

104TH CONGRESS
1ST SESSION

H. R. 1350

To amend the Merchant Marine Act, 1936 to revitalize the United States-flag merchant marine, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 29, 1995

Mr. SPENCE (for himself, Mr. DELLUMS, and Mr. BATEMAN), (all by request) introduced the following bill; which was referred to the Committee on National Security

A BILL

To amend the Merchant Marine Act, 1936 to revitalize the United States-flag merchant marine, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Maritime Security Act
5 of 1995.”

6 **SEC. 2. AMENDMENTS TO THE MERCHANT MARINE ACT,**
7 **1936, AS AMENDED.**

8 (a) Title VI of the Merchant Marine Act, 1936, as
9 amended (46 App. U.S.C. 1171 et seq.), is amended by
10 deleting the heading of title VI, “OPERATING-DIF-

1 FERENTIAL SUBSIDY” and inserting a new heading
2 and subheading as follows:

3 “TITLE VI—OPERATING-DIFFERENTIAL
4 SUBSIDY AND MARITIME SECURITY PROGRAM
5 “Subpart A—Operating-Differential Subsidy”.

6 (b) Section 605(b) (46 App. U.S.C. 1175(b)) is
7 amended to read as follows:

8 “(b) No operating-differential subsidy shall be paid
9 for the operation of a vessel that is more than twenty-
10 five years of age, unless the Secretary of Transportation
11 has determined, before the enactment of the Maritime Se-
12 curity Act of 1995, that it is in the public interest to grant
13 such financial aid for the operation of such vessel. After
14 the date of enactment of the Maritime Security Act of
15 1995, the Secretary of Transportation shall have no au-
16 thority to grant additional operating-differential subsidy
17 under this subsection.”.

18 (c) Title VI of the Merchant Marine Act, 1936, as
19 amended (46 App. U.S.C. 1171 et seq.) is amended by
20 adding a new section 616 following section 615, to read
21 as follows:

22 “SEC. 616. (a)(1) The Secretary of Transportation
23 may authorize a contractor operating a liner vessel and
24 receiving an operating-differential subsidy under subpart
25 A of this title to construct, reconstruct, or acquire a liner

1 vessel of over five thousand deadweight tons worldwide to
2 replace a vessel that would reach the end of its
3 subsidizable life prior to the expiration of the contractor's
4 operating-differential subsidy contract. The replacement
5 vessel shall be documented under chapter 121 of subtitle
6 II of title 46, United States Code.

7 “(2) A replacement liner vessel shall not be eligible
8 for operating-differential subsidy pursuant to subpart A
9 of this title, and shall be limited to payments in the
10 amounts set forth in subpart B of this title until the exist-
11 ing contract pursuant to subpart A terminates according
12 to its terms.

13 “(b)(1) The Secretary of Transportation may author-
14 ize a contractor operating a bulk cargo vessel and receiv-
15 ing operating-differential subsidy under subpart A of this
16 title to construct, reconstruct, or acquire a bulk cargo ves-
17 sel of over five thousand deadweight tons worldwide to re-
18 place a vessel that would reach the end of its subsidizable
19 life prior to the expiration of the contractor's operating-
20 differential subsidy contract. The replacement vessel shall
21 be documented under chapter 121 of subtitle II of title
22 46, United States Code.

23 “(2) A replacement bulk cargo vessel shall continue
24 to receive an operating-differential subsidy under an exist-

1 ing contract pursuant to subpart A of this title until the
2 existing contract terminates according to its terms.

3 “(c) Liner vessels and bulk cargo vessels constructed
4 pursuant to subsections (a) and (b) of this section shall
5 be deemed to have been built in a domestic shipyard for
6 the purposes of section 610 of this Act: *Provided*, That
7 the provisions of section 607 of this Act shall not apply
8 to vessels constructed, reconstructed, or acquired pursuant
9 to subsections (a) and (b) of this section.

10 “(d) Any existing foreign-built liner vessel that is ac-
11 quired pursuant to subsection (a) of this section and docu-
12 mented under chapter 121 of subtitle II of title 46, United
13 States Code, shall be less than five years of age at the
14 time of such documentation.

15 “(e) Any existing foreign-built bulk cargo vessel that
16 is acquired pursuant to subsection (b) of this section and
17 documented under chapter 121 of subtitle II of title 46,
18 United States Code, shall be less than five years of age
19 at the time of such documentation.

20 “(f) No authority granted by the Secretary of Trans-
21 portation to construct, reconstruct, or acquire vessels pur-
22 suant to subsections (a) and (b) of this section may be
23 sold, assigned, conveyed, leased or otherwise transferred
24 to any other party, without the written consent of the Sec-

1 retary of Transportation pursuant to section 608 of this
2 title.”.

3 (d) Title VI of the Merchant Marine Act, 1936, as
4 amended (46 App. U.S.C. 1171 et seq.) is amended by
5 adding a new section 617 following the new section 616,
6 to read as follows:

7 “SEC. 617. (A) After the date of enactment of the
8 Maritime Security Act of 1995, the Secretary of Transpor-
9 tation shall not enter into any new contract for an operat-
10 ing-differential subsidy under subpart A of this title.

11 “(b) Notwithstanding any other provision of this Act,
12 any operating-differential subsidy contract in effect under
13 title VI on the day before the date of enactment of the
14 Maritime Security and Trade Act of 1995—

15 “(1) shall continue in effect and terminate as
16 set forth in the contract, unless voluntarily termi-
17 nated at an earlier date by the persons (other than
18 the United States Government) that are parties to
19 the contract; and

20 “(2) may not be renewed or extended.

21 “(c) After the date of enactment of the Maritime Se-
22 curity Act of 1995, an owner or operator of a vessel cov-
23 ered by an operating-differential subsidy contract under
24 subpart A of this title may operate such vessel in the for-

1 eign commerce of the United States without restriction,
2 notwithstanding any other provision of this Act.

3 “(d) With respect to a liner vessel—

4 “(1) whose operator receives operating-differen-
5 tial subsidy pursuant to a contract under this title,
6 which is in force on October 1, 1995, and if the Sec-
7 retary approves the replacement of such vessel with
8 a comparable vessel, or

9 “(2) covered by an operating agreement under
10 subpart B of this title, and if the Secretary approves
11 the replacement of such vessel with a comparable
12 vessel for inclusion in the fleet established under
13 subpart B of title VII—

14 such vessel may be transferred and registered under the
15 flag of an effective United States-controlled foreign flag,
16 notwithstanding any other provision of law: *Provided,*
17 That the vessel is available to be requisitioned by the Sec-
18 retary of Transportation pursuant to section 902 of this
19 Act (46 App. U.S.C. 1242).”.

20 (e) Title VI of the Merchant Marine Act, 1936, as
21 amended (46 App. U.S.C. 1171 et seq.) is amended by
22 adding a new subpart B to read as follows:

1 “Subpart B—Maritime Security Program

2 “ESTABLISHMENT OF FLEET

3 “SEC. 650. (a) The Secretary of Transportation shall
4 encourage the establishment of a fleet of active, militarily
5 useful, privately owned vessels to meet national defense
6 and other security requirements and maintain an Amer-
7 ican presence in international commercial shipping. The
8 fleet shall consist of privately owned, United States-flag
9 liner vessels for which there are in effect operating agree-
10 ments under this subpart.

11 “(b) A liner vessel may not be included in the fleet
12 unless:

13 “(1) It is operated by an ‘ocean common car-
14 rier’ as defined in section 3 of the Shipping Act of
15 1984 (46 App. U.S.C. 1702).

16 “(2) It is a vessel that is fifteen years of age
17 or less on the date an operating agreement is en-
18 tered into under section 651, unless the Secretary of
19 Transportation, in consultation with the Secretary of
20 Transportation, in consultation with the Secretary of
21 Defense, determines that it is in the national inter-
22 est to waive this requirement.

23 “(3) It is a vessel that is less than five years
24 of age at the time it is documented under chapter

1 121 of subtitle II of title 46, United States Code, if
2 it is foreign-built.

3 “(4) The Secretary of Transportation, after
4 consultation with the Secretary of Defense, deter-
5 mines that the vessel is necessary to maintain a
6 United States presence in international commercial
7 shipping or determines that the vessel is militarily
8 useful for meeting the sealift needs of the United
9 States with respect to national emergencies.

10 “(5) The owner or operator of the vessel is a
11 citizen of the United States as set forth in section
12 651.

13 “OPERATING AGREEMENTS

14 “SEC. 651. (a) The Secretary of Transportation shall
15 require, as a condition of including any vessel in the fleet,
16 that the owner or operator of the vessel enter into an oper-
17 ating agreement with the Secretary of Transportation pur-
18 suant to this section.

19 “(b) An operating agreement pursuant to this section
20 shall require that, during the period of the agreement—

21 “(1) each vessel covered by the operating agree-
22 ment—

23 “(A) shall be operated exclusively in the
24 foreign trade, and

1 “(B) shall not be operated in the coastwise
2 trade of the United States or in mixed domestic
3 and foreign trade; and

4 “(2) the owner or operator of a vessel covered
5 by the operating agreement shall have the vessel
6 documented under chapter 121 of subtitle II of title
7 46, United States Code, and shall maintain that
8 documentation.

9 “(c) An owner or operator of a vessel covered by an
10 operating agreement under this subpart may operate this
11 vessel in the foreign commerce of the United States with-
12 out restriction.

13 “(d)(1) The Secretary of Transportation is author-
14 ized to enter into multiyear operating agreements for the
15 period of fiscal year 1996 through fiscal year 2005, sub-
16 ject to the following conditions:

17 “(A) The total amount of all operating agree-
18 ments does not exceed \$1,000,000,000 for fiscal
19 years 1996 through 2005.

20 “(B) Funds need only be appropriated for the
21 first year of the agreements and for termination
22 costs, pursuant to section 3 of the Maritime Security
23 Act of 1995, at the time the operating agreements
24 are executed.

1 “(C) Funds for termination costs shall be held
2 in reserve, pursuant to section 3 of the Maritime Se-
3 curity Act of 1995.

4 “(D) Such operating agreements shall provide
5 that at no time will the Government’s total termi-
6 nation liability exceed amounts currently appro-
7 priated for the purpose of such agreements plus
8 amounts held in reserve for termination costs.

9 “(E) An operating agreement entered into pur-
10 suant to this section shall not be considered a pro-
11 curement contract for the purposes of Federal pro-
12 curement laws or regulations.

13 “(2) An operating agreement pursuant to this section
14 shall provide that the Secretary of Transportation pay to
15 the owner or operator of each liner vessel that is included
16 in the operating agreement, an amount per vessel per year
17 that does not exceed \$2,500,000, for fiscal years 1996
18 through 1998, and does not exceed \$2,000,000, for fiscal
19 years 1999 through 2005. The amount per year paid to
20 the owner or operator of a liner vessel under an operating
21 agreement pursuant to this section shall be paid at the
22 end of each month in equal installments.

23 “(e) In order to qualify for the annual payments
24 under this section, the owner or operator shall certify an-
25 nually, pursuant to regulations issued by the Secretary,

1 that each vessel covered by an operating agreement was
2 operated in a trade required by section 651(b)(1) for at
3 least three hundred and twenty days in a fiscal year, in-
4 cluding days during which the liner vessel is drydocked,
5 surveyed, inspected, or repaired.

6 “(f) Without regard to an operating agreement in ef-
7 fect with an owner or operator of a liner vessel under this
8 section, the Secretary of Transportation shall not make
9 any payment under this section for a vessel with respect
10 to any period in which the vessel is—

11 “(1) subject to an operating-differential subsidy
12 contract under subpart A of title VI of this Act;

13 “(2) not operated or maintained in accordance
14 with an operating agreement under this subpart; or

15 “(3) more than twenty-five years of age.

16 “(g) With respect to payments under this section for
17 a vessel covered by an operating agreement, the Secretary
18 of Transportation—

19 “(1) shall not reduce any payment for the oper-
20 ation of a vessel to carry military or other preference
21 cargoes under—

22 “(A) section 2631 of title 10, United
23 States Code; or

24 “(B) section 1241-1 of title 46, Appendix,
25 United States Code;

1 “(2) shall not make any payment for each day
2 that a vessel is engaged in transporting more than
3 five thousand tons of civilian bulk preference cargoes
4 pursuant to section 901(a), 901(b), or 901b of this
5 Act; and

6 “(3) shall reduce any payment for each day
7 that a vessel is engaged in transporting less than
8 five thousand tons of civilian bulk preference cargoes
9 pursuant to sections 901(a), 901(b), or 901b of this
10 Act, by an amount which bears the same ratio to the
11 amount otherwise payable as revenue for the car-
12 riage of preference cargo bears to the gross revenue
13 derived from the entire voyage.

14 “(h) The Secretary of Transportation shall enter into
15 operating agreements in the following order of priority—

16 “(1) liner vessel or vessels owned or operated by
17 a person that is a citizen of the United States under
18 section 2 of the Shipping Act, 1916; and then

19 “(2) liner vessel or vessels owned or operated by
20 a person that is eligible to document a vessel under
21 chapter 121 of subtitle II of title 46, United States
22 Code.

23 “(i) No authority granted by the Secretary of Trans-
24 portation to an owner or operator of a vessel covered by
25 an operating agreement under this subpart may be sold,

1 assigned, conveyed, leased or otherwise transferred to any
2 other party, without the written consent of the Secretary
3 of Transportation pursuant to the provisions of section
4 608 of this title.

5 “(j) Any authority granted by the Secretary of Trans-
6 portation to an owner or operator of a vessel covered by
7 an operating agreement under this subpart shall be used
8 by the holder of the operating agreement within one year
9 from the date such authority is granted for existing vessels
10 and within two years from the date such authority is
11 granted for newly constructed vessels, or the authority
12 shall revert to the Secretary of Transportation for such
13 disposition as determined appropriate.

14 “(k) An operating agreement entered into by the Sec-
15 retary of Transportation under this subpart shall be effec-
16 tive for a period of not more than ten years, and, under
17 any condition, terminate not later than September 30,
18 2005.

19 “(l) An operating agreement entered into by the Sec-
20 retary of Transportation under this subpart shall require
21 the owner or operator of a vessel covered by an operating
22 agreement under this subpart to enroll in an Emergency
23 Preparedness Program, pursuant to the requirements of
24 section 652, under such terms and conditions as the Sec-
25 retary may prescribe.

1 “NATIONAL SECURITY REQUIREMENTS

2 “SEC. 652. (a) On a request of the President during
3 time of war or national emergency or when decided by the
4 President to be necessary in the national interest, an
5 owner or operator of a vessel covered by an operating
6 agreement under this subpart shall make available com-
7 mercial transportation resources pursuant to an Emer-
8 gency Preparedness Program established by the Secretary
9 of Transportation and approved by the Secretary of De-
10 fense.

11 “(b) The commercial transportation resources to be
12 made available shall include vessels or capacity in vessels,
13 intermodal systems and equipment, terminal facilities, and
14 intermodal and management services, or any portion of
15 these resources, as the Secretary may determine to be nec-
16 essary.

17 “(c) The Secretary of Transportation shall not reduce
18 the amount of equal monthly installment payments under
19 section 651 to an owner or operator who makes commer-
20 cial transportation resources available pursuant to an
21 Emergency Preparedness Program under this section.

22 “(d) An owner or operator who makes a vessel avail-
23 able pursuant to this section shall be permitted to employ
24 a foreign-flag vessel in the foreign commerce of the United
25 States, without receiving additional compensation, as a re-

1 placement for a vessel covered by an operating agreement,
2 until a vessel used is redelivered.

3 “DOMESTIC NONCONTIGUOUS TRADE RESTRICTIONS

4 “SEC. 653. (a) PROHIBITION.—

5 “(1) IN GENERAL.—Except as provided in this
6 section, an owner or operator may not receive any
7 payment under this subpart—

8 “(A) if the owner or operator or a related
9 party with respect to the owner or operator, di-
10 rectly or indirectly owns, charters, or operates
11 a vessel engaged in the transportation of cargo
12 in a noncontiguous trade other than in accord-
13 ance with a waiver under subsection (b), (c), or
14 (d); or

15 “(B) if the owner or operator is authorized
16 to operate a vessel in noncontiguous trade
17 under such a waiver, and there is a—

18 “(i) material change in the domestic
19 ports served by the owner or operator from
20 the ports permitted to be served under the
21 waiver;

22 “(ii) material increase in the annual
23 number or the frequency of sailings by the
24 owner or operator from the number or fre-
25 quency permitted under the waiver; or

1 “(iii) material increase in the annual
2 volume of cargo carried or annual capacity
3 utilized by the owner or operator from the
4 annual volume of cargo or annual capacity
5 permitted under the waiver.

6 “(2) LIMITATIONS ON PROHIBITION.—Para-
7 graph (1) applies to an owner or operator only in
8 the years specified for payments under the operating
9 agreement entered into by the owner or operator.

10 “(b) GENERAL WAIVER AUTHORITY.—

11 “(1) IN GENERAL.—Except as provided in sub-
12 section (c), the Secretary may waive, in writing, the
13 application of subsection (a) to an owner or operator
14 pursuant to an application submitted in accordance
15 with this subsection, unless the Secretary finds
16 that—

17 “(A) the waiver would result in unfair
18 competition to any person that operates vessels
19 as a carrier of cargo in a service exclusively in
20 the noncontiguous trade for which the waiver is
21 applied;

22 “(B) subject to paragraph (6), existing
23 service in that noncontiguous trade is adequate;
24 or

1 “(C) the waiver will result in prejudice to
2 the objects or policy of this title or Act.

3 “(2) TERMS OF WAIVER.—Any waiver granted
4 by the Secretary under this subsection shall state—

5 “(A) the domestic ports permitted to be
6 served,

7 “(B) the annual number or frequency of
8 sailings that may be provided; and

9 “(C)(i) the annual volume of cargo per-
10 mitted,

11 “(ii) for containerized or trailer service, the
12 annual forty-foot equivalent unit shipboard con-
13 tainer and trailer or vehicle or general cargo ca-
14 pacity permitted, or

15 “(iii) for tug and barge service, the annual
16 barge house cubic foot capacity and the annual
17 barge deck general cargo capacity, or forty-foot
18 equivalent unit container, trailer, or vehicle ca-
19 pacity, permitted.

20 “(3) APPLICATIONS FOR WAIVERS.—An appli-
21 cation for a waiver under this subsection may be
22 submitted by an owner or operator and shall de-
23 scribe, as applicable, the nature and scope of—

24 “(A) the service proposed to be conducted
25 in a noncontiguous trade under the waiver; or

1 “(B) any proposed material change or in-
2 crease in a service in a noncontiguous trade
3 permitted under a previous waiver.

4 “(4) ACTION ON APPLICATION AND HEARING.—

5 “(A) NOTICE AND PROCEEDING.—Within
6 thirty days after receipt of an application for a
7 waiver under this subsection, the Secretary
8 shall—

9 “(i) publish a notice of the applica-
10 tion;

11 “(ii) begin a proceeding on the appli-
12 cation section 554 of title 5, United States
13 Code, to receive—

14 “(I) evidence of the nature,
15 quantity, and quality of the existing
16 service in the noncontiguous trade for
17 which the waiver is applied;

18 “(II) a description of the pro-
19 posed service or proposed material
20 change or increase in a previously per-
21 mitted service;

22 “(III) the projected effect of the
23 proposed service or proposed material
24 change or increase in existing service;
25 and

1 “(IV) recommendations on condi-
2 tions that should be contained in any
3 waiver for the proposed service or ma-
4 terial change or increase.

5 “(B) INTERVENTION.—An applicant for a
6 waiver under this subsection, and any person
7 that operates cargo vessels in the noncontiguous
8 trade for which a waiver is applied and that has
9 any interest in the application, may intervene in
10 the proceedings on the application.

11 “(C) HEARING.—Before deciding whether
12 to grant a waiver under this subsection, the
13 Secretary shall hold a public hearing in an ex-
14 peditious manner, reasonable notice of which
15 shall be published.

16 “(5) DECISION.—The Secretary shall complete
17 all proceedings and hearings on an application under
18 this subsection and issue a decision on the record
19 within ninety days after receipt of the final briefs
20 submitted for the record.

21 “(6) LIMITATION ON CONSIDERATION OF CER-
22 TAIN EXISTING SERVICE.—

23 “(A) LIMITATION.—In determining wheth-
24 er to grant a waiver under this subsection for
25 noncontiguous trade with Hawaii, the Secretary

1 shall not consider the criterion set forth in
2 paragraph (1)(B) if a qualified operator—

3 “(i) is a party to an operating agree-
4 ment under this subpart, and

5 “(ii) operates four or more vessels in
6 foreign commerce in competition with an-
7 other operator who is a party to an operat-
8 ing agreement under this subpart.

9 “(B) QUALIFIED OPERATOR.—In this
10 paragraph, the term ‘qualified operator’ means
11 a person that on July 1, 1992, offered service
12 as an operator of containerized vessels, trailer
13 vessels, or combination container and trailer
14 vessels in domestic trade with Hawaii and the
15 Johnston Islands (including a related party
16 with respect to the person).

17 “(c) WAIVERS FOR EXISTING NONCONTIGUOUS
18 TRADE OPERATORS.—

19 “(1) IN GENERAL.—The Secretary shall waive
20 the application of subsection (a) to an owner or op-
21 erator, who is a party to an operating agreement
22 under this subpart, pursuant to an application sub-
23 mitted in accordance with this subsection if the Sec-
24 retary finds that the owner or operator, or a related

1 party or predecessor in interest with respect to the
2 owner or operator—

3 “(A) engaged in bona fide operation of a
4 vessel as a carrier of cargo by water—

5 “(i) in a noncontiguous trade on July
6 1, 1992; or

7 “(ii) in furnishing seasonal service in
8 a season ordinarily covered by its oper-
9 ation, during the 12 calendar months pre-
10 ceding July 1, 1992; and

11 “(B) has operated in that service since
12 that time, except for interruptions of service re-
13 sulting from military contingency or over which
14 the owner or operator (or related party or pred-
15 ecessor in interest) had no control.

16 “(2) TERMS OF WAIVER.—

17 “(A) IN GENERAL.—Except as otherwise
18 provided in this paragraph, the level of service
19 permitted under a waiver under this subsection
20 shall be the level of service provided by the ap-
21 plicant (or related party or predecessor in inter-
22 est) in the relevant noncontiguous trade during,
23 for year-round service, the six calendar months
24 preceding July 1, 1992, or for seasonal service,

1 the twelve calendar months preceding July 1,
2 1992, determined by—

3 “(i) the domestic ports called;

4 “(ii) the number of sailings actually
5 made, except as to interruptions in the
6 service in the noncontiguous trade result-
7 ing from military contingency or over
8 which the applicant (or related party or
9 predecessor in interest) had no control;
10 and

11 “(iii) the volume of cargo carried or,
12 for containerized or trailer service, the
13 forty-foot equivalent unit shipboard con-
14 tainer, trailer, or vehicle or general cargo
15 capacity employed, or, for tug and barge
16 service, the barge house cubic foot capacity
17 and barge deck general cargo capacity or
18 forty-foot equivalent unit container, trailer,
19 or vehicle capacity, employed.

20 “(B) CERTAIN CONTAINERIZED VES-
21 SELS.—If an applicant under this subsection
22 was offering service as an operator of container-
23 ized vessels in noncontiguous trades with Ha-
24 waii, Puerto Rico, and Alaska on July 1, 1992,

1 a waiver under this subsection for the applicant
2 shall permit a level of service consisting of—

3 “(i) one hundred and four sailings
4 each year from the West Coast of the
5 United States to Hawaii with an annual
6 capacity allocated to the service of 75 per
7 centum of the total capacity of the vessels
8 employed in the service on July 1, 1992;

9 “(ii) one hundred and fifty-six sailings
10 each year in each direction between the
11 East Coast or Gulf Coast of the United
12 States and Puerto Rico with an annual ca-
13 pacity allocated to the service of 75 per
14 centum of the total capacity of its vessels
15 employed in the service on the date of the
16 enactment of the Maritime Security Act of
17 1995; and

18 “(iii) one hundred and three sailings
19 each year in each direction between Wash-
20 ington and Alaska with an annual capacity
21 allocated to the service in each direction of
22 100 per centum of the total capacity of its
23 vessels employed in the service on July 1,
24 1992.

1 “(C) CERTAIN TUGS AND BARGES.—If an
2 applicant under this subsection was offering
3 service as an operator of tugs and barges in
4 noncontiguous trades with Hawaii, Puerto Rico,
5 and Alaska on July 1, 1992, a waiver under
6 this subsection for the applicant shall permit a
7 level of service consisting of—

8 “(i) seventeen sailings each year in
9 each direction between ports in Washing-
10 ton, Oregon, and Northern California and
11 ports in Hawaii with an annual barge
12 house cubic foot capacity and annual barge
13 deck forty-foot equivalent unit container
14 capacity in each direction of 100 per cen-
15 tum of the total of the capacity of its ves-
16 sels employed in the service during the six
17 calendar months preceding July 1, 1992,
18 annualized;

19 “(ii) two hundred and fifty-three
20 sailings each year in each direction be-
21 tween the East Coast or Gulf Coast of the
22 United States and Puerto Rico with an an-
23 nual forty-foot equivalent unit container or
24 trailer capacity equal to 100 per centum of
25 the capacity of its barges employed in the

1 service on the date of the enactment of the
2 Maritime Security Act of 1995;

3 “(iii) thirty-seven regularly scheduled
4 tandem tow rail barge sailings and ten ad-
5 ditional single tow rail barge sailings each
6 year in each direction between Washington
7 and the Alaskan port range between and
8 including Anchorage and Whittier with an
9 annual capacity allocated to the service in
10 each direction of 100 per centum of the
11 total rail car capacity of its vessels em-
12 ployed in the service on July 1, 1992;

13 “(iv) eight regularly scheduled single
14 tow sailings each year in each direction be-
15 tween Washington and points in Alaska
16 (not including the port range between and
17 including Anchorage and Whittier, except
18 occasional deviations to discharge inciden-
19 tal quantities of cargo) with an annual ca-
20 pacity allocated to the service in each di-
21 rection of 100 per centum of the total ca-
22 pacity of its vessels employed in the service
23 on July 1, 1992; and

24 “(v) unscheduled, contract carrier tug
25 and barge service between points in Alaska

1 south of the Arctic Circle not served by the
2 common carrier service permitted under
3 clause (iii) and points in the contiguous
4 forty-eight States, with an annual capacity
5 allocated to that service not exceeding 100
6 per centum of the total capacity of the
7 equipment that was dedicated to service
8 south of the Arctic Circle on July 1, 1992,
9 and actually utilized in that service in the
10 two-year period preceding that date.

11 “(D) ANNUALIZATION.—Capacity other-
12 wise required by this paragraph to be permitted
13 under a waiver under this subsection shall be
14 annualized if not a seasonal service.

15 “(E) ADJUSTMENTS.—

16 “(i) Each written waiver granted by
17 the Secretary under this subsection shall
18 contain a statement that the annual capac-
19 ity permitted under this waiver in any di-
20 rection shall increase for a calendar year
21 by the percentage of increase during the
22 preceding calendar year in the real gross
23 product of the State or territory to which
24 goods are transported in the noncontiguous
25 trade covered by the waiver, or its equiva-

1 lent economic measure as determined by
2 the Secretary if the real gross produce is
3 not available, and that the increase shall
4 not be considered to be a material change
5 or increase for purposes of subsection
6 (a)(1)(B).

7 “(ii) The increase in permitted capac-
8 ity under clause (i) in the noncontiguous
9 trade with Alaska shall be allowed only to
10 the extent the operator actually uses that
11 increased capacity to carry cargo in the
12 permitted service in the calendar year im-
13 mediately following the preceding increase
14 in gross product. However, if an operator
15 operating exclusively containerized vessels
16 in trade on July 1, 1992, carries an aver-
17 age load factor of at least 90 per centum
18 of permitted capacity (including the capac-
19 ity, if any, both authorized and used under
20 the previous sentence) during nine months
21 of any one calendar year, then in the next
22 following calendar year and thereafter, the
23 requirement that additional capacity must
24 be used in the immediately following year
25 does not apply.

1 “(F) SERVICE LEVELS NOT INCREASED BY
2 TERMINATION OF AGREEMENT.—The termi-
3 nation of an operating agreement under subpart
4 B of this title shall not be considered to in-
5 crease a level of service specified in subpara-
6 graph (A), (B), or (C) if the contractor under
7 the agreement enters into another operating
8 agreement after that termination.

9 “(3) APPLICATIONS FOR WAIVERS.—For a
10 waiver under this subsection a contractor shall sub-
11 mit to the Secretary an application certifying the
12 facts required to be found under paragraph (1) (A)
13 or (B), as applicable.

14 “(4) ACTION ON APPLICATION.—

15 “(A) NOTICE.—The Secretary shall pub-
16 lish a notice of receipt of an application for a
17 waiver under this subsection within thirty days
18 after receiving the application.

19 “(B) HEARING PROHIBITED.—The Sec-
20 retary may not conduct a hearing on an appli-
21 cation for a waiver under this subsection.

22 “(C) SUBMISSION OF COMMENTS.—The
23 Secretary shall give every person operating a
24 cargo vessel in a noncontiguous domestic trade
25 for which a waiver is applied for under this sub-

1 section and who has any interest in the applica-
2 tion a reasonable opportunity to submit com-
3 ments on the application and on the description
4 of the service that would be permitted by any
5 waiver that is granted by the Secretary under
6 the application.

7 “(5) DECISION ON APPLICATION.—Subject to
8 the time required for publication of notice and for
9 receipt and evaluation of comments by the Sec-
10 retary, an application for a waiver under this sub-
11 section submitted at the same time the applicant ap-
12 plies for inclusion of a vessel in the fleet established
13 under this subpart shall be granted in accordance
14 with the level of service determined by the Secretary
15 under this subsection by not later than the date on
16 which the Secretary offers to the applicant an oper-
17 ating agreement with respect to that vessel.

18 “(6) CHANGE OF INCREASE IN SERVICE.—Any
19 material change or increase in a service that is sub-
20 ject to a waiver under this subsection is not author-
21 ized except to the extent the change or increase is
22 permitted by a waiver under subsection (b).

23 “(d) EMERGENCY WAIVER.—Notwithstanding any
24 other provision of this section, the Secretary may, without
25 hearing, temporarily waive the application of subsection

1 (a)(1)(B) if the Secretary finds that a material change or
2 increase is essential in order to respond adequately to—

3 “(1) an environmental or natural disaster or
4 emergency, or

5 “(2) another emergency declared by the Presi-
6 dent.

7 Any waiver shall be for a period of not to exceed forty-
8 five days, except that a waiver may be renewed for thirty-
9 day periods if the Secretary finds that adequate capacity
10 continues to be otherwise unavailable.

11 “(e) ANNUAL REPORT ON WAIVERS.—Each waiver
12 under this section shall require the person who is granted
13 the waiver to submit to the Secretary each year an annual
14 report setting forth for the service authorized by the waiv-
15 er—

16 “(1) the ports served during the year;

17 “(2) the number or frequency of sailings per-
18 formed during the year; and

19 “(3) the volume of cargo carried or, for contain-
20 erized or trailer service, the annual forty-foot equiva-
21 lent unit shipboard container, trailer, or vehicle ca-
22 pacity utilized during the year, or for tug and barge
23 service, the annual barge house and barge deck ca-
24 pacity utilized during the year.

25 “(f) DEFINITIONS.—In this section—

1 “(1) the term ‘noncontiguous trade’ means
2 trade between—

3 “(A) a point in the contiguous forty-eight
4 States; and

5 “(B) a point in Alaska, Hawaii, or Puerto
6 Rico, other than a point in Alaska north of the
7 Arctic Circle; and

8 “(2) the term ‘related party’ means—

9 “(A) a holding company, subsidiary, affili-
10 ate, or associate of a owner or operator who is
11 a party to an operating agreement under this
12 subpart; and

13 “(B) an officer, director, agency, or other
14 executive of a contractor or of a person referred
15 to in subparagraph (A).

16 “DEFINITIONS

17 “SEC. 654. For the purposes of subpart B of this
18 title:

19 “(1) The term ‘citizen of the United States’
20 means a person that is a citizen of the United States
21 under section 651 of this subpart.

22 “(2) The term ‘operating agreement’ means an
23 operating agreement that takes effect under section
24 651 of this subpart and covers one or more ves-
25 sels.”.

1 (f) EFFECTIVE DATE.—The amendments made by
2 subsections (a) through (e) of this section shall be effective
3 beginning on the date which is one hundred twenty days
4 after the date of enactment of the Maritime Security Act
5 of 1995.

6 **SEC. 3. AUTHORIZATION OF APPROPRIATIONS.**

7 (a) Funds are authorized to be appropriated for oper-
8 ating agreements that are entered into under the Maritime
9 Security Program in subpart B of title VI of the Merchant
10 Marine Act, 1936, as amended, as follows:

11 “(1) not to exceed \$175,000,000, to remain
12 available until expended, for fiscal year 1996, of
13 which \$75,000,000 shall be held in reserve for con-
14 tract termination costs, and

15 “(2) not to exceed \$100,000,000, to remain
16 available until expended, for each of fiscal years
17 1997 through 2005.”.

18 (b) For any fiscal year after fiscal year 1996, con-
19 tract termination costs are deemed termination costs that
20 satisfy the total obligation of the Federal Government to
21 an owner or operator of a vessel covered by an operating
22 agreement under the Maritime Security Program and the
23 operating agreement is thereby terminated, if funds are
24 not authorized and appropriated for payments pursuant
25 to operating agreements that are entered into under the

1 Maritime Security Program, and the \$75,000,000 held in
2 reserve for contract termination costs is paid on a pro rata
3 basis for vessels covered by operating agreements in the
4 year of the default. Each vessel covered by an operating
5 agreement is thereby released from any further obligation
6 under the operating agreement and the vessel owner or
7 operator may transfer and register such vessel imme-
8 diately under an effective United States-controlled foreign
9 flag, notwithstanding any other provision of law: Provided,
10 that, if section 902 of the Merchant Marine Act, 1936,
11 as amended (46 App. U.S.C. 1242) is applicable to such
12 vessel after registry under the flag of an effective United
13 States-controlled foreign flag, the vessel is available to be
14 requisitioned by the Secretary of Transportation pursuant
15 to section 902 of the Merchant Marine Act, 1936, as
16 amended.

17 **SEC. 4. USE OF FOREIGN-FLAG VESSELS.**

18 Section 804 of title VIII of the Merchant Marine Act,
19 1936, as amended (46 App. U.S.C. 1222), is amended by
20 adding a new subsection (f) as follows:

21 “(f) The provisions of subsection (a) of this section
22 shall not preclude an owner or operator receiving operat-
23 ing assistance under subpart A or subpart B of title VI,
24 or any holding company, subsidiary, affiliate or associate

1 of such owner or operator, or any officer, director, agency,
2 or executive thereof from—

3 “(1) owning, chartering, or operating any for-
4 eign-flag vessel that is operated as a feeder vessel
5 for a United States-flag service under an operating
6 agreement pursuant to subpart B of title VI;

7 “(2) owning, chartering, or operating any for-
8 eign-flag vessel in line haul service between the Unit-
9 ed States and foreign ports; *Provided*, That the for-
10 eign-flag vessel was operated by that owner or oper-
11 ator on the date of enactment of this Act; or that
12 the owner or operator, with respect to each addi-
13 tional foreign-flag vessel, has first applied to have
14 that vessel added to the existing operating agree-
15 ment, and the Secretary has denied the application;
16 *And provided further*, That any foreign-flag vessel in
17 line haul service between the United States and for-
18 eign ports is—

19 (A) registered under the flag of an effec-
20 tive United States-controlled foreign flag, and

21 (B) available to be requisitioned by the
22 Secretary of Transportation pursuant to section
23 902 of this Act;

24 “(3) owning, chartering, or operating foreign-
25 flag liner vessels that are operated exclusively in for-

1 eign-to-foreign service and not in the foreign com-
2 merce of the United States;

3 “(4) owning, chartering, or operating foreign-
4 flag bulk cargo vessels that are operated in both for-
5 eign-to-foreign service and the foreign commerce of
6 the United States;

7 “(5) chartering or operating foreign-flag vessels
8 that are operated solely as replacement vessels for
9 United States-flag vessels that are made available to
10 the Secretary of Defense pursuant to section 652 of
11 subpart B of title VI; or

12 “(6) entering into space charter agreements
13 with foreign-flag carriers or acting as agent or
14 broker for a foreign-flag vessel or vessels.”.

15 **SEC. 5. DEFINITION OF PRIVATELY OWNED UNITED**
16 **STATES-FLAG COMMERCIAL VESSELS.**

17 The third sentence of section 901(b)(1) of title IX
18 of the Merchant Marine Act, 1936, as amended (46 App.
19 U.S.C. 1241(b)(1)) is deleted in its entirety and the fol-
20 lowing is inserted in lieu thereof: “For purposes of this
21 section, the term ‘privately owned United States-flag com-
22 mercial vessels’ shall be deemed to include—

23 (A) any privately owned United States flag
24 commercial vessel constructed in the United
25 States,

1 (B) any privately owned liner vessel con-
2 structed, reconstructed, or acquired outside the
3 United States that is documented pursuant to
4 chapter 121 of title 46, United States Code and
5 is less than five years of age on the date of
6 such documentation, and

7 (C) any bulk cargo vessel constructed in or
8 delivered by a shipyard outside the United
9 States after January 1, 1993.

10 The term ‘privately owned United States-flag com-
11 mercial vessels’ shall also be deemed to include any
12 liner or bulk cargo vessel that so qualified pursuant
13 to section 615 of title VI or Section 901(b)(1) of
14 title IX of this Act, prior to enactment of the Mari-
15 time Security Act of 1995. The term ‘privately
16 owned United States-flag commercial vessels’ shall
17 not be deemed to include any liquid bulk cargo ves-
18 sel that does not meet the requirements of section
19 3703a of title 46, United States Code.’’.

20 **SEC. 6. USE OF FOREIGN-FLAG FEEDER VESSELS IN CAR-**
21 **RIAGE OF PREFERENCE CARGOES.**

22 The provisions of law set forth in 46 App. U.S.C.
23 1241(b)(1), 1241-1, and 1241f, requiring use of United
24 States-flag vessels shall, with respect to liner vessels, be
25 deemed fulfilled, as to the total of any shipment other than

1 that of the Department of Defense covered by 10 U.S.C.
2 2631, if the actual ocean transportation of each shipment
3 for which the United States-flag carrier has issued its own
4 through bill-of-lading between the original port of lading
5 and the port of final discharge, consists of transportation
6 of the cargo by a combination of United States- and for-
7 eign-flag vessels; *Provided*, That, measured by distance,
8 the United States-flag line haul portion of each voyage is
9 greater than the foreign-flag feeder portion of each voyage
10 pursuant to regulations issued by the Secretary of Trans-
11 portation.

12 **SEC. 7. LIMITATION ON RESTRICTIONS.**

13 Notwithstanding any other provision of law or con-
14 tract, all restrictions and requirements set forth in 46
15 App. U.S.C. 1153, 1156, and 1212, applicable to a vessel
16 constructed, reconstructed or reconditioned with the aid
17 of construction-differential subsidy shall terminate—

18 (1) for a liner or dry bulk cargo vessel, upon
19 the expiration of the twenty-five-year period begin-
20 ning on the date of original delivery of the vessel
21 from the shipyard, and

22 (2) for a liquid bulk cargo vessel, upon the expi-
23 ration of the twenty-year period beginning on the

- 1 date of original delivery of the vessel from the ship-
- 2 yard.

○

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