SHIPPING ACT, 1916

SEC. 1. DEFINITIONS (46 App. U.S.C. 801 (1999)).

When used in this Act:

The term "common carrier by water in interstate commerce" means a common carrier engaged in the transportation by water of passengers or property on the high seas or the Great Lakes on regular routes from port to port between one State, Territory, District, or possession of the United States and any other State, Territory, District, or possession of the United States, or between places in the same Territory, District, or possession.

The term "other person subject to this Act" means any person not included in the term "common carrier by water in interstate commerce" carrying on the business of forwarding or furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier by water in interstate commerce.

The term "person" includes corporations, partnerships, and associations, existing under or authorized by the laws of the United States, or any State, Territory, District, or possession thereof, or of any foreign country.

The term "vessel" includes all water craft and other artificial contrivances of whatever description and at whatever stage of construction, whether on the stocks or launched, which are used or are capable of being or are intended to be used as a means of transportation on water.

The term "documented under the laws of the United States," means "registered, enrolled, or licensed under the laws of the United States."

The term "carrying on the business of forwarding" means the dispatching of shipments by any person on behalf of others, by oceangoing common carriers in commerce between the United States and its Territories or possessions, or between such Territories and possessions, and handling the formalities incident to such shipments.

The term "maritime labor agreement" means any collective bargaining agreement between an employer subject to this Act, or group of such employers and a labor organization representing employees in the maritime or stevedoring industry, or any agreement preparatory to such a collective bargaining agreement among members of a multiemployer bargaining group, or any agreement specifically implementing provisions of such a collective bargaining agreement or providing for the formation, financing, or administration of a multiemployer bargaining group.

SEC. 2 (a)–(c). CORPORATION, PARTNERSHIP, OR ASSOCIATION AS CITIZEN[1] (46 App. U.S.C. 802 (1999)).

(a) **Ownership of Controlling Interest.** Within the meaning of this Act no corporation, partnership, or association shall be deemed a citizen of the United States unless the controlling interest therein is owned by citizens of the United States, and, in the case of a corporation, unless its chief executive officer, by whatever title, and the chairman of its board of directors are citizens of the United States and unless no more of its directors than a minority of the number necessary to constitute a quorum are noncitizens and the corporation itself is organized under the laws of the United States or of a State, Territory, District, or possession thereof, but in the case of a corporation, association, or partnership operating any vessel in the coastwise trade the amount of interest required to be owned by citizens of the United States shall be 75 per centum.

(b) **Determination of Controlling Interest.** The controlling interest in a corporation shall not be deemed to be owned by citizens of the United States (a) if the title to a majority of the stock thereof is not vested in such citizens free from any trust or fiduciary obligation in favor of any person not a citizen of the United States; or (b) if the majority of the voting power in such corporation is not vested in citizens of the United States; or (c) if through any contract or understanding it is so arranged that the majority of the voting power may be exercised, directly or indirectly, in behalf of any person who is not a citizen of the United States; or, (d) if by any other means whatsoever control of the corporation is conferred upon or permitted to be exercised by any person who is not a citizen of the United States.

(c) **Determination of Seventy-five Per Centum of Interest.** Seventy-five per centum of the interest in a corporation shall not be deemed to be owned by citizens of the United States (a) if the title to 75 per centum of its stock is not vested in such citizens free from any trust or fiduciary obligation in favor of any person not a citizen of the United States; or (b) if 75 per centum of the voting power in such corporation is not vested in citizens of the United States; or (c) if, through any contract or understanding, it is so arranged that more than 25 per centum of the voting power in such corporation may be exercised, directly or indirectly, in behalf of any person who is not a citizen of the United States;

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[1] Note provisions of law at the end of Section 2 of the Shipping Act, 1916, concerning recent changes to the U.S. vessel citizenshp requirements for certain purposes. Also note that both 46 U.S.C. 12106(d)(2) and 46 U.S.C. 12106(e)(4), pages 414, 415, *infra*, provide that for the purpose of Section 2 of the Shipping Act, 1916, a vessel meeting the requirements of those subsections shall be deemed to be owned exclusively by citizens of the United States.

or (d) if by any other means whatsoever control of any interest in the corporation in excess of 25 per centum is conferred upon or permitted to be exercised by any person who is not a citizen of the United States.

SEC. 2 (d). APPLICABILITY TO RECEIVERS AND TRUSTEES (46 App. U.S.C. 803 (1999)).

The provisions of this Act shall apply to receivers and trustees of all persons to whom the Act applies, and to the successors or assignees of such persons.

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PROVISIONS THAT AFFECT SECTION 2 CITIZENSHIP REQUIREMENTS

COASTWISE ENDORSEMENT. Section 1113(d) of Public Law 104-324, approved October 19, 1996 (110 STAT. 3971), added a subsection (e) to **46 U.S.C. 12106. Coastwise Endorsement,** as follows:

(e)(1) A certificate of documentation for a vessel may be endorsed with a coastwise endorsement if—

(A) the vessel is eligible for documentation;

(B) the person that owns the vessel, a parent entity of that person, or a subsidiary of a parent entity of that person, is primarily engaged in leasing or other financing transactions;

(C) the vessel is under a demise charter to a person that certifies to the Secretary that the person is a citizen of the United States for engaging in the coastwise trade under section 2 of the Shipping Act, 1916;

(D) the demise charter is for a period of at least 3 years or a shorter period as may be prescribed by the Secretary; and

(E) the vessel is otherwise eligible for documentation under this section.

(2) The demise charter and any amendments to that charter shall be filed with the certificate required by this subsection, or within 10 days following the filing of an amendment to the charter, and such charter and amendments shall be made available to the public.

(3) Upon termination by a demise charterer required under paragraph (1)(C), the coastwise endorsement of the vessel may, in the sole discretion of the Secretary, be continued after the termination for default of the demise charterer for a period not to exceed 6 months on such terms and conditions as the Secretary may prescribe.

(4) For purposes of section 2 of the Shipping Act, 1916, and section 12102(a) of this title, a vessel meeting the criteria of this subsection is deemed to be owned exclusively by citizens of the United States.

TRUST CHARTERS/INDIRECT VESSEL OWNERS. Section 1136(c) and (d) of Public Law 104-324, approved October 19, 1996 (110 STAT. 3987) provide:

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

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

(2)(A) the vessel—

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

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

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

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

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

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

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

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

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CONTINUATION OF THE SHIPPING ACT, 1916.

SEC. 9. REGISTRATION, ENROLLMENT, AND LICENSING OF VESSELS PURCHASED, CHARTERED, OR LEASED; REGULATIONS; COASTWISE TRADE. (46 App. U.S.C. 808 (1999)).

(b) Every vessel purchased, chartered, or leased from the Secretary of Transportation shall, unless otherwise authorized by the Secretary of Transportation, be operated only under such registry or enrollment and license. Such vessels while employed solely as merchant vessels shall be subject to all laws, regulations, and liabilities governing merchant vessels, whether the United States be interested therein as owner, in whole or in part, or hold any mortgage, lien, or other interest therein.

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(c)[2] Except as provided in section 611 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1181), and sections 31322(a)(1)(D) and 12106(e) of title 46, United States Code, a person may not, without the approval of the Secretary of Transportation—

(c)[3] Except as provided in section 611 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1181), and sections 12106(e), 31322(a)(1)(D) and 31328 of title 46, United States Code, a person may not, without the approval of the Secretary of Transportation—

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(1) sell, lease, charter, deliver, or in any manner transfer, or agree to sell, lease, charter, deliver, or in any manner transfer, to a person not a citizen of the United States, any interest in or control of a documented vessel (except in a vessel that has been operated only as a fishing vessel, fish processing vessel, or fish tender vessel (as defined in section 2101 of title 46, United States Code) or in a vessel that has been operated only for pleasure) owned by a citizen of the United States or the last documentation of which was under the laws of the United States; or

(2) place a documented vessel, or a vessel the last documentation of which was under the laws of the United States, under foreign registry or operate that vessel under the authority of a foreign country.

(d)(1) Any charter, sale, or transfer of a vessel, or interest in or control of that vessel, contrary to this section is void.

(2) A person that knowingly charters, sells, or transfers a vessel, or interest in or control of that vessel, contrary to this section shall be fined under title 18, United States Code, imprisoned for not more than 5 years, or both.

(3) A documented vessel may be seized by, and forfeited to, the United States Government if—

(A) the vessel is placed under foreign registry or operated under the authority of a foreign country contrary to this section; or

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[2] As amended by section 1113(c)(1)(A) of Public Law 104-324, approved October 19, 1996 (110 STAT. 3970).

[3] As amended by section 1113(e) of Public Law 104-324, approved October 19, 1996 (110 STAT. 3971).

(B) a person knowingly charters, sells, or transfers a vessel, or interest or control in that vessel, contrary to this section.

(4) A person that charters, sells, or transfers a vessel, or an interest in or control of a vessel, in violation of this section is liable to the United States Government for a civil penalty of not more than $ 10,000 for each violation.

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(e)[4] Notwithstanding subsection (c)(2), the Merchant Marine Act, 1936, or any contract entered into with the Secretary of Transportation under that Act, a vessel may be placed under a foreign registry, without approval of the Secretary, if—

(1)(A) the Secretary determines that at least one replacement vessel of a capacity that is equivalent or greater, as measured by deadweight tons, gross tons, or container equivalent units, as appropriate, is documented under chapter 121 of title 46, United States Code, by the owner of the vessel placed under the foreign registry; and

(B) the replacement vessel is not more than 10 years of age on the date of that documentation;

(2)(A) an application for an operating agreement under subtitle B of title VI of the Merchant Marine Act, 1936 has been filed with respect to a vessel which is eligible to be included in the Maritime Security Fleet under section 651(b)(1) of that Act; and

(B) the Secretary has not awarded an operating agreement with respect to that vessel within 90 days after the date of that application;

(3) a contract covering the vessel under subtitle A of title VI of the Merchant Marine Act, 1936 has expired, and that vessel is more than 15 years of age on the date the contract expires; or

(4) an operating agreement covering the vessel under subtitle B of title VI of the Merchant Marine Act, 1936 has expired.

(e)[5] To promote financing with respect to a vessel to be documented under chapter 121 of title 46, United States Code. the Secretary may grant approval under subsection (c) before the date the vessel is documented.

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SEC. 12. INVESTIGATIONS AS TO COST OF MERCHANT VESSELS (46 App. U.S.C. 811 (1999)). The Secretary of Transportation shall investigate the relative cost of building merchant vessels in the United States and in foreign maritime countries, and the

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[4] Subsection (e), as added by Section 6 of Public Law 104-329, approved October 8, 1996 (110 STAT. 3132).

[5] Subsection (e), as added by Section 1136(b) of Public Law 104-324, approved October 19, 1996 (110 STAT. 3987).

relative cost, advantages, and disadvantages of operating in the foreign trade vessels under United States registry and under foreign registry. The Secretary shall examine the rules under which vessels are constructed abroad and in the United States, and the methods of classifying and rating same, and the Secretary shall examine into the subject of marine insurance, the number of companies in the United States, domestic and foreign, engaging in marine insurance, the extent of the insurance on hulls and cargoes placed or written in the United States, and the extent of reinsurance of American maritime risks in foreign companies, and ascertain what steps may be necessary to develop an ample marine insurance system as an aid in the development of an American merchant marine. The Secretary shall examine the navigation laws of the United States and the rules and regulations thereunder, and make such recommendations to the Congress as the Secretary deems proper for the amendment, improvement, and revision of such laws, and for the development of the American merchant marine. The Secretary shall investigate the legal status of mortgage loans on vessel property, with a view to means of improving the security of such loans and of encouraging investment in American shipping.

The Secretary shall, on or before the first day of December in each year, make a report to the Congress, which shall include his recommendations and the results of his investigations, a summary of his transactions, and a statement of all expenditures and receipts under this Act, and of the operations of any corporation in which the United States is a stockholder, and the names and compensation of all persons employed by the Secretary of Transportation.

SEC. 34. PARTIAL INVALIDITY NOT AFFECTING REMAINDER. (46 App. U.S.C. 833 (1999)). If any provisions of this Act, or the application of such provision to certain circumstances, is held unconstitutional, the remainder of the Act, and the application of such provision to circumstances other than those as to which it is held unconstitutional, shall not be affected thereby.

SEC. 36. REFUSAL OF CLEARANCE TO VESSEL REFUSING TO ACCEPT FREIGHT (46 App. U.S.C. 834 (1999)). The Secretary of the Treasury is authorized to refuse a clearance to any vessel or other vehicle laden with merchandise destined for a foreign or domestic port whenever he shall have satisfactory reason to believe that the master, owner, or other officer of such vessel or other vehicle refuses or declines to accept or receive freight or cargo in good condition tendered for such port of destination or for some intermediate port of call, together with the proper freight or transportation charges therefor, by any citizen of the United States, unless the same is fully laden and

has no space accommodations for the freight or cargo so tendered, due regard being had for the proper loading of such vessel or vehicle, or unless such freight or cargo consists of merchandise for which such vessel or vehicle is not adaptable.

SEC. 37. RESTRICTIONS ON TRANSFERS OF SHIPPING FACILITIES DURING WAR OR NATIONAL EMERGENCY. (46 App. U.S.C. 835 (1999)). When the United States is at war or during any national emergency, the existence of which is declared by proclamation of the President, it shall be unlawful, without first obtaining the approval of the Secretary of Transportation:

(a) To transfer to or place under any foreign registry or flag any vessel owned in whole or in part by any person a citizen of the United States or by a corporation organized under the laws of the United States, or of any State, Territory, District, or possession thereof; or

(b) To sell, mortgage, lease, charter, deliver, or in any manner transfer, or agree to sell, mortgage, lease, charter, deliver, or in any manner transfer, to any person not a citizen of the United States, (1) any such vessel or any interest therein, or (2) any vessel documented under the laws of the United States, or any interest therein, or (3) any shipyard, dry dock, ship-building or ship-repairing plant or facilities, or any interest therein; or

(c) To issue, transfer, or assign a bond, note, or other evidence of indebtedness which is secured by a mortgage of a vessel to a trustee or by an assignment to a trustee of the owner's right, title, or interest in a vessel under construction, or by a mortgage to a trustee on a shipyard, drydock, or ship-building or ship-repairing plant or facilities, to a person not a citizen of the United States, unless the trustee or a substitute trustee of such mortgage or assignment is approved by the Secretary of Transportation: Provided, however, That the Secretary of Transportation shall grant his approval if such trustee or a substitute trustee is a bank or trust company which (1) is organized as a corporation, and is doing business, under the laws of the United States or any State thereof, (2) is authorized under such laws to exercise corporate trust powers, (3) is a citizen of the United States, (4) is subject to supervision or examination by Federal or State authority, and (5) has a combined capital and surplus (as set forth in its most recent published report of condition) of at least $3,000,000; or for the trustee or substitute trustee approved by the Secretary of Transportation to operate said vessel under the mortgage or assignment: Provided further, That if such trustee or a substitute trustee at any time ceases to meet the foregoing qualifications, the Secretary of Transportation shall disapprove such trustee or substitute trustee, and after such disapproval the transfer or assignment of such bond, note, or

other evidence of indebtedness to a person not a citizen of the United States, without the approval of the Secretary of Transportation, shall be unlawful; or

(d) To enter into any contract, agreement, or understanding to construct a vessel within the United States for or to be delivered to any person not a citizen of the United States, without expressly stipulating that such construction shall not begin until after the war or emergency proclaimed by the President has ended; or

(e) To make any agreement or effect any understanding whereby there is vested in or for the benefit of any person not a citizen of the United States, the controlling interest or a majority of the voting power in a corporation which is organized under the laws of the United States, or of any State, Territory, District, or possession thereof, and which owns any vessel, shipyard, dry dock, or ship-building or ship-repairing plant or facilities; or

(f) To cause or procure any vessel constructed in whole or in part within the United States, which has never cleared for any foreign port, to depart from a port of the United States before it has been documented under the laws of the United States.

Whoever violates, or attempts or conspires to violate, any of the provisions of this section shall be guilty of a misdemeanor, punishable by a fine of not more than $5,000 or by imprisonment for not more than five years, or both.

If a bond, note, or other evidence of indebtedness which is secured by a mortgage of a vessel to a trustee or by an assignment to a trustee of the owner's right, title, or interest in a vessel under construction, or by a mortgage to a trustee on a shipyard, drydock or ship-building or ship-repairing plant or facilities, is issued, transferred, or assigned to a person not a citizen of the United States in violation of subsection (c) of this section, the issuance, transfer or assignment shall be void.

Any vessel, shipyard, dry dock, ship-building or ship-repairing plant or facilities, or interest therein, sold, mortgaged, leased, chartered, delivered, transferred, or documented, or agreed to be sold, mortgaged, leased, chartered, delivered, transferred, or documented, in violation of any of the provisions of this section, and any stocks, bonds, or other securities sold or transferred, or agreed to be sold or transferred, in violation of any of such provisions, or any vessel departing in violation of the provisions of subdivision (e) [f], shall be forfeited to the United States.

Any such sale, mortgage, lease, charter, delivery, transfer, documentation, or agreement therefor shall be void, whether made within or without the United States, and any consideration paid therefor or deposited in connection therewith shall be recoverable at the suit of the person who has paid or deposited the same, or of his successors or assigns,

after the tender of such vessel, shipyard, dry dock, shipbuilding or ship-repairing plant or facilities, or interest therein, or of such stocks, bonds, or other securities, to the person entitled thereto, or after forfeiture thereof to the United States, unless the person to whom the consideration was paid, or in whose interest it was deposited, entered into the transaction in the honest belief that the person who paid or deposited such consideration was a citizen of the United States.

SEC. 38. FORFEITURE (46 App. U.S.C. 836 (1999)). All forfeitures incurred under the provisions of this Act may be prosecuted in the same court, and may be disposed of in the same manner, as forfeitures incurred for offenses against the law relating to the collection of duties, except that forfeitures may be remitted without seizure of the vessel.

SEC. 39. PRIMA FACIE EVIDENCE (46 App. U.S.C. 837 (1999)). In any action or proceeding under the provisions of this Act to enforce a forfeiture the conviction in a court of criminal jurisdiction of any person for a violation thereof with respect to the subject of the forfeiture shall constitute prima facie evidence of such violation against the person so convicted.

SEC. 41. APPROVALS BY SECRETARY (46 App. U.S.C. 839 (1999)). Whenever by said section nine or thirty-seven the approval of the Secretary of Transportation is required to render any act or transaction lawful, such approval may be accorded either absolutely or upon such conditions as the Secretary of Transportation prescribes. Whenever the approval of the Secretary of Transportation is accorded upon any condition a statement of such condition shall be entered upon his records and incorporated in the same document or paper which notifies the applicant of such approval. A violation of such condition so incorporated shall constitute a misdemeanor and shall be punishable by fine and imprisonment in the same manner, and shall subject the vessel, stocks, bonds, or other subject matter of the application conditionally approved to forfeiture in the same manner, as though the act conditionally approved had been done without the approval of the Secretary of Transportation, but the offense shall be deemed to have been committed at the time of the violation of the condition.

Whenever by this Act the approval of the Secretary of Transportation is required to render any act or transaction lawful, whoever knowingly makes any false statement of a material fact to the Secretary of Transportation, [or to any member thereof,] or to any officer, attorney, or agent [of the Department of Transportation] [thereof], for the purpose of securing such approval, shall be guilty of a misdemeanor and subject to a fine of not more than $ 5,000 or to imprisonment for not more than five years, or both.

SEC. 46. SHORT TITLE (46 App. U.S.C. 842 (1999)). This Act may be cited as "Shipping Act, 1916."