

**Calendar No. 955**

110TH CONGRESS }  
2d Session }

SENATE

{ REPORT  
{ 110-457

MARITIME ADMINISTRATION AUTHORIZA-  
TION ACT FOR FISCAL YEAR 2009

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R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND  
TRANSPORTATION

ON

S. 2997



SEPTEMBER 11, 2008.—Ordered to be printed

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U.S. GOVERNMENT PRINTING OFFICE

69-010

WASHINGTON : 2008

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

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### MARITIME ADMINISTRATION AUTHORIZATION ACT FOR FISCAL YEAR 2009

SEPTEMBER 11, 2008.—Ordered to be printed

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

### R E P O R T

[To accompany S. 2997]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 2997) to reauthorize the Maritime Administration and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill (as amended) do pass.

#### PURPOSE OF THE BILL

This legislation is the annual authorization act for the Maritime Administration (MARAD) within the Department of Transportation (DOT). The bill would authorize funds for fiscal year 2009 and amend laws governing the activities of the MARAD. The bill would improve the Student Incentive Program (SIP), streamline the application process for the Small Shipyard Assistance (SSA) Program, and strengthen the enforcement of cargo preference laws.

#### BACKGROUND AND NEEDS

The MARAD was authorized through fiscal year 2008 in the Department of Defense Authorization Act for FY 2008 (P.L. 110-181). The MARAD administers U.S. merchant marine support programs within the DOT, including the Maritime Security Program (MSP); the Title XI guaranteed loan program; various cargo preference programs; the SSA program; the maintenance of the Ready Reserve Force (RRF) and the National Defense Reserve Fleet (NDRF); and operation of the U.S. Merchant Marine Academy (USMMA) at Kings Point, New York.

## SUMMARY OF PROVISIONS

The Maritime Administration Authorization Act for fiscal year 2009 would authorize the USMMA to hire adjunct professors and would require the USMMA to prescribe a policy on sexual harassment and sexual violence similar to such policies in the Department of Defense (DOD) military academies. Also, the bill would authorize the MARAD to increase the annual payments to cadets of state maritime academies for the SIP program, as well as adjust the timing of the award and the terms for which the payments may be used. Approximately 70 percent of all licensed officer graduates come from the state maritime academies. There is a compelling need to assist both the USMMA and the state maritime academies to meet growing demands for the U.S. armed forces and the commercial maritime industry.

In addition to authorizing fiscal year 2009 funds for the MARAD, the bill would modify the provisions under title 46 relating to riding gangs on commercial cargo vessels that are under DOD contract. This measure would also make improvements to the SSA program by streamlining grant making processes and expanding eligibility assistance to medium and small shipyards that are engaged in the vessel repair and vessel construction industries. The bill would extend the duration of the marine war risk insurance program. The bill would place in statute existing administrative procedures for waivers to the Jones Act during times of an actual or imminent energy shortage, or when it is in the interest of national security. Lastly, the bill would provide the MARAD with appropriate enforcement authority for the administration of our cargo preference laws.

## LEGISLATIVE HISTORY

S. 2997 was introduced by Senator Lautenberg, Senator Smith and Senator Stevens on May 8, 2008. Senator Inouye was added as a cosponsor to the bill on May 14, 2008. The Senate Committee on Commerce, Science and Transportation reported the bill favorably as amended by a manager's amendment sponsored by Senator Inouye, Senator Stevens, Senator Lautenberg, and Senator Smith on May 15, 2008. The staff members assigned to this legislation are: Dabney Hegg, Democratic Senior Professional Staff; Todd Bertson, Senior Republican Counsel; and Betsy McDonnell, Republican Professional Staff.

## ESTIMATED COSTS

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

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, June 5, 2008.*

Hon. DANIEL K. INOUE,  
*Chairman, Committee on Commerce, Science, and Transportation,  
U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2997, the Maritime Administration Act for Fiscal Year 2009.

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

Sincerely,

ROBERT A. SUNSHINE  
(For Peter R. Orszag, Director).

Enclosure.

*S. 2997—Maritime Administration Act for Fiscal Year 2009*

Summary: S. 2997 would amend various laws governing the activities of the Maritime Administration (MARAD) and would authorize appropriations for that agency for fiscal year 2009. Assuming appropriation of the amounts authorized for 2009, CBO estimates that implementing S. 2997 would result in discretionary outlays of \$163 million over the 2009–2013 period. Enacting the bill also could change revenues (primarily from civil fines) and direct spending (for benefits to certain longshoremen), but we estimate that any such changes would be minimal.

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

Estimated cost to the Federal Government: The estimated budgetary impact of S. 2997 is shown in the following table. The costs of this legislation fall within budget function 400 (transportation).

	By fiscal year, in millions of dollars—					
	2009	2010	2011	2012	2013	2009– 2013
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Authorization Level .....	163	0	0	0	0	163
Estimated Outlays .....	131	20	13	0	0	163

Notes: As discussed below, the authorization levels do not include amounts specifically authorized by the bill for programs that are already authorized under current law.

Enacting S. 2997 could result in changes in revenues and direct spending, but CBO estimates that such changes would be insignificant in any year.

Basis of estimate: For this estimate, CBO assumes that S. 2997 will be enacted near the end of fiscal year 2008 and that the amounts newly authorized by the bill will be appropriated for 2009. Estimated outlays are based on historical spending patterns for MARAD activities.

The authorization level shown in the table includes \$143 million for MARAD operations, \$18 million for the agency's program to dispose of obsolete vessels in the National Defense Reserve Fleet, and \$2 million for the U.S. Coast Guard to perform assessments of vessel traffic risk in Alaska. The bill also would authorize appropriations for other MARAD programs, including \$174 million for sub-

sidies to U.S. flag vessels under the maritime security program, \$19.5 million for reimbursements to vessel owners for repairs made in U.S. shipyards, \$30 million for the cost of making maritime loan guarantees, and \$6 million for related administrative costs. Those amounts are not shown in the table, however, because they are already authorized under current law.

The bill would strengthen existing rules that govern cargo preference requirements, clarifying that all federally financed cargoes are subject to cargo preference laws (which require that certain percentages of government-sponsored freight be transported on U.S. flag vessels). Also, the bill would establish civil penalties for violations of such laws by shipping companies.

Enacting the bill could result in an increase in civil penalties collected by MARAD from violators of cargo preference laws, but CBO estimates that any such increases would be minimal. Based on information provided by MARAD and other federal agencies, we estimate that other changes to the cargo preference law would have no significant impact on the federal budget because most federal agencies already comply with the law.

Finally, section 12 would expand an exemption in the Longshore and Harbor Workers' Compensation Act for individuals who manufacture, repair, or dismantle recreational vessels. Enacting this provision could reduce revenues (from fines and penalties on the shipbuilding industry) and direct spending (for compensation to individuals), but CBO estimates that such changes would be insignificant.

Intergovernmental and private-sector impact: S. 2997 contains no intergovernmental or private-sector mandates as defined in UMRA would impose no significant costs on state, local, or tribal governments.

Previous CBO estimates: CBO has transmitted several cost estimates for bills that contained authorizations for assessments of vessel traffic risk in Alaska, including S. 1892, the Coast Guard Authorization Act for Fiscal Year 2008, as ordered reported by the Senate Committee on Commerce, Science, and Transportation on August 2, 2007, and three versions of H.R. 2830, the Coast Guard Authorization Act of 2007, as ordered reported by the House Committee on Transportation and Infrastructure (June 28, 2007), the House Committee on the Homeland Security (September 25, 2007), and the House Committee on the Judiciary (October 30, 2007). All four versions of the legislation would authorize the appropriation of about \$2 million for each of fiscal years 2008 and 2009 for assessments of vessel traffic risk in Alaska. The cost estimate for S. 2997 only includes the 2009 authorization for the program because CBO assumes that the bill will not be enacted in time for the 2008 authorization to be appropriated.

On May 20, 2008, CBO transmitted a cost estimate for H.R. 5658, the National Defense Authorization Act for 2009, as ordered reported by the House Committee on Armed Services on May 16, 2008. H.R. 5658 also would authorize funding for MARAD for 2009 but at a lower level than S. 2997. The CBO cost estimates reflect that difference.

Estimate prepared by: Federal costs: Deborah Reis; Impact on state, local, and tribal governments: Elizabeth Cove; Impact on the private sector: Jacob Kuipers.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

#### REGULATORY IMPACT STATEMENT

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

##### NUMBER OF PERSONS COVERED

The number of persons affected by this bill is consistent with previous MARAD reauthorizations with the exception of Section 12, which is expected to benefit the repair and boat manufacturing sectors of the marine recreational industry consisting of 500,000 workers. Any changes to the personnel at the USMMA are intended to improve the quality of the experience for the students and the long-term health of the U.S. merchant marine.

##### ECONOMIC IMPACT

Section 12 is expected to have a positive impact on the economy, particularly the boat repair and boat manufacturing sectors of the marine recreational industry. In the state of Florida alone, this industry supports 220,000 jobs and contributes \$18.4 billion to the economy. In recognition of the modest injury profile of the marine recreational industry, this section allows thousands of small businesses to cover all or most of their employees with State workers' compensation insurance rather than having to pay the considerably higher premiums required under the Longshore and Harbor Workers' Compensation Act. These companies would be able to use the money saved by these considerably lower insurance rates for their employees benefit, and to compete more effectively with foreign-based boat repair and manufacturing businesses, helping to keep jobs in the United States.

##### PRIVACY

S. 2997 would have minimal effect on the privacy rights of individuals.

##### PAPERWORK

The Committee does not anticipate a major increase in paperwork burdens for individuals or business resulting from the passage of this legislation.

##### CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides the following identification of congressionally directed spending items contained in the bill, as reported:

Section	Provision	Member
Section 9	Vessel traffic risk assessments	Sen. Stevens

## SECTION-BY-SECTION ANALYSIS

*Section 1. Short title*

Section 1 would provide that the legislation may be cited as the “Maritime Administration Authorization Act for Fiscal Year 2009.”

*Section 2. Adjunct professors at the Merchant Marine Academy*

The USMMA uses between 20 and 25 percent adjunct professors during any one academic trimester. As part of improving the budget submission process, the USMMA proposes to transition most of these adjunct professors to direct USMMA employment. Some adjunct professors may continue to be governed by personal service contracts. This proposal would clarify the USMMA’s authority to retain the adjunct professors under existing contracts until their employment is transferred for the 2008–2009 school year.

*Section 3. Actions to address sexual harassment and violence at the United States Merchant Marine Academy*

Section 3 would require the USMMA to prescribe a policy on sexual harassment and sexual violence applicable to the cadets and other personnel of the Academy. This requirement would bring the USMMA into parity with the military academies of the DOD.

*Section 4. Riding gang member requirements*

Section 8106 of title 46, United States Code, limits the use of non-U.S. citizen riding gang members on U.S. flagged merchant vessels. Section 2101 of title 46, United States Code, defines a riding gang member as an individual who does not hold a merchant mariner document, and who is not a regular member of the ship’s crew who performs watch standing duties. The riding gang member may perform limited functions aboard the ship and must at all times be supervised by a crew member holding a merchant mariner document (MMD).

Section 1018 of the John Warner National Defense Authorization Act for Fiscal Year 2007 prohibited the use of riding gangs on board vessels under contract by the DOD unless the Secretary of Defense complied with the limitations for riding gangs under section 8106 of title 46.

The FY 2007 Defense Authorization Act provided four exceptions to the contractual requirements: (1) for personnel associated with the cargo; (2) force protection personnel; (3) repair technicians; and (4) other personnel required by the Secretary of Defense to be aboard the vessel other than for maintenance or operation of the vessel. However, there was no parallel exception under section 8106.

In order for the DOD to use the exceptions authorized in the FY 2007 Defense Authorization Act effectively, those exceptions also must apply to the requirements of title 46. Therefore, this section would authorize the Secretary of Defense to invoke the exceptions both under contract and under section 8106 of title 46. This provision was requested by the DOD.



*Section 5. Assistance for small shipyards and maritime communities*

Section 5 would make technical modifications to the existing SSA program established under Section 3506 of the National Defense Authorization Act for Fiscal Year 2006, P.L. 109–163, in order to improve the functionality of the grant making process and to expand the eligibility of small shipyards that may qualify for assistance under the program.

*Section 6. Student Incentive Payment (SIP) program*

The SIP program provides financial assistance to qualified cadets at the six state maritime academies. The SIP program is voluntary, and it is designed to assist cadets in defraying the cost of uniforms, books, and subsistence in return for certain obligations on the part of the cadet. Upon graduation from the Academy, SIP participants are required to: maintain maritime-related employment for at least three years; maintain a U.S. Coast Guard license; maintain a Commission in the Military Reserve for six years, which includes two active drill weeks per year; and report employment status annually to the Maritime Administration. As such, SIP participants help the military maintain a ready pool of qualified mariners during times of national emergency. This section would amend section 51509 of title 46, United States Code, to increase the authorized annual payments to cadets, adjust the timing of the award, and expand the terms for which the payments may be used.

*Section 7. Marine War Risk Insurance*

The MARAD administers a War Risk Insurance Program under 46 U.S.C. 53901 *et seq.* If commercial war risk insurance is not available on reasonable terms and conditions from commercial insurance companies, then the Secretary, with the approval of the President, may provide two basic types of insurance: (1) written for commercial vessels that are deemed necessary to move cargo for a national emergency, and if a vessel was damaged or lost, the claim is paid out of the DOT's funds; and (2) written for both U.S. and foreign flag commercial vessels that are under charter to the military, and if a vessel were damaged or lost, the DOD indemnifies the DOT for payment of the claim. The latter authority under 46 U.S.C. 53912 expires December 31, 2010. Section 7 of the reported bill would extend war risk insurance authority under section 53912 of title 46, United States Code, until December 31, 2015.

*Section 8. MARAD consultation on Jones Act Waivers*

In 1950, a process was authorized in statute to allow for the DOD to request a waiver of the Jones Act for the transportation of domestic cargo during times of an actual or imminent energy shortage, or when it is in the interest of national security. To facilitate the consideration of waiver requests, the U.S. Customs Service (now the U.S. Customs and Border Protection (CBP)), the MARAD, and the Department of Energy (DOE) entered into a Memorandum of Agreement (MOA). Under the MOA, the MARAD is responsible for certifying and granting Jones Act waivers for U.S. flagged vessels when it is in the interest of national security. The MOA remains in effect today and helps ensure that waiver decisions are processed timely and efficiently to meet the demand for emergency

transportation of energy products. This section would amend 46 U.S.C. 501 to apply the terms of the existing MOA to all waiver requests originating from outside the DOD. This ensures that national defense interests are met in the most efficient manner possible. It remains consistent with the stated U.S. policy, to encourage and aid in the development and maintenance of a U.S. merchant marine as necessary for the national defense, and for the development of the domestic and foreign commerce of the United States.

*Section 9. Vessel traffic risk assessments*

Section 9 would require the Commandant of the Coast Guard to prepare two vessel traffic risk assessments; one for Cook Inlet, Alaska, within one year after the date of enactment of this Act, and the second for the Aleutian Islands, within two years after the date of enactment of this Act. Each assessment would describe both the level of shipping traffic, and the current and projected routing measures used, including long-range vessel tracking systems, and the Automatic Identification System. The assessments also would provide recommendations for enhancing safety and security of marine shipping. This provision would authorize \$1,800,000 for both fiscal year 2008 and fiscal year 2009 to conduct these assessments.

*Section 10. Small Vessel Exception from Definition of Fish Processing Vessel*

Section 10, titled 'Small Vessel Exception From Definition of Fish Processing Vessel,' would modify section 2101 (11b) of title 46, United States Code, to exclude certain fishing vessels operating in Alaskan waters that fillet only salmon taken by that vessel, and fillet less than five metric tons of such salmon during any seven day period.

*Section 11. Transportation in American vessels of government personnel and certain cargoes*

Section 11 would clarify that cargo preference applies to any person or organization receiving federal funding, unless they are otherwise exempted. This clarification eliminates confusion over the application of cargo preference, and it would provide the Secretary of the DOT with the appropriate enforcement authority for administrative oversight of cargo preference laws under subsection 55305(d) of title 46, United States Code. This section only applies to agencies, organizations, or persons subject to section 55305, and it makes a technical correction by conforming the cargo preference year to the fiscal year in 46 U.S.C. 55314(a).

*Section 12. Exclusion of certain employee benefits for individuals in the recreational marine industry*

Section 12 would extend the current Longshore and Harbor Workers' Compensation Act exemption for recreational marine workers employed to manufacture any recreational vehicle under 165 feet in length, or to repair any recreational vehicle, including the dismantling of any part of such a vessel connected to its repair.

*Section 13. Authorization of appropriations for fiscal year 2009*

Section 13 describes the authorization of appropriations for the MARAD for fiscal year 2009.

## CHANGES IN EXISTING LAW

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

JOHN WARNER NATIONAL DEFENSE AUTHORIZATION ACT  
FOR FISCAL YEAR 2007**SEC. 1018. RIDING GANG MEMBER REQUIREMENTS.**

## (a) REQUIREMENT FOR CHARTERS AND CONTRACTS.—

(1) IN GENERAL.—The Secretary of Defense may not award, renew, extend, or exercise an option to extend any charter of a vessel documented under chapter 121 of title 46, United States Code, for the Department of Defense, or any contract for the carriage of cargo by a vessel documented under that chapter for the Department of Defense, unless the charter or contract, respectively, includes provisions that allow riding gang members to perform work on the vessel during the effective period of the charter or contract only under terms, conditions, restrictions, and [requirements that, except as provided in paragraphs (2) and (3), are substantially the same as those that apply under section 8106 of title 46, United States Code, as in effect immediately before the enactment of this Act, with respect to a vessel referred to in that section.] *requirements as provided in section 8106 of title 46, United States Code.*

[(2) LIMITATION.—For purposes of paragraph (1) of this subsection, subsections (a)(1)(A)(ii), (c), and (d) of section 8106 of title 46, United States Code, shall not apply with respect to a charter or contract referred to in paragraph (1).]

[(3) MERCHANT MARINER'S DOCUMENT REQUIRED.—The Secretary of Defense shall include in the provisions required under paragraph (1) a requirement that each riding gang member who performs work on the vessel must hold a merchant mariner's document issued under chapter 73 of title 46, United States Code.]

[(4) (2) RIDING GANG MEMBER DEFINED.—In this subsection the term “riding gang member” has the meaning that term has in section [8106] 2101 of title 46, United States Code, as in effect immediately before the enactment of this Act.]

## (b) EXEMPTIONS BY SECRETARY OF DEFENSE.—

[(1) IN GENERAL.—The Secretary of Defense may issue regulations that exempt from the charter or contract provisions required under subsection (a) any individual who is on a vessel for purposes other than engaging in the operation or maintenance of the vessel, including an individual who is—

[(A) one of the personnel who accompany, supervise, guard, and maintain unit equipment aboard a ship, commonly referred to as supercargo personnel;

[(B) one of the force protection personnel of the vessel;

[(C) a specialized repair technician; or

[(D) otherwise required by the Secretary of Defense to be aboard the vessel.]

(1) *IN GENERAL.*—Pursuant to regulations issued by the Secretary of Defense, an individual—

(A) *who is aboard a vessel, which is under charter or contract for the carriage of cargo for the Department of Defense, for purposes other than engaging in the operation or maintenance of the vessel, and*

(B) *who—*

(i) *accompanies, supervises, guards, or maintains unit equipment aboard a ship, commonly referred to as supercargo personnel,*

(ii) *is one of the force protection personnel of the vessel,*

(iii) *is a specialized repair technician, or*

(iv) *is otherwise required by the Secretary of Defense to be aboard the vessel,*

*shall not be deemed a riding gang member for purposes of title 46, United States Code.*

(2) **BACKGROUND CHECK.**—Such regulations shall include a requirement that any individual who is exempt under the regulations must pass a background check before going aboard the vessel, unless the individual holds a merchant mariner's document issued under chapter 73 of title 46, United States Code.

(3) **EXEMPTED INDIVIDUAL NOT TREATED AS IN ADDITION TO THE CREW.**—An individual exempted under paragraph (1) shall not be counted as an individual in addition to the crew for the purposes of section 3304 of title 46, United States Code.

**NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL  
YEAR 2006**

**[SEC. 3506. 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.]

## TITLE 46. SHIPPING

### SUBTITLE I. GENERAL

#### CHAPTER 5. OTHER GENERAL PROVISIONS

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

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

[(b) BY HEAD OF AGENCY.—When the head of an agency responsible for the administration of the navigation or vessel-inspection laws considers it necessary in the interest of national defense, the individual may waive compliance with those laws to the extent, in the manner, and on the terms the individual prescribes.]

*(b) BY HEAD OF AGENCY.—When the head of an agency responsible for the administration of the navigation or vessel-inspection laws considers it necessary in the interest of national defense, the individual, following a determination by the Maritime Administrator, acting in the Administrator’s capacity as Director, National Shipping Authority, of the non-availability of qualified United States flag capacity to meet national defense requirements, may waive compliance with those laws to the extent, in the manner, and on the terms the individual, in consultation with the Administrator, acting in that capacity, prescribes.*

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

## SUBTITLE II. VESSELS AND SEAMEN

## PART A. GENERAL PROVISIONS

## CHAPTER 21. GENERAL

**§ 2101. General definitions**

In this subtitle—

(1) “associated equipment”—

(A) means—

(i) a system, accessory, component, or appurtenance of a recreational vessel; or

(ii) a marine safety article intended for use on board a recreational vessel; but

(B) does not include radio equipment.

(2)–(3a) [repealed]

(4) “Coast Guard” means the organization established and continued under section 1 of title 14.

(5) “commercial service” includes any type of trade or business involving the transportation of goods or individuals, except service performed by a combatant vessel.

(5a) “consideration” means an economic benefit, inducement, right, or profit including pecuniary payment accruing to an individual, person, or entity, but not including a voluntary sharing of the actual expenses of the voyage, by monetary contribution or donation of fuel, food, beverage, or other supplies.

(6)

(7) “crude oil” means a liquid hydrocarbon mixture occurring naturally in the earth, whether or not treated to render it suitable for transportation, and includes crude oil from which certain distillate fractions may have been removed, and crude oil to which certain distillate fractions may have been added.

(8) “crude oil tanker” means a tanker engaged in the trade of carrying crude oil.

(8a) “dangerous drug” means a narcotic drug, a controlled substance, or a controlled substance analog (as defined in section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802)).

(9) “discharge”, when referring to a substance discharged from a vessel, includes spilling, leaking, pumping, pouring, emitting, emptying, or dumping, however caused.

(10), (10a) [repealed]

(10b) “ferry” means a vessel that is used on a regular schedule—

(A) to provide transportation only between places that are not more than 300 miles apart; and

(B) to transport only—

(i) passengers; or

(ii) vehicles, or railroad cars, that are being used, or have been used, in transporting passengers or goods.

(11) “fish” means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life, except marine mammals and birds.

(11a) “fishing vessel” means a vessel that commercially engages in the catching, taking, or harvesting of fish or an activ-

ity that can reasonably be expected to result in the catching, taking, or harvesting of fish.

(11b) “fish processing vessel” means a vessel that commercially prepares fish or fish products other than by gutting, decapitating, gilling, skinning, shucking, icing, freezing, or brine [chilling.] *chilling, but does not include a fishing vessel operating in Alaskan waters under a permit or license issued by Alaska that—*

(A) *fillets only salmon taken by that vessel;*

(B) *fillets less than 5 metric tons of such salmon during any 7-day period.*

(11c) “fish tender vessel” means a vessel that commercially supplies, stores, refrigerates, or transports fish, fish products, or materials directly related to fishing or the preparation of fish to or from a fishing, fish processing, or fish tender vessel or a fish processing facility.

(12) [repealed]

(13) “freight vessel” means a motor vessel of more than 15 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title that carries freight for hire, except an oceanographic research vessel or an offshore supply vessel.

(13a) “Great Lakes barge” means a non-self-propelled vessel of at least 3,500 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title operating on the Great Lakes.

(14) “hazardous material” means a liquid material or substance that is—

(A) flammable or combustible;

(B) designated a hazardous substance under section 311(b) of the Federal Water Pollution Control Act (33 U.S.C. 1321); or

(C) designated a hazardous material under section 5103(a) of title 49;

(14a) “major conversion” means a conversion of a vessel that—

(A) substantially changes the dimensions or carrying capacity of the vessel;

(B) changes the type of the vessel;

(C) substantially prolongs the life of the vessel; or

(D) otherwise so changes the vessel that it is essentially a new vessel, as decided by the Secretary.

(15) “marine environment” means—

(A) the navigable waters of the United States and the land and resources in and under those waters;

(B) the waters and fishery resources of an area over which the United States asserts exclusive fishery management authority;

(C) the seabed and subsoil of the outer Continental Shelf of the United States, the resources of the Shelf, and the waters superjacent to the Shelf; and



(D) the recreational, economic, and scenic values of the waters and resources referred to in subclauses (A)-(C) of this clause.

(15a) “mobile offshore drilling unit” means a vessel capable of engaging in drilling operations for the exploration or exploitation of subsea resources.

(16) “motor vessel” means a vessel propelled by machinery other than steam.

(17) “nautical school vessel” means a vessel operated by or in connection with a nautical school or an educational institution under section 558 of title 40.

(17a) “navigable waters of the United States” includes all waters of the territorial sea of the United States as described in Presidential Proclamation No. 5928 of December 27, 1988.

(17b) [repealed]

(18) “oceanographic research vessel” means a vessel that the Secretary finds is being employed only in instruction in oceanography or limnology, or both, or only in oceanographic or limnological research, including studies about the sea such as seismic, gravity meter, and magnetic exploration and other marine geophysical or geological surveys, atmospheric research, and biological research.

(19) “offshore supply vessel” means a motor vessel of more than 15 gross tons but less than 500 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title that regularly carries goods, supplies, individuals in addition to the crew, or equipment in support of exploration, exploitation, or production of offshore mineral or energy resources.

(20) “oil” includes oil of any type or in any form, including petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes except dredged spoil.

(20a) “oil spill response vessel” means a vessel that is designated in its certificate of inspection as such a vessel, or that is adapted to respond to a discharge of oil or a hazardous material.

(20b) “overall in length” means—

(A) for a foreign vessel or a vessel engaged on a foreign voyage, the greater of—

(i) 96 percent of the length on a waterline at 85 percent of the least molded depth measured from the top of the keel (or on a vessel designed with a rake of keel, on a waterline parallel to the designed waterline); or

(ii) the length from the fore side of the stem to the axis of the rudder stock on that waterline; and

(B) for any other vessel, the horizontal distance of the hull between the foremost part of the stem and the aftermost part of the stern, excluding fittings and attachments.

(21) “passenger”—

(A) means an individual carried on the vessel except—

(i) the owner or an individual representative of the owner or, in the case of a vessel under charter, an individual charterer or individual representative of the charterer;

- (ii) the master; or
  - (iii) a member of the crew engaged in the business of the vessel who has not contributed consideration for carriage and who is paid for on board services;
  - (B) on an offshore supply vessel, means an individual carried on the vessel except—
    - (i) an individual included in clause (i), (ii), or (iii) of subparagraph (A) of this paragraph;
    - (ii) an employee of the owner, or of a subcontractor to the owner, engaged in the business of the owner;
    - (iii) an employee of the charterer, or of a subcontractor to the charterer, engaged in the business of the charterer; or
    - (iv) an individual employed in a phase of exploration, exploitation, or production of offshore mineral or energy resources served by the vessel;
  - (C) on a fishing vessel, fish processing vessel, or fish tender vessel, means an individual carried on the vessel except—
    - (i) an individual included in clause (i), (ii), or (iii) of subparagraph (A) of this paragraph;
    - (ii) a managing operator;
    - (iii) an employee of the owner, or of a subcontractor to the owner, engaged in the business of the owner;
    - (iv) an employee of the charterer, or of a subcontractor to the charterer, engaged in the business of the charterer; or
    - (v) an observer or sea sampler on board the vessel pursuant to a requirement of State or Federal law; or
  - (D) on a sailing school vessel, means an individual carried on the vessel except—
    - (i) an individual included in clause (i), (ii), or (iii) of subparagraph (A) of this paragraph;
    - (ii) an employee of the owner of the vessel engaged in the business of the owner, except when the vessel is operating under a demise charter;
    - (iii) an employee of the demise charterer of the vessel engaged in the business of the demise charterer; or
    - (iv) a sailing school instructor or sailing school student.
- (21a) “passenger for hire” means a passenger for whom consideration is contributed as a condition of carriage on the vessel, whether directly or indirectly flowing to the owner, charterer, operator, agent, or any other person having an interest in the vessel.
- (22) “passenger vessel” means a vessel of at least 100 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title—
- (A) carrying more than 12 passengers, including at least one passenger for hire;
  - (B) that is chartered and carrying more than 12 passengers;
  - (C) that is a submersible vessel carrying at least one passenger for hire; or

- (D) that is a ferry carrying a passenger.
- (23) “product carrier” means a tanker engaged in the trade of carrying oil except crude oil.
- (24) “public vessel” means a vessel that—
- (A) is owned, or demise chartered, and operated by the United States Government or a government of a foreign country; and
  - (B) is not engaged in commercial service.
- (25) “recreational vessel” means a vessel—
- (A) being manufactured or operated primarily for pleasure; or
  - (B) leased, rented, or chartered to another for the latter’s pleasure.
- (26) “recreational vessel manufacturer” means a person engaged in the manufacturing, construction, assembly, or importation of recreational vessels, components, or associated equipment.
- (26a) “riding gang member” means an individual who—
- (A) has not been issued a merchant mariner document under chapter 73;
  - (B) does not perform—
    - (i) watchstanding, automated engine room duty watch, or personnel safety functions; or
    - (ii) cargo handling functions, including any activity relating to the loading or unloading of cargo, the operation of cargo-related equipment (whether or not integral to the vessel), and the handling of mooring lines on the dock when the vessel is made fast or let go;
  - (C) does not serve as part of the crew complement required under section 8101;
  - (D) is not a member of the steward’s department; and
  - (E) is not a citizen or temporary or permanent resident of a country designated by the United States as a sponsor of terrorism or any other country that the Secretary, in consultation with the Secretary of State and the heads of other appropriate United States agencies, determines to be a security threat to the United States.
- (27) “sailing instruction” means teaching, research, and practical experience in operating vessels propelled primarily by sail and may include—
- (A) any subject related to that operation and to the sea, including seamanship, navigation, oceanography, other nautical and marine sciences, and maritime history and literature; and
  - (B) only when in conjunction with a subject referred to in subclause (A) of this clause, instruction in mathematics and language arts skills to sailing school students having learning disabilities.
- (28) “sailing school instructor” means an individual who is on board a sailing school vessel to provide sailing instruction, but does not include an operator or crewmember who is among those required to be on board the vessel to meet a requirement established under part F of this subtitle
- (29) “sailing school student” means an individual who is on board a sailing school vessel to receive sailing instruction.

(30) “sailing school vessel” means a vessel—

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

(B) carrying more than 6 individuals who are sailing school instructors or sailing school students;

(C) principally equipped for propulsion by sail, even if the vessel has an auxiliary means of propulsion; and

(D) owned or demise chartered, and operated by an organization described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)(3)) and exempt from tax under section 501(a) of that Code, or by a State or political subdivision of a State, during times that the vessel is operated by the organization, State, or political subdivision only for sailing instruction.

(31) “scientific personnel” means individuals on board an oceanographic research vessel only to engage in scientific research, or to instruct or receive instruction in oceanography or limnology.

(32) “seagoing barge” means a non-self-propelled vessel of at least 100 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title making voyages beyond the Boundary Line.

(33) “seagoing motor vessel” means a motor vessel of at least 300 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title making voyages beyond the Boundary Line.

(34) “Secretary” means the Secretary of the department in which the Coast Guard is operating.

(35) “small passenger vessel” means a wing-in-ground craft, regardless of tonnage, carrying at least one passenger for hire, and a vessel of less than 100 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title—

(A) carrying more than 6 passengers, including at least one passenger for hire;

(B) that is chartered with the crew provided or specified by the owner or the owner’s representative and carrying more than 6 passengers;

(C) that is chartered with no crew provided or specified by the owner or the owner’s representative and carrying more than 12 passengers;

(D) that is a submersible vessel carrying at least one passenger for hire; or

(E) that is a ferry carrying more than 6 passengers.

(36) [repealed]

(37) “steam vessel” means a vessel propelled in whole or in part by steam, except a recreational vessel of not more than 40 feet in length.

(37a) “submersible vessel” means a vessel that is capable of operating below the surface of the water.

(38) “tanker” means a self-propelled tank vessel constructed or adapted primarily to carry oil or hazardous material in bulk in the cargo spaces.

(39) “tank vessel” means a vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue, and that—

(A) is a vessel of the United States;

(B) operates on the navigable waters of the United States; or

(C) transfers oil or hazardous material in a port or place subject to the jurisdiction of the United States.

(40) “towing vessel” means a commercial vessel engaged in or intending to engage in the service of pulling, pushing, or hauling along side, or any combination of pulling, pushing, or hauling along side.

(41) [repealed]

(42) “uninspected passenger vessel” means an uninspected vessel—

(A) of at least 100 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title—

(i) carrying not more than 12 passengers, including at least one passenger for hire; or

(ii) that is chartered with the crew provided or specified by the owner or the owner’s representative and carrying not more than 12 passengers; and

(B) of less than 100 gross tons as measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title—

(i) carrying not more than 6 passengers, including at least one passenger for hire; or

(ii) that is chartered with the crew provided or specified by the owner or the owner’s representative and carrying not more than 6 passengers.

(43) “uninspected vessel” means a vessel not subject to inspection under section 3301 of this title that is not a recreational vessel.

(44)–(46) [repealed]

(47) “vessel of war” means a vessel—

(A) belonging to the armed forces of a country;

(B) bearing the external marks distinguishing vessels of war of that country;

(C) under the command of an officer commissioned by the government of that country and whose name appears in the appropriate service list or its equivalent; and

(D) staffed by a crew under regular armed forces discipline.

(48) “wing-in-ground craft” means a vessel that is capable of operating completely above the surface of the water on a dynamic air cushion created by aerodynamic lift due to the ground effect between the vessel and the water’s surface.

## SUBTITLE V. MERCHANT MARINE

## PART B. MERCHANT MARINE SERVICE

## CHAPTER 515. STATE MARITIME ACADEMY SUPPORT PROGRAM

**§ 51509. Student incentive payment agreements**

(a) GENERAL AUTHORITY.—If a State maritime academy has an agreement with the Secretary of Transportation under section 51505 of this title, the Secretary may make an agreement with a student at the academy who is a citizen of the United States to make student incentive payments **[to the individual.]** *to the individual or the academy, as determined by the Secretary.* An agreement with a student may not be effective for more than 4 academic years. The Secretary shall allocate payments under this section among the various State maritime academies in an equitable manner.

(b) PAYMENTS.—Payments under an agreement under this section shall be equal to **[\$4,000]** *\$8,000* each academic year and be paid, **[as prescribed by the Secretary,** while the individual is attending the academy.] *subject to such conditions as may be prescribed by the Secretary.* The payments shall be used for uniforms, tuition, books, and subsistence.

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

*(c) MIDSHIPMAN AND ENLISTED RESERVE STATUS.—Each agreement entered into under this section shall require the individual to accept midshipman and enlisted reserve status in the United States Navy Reserve (including the Merchant Marine Reserve) or the United States Coast Guard Reserve before any payments are made under the agreement.*

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

(1) complete the course of instruction at the academy the individual is attending;

(2) take the examination for a license as an officer in the merchant marine of the United States before graduation from the academy and fulfill the requirements for such a license within 3 months after graduation from the academy;

(3) maintain a valid license as an officer in the merchant marine of the United States for at least 6 years after graduation from the academy, accompanied by the appropriate national and international endorsements and certification required by the Coast Guard for service aboard vessels on domestic and international voyages;

(4) accept, if tendered, an appointment as a commissioned officer in the Navy Reserve (including the Merchant Marine Reserve, 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;

(5) serve the foreign and domestic commerce and the national defense of the United States for at least 3 years after graduation from the academy—

(A) as a merchant marine officer on a documented vessel or a vessel owned and operated by the United States Government or by a State;

(B) as an employee in a United States maritime-related industry, profession, or marine science (as determined by the Secretary), if the Secretary determines that service under subparagraph (A) is not available to the individual;

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

(D) by a combination of the service alternatives referred to in subparagraphs (A)-(C); and

(6) report to the Secretary on compliance with this subsection.

(e) FAILURE TO COMPLETE COURSE OF INSTRUCTION.—

(1) ACTIVE DUTY.—If the Secretary of Transportation determines that an individual who has accepted the payments described in subsection (b) for a minimum of 2 academic years has failed to fulfill the part of the agreement described in subsection (d)(1), the individual may be ordered by the Secretary of Defense to serve on active duty in the armed forces of the United States for a period of not more than 2 years. In cases of hardship as determined by the Secretary of Transportation, the Secretary of Transportation may waive this paragraph in whole or in part.

(2) RECOVERY OF COST.—If the Secretary of Defense is unable or unwilling to order an individual to serve on active duty under paragraph (1), or if the Secretary of Transportation determines that reimbursement of the cost of education provided would better serve the interests of the United States, the Secretary of Transportation may recover from the individual the amount of student incentive payments, plus interest and attorney fees. The Secretary may reduce the amount to be recovered to reflect partial performance of service obligations and other factors the Secretary determines merit a reduction.

(f) FAILURE TO CARRY OUT OTHER REQUIREMENTS.—

(1) ACTIVE DUTY.—If the Secretary of Transportation determines that an individual has failed to fulfill any part of the agreement described in subsection (d)(2)–(6), the individual may be ordered to serve on active duty for a period of at least 2 years but not more than the unexpired period (as determined by the Secretary) of the service required by subsection (d)(5). The Secretary of Transportation, in consultation with the Secretary of Defense, shall determine in which service the individual shall serve. In cases of hardship as determined by the Secretary of Transportation, the Secretary of Transportation may waive this paragraph in whole or in part.

(2) RECOVERY OF COST.—If the Secretary of Defense is unable or unwilling to order an individual to serve on active duty

under paragraph (1), or if the Secretary of Transportation determines that reimbursement of the cost of education provided would better serve the interests of the United States, the Secretary of Transportation may recover from the individual the amount of student incentive payments, plus interest and attorney fees. The Secretary may reduce the amount to be recovered to reflect partial performance of service obligations and other factors the Secretary determines merit a reduction.

(g) **ACTIONS TO RECOVER COST.**—To aid in the recovery of the cost of education provided by the Government under a commitment agreement under this section, the Secretary of Transportation may—

- (1) request the Attorney General to bring a civil action against the individual; and
- (2) make use of the Federal debt collection procedures in chapter 176 of title 28 or other applicable administrative remedies.

SUBTITLE V. MERCHANT MARINE

PART C. FINANCIAL ASSISTANCE PROGRAMS

CHAPTER 539. WAR RISK INSURANCE

**§ 53912. Expiration date**

The authority of the Secretary of Transportation to provide insurance and reinsurance under this chapter expires on [December 31, 2010.] *December 31, 2015.*

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 execute agreements with shipyards to provide assistance—*

- (1) *in the form of grants, loans, and loan guarantees to small shipyards for capital improvements; and*
- (2) *for maritime training programs to foster technical skills and operational productivity in communities whose economies are related to or dependent upon 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;*

(B) *projects that would be effective in fostering efficiency, competitive operations, and quality ship construction, repair, and reconfiguration; and*

(C) *projects that would be effective in fostering employee skills and enhancing productivity; and*

(2) *make grants within 120 days after the date of enactment of the appropriations Act for the fiscal year concerned.*

(c) **USE OF FUNDS.**—



(1) *IN GENERAL.*—Assistance provided under this section may be used—

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

(B) to provide training for workers in communities whose economies are related to the maritime industry; and

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

(2) *ADMINISTRATIVE COSTS.*—Not more than 2 percent of amounts made available to carry out the program may be used for the necessary costs of grant administration.

(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)(1)(C).

(e) *MATCHING REQUIREMENTS; ALLOCATION.*—

(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) *EXCEPTION.*—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).

(3) *ALLOCATION OF FUNDS.*—The Administrator may not award more than 25 percent of the funds appropriated to carry out this section for any fiscal year to any small shipyard in one geographic location that has more than 600 employees.

(f) *APPLICATIONS.*—

(1) *IN GENERAL.*—To be eligible for assistance under this section, an applicant shall submit an application, in such form, and containing such information and assurances as the Administrator may require, within 60 days after the date of enactment of the appropriations Act for the fiscal year concerned.

(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 facility in one geographic location that does not have more than 1,200 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 improvements.”*

#### PART D. PROMOTIONAL PROGRAMS

##### CHAPTER 553. PASSENGER AND CARGO PREFERENCES

###### SUBCHAPTER I. GENERAL

#### **§ 55305. Cargoes procured, furnished, or financed by the United States Government**

(a) *DEFINITION.*—*In this section, the term ‘privately-owned commercial vessel of the United States’ does not include a vessel that, after September 21, 1961, was built or rebuilt outside the United States or documented under the laws of a foreign country, until the vessel has been documented under the laws of the United States for at least 3 years.*

(b) *MINIMUM TONNAGE.*—*When the United States Government procures, contracts for, or otherwise obtains for its own account, or furnishes to or for the account of a foreign [country] country, organization, or persons without provision for reimbursement, any equipment, materials, or [commodities,] commodities, or provides financing in any way with Federal funds for the account of any persons unless otherwise exempted, within or without the United States, or advances funds or credits, or guarantees the convertibility of foreign currencies in connection with the furnishing or obtaining of the equipment, materials, or commodities, the appropriate agencies shall take steps necessary and practicable to ensure that at least 50 percent of the gross tonnage of the equipment, materials, or commodities (computed separately for dry bulk carriers, dry cargo liners, and tankers) which may be transported on ocean vessels is transported on privately-owned commercial vessels of the United States, to the extent those vessels are available at fair and reasonable rates for commercial vessels of the United States, in a manner that will ensure a fair and reasonable participation of com-*

mercial vessels of the United States in those cargoes by geographic areas.

(c) WAIVERS.—The President, the Secretary of Defense, or Congress (by concurrent resolution or otherwise) may waive this section temporarily by—

- (1) declaring the existence of an emergency justifying a waiver; and
- (2) notifying the appropriate agencies of the waiver.

[(d) PROGRAMS OF OTHER AGENCIES.—An agency having responsibility under this section shall administer its programs with respect to this section under regulations prescribed by the Secretary of Transportation. The Secretary shall review the administration of those programs and report annually to Congress on their administration.]

(d) PROGRAMS OF OTHER AGENCIES.—

(1) *Each department or agency that has responsibility for a program under this section shall administer that program with respect to this section under regulations and guidance issued by the Secretary of Transportation. The Secretary, after consulting with the department or agency or organization or person involved, shall have the sole responsibility for determining if a program is subject to the requirements of this section.*

(2) *The Secretary—*

*(A) shall conduct an annual review of the administration of programs determined pursuant to paragraph (1) as subject to the requirements of this section;*

*(B) may direct agencies to require the transportation on United States-flagged vessels of cargo shipments not otherwise subject to this section in equivalent amounts to cargo determined to have been shipped on foreign carriers in violation of this section;*

*(C) may impose on any person that violates this section, or a regulation prescribed under this section, a civil penalty of not more than \$25,000 for each violation willfully and knowingly committed, with each day of a continuing violation following the date of shipment to be a separate violation; and*

*(D) may take other measures as appropriate under the Federal Acquisition Regulations issued pursuant to section 25(c)(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(c)(1) or contract with respect to each violation.*

#### SUBCHAPTER II. EXPORT TRANSPORTATION OF AGRICULTURAL COMMODITIES

### § 55314. **Transportation requirements for certain exports sponsored by the Secretary of Agriculture**

(a) MINIMUM TONNAGE.—

(1) IN GENERAL.—In addition to the requirement under section 55305 of this title for the transportation of a percentage of gross tonnage on commercial vessels of the United States, 25 percent of the gross tonnage of agricultural commodities or their products specified in subsection (b) shall be transported each [calendar] fiscal year on commercial vessels of the United States that—

(A) are necessary for national security; and

(B) if more than 25 years old, were rebuilt within the last 5 years and certified by the Secretary of Transportation as having a useful life of at least 5 years after that rebuilding.

(2) **[CALENDAR] FISCAL YEAR.**—To provide for effective and equitable administration of the cargo preference laws, the **[calendar] fiscal** year for the purpose of compliance with minimum percentage requirements is the 12-month period beginning October 1 of each year.

(b) **APPLICABLE EXPORT ACTIVITY.**—This section applies to export activity (except inspection or weighing activities, other activities carried out for health or safety, or technical assistance provided in the handling of commercial transactions) of the Secretary of Agriculture or the Commodity Credit Corporation—

(1) carried out under the Food for Peace Act (7 U.S.C. 1691 et seq.);

(2) carried out under section 416 of the Agricultural Act of 1949 (7 U.S.C. 1431);

(3) carried out under the Bill Emerson Humanitarian Trust Act (7 U.S.C. 1736f-1);

(4) under which agricultural commodities or their products are—

(A) donated through foreign governments or private or public agencies, including intergovernmental organizations; or

(B) sold for foreign currencies or for dollars on credit terms of more than 10 years;

(5) under which agricultural commodities or their products are made available for emergency food relief at less than prevailing world market prices;

(6) under which a cash grant is made directly or through an intermediary to a foreign purchaser to enable the purchaser to obtain United States agricultural commodities or their products in an amount greater than the difference between the prevailing world market price and the United States market price, free along side vessel at a United States port; or

(7) under which agricultural commodities owned or controlled by or under loan from the Corporation are exchanged or bartered for materials, goods, equipment, or services produced in foreign countries, except export activities described in section 55313(5) of this title.

(c) **ADDITIONAL REQUIREMENTS.**—

(1) **APPLICATION OF SECTION 55305.**—The requirement for transportation on vessels of the United States under subsection (a) is subject to the same terms and conditions as provided in section 55305 of this title.

(2) **ALLOCATION OF COMMODITIES.**—Subject to paragraph (3), in carrying out this section and section 55305 of this title, the Corporation shall take steps necessary and practicable, and consistent with this section and section 55305, without detriment to any port range to allocate, on the principle of lowest landed cost without regard to the country of registry of the vessel, 25 percent of the bagged, processed, or fortified commod-

ities provided under title II of the Food for Peace Act (7 U.S.C. 1721 et seq.).

(3) CALCULATIONS.—In carrying out paragraph (2), first there shall be calculated the allocation of 100 percent of the quantity to be procured on an overall lowest landed cost basis without regard to the country of registry of the vessel, and then there shall be allocated to the Great Lakes port range any cargoes for which it has the lowest landed cost under that calculation. The requirements for transportation on vessels of the United States under this section and section 55305 of this title do not apply to commodities allocated to the Great Lakes port range under paragraph (2). Commodities allocated to the Great Lakes port range under paragraph (2) may not be reallocated or diverted to another port range to meet those requirements to the extent that the total tonnage of commodities to which paragraph (2) applies that is furnished and transported from the Great Lakes port range is less than 25 percent of the total annual tonnage of the commodities furnished.

(4) AWARDED CONTRACTS.—In awarding a contract for the transportation by vessel of commodities from the Great Lakes port range pursuant to an export activity referred to in subsection (b), an agency—

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

(B) may not deny award of the contract to a person based on the type of vessel on which the transportation would be provided (including on the basis that the transportation would not be provided on a liner vessel, as that term is used in the Shipping Act of 1984, as in effect on November 14, 1995), if the person otherwise satisfies reasonable requirements for financial and operational integrity.

(5) NONAVAILABILITY OF VESSELS.—A determination of non-availability of vessels of the United States resulting from the application of this subsection may not reduce the gross tonnage of commodities required by this section and section 55305 of this title to be transported on vessels of the United States.

## LONGSHORE AND HARBOR WORKERS' COMPENSATION ACT

### SEC. 2. DEFINITIONS.

[33 U.S.C. 902]

When used in this Act—

(1) The term “person” means individual, partnership, corporation, or association.

(2) The term “injury” means accidental injury or death arising out of and in the course of employment, and such occupational disease or infection as arises naturally out of such employment or as naturally or unavoidably results from such accidental injury, and includes an injury caused by the willful act of a third person directed against an employee because of his employment.

(3) The term “employee” means any person engaged in maritime employment, including any longshoreman or other person

engaged in longshoring operations, and any harbor-worker including a ship repairman, shipbuilder, and ship-breaker, but such term does not include—

(A) individuals employed exclusively to perform office clerical, secretarial, security, or data processing work;

(B) individuals employed by a club, camp, recreational operation, restaurant, museum, or retail outlet;

(C) individuals employed by a marina and who are not engaged in construction, replacement, or expansion of such marina (except for routine maintenance);

(D) individuals who (i) are employed by suppliers, transporters, or vendors, (ii) are temporarily doing business on the premises of an employer described in paragraph (4), and (iii) are not engaged in work normally performed by employees of that employer under this Act;

(E) aquaculture workers;

**[(F) individuals employed to build, repair, or dismantle any recreational vessel under sixty-five feet in length;]**

*(F) individuals who—*

*(i) are employed to manufacture any recreational vessel under 165 feet in length; or*

*(ii) are employed to repair any recreational vessel or to dismantle any part of any recreational vessel in connection with repair of the vessel;*

(G) a master or member of a crew of any vessel; or

(H) any person engaged by a master to load or unload or repair any small vessel under eighteen tons net; if individuals described in clauses (A) through (F) are subject to coverage under a State workers' compensation law.

(4) The term “employer” means an employer any of whose employees are employed in maritime employment, in whole or in part, upon the navigable waters of the United States (including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel).

(5) The term “carrier” means any person or fund authorized under section 32 to insure under this Act and includes self-insurers.

(6) The term “Secretary” means the Secretary of Labor.

(7) The term “deputy commissioner” means the deputy commissioner having jurisdiction in respect of an injury or death.

(8) The term “State” includes a Territory and the District of Columbia.

(9) The term “United States” when used in a geographical sense means the several States and Territories and the District of Columbia, including the territorial waters thereof.

(10) “Disability” means incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment; but such term shall mean permanent impairment, determined (to the extent covered thereby) under the guides to the evaluation of permanent impairment promulgated and modified from time to time by the American Medical Association, in the case of an individual whose claim is described in section 10(d)(2).

(11) "Death" as a basis for a right to compensation means only death resulting from an injury.

(12) "Compensation" means the money allowance payable to an employee or to his dependents as provided for in this Act, and includes funeral benefits provided therein.

(13) The term "wages" means the money rate at which the service rendered by an employee is compensated by an employer under the contract of hiring in force at the time of the injury, including the reasonable value of any advantage which is received from the employer and included for purposes of any withholding of tax under subtitle C of the Internal Revenue Code of 1954 (relating to employment taxes). The term wages does not include fringe benefits, including (but not limited to) employer payments for or contributions to a retirement, pension, health and welfare, life insurance, training, social security or other employee or dependent benefit plan for the employee's or dependent's benefit, or any other employee's dependent entitlement.

(14) "Child" shall include a posthumous child, a child legally adopted prior to the injury of the employee, a child in relation to whom the deceased employee stood in loco parentis for at least one year prior to the time of injury, and a stepchild or acknowledged illegitimate child dependent upon the deceased, but does not include married children unless wholly dependent on him. "Grandchild" means a child as above defined of a child as above defined. "Brother" and "sister" include stepbrothers and stepsisters, half brothers and half sisters, and brothers and sisters by adoption, but does not include married brothers nor married sisters unless wholly dependent on the employee. "Child", "grandchild", "brother", and "sister" include only a person who is under eighteen years of age, or who, though eighteen years of age or over, is (1) wholly dependent upon the employee and incapable of self-support by reason of mental or physical disability, or (2) a student as defined in paragraph (19) of this section.

(15) The term "parent" includes step-parents and parents by adoption, parents-in-law, and any person who for more than three years prior to the death of the deceased employee stood in the place of a parent to him, if dependent on the injured employee.

(16) The terms "widow or widower" includes only the decedent's wife or husband living with or dependent for support upon him or her at the time of his or her death; or living apart for justifiable cause or by reason of his or her desertion at such time.

(17) The terms "adoption" or "adopted" mean legal adoption prior to the time of the injury.

(18) The term "student" means a person regularly pursuing a full-time course of study or training at an institution which is—

(A) a school or college or university operated or directly supported by the United States, or by any State or local government or political subdivision thereof,

(B) a school or college or university which has been accredited by a State or by a State recognized or nationally recognized accrediting agency or body,

(C) a school or college or university not so accredited but whose credits are accepted, on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited, or

(D) an additional type of educational or training institution as defined by the Secretary, but not after he reaches the age of twenty-three or has completed four years of education beyond the high school level, except that, where his twenty-third birthday occurs during a semester or other enrollment period, he shall continue to be considered a student until the end of such semester or other enrollment period. A child shall not be deemed to have ceased to be a student during any interim between school years if the interim does not exceed five months and if he shows to the satisfaction of the Secretary that he has a bona fide intention of continuing to pursue a full-time course of education or training during the semester or other enrollment period immediately following the interim or during periods of reasonable duration during which, in the judgment of the Secretary, he is prevented by factors beyond his control from pursuing his education. A child shall not be deemed to be a student under this Act during a period of service in the Armed Forces of the United States.

(19) The term "national average weekly wage" means the national average weekly earnings of production or nonsupervisory workers on private nonagricultural payrolls.

(20) The term "Board" shall mean the Benefits Review Board.

(21) Unless the context requires otherwise, the term "vessel" means any vessel upon which or in connection with which any person entitled to benefits under this Act suffers injury or death arising out of or in the course of his employment, and said vessel's owner, owner pro hac vice, agent, operator, charter or bare boat charterer, master, officer, or crew member.

(22) The singular includes the plural and the masculine includes the feminine and neuter.