composed of the following individuals or their designees:

(A) The ~~Secretary of Transportation~~ *Administrator*, who is the chairman of the council.

(B) The Secretary of the Treasury.

(C) The Secretary of State.

(D) The Assistant to the President for Economic Policy.

(E) The United States Trade Representative.

(F) The President and Chairman of the Export-Import Bank of the United States.

(3) FUNCTIONS.—The council shall—

(A) obtain information on shipbuilding loan guarantees, direct and indirect subsidies, and other favorable treatment of shipyards provided by foreign governments to shipyards in competition with United States shipyards;

(B) consult regularly with United States shipbuilders to obtain the essential information about international shipbuilding competition on which to set terms for loan guarantees under subsection (a)(2); and

(C) provide guidance to the *Secretary Administrator* in establishing terms for loan guarantees under subsection (a)(2).

(4) ANNUAL REPORT.—Not later than January 31 of each year, the *Secretary Administrator* shall submit to Congress a report on activities of the *Secretary Administrator* under this section during the preceding year. The report shall include—

(A) documentation of sources of information about assistance by governments of other countries to shipyards in those countries; and

(B) a summary of recommendations made to the *Secretary Administrator* during the preceding year about applications submitted to the *Secretary Administrator* during that year for loan guarantees to construct eligible export vessels.

(c) REQUIRED FINDINGS.—

(1) BENEFIT TO SHIPBUILDING INDUSTRY.—The *Secretary Administrator* may not guarantee or make a commitment to guarantee an obligation for an eligible export vessel unless the *Secretary Administrator* finds that the construction, reconstruction, or reconditioning of the vessel will aid in the transition of United States shipyards to commercial activities or will preserve shipbuilding assets that would be essential in time of war or national emergency.

(2) PRIORITY OF DOCUMENTED VESSELS.—The *Secretary Administrator* may not make a commitment to guarantee an obligation for an eligible export vessel unless the *Secretary Administrator* determines that making the commitment will not result in denial of an economically sound application for a commitment to guarantee an obligation for a vessel documented under the laws of the United States and operating in the domestic or foreign commerce of the United States. The *Secretary Administrator* has sole discretion in making the determination. In making the determination, the *Secretary Administrator* shall consider—

(A) the status and economic soundness of pending applications for commitments to guarantee obligations for vessels documented under the laws of the United States that are operating or will be operating in the domestic or foreign commerce of the United States; and

(B) the amount of guarantee authority available.

(d) RESTRICTION ON TRANSFER OF VESSEL.—The ~~Secretary~~ *Administrator* may not guarantee or make a commitment to guarantee an obligation for an eligible export vessel unless the owner of the vessel agrees with the ~~Secretary~~ *Administrator* that the vessel will not be transferred to a country designated by the Secretary of Defense as a country whose interests are hostile to the interests of the United States.

(e) REVIEW BY SECRETARY OF DEFENSE.—

(1) NOTIFICATION.—The ~~Secretary~~ *Administrator* shall promptly notify the Secretary of Defense of the receipt of an application for a loan guarantee for an eligible export vessel.

(2) DISAPPROVAL.—The Secretary of Defense, within 30 days after receiving the notice, may disapprove the guarantee based on an assessment of the potential use of the vessel in a manner that may harm the national security interests of the United States. The *Secretary of Defense* may not disapprove a guarantee solely because of the type of vessel to be constructed.

(3) DELEGATION.—The authority of the Secretary of Defense to disapprove a guarantee under this subsection may be delegated only to a civilian officer of the Department of Defense appointed by the President by and with the advice and consent of the Senate.

(4) PROHIBITION.—The ~~Secretary~~ *Administrator* may not make a loan guarantee disapproved by the Secretary of Defense under this subsection.

(f) EXPIRATION OF AUTHORITY.—The ~~Secretary~~ *Administrator* may not issue a commitment to guarantee an obligation for an eligible export vessel under this chapter after the last date on which such a commitment may be issued under any treaty or convention entered into after November 30, 1993, that prohibits guarantee of such an obligation.

§ 53733. Shipyard modernization and improvement

(a) DEFINITIONS.—In this section:

(1) ADVANCED SHIPBUILDING TECHNOLOGY.—The term “advanced shipbuilding technology” includes—

(A) numerically controlled machine tools, robots, automated process control equipment, computerized flexible manufacturing systems, associated computer software, and other technology for improving shipbuilding and related industrial production that advance the state-of-the-art; and

(B) novel techniques and processes designed to improve shipbuilding quality, productivity, and practice, and to promote sustainable development, including engineering design, quality assurance, concurrent engineering, continuous process production technology, energy efficiency, waste minimization, design for recyclability or parts reuse, inventory management, upgraded worker skills, and communications with customers and suppliers.

(2) GENERAL SHIPYARD FACILITY.—The term “general shipyard facility” means—

(A) for operations on land—

(i) a structure or appurtenance thereto designed for the construction, reconstruction, repair, rehabilitation,

or refurbishment of a vessel, including a graving dock, building way, ship lift, wharf, or pier crane;

(ii) the land necessary for the structure or appurtenance; and

(iii) equipment that is for use with the structure or appurtenance and that is necessary for performing a function referred to in clause (i); and

(B) for operations not on land, a vessel, floating drydock, or barge built in the United States and used for, equipped to be used for, or of a type normally used for, performing a function referred to in subparagraph (A)(i).

(3) MODERN SHIPBUILDING TECHNOLOGY.—The term “modern shipbuilding technology” means the best available proven technology, techniques, and processes appropriate to enhancing the productivity of shipyards.

(b) GENERAL AUTHORITY.—Under subchapter I of this chapter, the ~~Secretary~~ *Administrator* may guarantee or make a commitment to guarantee the payment of the principal of and interest on an obligation for advanced shipbuilding technology and modern shipbuilding technology of a general shipyard facility in the United States. Only a private shipyard is eligible to receive a guarantee.

(c) APPLICABILITY OF OTHER PROVISIONS.—Except as otherwise provided in this section, a guarantee or commitment to guarantee under this section is subject to all the provisions applicable to a guarantee or commitment to guarantee under subchapter I of this chapter.

(d) AMOUNT OF OBLIGATION.—The principal amount of an obligation guaranteed under this chapter may not exceed 87.5 percent of the actual cost of the advanced shipbuilding technology or modern shipbuilding technology.

(e) TRANSFER OF AMOUNTS.—The ~~Secretary~~ *Administrator* may accept the transfer of amounts from a department, agency, or instrumentality of the United States Government and may use those amounts to cover the cost (as defined in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a)) of making guarantees or commitments to guarantee under this section.

§ 53734. Replacement of vessels because of changes in operating standards

(a) GENERAL AUTHORITY.—Notwithstanding any other provision of this chapter, the Secretary or *Administrator*, on terms the Secretary or *Administrator* may prescribe, may guarantee or make a commitment to guarantee the payment of the principal of and interest on an obligation that aids in financing or refinancing (including reimbursement of an obligor for expenditures previously made for) a contract for the construction or reconstruction of a vessel if—

(1) the vessel is designed and to be used for commercial use in coastwise, intercoastal, or foreign trade;

(2) the construction or reconstruction is necessary to replace a vessel that cannot continue to be operated because of a change required by law in the standards for the operation of vessels, and the applicant for the guarantee or commitment would not otherwise legally be able to continue operating vessels in the trades in which the applicant operated vessels before the change;

(3) the applicant is presently engaged in transporting cargoes in vessels of the type and class that will be constructed or reconstructed under this section and agrees to employ vessels constructed or reconstructed under this section as replacements only for vessels made obsolete by the change in operating standards;

(4) the capacity of the vessels to be constructed or reconstructed under this section will not increase the cargo carrying capacity of the vessels being replaced;

(5) the Secretary *or Administrator* has not determined that the market demand for the vessel over its useful life will diminish so as to make granting the guarantee fiducially imprudent;

(6) the vessel, if to be reconstructed, will have a useful life of at least 15 years after the reconstruction; and

(7) the Secretary *or Administrator* has considered the criteria specified in section 53708(a)(3)–(5) of this title.

(b) TERM AND AMOUNT OF OBLIGATION.—

(1) TERM.—The term of an obligation guaranteed under this section may not exceed 25 years.

(2) AMOUNT.—The amount of an obligation guaranteed under this section may not exceed 87.5 percent of the actual cost or depreciated actual cost to the applicant for the construction or reconstruction of the vessel. The Secretary *or Administrator* may not establish a percentage under this paragraph that is to be applied uniformly to all guarantees or commitments to guarantee made under this section.

(c) APPLICABILITY OF OTHER PROVISIONS.—A guarantee or commitment to guarantee under this section is also subject to sections 53701, 53702(a), 53704, 53705, 53707(a), 53708(d) and (e), 53709(a), 53710(a)(1), (2), and (4) and (c), 53711(a), 53713, 53714, 53717, and 53721–53725 of this title.

(d) SECURITY AGAINST DEFAULT.—The Secretary *or Administrator* shall require by regulation that an applicant under this section provide adequate security against default.

(e) GUARANTEE FEES.—The Secretary *or Administrator* may establish a fee for the guarantee of an obligation under this section that is in addition to the fee established under section 53714 of this title. The fee may be—

(1) an annual fee of not more than an additional 1 percent added to the fee established under section 53714 of this title; or

(2) a fee based on the amount of the obligation versus the percentage of the obligor's fleet being replaced by vessels constructed or reconstructed under this section.

§ 53735. Fisheries financing and capacity reduction

(a) DEFINITION.—In this section, the term “program” means a fishing capacity reduction program established under section 312 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861a).

(b) GUARANTEE AUTHORITY.—The Secretary may guarantee the repayment of debt obligations issued by entities under this section. Debt obligations to be guaranteed may be issued by any entity that has been approved by the Secretary and has agreed with the Sec-

retary to conditions the Secretary considers necessary for this section to achieve the objective of the program and to protect the interest of the United States.

(c) REQUIREMENTS OF OBLIGATIONS.—A debt obligation guaranteed under this section shall—

(1) be treated in the same manner and to the same extent as other obligations guaranteed under this chapter, except with respect to provisions of this chapter that by their nature cannot be applied to obligations guaranteed under this section;

(2) have the fishing fees established under the program paid into a separate subaccount of the fishing capacity reduction fund established under this section;

(3) not exceed \$100,000,000 in an unpaid principal amount outstanding at any one time for a program;

(4) have such maturity (not to exceed 20 years), take such form, and contain such conditions as the Secretary determines necessary for the program to which they relate;

(5) have as the exclusive source of repayment (subject to the second sentence of subsection (d)(2)) and as the exclusive payment security, the fishing fees established under the program; and

(6) at the discretion of the Secretary be issued in the public market or sold to the Federal Financing Bank.

(d) FISHING CAPACITY REDUCTION FUND.—

(1) IN GENERAL.—There is a separate account in the Treasury, known as the Fishing Capacity Reduction Fund. Within the Fund, at least one subaccount shall be established for each program into which shall be paid all fishing fees established under the program and other amounts authorized for the program.

(2) AVAILABILITY OF AMOUNTS.—Amounts in the Fund shall be available, without appropriation or fiscal year limitation, to the Secretary to pay the cost of the program, including payments to financial institutions to pay debt obligations incurred by entities under this section. Funds available for this purpose from other amounts available for the program may also be used to pay those debt obligations.

(3) INVESTMENT.—Amounts in the Fund that are not currently needed for the purpose of this section shall be kept on deposit or invested in obligations of the United States Government.

(e) REGULATIONS.—The Secretary shall prescribe regulations the Secretary considers necessary to carry out this section.

* * *

CHAPTER 541—MISCELLANEOUS

Sec.

54101. *Assistance for small shipyards and maritime communities.*

§54101. Assistance for small shipyards and maritime communities

(a) ESTABLISHMENT OF PROGRAM.—*Subject to the availability of appropriations, the Administrator of the Maritime Administration*

shall establish a program to provide assistance to State and local governments—

(1) to provide assistance in the form of grants, loans, and loan guarantees to small shipyards for capital improvements; and

(2) for maritime training programs in communities whose economies are substantially related to the maritime industry.

(b) AWARDS.—In providing assistance under the program, the Administrator shall—

(1) take into account—

(A) the economic circumstances and conditions of maritime communities; and

(B) the local, State, and regional economy in which the communities are located; and

(2) strongly encourage State, local, and regional efforts to promote economic development and training that will enhance the economic viability of and quality of life in maritime communities.

(c) USE OF FUNDS.—Assistance provided under this section may be used—

(1) to make capital and related improvements in small shipyards located in or near maritime communities;

(2) to encourage, assist in, or provide training for residents of maritime communities that will enhance the economic viability of those communities; and

(3) for such other purposes as the Administrator determines to be consistent with and supplemental to such activities.

(d) PROHIBITED USES.—Grants awarded under this section may not be used to construct buildings or other physical facilities or to acquire land unless such use is specifically approved by the Administrator in support of subsection (c)(3).

(e) MATCHING REQUIREMENTS.—

(1) FEDERAL FUNDING.—Except as provided in paragraph (2), Federal funds for any eligible project under this section shall not exceed 75 percent of the total cost of such project.

(2) EXCEPTIONS.—

(A) SMALL PROJECTS.—Paragraph (1) shall not apply to grants under this section for stand alone projects costing not more than \$25,000. The amount under this subparagraph shall be indexed to the consumer price index and modified each fiscal year after the annual publication of the consumer price index.

(B) REDUCTION IN MATCHING REQUIREMENT.—If the Administrator determines that a proposed project merits support and cannot be undertaken without a higher percentage of Federal financial assistance, the Administrator may award a grant for such project with a lesser matching requirement than is described in paragraph (1).

(f) APPLICATION.—

(1) IN GENERAL.—The Administrator shall determine who, as an eligible applicant, may submit an application, at such time, in such form, and containing such information and assurances as the Administrator may require.

(2) *MINIMUM STANDARDS FOR PAYMENT OR REIMBURSEMENT.*—Each application submitted under paragraph (1) shall include—

- (A) a comprehensive description of—
- (i) the need for the project;
 - (ii) the methodology for implementing the project;
- and
- (iii) any existing programs or arrangements that can be used to supplement or leverage assistance under the program.

(3) *PROCEDURAL SAFEGUARDS.*—The Administrator, in consultation with the Office of the Inspector General, shall issue guidelines to establish appropriate accounting, reporting, and review procedures to ensure that—

- (A) grant funds are used for the purposes for which they were made available;
- (B) grantees have properly accounted for all expenditures of grant funds; and
- (C) grant funds not used for such purposes and amounts not obligated or expended are returned.

(4) *PROJECT APPROVAL REQUIRED.*—The Administrator may not award a grant under this section unless the Administrator determines that—

- (A) sufficient funding is available to meet the matching requirements of subsection (e);
- (B) the project will be completed without unreasonable delay; and
- (C) the recipient has authority to carry out the proposed project.

(g) *AUDITS AND EXAMINATIONS.*—All grantees under this section shall maintain such records as the Administrator may require and make such records available for review and audit by the Administrator.

(h) *SMALL SHIPYARD DEFINED.*—In this section, the term “small shipyard” means a shipyard that—

- (1) is a small business concern (within the meaning of section 3 of the Small Business Act (15 U.S.C. 632)); and
- (2) does not have more than 600 employees.

(i) *AUTHORIZATION OF APPROPRIATIONS.*—There are authorized to be appropriated to the Administrator of the Maritime Administration for each of fiscal years 2006 through 2010 to carry out this section—

- (1) \$5,000,000 for training grants; and
- (2) \$25,000,000 for capital and related improvement grants.

PART D—PROMOTIONAL PROGRAMS

CHAPTER 551—COASTWISE TRADE

Sec.

55110. Transportation of *valueless material* or dredged material.

* * *

§ 55101. Application of coastwise laws

(a) IN GENERAL.—Except as provided in subsection (b), the coastwise laws apply to the United States, including the island territories and possessions of the United States.

(b) EXCEPTIONS.—The coastwise laws do not apply to—

(1) American Samoa;

(2) the Northern Mariana Islands, except as provided in section 502(b) of the Covenant To Establish a Commonwealth of the Northern Mariana Islands in Political Union With the United States of America (48 U.S.C. 1801 note); or

~~(3) Canton Island until the President declares by proclamation that the coastwise laws apply to Canton Island; or~~

(4) (3) the Virgin Islands until the President declares by proclamation that the coastwise laws apply to the Virgin Islands.

* * *

§ 55105. Transportation of hazardous waste

* * *

(b) NONAPPLICATION TO CERTAIN FOREIGN VESSELS.—

* * *

(3) INSPECTION.—A vessel described in paragraph (1) shall be inspected by the Coast Guard, regardless of whether inspected by the nation in which it is registered. The inspection shall be the same as would be required of a vessel of the United States, including drydock inspection and internal examination of tanks and void spaces. The inspection may be made concurrently with an inspection by that nation or within one year after the initial issuance or next scheduled issuance of the Safety of Life at Sea Safety Construction Certificate. In making the inspection, the Coast Guard shall refer to the condition of the hull and superstructure established by the initial foreign certification as the basis for evaluating the current condition of the hull and superstructure. The Coast Guard shall allow the substitution of fittings, material, apparatus, equipment, and appliances different from those required for vessels of the United States if satisfied they are equivalent and at least as effective as those required for vessels of the United States. A satisfactory inspection under this paragraph shall be certified in writing by the Secretary of the department in which the Coast Guard is operating *Secretary of Homeland Security*.

* * *

§ 55110. Transportation of *valueless material or dredged material*

* * *

Subtitle VI—Clearance, Tonnage Taxes, and Duties

* * *

CHAPTER 603—TONNAGE TAXES AND LIGHT MONEY

* * *

§ 60301. Regular tonnage taxes

(a) LOWER RATE.—A tax is imposed at the rate of ~~2~~ cents per ton (but not more than a total of 10 cents per ton per year) *4.5 cents per ton, not to exceed a total of 22.5 cents per ton per year, for fiscal years 2006 through 2010, and 2 cents per ton, not to exceed a total of 10 cents per ton per year, for each fiscal year thereafter*, at each entry in a port of the United States of—

* * *

(b) HIGHER RATE.—A tax is imposed at the rate of 6 cents per ton (but not more than a total of 30 cents per ton per year) *13.5 cents per ton, not to exceed a total of 67.5 cents per ton per year, for fiscal years 2006 through 2010, and 6 cents per ton, not to exceed a total of 30 cents per ton per year, for each fiscal year thereafter*, on a vessel at each entry in a port of the United States from a foreign port or place not named in subsection (a)(1).

* * *

Subtitle VII—Security and Drug Enforcement

* * *

CHAPTER 703—MARITIME SECURITY

* * *

§ 70306. Report on terrorist threats

(a) CONTENT.—Not later than February 28 of each year, the Secretary shall submit a report *The Secretary shall submit an annual report* to Congress on the threat from acts of terrorism to United States ports and vessels operating from those ports. The Secretary shall include a description of activities undertaken under title I of the Maritime Transportation Security Act of 2002 (Public Law 107–295, 116 Stat. 2066) and an analysis of the effect of those activities on port security against acts of terrorism.

* * *

CHAPTER 705—MARITIME DRUG LAW ENFORCEMENT

* * *

§ 70502. Definitions

* * *

(d) VESSEL WITHOUT NATIONALITY.—

* * *

(2) VERIFICATION OR DENIAL.—A claim of registry under paragraph (1)(A) or (C) may be verified or denied by radio, telephone, or similar oral or electronic means. The denial of such a claim is proved conclusively by certification of the Secretary of State or the Secretary's designee.

(2) RESPONSE TO CLAIM OF REGISTRY.—*The response of a foreign nation to a claim of registry under paragraph (1)(A) or (C) may be made by radio, telephone, or similar oral or electronic means, and is proved conclusively by certification of the Secretary of State or the Secretary's designee.*

* * *

Public Law 109–304

SEC. 9. SUBTITLE VI OF TITLE 46.

* * *

(a) REDESIGNATION.—Title 46, United States Code, is amended by redesignating subtitle VI as subtitle VII.

* * *

SEC. 15. ADDITIONAL AMENDMENTS TO TITLE 46.

* * *

Title 46, United States Code, is amended as follows:

* * *

(10) In section 3205(d), strike “Secretary of the Treasury shall withhold or revoke the clearance required by section 4197 of the Revised Statutes (46 App. U.S.C. 46 U.S.C. App. 91)” and substitute “Secretary of Homeland Security shall withhold or revoke the clearance required by section 60105 of this title”.

* * *

(21) In section 6101, redesignate the second subsection (g) and subsection (h) as subsections (h) and (i), respectively.

* * *

(30) In section 31325(b)(3)(B), strike “section 9 or 37 of the Shipping Act, 1936 1916 (46 App. U.S.C. 808, 835)” and substitute “section 56101 or 56102 of this title”.

* * *

(33)(A) Sections 70118 and 70119, as added by section 801(a) of the Coast Guard and Maritime Transportation Act of 2004 (Public Law 108-293, 118 Stat. 1078), are redesignated as sections 70117 and 70118, respectively, and moved to appear immediately after section 70116 of title 46, United States Code.

(B) Sections 70117 and 70118, as added by section 802(a)(2) of such Act, are redesignated as sections 70120 and 70121, respectively, and moved to appear immediately after section 70119 of title 46, United States Code.

(C) In section 70120(a) (as redesignated by subparagraph (B)), strike “section 70120” and substitute “section 70119”.

(D) In section 70121(a) (as redesignated by subparagraph (B))—

(i) strike “section 70120” and substitute “section 70119”; and

* * *

SEC. 16. RECREATIONAL BOATING SAFETY TECHNICAL AMENDMENTS.

* * *

(c) CROSS REFERENCES.—

* * *

(2) Section 9504(e) of the Internal Revenue Code of 1986 (26 U.S.C. 9504(e)) is amended by striking “section 13106” and substituting “section 13107”.

* * *

SEC. 19. REPEALS.

* * *

Statutes at Large

Date	Chapter or Public Law	Section	Statutes at Large		U.S. Code (46 App. unless otherwise specified)
			Volume	Page	
1936 June 29	858	111 1113	1279f
		112 1114	1279g

* * *

National Defense Authorization Act for Fiscal Year 2006 (Public Law 109-163)

SEC. 515. REDESIGNATION OF THE NAVAL RESERVE AS THE NAVY RESERVE.

(g) CONFORMING AMENDMENTS TO OTHER LAWS.—

* * *

(2) The Merchant Marine Act, 1936 is amended—

(A) by striking “Naval Reserve” each place it appears in sections 301(b) (46 U.S.C. App. 1131(b)), 1303 (46 U.S.C. App. 1295b), and 1304 (46 U.S.C. App. 1295c) and inserting “Navy Reserve”; and

(B) by striking “Naval Reserve” in sections 1303(c) and 1304(h) and inserting “Navy Reserve”.

* * *

SEC. 3502. PAYMENTS FOR STATE AND REGIONAL MARITIME ACADEMIES.

(a) ANNUAL PAYMENT.—Section 1304(d)(1)(C)(ii) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1295e(d)(1)(C)(ii)) is amended by striking “\$200,000” and inserting “\$300,000 for fiscal year 2006; \$400,000 for fiscal year 2007; and \$500,000 for fiscal year 2008 and each fiscal year thereafter”.

(b) SCHOOL SHIP FUEL PAYMENT.—Section 1304(e)(2) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1295c(e)(2)) is amended—

(1) by striking “The Secretary may pay to any State maritime academy” and inserting “(A) The Secretary shall, subject to the availability of appropriations, pay to each State maritime academy”; and

(2) by adding at the end the following:

“(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.”.

* * *

SEC. 3507. TRANSFER OF AUTHORITY FOR TITLE XI NON-FISHING LOAN GUARANTEE DECISIONS TO MARITIME ADMINISTRATION.

(a) IN GENERAL.—Title XI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1271 et seq.), as amended by subsection (d) of this section, is amended—

(1) by striking “Secretary” each place it appears and inserting “Secretary or Administrator” in—

(A) section 1101(c), (f), and (g);

(B) section 1102;

(C) section 1103(a), (b), (c), (e), (g), and (h);

(D) section 1104A, except in—

- (i) subsection (b)(7) and the undesignated paragraph that follows;
 - (ii) paragraphs (1), (2), (3)(B), and (4) of subsection (d);
 - (iii) subsection (e)(2)(F) the second place it appears;
 - (iv) subsection (j); and
 - (v) subsection (n)(1) the first place it appears;
 - (E) section 1104B;
 - (F) section 1105(a), (b), (c), and (e);
 - (G) section 1105(d) the first, second, third, fifth, and last places it appears; and
 - (H) sections 1108, 1109 (except the second place it appears in subsection (c)), and 1113 (as redesignated by subsection (d) of this section);
- (2) by striking “Secretary” and inserting “Administrator” in—
- (A) section 1103(i);
 - (B) section 1103(j) the first place it appears;
 - (C) section 1104A(b)(7) each place it appears but not in the undesignated paragraph that follows subsection (b)(7);
 - (D) section 1104A(d)(1)(A) each place it appears except the first;
 - (E) section 1104A(d)(3) each place it appears except in subparagraph (B);
 - (F) section 1104A(j)(1) the first, fifth, and seventh places it appears;
 - (G) section 1104A(n) each place it appears except the first;
 - (H) section 1110 each place it appears except the first and fourth places it appears in subsection (b);
 - (I) section 1111(a) and (b)(2) each place it appears;
 - (J) section 1111(b)(4) each place it appears except the first; and
 - (K) section 1112 each place it appears; and
- (3) by striking “Secretary’s” in sections 1108(g)(1) and 1109(d)(3) and inserting “Secretary’s or Administrator’s”.
- (b) ADDITIONAL AND CONFORMING TITLE XI CHANGES.—
- (1) Section 1101 of the Merchant Marine Act, 1936 (46 U.S.C. App. 1271) is amended—
- (A) by striking “title,” and all that follows in subsection (n) and inserting “title.”; and
 - (B) by adding at the end the following:

“(p) The term ‘Administrator’ means the Administrator of the Maritime Administration.”.
- (2) Section 1103(j) of such Act (46 U.S.C. App. 1273(j)) is amended by adding at the end the following:
- “The Secretary of Defense shall determine whether a vessel satisfies paragraphs (1) and (2) by not later than 30 days after receipt of a request from the Administrator for such a determination.”.
- (3) Section 1104A(d) of such Act (46 U.S.C. App. 1274(d)) is amended—
- (A) by striking “Secretary of Transportation” in paragraphs (1)(A) and (3)(B) and inserting “Administrator”;
 - (B) by striking “the waiver” in paragraph (4)(B) and inserting “if deemed necessary by the Secretary or Administrator, the waiver”;
 - (C) by striking “the increased” in paragraph (4)(B) and inserting “any significant increase in”.

(4) Section 1104A(f) of such Act (46 U.S.C. App. 1273(f)) is amended—

(A) by striking “financial structures, or other risk factors identified by the Secretary or Administrator.” in paragraph (2); as amended by subsection (a) of this section; and inserting “or financial structures.”;

(B) by striking “financial structures, or other risk factors identified by the Secretary or Administrator.” in paragraph (3); as amended by subsection (a) of this section; and inserting “or financial structures.”; and

(C) by adding at the end the following:

“(5) A third party independent analysis conducted under paragraph (2) shall be performed by a private sector expert in assessing such risk factors who is selected by the Administrator.”

(5) Section 1104A(j)(2) of such Act (46 U.S.C. App. 1273(j)(2)) is amended by striking “The Secretary of Transportation” and inserting “The Administrator”.

(6) Section 1104A(m) of such Act (46 U.S.C. App. 1273(m)) is amended by striking the last sentence and inserting “If the Secretary or Administrator has waived a requirement under section 1104A(d), the loan agreement shall include requirements for additional payments, collateral, or equity contributions to meet such waived requirement upon the occurrence of verifiable conditions indicating that the obligor’s financial condition enables the obligor to meet the waived requirement.”

(7) Section 1104A(n)(1) of such Act (46 U.S.C. App. 1273(n)(1)) is amended by striking “The Secretary of Transportation” and inserting “The Administrator”.

(8) Section 1111 of such Act (46 U.S.C. 1279(f)) is amended by striking “Secretary of Transportation” each place it appears and inserting “Administrator”.

(c) CONFORMING CHANGES IN OTHER STATUTES.—

(1) Section 401(a) of the Ocean Shipping Reform Act of 1998 (46 U.S.C. App. 1273a(a)) is amended by striking “Secretary of Transportation” and inserting “Administrator of the Maritime Administration”.

(2) Section 101 of Public Law 85-469 (46 U.S.C. 1280) is amended by inserting “or the Administrator of the Maritime Administration” after “Secretary”.

(3) Section 3527 of the Maritime Security Act of 2003 (46 U.S.C. App. 1280b) is amended by striking “Secretary of Transportation” and inserting “Administrator of the Maritime Administration”.

(4) Section 3528 of the Maritime Security Act of 2003 (46 U.S.C. App. 1271 note) is repealed.

(d) TECHNICAL CORRECTION OF SECTION NUMBERING.—Title XI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1271 et seq.) is amended by redesignating the second sections 1111 and 1112, as added by section 303 of the Sustainable Fisheries Act (Public Law 104-297; 110 Stat. 3616), as sections 1113 and 1114, respectively.

* * *

SEC. 3509. UNITED STATES MARITIME SERVICE.

Section 1306(a) of the Maritime Education and Training Act of 1980 (46 U.S.C. App. 1295e(a)); is amended by inserting “and to perform functions to assist the United States merchant marine, as determined necessary by the Secretary,” after “United States” the second place it appears.

SEC. 3510. AWARDS AND MEDALS.

Section 5(c) of the Merchant Marine Decorations and Medals Act (46 U.S.C. App. 2004(c)) is amended by striking “provide at cost, or authorize for the manufacture and sale at reasonable prices by private persons—” and inserting “provide—”.

* * *

Deficit Reduction Act of 2005 (Public Law 109-171)

SEC. 4001. EXTENSION OF VESSEL TONNAGE DUTIES.

(a) **EXTENSION OF DUTIES.**—Section 36 of the Act entitled “An Act to provide revenue, equalize duties and encourage the industries of the United States, and for other purposes”, approved August 5, 1909 (36 Stat. 111; 46 U.S.C. App. 121), is amended—

(1) by striking “9 cents per ton” and all that follows through “2002,” the first place it appears and inserting “4.5 cents per ton, not to exceed in the aggregate 22.5 cents per ton in any one year, for fiscal years 2006 through 2010,”; and

(2) by striking “27 cents per ton” and all that follows through “2002,” and inserting “13.5 cents per ton, not to exceed 67.5 cents per ton per annum, for fiscal years 2006 through 2010,”.

(b) **CONFORMING AMENDMENT.**—The Act entitled “An Act concerning tonnage duties on vessels entering otherwise than by sea”, approved March 8, 1910 (36 Stat. 234; 46 U.S.C. App. 132), is amended by striking “9 cents per ton” and all that follows through “and 2 cents” and inserting “4.5 cents per ton, not to exceed in the aggregate 22.5 cents per ton in any one year, for fiscal years 2006 through 2010, and 2 cents”.

* * *

Coast Guard and Maritime Transportation Act of 2006 (Public Law 109-241)

SEC. 303. CERTIFICATION OF VESSEL NATIONALITY IN DRUG SMUGGLING CASES.

Section 3(c)(2) of the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1903(c)(2)) is amended by striking the last two sentences and inserting the following: “The response of a foreign nation to a claim of registry under subparagraph (A) or (C) may be made by radio, telephone, or similar oral or electronic means, and is conclusively proved by certification of the Secretary of State or the Secretary’s designee.”.

* * *

SEC. 307. TRAINING OF CADETS AT UNITED STATES MERCHANT MARINE ACADEMY.

Section 1303(f) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1295b(f)) is amended—

(1) by striking “and” at the end of paragraph (2);

(2) by striking the period at the end of paragraph (3) and inserting “; and”; and

(3) by adding at the end the following:

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

SEC. 308. REPORTS FROM MORTGAGEES OF VESSELS.

Section 12120 of title 46, United States Code, is amended by striking “owners, masters, and charterers” and inserting “owners, masters, charterers, and mortgagees”.

* * *

SEC. 310. SETTING, RELOCATING, AND RECOVERING ANCHORS.

Section 12105 of title 46, United States Code, is amended by adding at the end the following:

“(c)(1) Only a vessel for which a certificate of documentation with a registry endorsement is issued may engage in—

“(A) the setting, relocation, or recovery of the anchors or other mooring equipment of a mobile offshore drilling unit that is located over the outer Continental Shelf (as defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a))); or

“(B) the transportation of merchandise or personnel to or from a point in the United States from or to a mobile offshore drilling unit located over the outer Continental Shelf that is not attached to the seabed.

“(2) Nothing in paragraph (1) authorizes the employment in the coastwise trade of a vessel that does not meet the requirements of section 12106 of this title.”.

* * *

SEC. 901. MISCELLANEOUS TECHNICAL CORRECTIONS.

* * *

(q) Acts of Terrorism Report.—Section 905 of the Omnibus Diplomatic Security and Antiterrorism Act of 1986 (46 U.S.C. App. 1802; 100 Stat. 890) is amended by striking “Not later than February 28, 1987, and annually thereafter, the Secretary of Transportation shall report” and inserting “The Secretary of the department in which the Coast Guard is operating shall report annually”.

* * *

SEC. 902. CORRECTION OF REFERENCES TO SECRETARY OF TRANSPORTATION AND DEPARTMENT OF TRANSPORTATION; RELATED MATTERS.

* * *

(o) Merchant Marine Act, 1920.—Section 27 of the Merchant Marine Act, 1920 (46 U.S.C. App. 883) is amended in the matter following the ninth proviso (pertaining to transportation of a foreign-flag incineration vessel) by striking “Satisfactory inspection shall be certified in writing by the Secretary of Transportation” and inserting “Satisfactory inspection shall be certified, in writing, by the Secretary of Homeland Security.”.

* * *

John Warner National Defense Authoriza- tion Act for Fiscal Year 2007 (Public Law 109-364)

SEC. 1017. OBTAINING CARRIAGE BY VESSEL; CRITERION REGARDING OVERHAUL, REPAIR, AND MAINTENANCE OF VESSELS IN THE UNITED STATES

* * *

(b) COVERED VESSELS.—A vessel is a covered vessel of an offeror under this section if the vessel is—

- (1) owned, operated, or controlled by the offeror; and
- (2) qualified to engage in the carriage of cargo in the coastwise or non-contiguous trade under section 27 of the Merchant Marine Act, 1920 (46 U.S.C. 883), section 12106 of title 46, United States Code, and section 2 of the Shipping Act, 1916 (46 U.S.C. App. 892) *sections 12112, 50501, and 55102 of title 46, United States Code.*

* * *

SEC. 3505. UNITED STATES MERCHANT MARINE ACADEMY GRAD- UATES: SERVICE REQUIREMENTS.

(a) ALTERNATE SERVICE.—Section 1303(e) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1295b(e)) is amended by adding at the end the following:

“(6)(A) An individual who for the 5-year period following graduation from the Academy, serves as a commissioned officer on active duty in an armed force of the United States or as a commissioned officer of the National Oceanic and Atmospheric Administration or the Public Health Service shall be excused from the requirements of subparagraphs (C), (D), and (E) of paragraph (1).

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

(b) APPLICATION.—Paragraph (6) of section 1303(e) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1295b(e)), as added by this section, applies only to an individual who enrolls as a cadet at the United States Merchant Marine Academy, and signs an agreement under paragraph (1) of that section, after the date of the enactment of this Act.

SEC. 3506. UNITED STATES MERCHANT MARINE ACADEMY GRAD- UATES: SERVICE OBLIGATION PERFORMANCE REPORT- ING REQUIREMENT.

(a) IN GENERAL.—Section 1303(e) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1295b(e)) is further amended by adding at the end the following:

“(7)(A) Subject to any otherwise applicable restrictions on disclosure in section 552a of title 5, United States Code, the Secretary of Defense, the Secretary of the department in which the Coast Guard is operating, the Administrator of the National Oceanic and Atmospheric Administration, and the Surgeon General of the Public Health Service—

“(i) shall report the status of obligated service of an individual graduate of the Academy upon request of the Secretary; and

“(ii) may, in their discretion, notify the Secretary of any failure of the graduate to perform 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 or the Public Health Service, respectively.

“(B) A report or notice under subparagraph (A) shall identify any graduate determined to have failed to comply with service obligation requirements and provide all required information as to why such graduate failed to comply.

“(C) 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 Secretary, and subject to all remedies the Secretary may have with respect to such a default.”.

(b) Application.—The amendment made by this section does not apply with respect to an agreement entered into under section 1303(e) of the Merchant Marine Act, 1936 (46 U.S.C. 1295b(e)) before the date of the enactment of this Act.

* * *

SEC. 3508. QUALIFYING RESERVE DUTY FOR RECEIPT OF STUDENT INCENTIVE PAYMENTS.

Section 1304(g)(2) of title XIII of the Merchant Marine Act, 1936 (46 U.S.C. App. 1295e(g)(2)) is amended to read as follows:

“(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.”.

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SEC. 3510. MISCELLANEOUS MARITIME ADMINISTRATION PROVISIONS.

(a) TECHNICAL CORRECTION REGARDING WAR RISK INSURANCE FOR MERCHANT MARINE VESSELS.—

(1) IN GENERAL.—Section 1208(a) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1288(a)) is amended—

(A) by striking “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.”; and

(B) by inserting after “to the credit of such fund.” the following: “Payments of return premiums, losses, settlements, judgments, and all liabilities incurred by the United States under this title shall be made from such fund through the Fiscal Service of the Department of the Treasury.”.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall be effective as if enacted by section 3502 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (118 Stat. 2195).

(b) RIGHT TO USE MARITIME ADMINISTRATION DECORATION.—Section 8 of the Merchant Marine Decorations and Medals Act (46 U.S.C. App. 2007) is amended by inserting “or the Secretary of Transportation,” after “Act.”