

MARITIME SECURITY ACT OF 1995

AUGUST 3, 1995.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SPENCE, from the Committee on National Security,
submitted the following

R E P O R T

[To accompany H.R. 1350]

[Including cost estimate of the Congressional Budget Office]

The Committee on National Security, to whom was referred the bill (H.R. 1350) to amend the Merchant Marine Act, 1936, to revitalize the United States-flag merchant marine, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Maritime Security Act of 1995".

SEC. 2. MARITIME SECURITY PROGRAM.

Title VI of the Merchant Marine Act, 1936 (46 App. U.S.C. 1171 et seq.) is amended—

- (1) by striking the title heading and inserting the following:

"TITLE VI—VESSEL OPERATING ASSISTANCE PROGRAMS

"Subtitle A—Operating-Differential Subsidy Program";

and

- (2) by adding at the end the following new subtitle:

"Subtitle B—Maritime Security Fleet Program

"ESTABLISHMENT OF FLEET

"SEC. 651. (a) IN GENERAL.—The Secretary of Transportation shall establish a fleet of active, militarily useful, privately-owned vessels to meet national defense

and other security requirements and maintain a United States presence in international commercial shipping. The Fleet shall consist of privately owned, United States-flag vessels for which there are in effect operating agreements under this subtitle, and shall be known as the Maritime Security Fleet.

“(b) VESSEL ELIGIBILITY.—A vessel is eligible to be included in the Fleet if the vessel is self-propelled and—

“(1)(A) is operated by a person as an ocean common carrier (as that term is used in the Shipping Act of 1984 (46 App. U.S.C. 1701 et seq.);

“(B) whether in commercial service, on charter to the Department of Defense, or in other employment, is either—

“(i) a roll-on/roll-off vessel with a carrying capacity of at least 80,000 square feet or 500 twenty-foot equivalent units; or

“(ii) a lighter aboard ship vessel with a barge capacity of at least 75 barges; or

“(C) any other type of vessel that is determined by the Secretary to be suitable for use by the United States for national defense or military purposes in time of war or national emergency;

“(2)(A)(i) is a United States-documented vessel; and

“(ii) on the date an operating agreement covering the vessel is entered into under this subtitle, is—

“(I) a LASH vessel that is 25 years of age or less; or

“(II) any other type of vessel that is 15 years of age or less;

except that the Secretary of Transportation may waive the application of clause (ii) if the Secretary, in consultation with the Secretary of Defense, determines that the waiver is in the national interest; or

“(B) it is not a United States-documented vessel, but the owner of the vessel has demonstrated an intent to have the vessel documented under chapter 121 of title 46, United States Code, if it is included in the Fleet, and the vessel will be less than 10 years of age on the date of that documentation;

“(3) the Secretary of Transportation determines that the vessel is necessary to maintain a United States presence in international commercial shipping or, after consultation with the Secretary of Defense, determines that the vessel is militarily useful for meeting the sealift needs of the United States with respect to national emergencies; and

“(4) at the time an operating agreement for the vessel is entered into under this subtitle, the vessel will be eligible for documentation under chapter 121 of title 46, United States Code.

“OPERATING AGREEMENTS

“SEC. 652. (a) IN GENERAL.—The Secretary of Transportation shall require, as a condition of including any vessel in the Fleet, that the owner or operator of the vessel enter into an operating agreement with the Secretary under this section. Notwithstanding subsection (g), the Secretary may enter into an operating agreement for, among other vessels that are eligible to be included in the Fleet, any vessel which continues to operate under an operating-differential subsidy contract under subtitle A or which is under charter to the Department of Defense.

“(b) REQUIREMENTS FOR OPERATION.—An operating agreement under this section shall require that, during the period a vessel is operating under the agreement—

“(1) the vessel—

“(A) shall be operated exclusively in the foreign trade or in mixed foreign and domestic trade allowed under a registry endorsement issued under section 12105 of title 46, United States Code, and

“(B) shall not otherwise be operated in the coastwise trade; and

“(2) the vessel shall be documented under chapter 121 of title 46, United States Code.

“(c) CERTAIN REQUIREMENTS NOT TO APPLY.—A contractor of a vessel included in an operating agreement under this subtitle may operate the vessel in the foreign commerce of the United States without restriction, and shall not be subject to any requirement under section 801, 808, 809, or 810.

“(d) EFFECTIVENESS AND ANNUAL PAYMENT REQUIREMENTS OF OPERATING AGREEMENTS.—

“(1) EFFECTIVENESS.—The Secretary of Transportation may enter into an operating agreement under this subtitle for fiscal year 1996. The agreement shall be effective only for 1 fiscal year, but shall be renewable, subject to the availability of appropriations, for each subsequent fiscal year through the end of fiscal year 2005.

“(2) ANNUAL PAYMENT.—An operating agreement under this subtitle shall require, subject to the availability of appropriations and the other provisions of this section, that the Secretary of Transportation pay each fiscal year to the contractor, for each vessel that is covered by the operating agreement, an amount equal to \$2,300,000 for fiscal year 1996 and \$2,100,000 for each fiscal year thereafter in which the agreement is in effect. The amount shall be paid in equal monthly installments at the end of each month. The amount shall not be reduced except as provided by this section.

“(e) CERTIFICATION REQUIRED FOR PAYMENT.—As a condition of receiving payment under this section for a fiscal year for a vessel, the owner or operator of the vessel shall certify, in accordance with regulations issued by the Secretary of Transportation, that the vessel has been and will be operated in accordance with subsection (b)(1) for at least 320 days in the fiscal year. Days during which the vessel is drydocked, surveyed, inspected, or repaired shall be considered days of operation for purposes of this subsection.

“(f) OPERATING AGREEMENT IS OBLIGATION OF UNITED STATES GOVERNMENT.—An operating agreement under this subtitle constitutes a contractual obligation of the United States Government to pay the amounts provided for in the agreement to the extent of actual appropriations.

“(g) LIMITATIONS.—The Secretary of Transportation shall not make any payment under this subtitle for a vessel with respect to any days for which the vessel is—

“(1) subject to an operating-differential subsidy contract under subtitle A or under a charter to the United States Government, other than a charter pursuant to section 653;

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

“(3) more than 25 years of age, except that the Secretary may make such payments for a LASH vessel for any day for which the vessel is more than 25 years of age if that vessel—

“(A) is modernized after January 1, 1994,

“(B) is modernized before it is 25 years of age, and

“(C) is not more than 30 years of age.

“(h) PAYMENTS.—With respect to payments under this subtitle for a vessel covered by an operating agreement, the Secretary of Transportation—

“(1) except as provided in paragraph (2), shall not reduce any payment for the operation of a vessel to carry military or other preference cargoes under section 2631 of title 10, United States Code, the Act of March 26, 1934 (46 App. U.S.C. 1241-1), section 901(a), 901(b), or 901b of this Act, or any other cargo preference law of the United States;

“(2) shall not make any payment for any day that a vessel is engaged in transporting more than 7,500 tons of civilian bulk preference cargoes pursuant to section 901(a), 901(b), or 901b that is bulk cargo (as that term is defined in section 3 of the Shipping Act of 1984 (46 App. U.S.C. 1702)); and

“(3) shall make a pro rata reduction in payment for each day less than 320 in a fiscal year that a vessel covered by an operating agreement is not operated in accordance with subsection (b)(1), with days during which the vessel is drydocked or undergoing survey, inspection, or repair considered to be days on which the vessel is operated.

“(i) PRIORITY FOR AWARDING AGREEMENTS.—Subject to the availability of appropriations, the Secretary shall enter into operating agreements according to the following priority:

“(1) VESSELS OWNED BY CITIZENS.—

“(A) PRIORITY.—First, for any vessel that is—

“(i) owned and operated by persons who are citizens of the United States under section 2 of the Shipping Act, 1916; or

“(ii) less than 10 years of age and owned and operated by a corporation that is—

“(I) eligible to document a vessel under chapter 121 of title 46, United States Code; and

“(II) affiliated with a corporation operating or managing for the Secretary of Defense other vessels documented under that chapter, or chartering other vessels to the Secretary of Defense.

“(B) LIMITATION ON NUMBER OF OPERATING AGREEMENTS.—The total number of operating agreements that may be entered into by a person under the priority in subparagraph (A)—

“(i) for vessels described in subparagraph (A)(i), may not exceed the sum of—

“(I) the number of United States-documented vessels the person operated in the foreign commerce of the United States (except mixed coastwise and foreign commerce) on May 17, 1995; and

“(II) the number of United States-documented vessels the person chartered to the Secretary of Defense on that date; and

“(ii) for vessels described in subparagraph (A)(ii), may not exceed 5 vessels.

“(C) TREATMENT OF RELATED PARTIES.—For purposes of subparagraph (B), a related party with respect to a person shall be treated as the person.

“(2) OTHER VESSELS OWNED BY CITIZENS AND GOVERNMENT CONTRACTORS.—To the extent that amounts are available after applying paragraph (1), any vessel that is owned and operated by a person who is—

“(A) a citizen of the United States under section 2 of the Shipping Act, 1916, that has not been awarded an operating agreement under the priority established under paragraph (1); or

“(B)(i) eligible to document a vessel under chapter 121 of title 46, United States Code; and

“(ii) affiliated with a corporation operating or managing other United States-documented vessels for the Secretary of Defense or chartering other vessels to the Secretary of Defense.

“(3) OTHER VESSELS.—To the extent that amounts are available after applying paragraphs (1) and (2), any other eligible vessel.

“(j) TRANSFER OF OPERATING AGREEMENTS.—A contractor under an operating agreement may transfer the agreement (including all rights and obligations under the agreement) to any person eligible to enter into that operating agreement under this subtitle after notification of the Secretary in accordance with regulations prescribed by the Secretary, unless the transfer is disapproved by the Secretary within 90 days after the date of that notification. A person to whom an operating agreement is transferred may receive payments from the Secretary under the agreement only if each vessel to be covered by the agreement after the transfer is an eligible vessel under section 651(b).

“(k) REVERSION OF UNUSED AUTHORITY.—The obligation of the Secretary to make payments under an operating agreement under this subtitle shall terminate with respect to a vessel if the contractor fails to engage in operation of the vessel for which such payment is required—

“(1) within one year after the effective date of the operating agreement, in the case of a vessel in existence on the effective date of the agreement, or

“(2) within 30 months after the effective date of the operating agreement, in the case of a vessel to be constructed after that effective date.

“(l) PROCEDURE FOR CONSIDERING APPLICATION; EFFECTIVE DATE FOR CERTAIN VESSELS.—

“(1) PROCEDURES.—Within 90 days after receipt of an application for enrollment of a vessel in the Fleet, the Secretary shall enter into an operating agreement with the applicant or provide in writing the reason for denial of that application.

“(2) EFFECTIVE DATE.—Unless an earlier date is requested by the applicant, the effective date for an operating agreement with respect to a vessel which is, on the date of entry into an operating agreement, either subject to a contract under subtitle A or on charter to the United States Government, other than a charter under section 653, shall be the expiration or termination date of the contract under subtitle A or of the Government charter covering the vessel, respectively, or any earlier date the vessel is withdrawn from that contract or charter.

“(m) EARLY TERMINATION.—An operating agreement under this subtitle shall terminate on a date specified by the contractor if the contractor notifies the Secretary, by not later than 60 days before the effective date of the termination, that the contractor intends to terminate the agreement. Vessels covered by an operating agreement terminated under to this subsection shall remain documented under chapter 121 of title 46, United States Code, until the date the operating agreement would have terminated according to its terms. A contractor who terminates an operating agreement pursuant to this subsection shall continue to be bound by the provisions of section 653 until the date the operating agreement would have terminated according to its terms. All terms and conditions of an Emergency Preparedness Agreement entered into under to section 653 shall remain in effect until the date the operating agreement would have terminated according to its terms, except that the terms of such Emergency Preparedness Agreement may be modified by the mutual consent of the contractor and the Secretary of Transportation.

“(n) TERMINATION FOR LACK OF FUNDS.—If funds are not appropriated under the authority provided by section 655 for any fiscal year, then each vessel covered by an operating agreement under this subtitle is thereby released from any further obligation under the operating agreement, the operating agreement shall terminate, and the vessel owner or operator may transfer and register such vessel under an effective United States-controlled foreign flag, notwithstanding any other provision of law. If section 902 is applicable to such vessel after registry under an effective United States-controlled foreign flag, the vessel is available to be requisitioned by the Secretary of Transportation pursuant to section 902.

“(o) AWARD OF OPERATING AGREEMENTS.—

“(1) IN GENERAL.—The Secretary of Transportation, subject to paragraph (4), shall award operating agreements within each priority under subsection (i) (1), (2), and (3) under regulations prescribed by the Secretary.

“(2) NUMBER OF AGREEMENTS AWARDED.—Regulations under paragraph (1) shall provide that if appropriated amounts are not sufficient for operating agreements for all vessels within a priority under subsection (i) (1), (2), or (3), the Secretary shall award to each person submitting a request a number of operating agreements that bears approximately the same ratio to the total number of vessels in the priority, as the amount of appropriations available for operating agreements for vessels in the priority bears to the amount of appropriations necessary for operating agreements for all vessels in the priority.

“(3) TREATMENT OF RELATED PARTIES.—For purposes of paragraph (2), a related party with respect to a person shall be treated as the person.

“(4) PREFERENCE FOR U.S.-BUILT VESSELS.—In awarding operating agreements for vessels within a priority under subsection (i) (1), (2), or (3), the Secretary shall give preference to a vessel that was constructed in the United States, to the extent such preference is consistent with establishment of a fleet described in the first sentence of section 651(a) (taking into account the age of the vessel, the nature of service provided by the vessel, and the commercial viability of the vessel).

“(p) NOTICE TO U.S. SHIPBUILDERS REQUIRED.—The Secretary shall include in any operating agreement under this subtitle a requirement that the contractor under the agreement shall, by not later than 30 days after soliciting any bid or offer for the construction of any vessel in a foreign shipyard and before entering into a contract for construction of a vessel in a foreign shipyard, provide notice of the intent of the contractor to enter into such a contract to each shipyard in the United States that is capable of constructing the vessel.

“NATIONAL SECURITY REQUIREMENTS

“SEC. 653. (a) EMERGENCY PREPAREDNESS AGREEMENT.—

“(1) REQUIREMENT TO ENTER AGREEMENT.—The Secretary of Transportation shall establish an Emergency Preparedness Program under this section that is approved by the Secretary of Defense. Under the program, the Secretary of Transportation shall include in each operating agreement under this subtitle a requirement that the contractor enter into an Emergency Preparedness Agreement under this section with the Secretary. The Secretary shall negotiate and enter into an Emergency Preparedness Agreement with each contractor as promptly as practicable after the contractor has entered into an operating agreement under this subtitle.

“(2) TERMS OF AGREEMENT.—An Emergency Preparedness Agreement under this section shall require that upon a request by the Secretary of Defense during time of war or national emergency, an owner or operator of a vessel covered by an operating agreement under this subtitle shall make available commercial transportation resources (including services). The basic terms of the Emergency Preparedness Agreement shall be established pursuant to consultations among the Secretary, the Secretary of Defense, and Maritime Security Program contractors. In any Emergency Preparedness Agreement, the Secretary and a contractor may agree to additional or modifying terms appropriate to the contractor's circumstances.

“(b) RESOURCES MADE AVAILABLE.—The commercial transportation resources to be made available under an Emergency Preparedness Agreement shall include vessels or capacity in vessels, intermodal systems and equipment, terminal facilities, intermodal and management services, and other related services, or any agreed portion of such nonvessel resources for activation as the Secretary may determine to be necessary, seeking to minimize disruption of the contractor's service to commercial shippers.

“(c) COMPENSATION.—

“(1) IN GENERAL.—The Secretary of Transportation shall provide in each Emergency Preparedness Agreement for reasonable compensation for all commercial transportation resources provided pursuant to this section.

“(2) SPECIFIC REQUIREMENTS.—Compensation under this subsection—

“(A) shall not be less than the contractor’s commercial market charges for like transportation resources;

“(B) shall include all the contractor’s costs associated with provision and use of the contractor’s commercial resources to meet emergency requirements;

“(C) in the case of a charter of an entire vessel, shall be fair and reasonable;

“(D) shall be in addition to and shall not in any way reflect amounts payable under section 652; and

“(E) shall be provided from the time that a vessel or resource is diverted from commercial service until the time that reenters commercial service.

“(d) TEMPORARY REPLACEMENT VESSELS.—Notwithstanding any other provision of this subtitle or of other law to the contrary—

“(1) a contractor may operate or employ in foreign commerce a foreign-flag vessel or foreign-flag vessel capacity, as a temporary replacement for a United States-documented vessel or United States-documented vessel capacity that is activated under an Emergency Preparedness Agreement; and

“(2) such replacement vessel or vessel capacity shall be eligible during the replacement period to transport preference cargoes subject to section 2631 of title 10, United States Code, the Act of March 26, 1934 (46 App. U.S.C. 1241-1), and sections 901(a), 901(b), and 901b of this Act to the same extent as the eligibility of the vessel or vessel capacity replaced.

“(e) REDELIVERY AND LIABILITY OF U.S. FOR DAMAGES.—

“(1) IN GENERAL.—All commercial transportation resources activated under an Emergency Preparedness Agreement shall, upon termination of the period of activation, be redelivered to the contractor in the same good order and condition as when received, less ordinary wear and tear, or the Government shall fully compensate the contractor for any necessary repair or replacement.

“(2) LIMITATION ON LIABILITY OF U.S.—Except as may be expressly agreed to in an Emergency Preparedness Agreement, or as otherwise provided by law, the Government shall not be liable for disruption of a contractor’s commercial business or other consequential damages to a contractor arising from activation of commercial transportation resources under an Emergency Preparedness Agreement.

“(3) LIMITATION ON APPLICATION OF OTHER REQUIREMENTS.—Sections 902 and 909 of this Act shall not apply to a vessel while it is covered by an Emergency Preparedness Agreement under this subtitle. Any Emergency Preparedness Agreement entered into by a contractor shall supersede any other agreement between that contractor and the Government for vessel availability in time of war or national emergency.

“DEFINITIONS

“SEC. 654. In this subtitle:

“(1) FLEET.—The term ‘Fleet’ means the Maritime Security Fleet established pursuant to section 651(a).

“(2) LASH VESSEL.—The term ‘LASH vessel’ means a lighter aboard ship vessel.

“(3) UNITED STATES-DOCUMENTED VESSEL.—The term ‘United States-documented vessel’ means a vessel documented under chapter 121 of title 46, United States Code.

“AUTHORIZATION OF APPROPRIATIONS

“SEC. 655. There are authorized to be appropriated for operating agreements under this subtitle, to remain available until expended, \$100,000,000 for fiscal year 1996 and such sums as may be necessary, not to exceed \$100,000,000, for each fiscal year thereafter through fiscal year 2005.”.

SEC. 3. TERMINATION OF OPERATING-DIFFERENTIAL SUBSIDY PROGRAM.

(a) LIMITATION ON PAYMENTS FOR OLDER VESSELS.—Section 605(b) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1175(b)), is amended to read as follows:

“(b) No operating-differential subsidy shall be paid for the operation of a vessel after the calendar year the vessel becomes 25 years of age, unless the Secretary of Transportation has determined, before the date of enactment of the Maritime Secu-

Act of 1995, that it is in the public interest to grant such financial aid for the operation of such vessel.”.

(b) WIND-UP OF PROGRAM.—Subtitle A of such Act (46 App. U.S.C. 1171 et seq.), as designated by the amendment made by section 2(1), is further amended by adding at the end the following new section:

“SEC. 616. (a) After the date of enactment of the Maritime Security Act of 1995, the Secretary of Transportation shall not enter into any new contract for operating-differential subsidy under this subtitle.

“(b) Notwithstanding any other provision of this Act, any operating-differential subsidy contract in effect under this title on the day before the date of enactment of the Maritime Security Act of 1995 shall continue in effect and terminate as set forth in the contract, unless voluntarily terminated at an earlier date by the parties (other than the United States Government) to the contract.

“(c) The essential service requirements of section 601(a) and 603(b), and the provisions of sections 605(c) and 809(a), shall not apply to the operating-differential subsidy program under this subtitle effective upon the earlier of—

“(1) the date that a payment is made, under the Maritime Security Program established by subtitle B to a contractor under that subtitle who is not party to an operating-differential subsidy contract under this subtitle, with the Secretary to cause notice of the date of such payment to be published in the Federal Register as soon as possible; or

“(2) with respect to a particular contractor under the operating-differential subsidy program, the date that contractor enters into a contract with the Secretary under the Maritime Security Program established by subtitle B.

“(d)(1) Notwithstanding any other provision of law, a vessel may be transferred and registered under an effective United States-controlled foreign flag if—

“(A) the operator of the vessel receives an operating-differential subsidy pursuant to a contract under this subtitle which is in force on October 1, 1994, and the Secretary approves the replacement of such vessel with a comparable vessel, or

“(B) the vessel is covered by an operating agreement under subtitle B, and the Secretary approves the replacement of such vessel with a comparable vessel for inclusion in the Maritime Security Fleet established under subtitle B.

“(2) Any such vessel may be requisitioned by the Secretary of Transportation pursuant to section 902.”.

SEC. 4. DOMESTIC OPERATIONS.

Section 805(a) of the Merchant Marine Act, 1936 (46 App. U.S.C. 1223(a)) is amended by striking “1935” each place it appears and inserting “1995”.

SEC. 5. USE OF FOREIGN-FLAG VESSELS.

(a) IN GENERAL.—Section 804 of the Merchant Marine Act, 1936 (46 App. U.S.C. 1222) is amended by adding at the end the following new subsection:

“(f) The provisions of subsection (a) shall not preclude a contractor receiving assistance under subtitle A or B of title VI, or any holding company, subsidiary, or affiliate of the contractor, or any officer, director, agent, or executive thereof, from—

“(1) owning, chartering, or operating any foreign-flag vessel on a voyage or a segment of a voyage that does not call at a port in the United States;

“(2) owning, chartering, or operating any foreign-flag vessel in line haul service between the United States and foreign ports if—

“(A) the foreign-flag vessel was operated by, or is a replacement for a foreign-flag vessel operated by, such owner or operator, or any holding company, subsidiary, affiliate, or associate of such owner or operator, on the date of enactment of the Maritime Security Act of 1995;

“(B) the owner or operator, with respect to each additional foreign-flag vessel, other than a time chartered vessel, has first applied to have that vessel covered by an operating agreement under to subtitle B of title VI, and the Secretary has not awarded an operating agreement with respect to that vessel within 90 days after the filing of the application; or

“(C) the vessel has been placed under foreign documentation pursuant to section 9 of the Shipping Act, 1916 (46 App. U.S.C. 808), except that any foreign-flag vessel, other than a time chartered vessel, a replacement vessel under section 653(d), or a vessel operated by the owner or operator on the date of enactment of the Maritime Security Act of 1995, in line haul service between the United States and foreign ports is registered under the flag of an effective United States-controlled foreign flag, and available to be requisitioned by the Secretary of Transportation pursuant to section 902 of this Act;

“(3) owning, chartering, or operating foreign-flag bulk cargo vessels that are operated in foreign-to-foreign service or the foreign commerce of the United States;

“(4) chartering or operating foreign-flag vessels that are operated solely as replacement vessels for United States-flag vessels or vessel capacity that are made available to the Secretary of Defense pursuant to section 653 of this Act; or

“(5) entering into time or space charter or other cooperative agreements with respect to foreign-flag vessels or acting as agent or broker for a foreign-flag vessel or vessels.”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to a contractor under subtitle B of title VI of the Merchant Marine Act, 1936, as amended by this Act, upon enactment of this Act, and shall apply to a contractor under subtitle A of title VI of that Act, upon the earlier of—

(1) the date that a payment is made, under the Maritime Security Program under subtitle B of that title to a contractor under subtitle B of that title who is not party to an operating-differential subsidy contract under subtitle A of that title, with the Secretary of Transportation to cause notice of the date of such payment to be published in the Federal Register as soon as possible; or

(2) with respect to a particular contractor under the operating-differential subsidy program under subtitle A of that title, the date that contractor enters into a contract with the Secretary under the Maritime Security Program established by subtitle B of that title.

SEC. 6. AMENDMENT TO SHIPPING ACT, 1916.

Section 9 of the Shipping Act, 1916 (46 App. U.S.C. 808) is amended by adding at the end the following:

“(e) 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 subpart B of title VI of the Merchant Marine Act, 1936 has expired.”.

SEC. 7. CONSTRUCTION DIFFERENTIAL SUBSIDY RESTRICTIONS.

Title V of the Merchant Marine Act, 1936 (46 App. U.S.C. 1151 et seq.) is amended by adding at the end the following new section:

“SEC. 512. LIMITATION ON RESTRICTIONS.

“Notwithstanding any other provision of law or contract, all restrictions and requirements under sections 503, 506, and 802 applicable to a liner vessel constructed, reconstructed, or reconditioned with the aid of construction-differential subsidy shall terminate upon the expiration of the 25-year period beginning on the date of the original delivery of the vessel from the shipyard.”.

SEC. 8. REGULATIONS.

(a) IN GENERAL.—The Secretary of Transportation may prescribe rules as necessary to carry out this Act and the amendments made by this Act.

(b) INTERIM RULES.—The Secretary of Transportation may prescribe interim rules necessary to carry out this Act and the amendments made by this Act. For this purpose, the Secretary of Transportation is excepted from compliance with the notice and comment requirements of section 553 of title 5, United States Code. All rules prescribed under the authority of this subsection that are not earlier superseded by

final rules shall expire no later than 270 day after the date of enactment of this Act.

PURPOSE AND SUMMARY

The purpose of H.R. 1350 is to establish a program, known as the Maritime Security Program, that would assure the retention by the United States of an active, privately owned, U.S.-flag and U.S.-crewed merchant shipping fleet to meet national and foreign commerce needs and to provide sustainment sealift capability in time of war or national emergency.

To accomplish the goals of ensuring the availability of a U.S. merchant fleet for wartime or national emergencies and in order to retain a pool of qualified mariners to serve on these vessels, the committee recommends a substitute to H.R. 1350 that would establish the Maritime Security Program. The committee substitute would phase out the existing operating-differential subsidy (ODS) program, would remove operating restrictions on participants in the Maritime Security Program and would provide reduced payments to vessels operators who agree to make their vessels available to the Secretary of Defense upon request. Funding in the amount of \$100 million per year for payments to vessel operators would be authorized. Each ship which participates in the program would receive \$2.3 million per year for the first year and \$2.1 million per year for the remaining nine years of the program. When fully operational, the program would result in the retention of approximately 40 to 50 U.S.-flag vessels. Absent this program, these vessels would shift their operations to foreign flags of convenience with foreign crews.

The current operating-differential subsidy program makes a payment based on the differential between U.S. crew wages and foreign crew wages. This payment scheme provides little incentive for vessel operators to reduce costs or to seek operational efficiencies. The Maritime Security Program would pay a flat amount per year per vessel. These payments would be up to 50 percent less per vessel than those under the existing program and would therefore create incentives for operators to constrain their operating costs.

The committee substitute to H.R. 1350 also would expand the existing obligation of vessel owners to provide sealift assistance to the Department of Defense in time of national need. Upon a request by the Department of Defense, vessel owners would be required to make their vessels, their vessels' capacity, and their intermodal equipment, terminal facilities and management services available for sealift operations.

BACKGROUND AND NEED FOR LEGISLATION

Following World War II, the United States had the largest commercial, privately owned merchant shipping fleet in the world. Almost half of the world's commercial fleet sailed under the American flag. Today, the U.S. merchant marine is in a state of crisis. While the United States remains the world's largest trading nation, our commercial fleet now ranks sixteenth in size in the world. As the number of ships in the U.S.-flag fleet declines, so does the number of civilian seafarers. Without remedial action, there simply will be no U.S. fleet to conduct foreign commerce, and the United States

will have to rely on foreign-flag shipping for all imports and exports and for the sustainment of future military operations.

During Operations Desert Shield and Desert Storm, the privately owned U.S.-flag fleet played a significant role in sealift operations. Approximately 32 percent of the cargo for those operations was shipped on container and chartered U.S.-flag ships, and 47 percent was shipped on government-controlled U.S.-flag ships. All of the U.S.-flag ships used during sealift operations were crewed by trained American merchant mariners. The Persian Gulf War thus demonstrated the continuing, modern day importance of maintaining the merchant fleet to meet our national security sealift needs.

Military sealift has two components: surge and sustainment. Surge sealift involves the mobilization of ships for the initial 30 day rapid deployment of unit equipment and military personnel for an overseas operation. Sustainment sealift refers to the requirements imposed on the merchant fleet to ship cargo in order to supply and resupply our forces beyond the first 30 days of an overseas military operation.

Surge sealift requirements are met through the use of fast sealift vessels and through the activation of specific vessels in the Ready Reserve Fleet (RRF). Fast sealift vessels are fully manned, 365 days a year. RRF vessels have at most only 10 assigned crew members during periods when such ships are not activated. To deploy within the 5 to 10 days required by mobility requirements, a substantial number of mariners must be activated from the existing U.S.-flag fleets in order to operate RRF vessels. For example, over 3,000 civilian mariners were required to meet mobilization requirements during Operations Desert Shield and Desert Storm.

Since 1965, the number of jobs on privately-owned, oceangoing U.S.-flag ships of 1,000 gross tons and over has dropped from 50,986 to 8,603, as of January 1, 1995. Of these, 3,163 were licensed officers and 5,440 were unlicensed seamen. A recent analysis by the U.S. Transportation Command concluded that in the absence of a Maritime Security Program, the U.S. mariner job base would be barely adequate to crew surge sealift vessels, with the RRF being at the highest risk.

While mariner shortages are most problematic for a successful surge sealift effort, the success of the sustainment sealift effort is most dependent on the efficient movement of goods including ammunition, food, and medical supplies in containers, a technology pioneered by U.S.-flag shipping companies. The intermodal nature of U.S. carriers makes this type of logistical support readily achievable through the use of their commercial land/water transportation systems. A key feature of the committee substitute to H.R. 1350 is that vessel operators would be required to make land as well as water transportation systems available to the Department of Defense.

In addition to the manning and operational considerations that underlie the need for the Maritime Security Program, there are concerns related to the size and financial soundness of the merchant fleet. In 1948, there were 716 vessels under the U.S. flag. Less than 150 privately owned vessels are currently in U.S.-foreign commerce and in the foreign-to-foreign trades. While the number of vessels under the U.S. flag and the number of jobs on those vessels

have decreased, U.S.-flag carriers have become more efficient over time and now move more cargo than ever before. For example, in 1950, it took 681 ships to move 21.5 million tons of cargo. In 1992, it took only 189 ships to move 24.6 million tons of cargo. Regardless of how efficient U.S.-flag carriers become, in order to compete internationally U.S. shipowners must have capital cost, operating costs, and tax liabilities that compare favorably with, or are at least equal to, those of their foreign-flag competitors.

Unfortunately, complying with federal laws results in higher operating costs for U.S.-flag carriers. For instance, federal law requires that all licensed and unlicensed seamen on U.S.-flag vessels must be U.S. citizens or permanent resident aliens. Ships registered in Liberia, Panama, or the Marshall Islands have no such requirement and employ seamen from countries such as Bangladesh or the Philippines, who make as little as \$350 per month and are subject to virtually no restrictions on working hours. In addition, tax laws and U.S. Coast Guard requirements are substantially more onerous for U.S.-flag vessels than for those operated under foreign flags and registration.

To offset the higher cost of operating under the U.S. flag, the Merchant Marine Act, 1936 created the ODS program, through which payments are made to U.S. carriers on specified trade routes. These ODS contracts begin to expire in 1995, and over 90% will have expired by 1998. Without the continued availability of a program to offset, at a minimum, labor costs, it is expected that there will be little or no U.S.-flag container fleet by the year 2000.

The committee therefore believes that it is in the best interests of the United States to retain a minimum number of these merchant vessels under the U.S. flag and to provide, as do many nations, adequate financial incentives to register vessels in their home country. Support for reform of the ODS program in order to provide such incentives has been ongoing for several years. Presidents Bush and Clinton both proposed maritime reform legislation to Congress, and bills passed the House in each session of the 103rd Congress.

COMMITTEE ACTION

On March 29, 1995, H.R. 1350 was introduced jointly, by request, by committee Chairman Spence, the committee's Ranking Minority member, Mr. Dellums, and by the Chairman of the Special Oversight Panel on the Merchant Marine, Mr. Bateman.

The Merchant Marine Panel held two days of hearings on H.R. 1350. On March 28, 1995, the panel received testimony from the Administration. Vice Admiral Albert J. Herberger, the U.S. Maritime Administrator, and Vice Admiral Philip Quast, Commander of the Military Sealift Command, testified in support of the legislation.

On April 6, 1995, the Merchant Marine Panel received testimony from maritime industry and union representatives. The witness panel representing the U.S.-flag operators included Mr. John Snow, CSX Corporation/Sealand Service, Inc., Mr. John Lillie, American President Lines, Mr. William Verdon, Crowley Maritime Corporation, Mr. Erik Johnson, Central Gulf Lines, Inc. The witness panel representing maritime shipboard labor included Mr. Michael Sacco,

Seafarers International Union of North America, Mr. Charles Crangel, American Maritime Officers, Mr. James Hopkins, International Organization of masters, Mates and Pilots, Mr. Joel Bem, Marine Engineers' Beneficial Association, and Mr. Talmage Simkins, National Maritime Union. All testified in favor of the bill.

On May 17, 1995, the Special Oversight Panel on the Merchant Marine recommended, by voice vote, that a substitute to H.R. 1350 be forwarded to the full committee.

The substitute would make a number of changes to H.R. 1350, as introduced. The substitute would authorize a new Maritime Security Program and would authorize the Secretary of Transportation to enter into operating agreements for fiscal year 1996. These operating agreements would be effective only for a one year period but would be renewable, subject to annual appropriations, through the end of 2005. The program would be authorized at \$100 million per year. Annual payments under the substitute would be \$2.3 million per ship per year for the first year and \$2.1 million per ship per year for the following nine years of the program. The Merchant Marine Panel recognized the value in providing longer term contract authority between the U.S. government and the U.S. flag operators, however fiscal constraints precluded the enactment of multi-year contract authority as the Administration had proposed. The substitute also would expand the obligations of vessel operators who participate in the program by requiring them to make available a broad range of intermodal assets and not simply vessels. The substitute also would allow vessel operators to reflag if Congress fails to appropriate the funds necessary to operate the program.

On May 24, 1995, the Committee on National Security considered the panel-recommended substitute to H.R. 1350. No amendments were offered. H.R. 1350 was ordered reported favorably to the House by unanimous voice vote, a quorum being present.

SECTION-BY-SECTION ANALYSIS

SECTION 1—SHORT TITLE

Section 1 would establish the short title for the Act as the "Maritime Security Act of 1995".

SECTION 2—MARITIME SECURITY PROGRAM

Section 2 would add a new subtitle B to the Merchant Marine Act, 1936, consisting of new sections 651 through 655 of title 46 App., United States Code. The program established under new Subtitle B would be entitled the "Maritime Security Fleet Program". Under this subtitle, the Secretary of Transportation would be required to establish a fleet of active, militarily useful, privately-owned vessels to meet national defense and other security requirements and for the purpose of maintaining a United States presence in international commercial shipping. The vessels in this fleet would be those which are covered by an operating agreement.

Section 651(b) would establish the criteria that vessels must meet to be eligible to be covered by an operating agreement. To be eligible, the vessel must currently be operating in ocean common carriage, must be a roll-on/roll-off vessel with a carrying capacity

of at least 80,000 square feet or 500 twenty-foot equivalent units, or must be a lighter aboard ship vessel (LASH) with a barge capacity of at least 75 barges. In addition to these specific categories, the Secretary would be authorized to select additional vessel types that may be needed to meet specific national defense or military requirements, such as small tankers or bulkers. Vessels that are currently not under the U.S. flag would be eligible to be covered if they are less than 10 years of age when placed under the U.S. flag. A vessel not yet under the U.S. flag would have to meet U.S. flag documentation requirements at the time the vessel enters into the operating agreement.

Section 652 would establish the terms, payment levels, and limitations on operating agreements. Restrictions, including trade route restrictions, which are imposed on existing ODS operators would be inapplicable to vessels under the new program. Because of budget limitations, the operating agreements would be one year contracts, with a provision authorizing annual renewals for up to nine years. Each renewal would be subject to the availability of appropriations. The annual payment for each vessel under an operating agreement would be \$2.3 million for fiscal year 1996 and \$2.1 million for each subsequent fiscal year. All participating vessels must be documented under U.S. law and operated in the foreign commerce. Participating vessels may not be operated in the coastwise trade, except for the trade between the United States and Guam, American Samoa, Wake Island, Midway Island, or Kingman Reef. A vessel would not be eligible to receive a payment under this program if it is under charter to the United States Government or is subject to an existing operating-differential contract.

Section 652(i) would establish the order in which the Secretary shall award contracts for vessels based on 3 priorities. The first priority includes two types of vessels: those that are owned by citizens of the United States under section 2 of the Shipping Act, 1916, and those that are less than 10 years old and owned by persons that are eligible to own a U.S.-flag vessel if the owner also operates or manages other U.S.-flag vessels for the Secretary of Defense or charters vessels to the Secretary of Defense. However, the number of vessels for which an owner and operator may be awarded an operating agreement under this priority would be capped at the number of U.S.-flag vessels that the owner operated in the foreign commerce of the United States (except mixed coastwise and foreign) on May 17, 1995, plus the number of U.S.-flag vessels that the owner had under charter to the Secretary of Defense on that date.

Under this provision, if appropriated funds are available after awarding contracts for all eligible vessels covered under the first priority, then the Secretary would be able to award contracts under the second priority. The second priority would include the same two types of vessel owners that are eligible under the first priority, but only with respect to vessels in excess of the cap for that owner or operator in the first priority. To the extent that appropriated funds would be available after awarding contracts for all eligible vessels covered under the first and second priorities, the Secretary would be required to award contracts for vessels that are otherwise eligible.

Section 652(n) would provide that if funds are not appropriated for any fiscal year, then each vessel covered by an operating agreement under this subtitle is released from any further obligation under the agreement, and the operator may transfer and register that vessel under an effective United States-controlled foreign flag.

Provisions included in section 652(o) would give a preference to American built vessels in the award of operating agreements.

Section 653(a) would establish requirements for the Emergency Preparedness Agreement that must be entered into as a condition for receiving payment under an operating agreement. The Emergency Preparedness Agreement would be entered into pursuant to the Emergency Preparedness Program established by the Secretary of Transportation but approved by the Secretary of Defense. Upon a request by the Secretary of Defense during time of war or national emergency, an owner or operator of a vessel covered by an operating agreement would be required to make available commercial transportation resources.

Section 653(b) would define commercial transportation resources which must be made available upon a request by the Secretary of Defense to include vessels or capacity in vessels, intermodal systems and equipment, terminal facilities, and intermodal and management services, or any portion of the above categories that the Secretary may deem necessary.

Under section 653(c), the Secretary of Transportation would not be permitted to reduce the amounts received under the operating agreement to an owner or operator who makes commercial transportation resources available under an Emergency Preparedness Program.

Under section 653(d), an owner or operator who makes a vessel available to the Secretary of Defense under this section would be allowed to employ a foreign-flag vessel in the foreign commerce of the United States as a replacement vessel for a vessel covered by an operating agreement under this subtitle.

Section 653(e) would require the Secretary to redeliver the vessel or other resources which were used during a war or national emergency in the same condition as when made available, less ordinary wear and tear. The Government would be required to compensate the contractor for necessary repairs or replacements. This section also would provide that the Emergency Preparedness Agreement shall supersede any other agreement between the contractor and the government.

Section 654 contains definitions applicable to Subtitle B.

Section 655 would authorize to be appropriated for operating agreements under this subtitle \$100 million for fiscal year 1996 and such sums as may be necessary, but not to exceed \$100 million, for each fiscal year thereafter through fiscal year 2005.

SECTION 3—TERMINATION OF OPERATING-DIFFERENTIAL SUBSIDY PROGRAM

Section 3 would amend the Merchant Marine Act, 1936, to generally provide for the phasing out of the current Operating Differential Subsidy program. Section 3(a) would amend section 605(b) of the Merchant Marine Act, 1936 to prohibit the payment of an operating-differential subsidy for the operation of a vessel that is

more than 25 years of age, unless the Secretary of Transportation determines, before enactment of this Act that it is in the public interest to grant such financial aid for the operation of such vessel.

Section 3(b) would create a new section 616 of the Merchant Marine Act, 1936. The new section would prohibit any new operating-differential contracts after the new program is enacted and would remove the trade route and essential service restrictions on vessels that are subject to existing contracts once the new program is operating. An operator of a vessel included in an operating agreement, would be allowed to place that vessel under an effective United States flag if a comparable vessel is included in the agreement as a replacement.

SECTION 4—DOMESTIC OPERATIONS

This section would maintain existing service in the domestic offshore trades by amending section 805(a) of the Merchant Marine Act, 1936. The year "1935" would be replaced by the year "1995" each place it appears in that section of the Act.

SECTION 5—USE OF FOREIGN-FLAG VESSELS

This section would amend section 804 of the Merchant Marine Act, 1936 to permit a vessel owner who is receiving payments under the new program to operate, under specified conditions, foreign-flag feeder vessels, line haul vessels and to enter into space chartering arrangements. Foreign-flag vessels in line haul service would be required to be under an effective United States controlled foreign flag.

SECTION 6—AMENDMENTS TO THE SHIPPING ACT, 1916

This section would amend section 9 of the Shipping Act, 1916 to allow the owner of a U.S.-flag vessel to place its vessels under foreign registry under certain conditions. These conditions generally relate to the expiration of existing contracts, admittance of replacement vessels or the nonavailability of new contracts.

SECTION 7—RESTRICTIONS ON CONSTRUCTION DIFFERENTIAL SUBSIDY

This section would reaffirm a longstanding executive branch interpretation of applicable statutes that a liner vessel built using a construction differential subsidy is eligible to enter the domestic trades at the expiration of 25 years, beginning from the date of original delivery of the vessel.

SECTION 8—REGULATIONS

This section would authorize the Secretary of Transportation to issue interim and final regulations for the purpose of implementing this Act.

DEPARTMENTAL POSITION

The committee understands the Department of Defense and the Department of Transportation support H.R. 1350.

COMMITTEE POSITION

The Committee on National Security, on May 24, 1995, a quorum being present, approved H.R. 1350, as amended, by unanimous voice vote.

FISCAL DATA

Pursuant to clause 7 of rule XIII of the Rules of the House of Representatives, the committee attempted to ascertain annual outlays that would result from enactment of H.R. 1350 during fiscal year 1996 and the four following fiscal years. The results of such efforts are reflected in the cost estimate prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974, which is included in this report pursuant to clause 2(l)(3)(C) of House rule XI.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

In compliance with clause 2(l)(3)(C) of rule XI of Rules of the House of Representatives, the cost estimate prepared by the Congressional Budget Office and submitted pursuant to section 403 of the Congressional Budget of 1974 is as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 19, 1995.

Hon. FLOYD D. SPENCE,
Chairman, Committee on National Security, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1350, the Maritime Security Act of 1995.

Enactment of H.R. 1350 would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JAMES L. BLUM
(For June E. O'Neill, Director).

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 1350.
2. Bill title: Maritime Security Act of 1995.
3. Bill status: As ordered reported by the House Committee on National Security on May 24, 1995.
4. Bill purpose: H.R. 1350 would amend Title VI of the Merchant Marine Act, 1936, which authorizes federal operating subsidies for U.S.-flag shipping companies. Section 2 of the bill would replace the existing operating differential subsidy (ODS) program currently administered by the Maritime Administration (MARAD) with a new program. Specifically, the section would establish the Maritime Security Fleet (MSF) within the Department of Transport-

tation. Owners or operators of ships enrolled in the MSF would enter into annual operating agreements with MARAD making their vessels available to the government when needed for national security. In exchange, the agency would pay the ship owners or operators \$2.1 million (\$2.3 million for 1996) per ship, subject to appropriation of the necessary amounts. The bill would authorize the Secretary of Transportation to enter into one-year agreements in 1996; the contracts could then be renewed each year through 2005 subject to the availability of appropriations. All eligible carriers would be able to sign the one-year agreements during 1996 but would not receive the monthly payments for vessels covered by ODS contracts or Military Sealift Command (MSC) charters until these other payments ended. The bill would authorize the appropriation of \$100 million for fiscal year 1996, and such sums as necessary up to \$100 million per year for fiscal years 1997 through 2005.

Section 3 of the bill would prohibit the Secretary of Transportation from renewing or executing new ODS contracts once the legislation is enacted. Carriers with active contracts would continue to receive subsidy payments until those agreements expire, unless the carriers choose to terminate them at an earlier date.

5. Estimated cost to the Federal Government:

Under current MARAD policies, operating subsidies to U.S. shipping companies will terminate in fiscal year 2001, when the last existing ODS contract expires. No new contracts have been executed since 1981, and MARAD no longer extends existing agreements. CBO projects that ODS outlays will fall from \$167 million in 1996 to less than \$7 million by 2000. CBO estimates that, as a result of H.R. 1350, subsidy payments to shipping companies would total \$209 million in 1996 and 1997. Total subsidies would fall to \$146 million in 1998, the first full year of payments under the new program, as more ODS contracts expire. From 2001 (when all ODS contracts will have expired) through 2005, annual subsidies would equal \$100 million, the amount authorized for MSF payments. The budgetary impacts of the legislation are summarized in the table below:

[By fiscal year, in millions of dollars]

	1995	1996	1997	1998	1999	2000
Spending under current law:						
Budget authority ¹						
Estimated outlays	211	167	128	46	11	7
Proposed changes:						
Estimated authorization level		46	84	100	100	100
Estimated outlays		42	81	100	100	100
Spending under H.R. 1350:						
Authorization level		46	84	100	100	100
Estimated outlays	211	209	209	146	111	107

¹ Spending under current law is equal to CBO baseline estimates of outlays that will occur under existing contracts. Budget authority was provided for this purpose in the years that the contracts were signed; no new authority is shown under current law because CBO does not expect any new ODS agreements to be executed.

The costs of this bill fall within budget function 400.

6. Basis of estimate: For purposes of this estimate, CBO assumed that H.R. 1350 would be enacted by the start of fiscal year 1996. The table shows the amounts estimated to be necessary for subsidy payments, up to the \$100 million annual cap specified in the bill.

We have further assumed that MSF operating agreements would be signed during the second and third quarters of fiscal year 1996 at the earliest, based on the requirements of the legislation.

Even though the bill specifies an authorization level of \$100 million for 1996, CBO estimates that MARAD would need to obligate only about \$46 million in the first year of the new program. Appropriations and outlays would rise to \$100 million annually by 1998, once all agreements have been signed and all enrolled vessels have begun receiving payments. (We estimate that fewer than 10 ships currently under other federal contracts will enter the MSF; most of these will begin receiving payments by 1998.) At that time, MSF appropriations will be sufficient to subsidize about 47 ships.

7. Pay-as-you-go considerations: None.
8. Estimated cost to State and local governments: None.
9. Estimate comparison: None.
10. Previous CBO estimate: None.
11. Estimate prepared by: Deborah Reis.
12. Estimated approved by: Paul N. Van de Water, Assistant Director for Budget Analysis.

COMMITTEE COST ESTIMATE

The committee generally concurs with the estimate contained in the report of the Congressional Budget Office.

INFLATION IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the committee concludes that the bill would have no significant inflationary impact.

OVERSIGHT FINDINGS

With respect to clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, this legislation results from hearings and other oversight activities conducted by the committee pursuant to clause 2(b)(1) of rule X.

With respect to clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives, section 308 of the Congressional Budget Act of 1974, and on the basis of the cost estimate prepared by the Congressional Budget Office, this legislation does not include any new budget, spending, or credit authority, nor does it provide for any increase or decrease in tax revenues or expenditures.

With respect to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, the committee has not received a report from the Committee on Government Reform and Oversight pertaining to the subject matter of H.R. 1350.

ROLLCALL VOTES

In accordance with clause 2(l)(2)(B) of rule XI of the Rules of the House of Representatives, no rollcall votes were taken with respect to H.R. 1350. H.R. 1350 was ordered reported favorably to the House by unanimous voice vote.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, 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 matter is printed in italic, existing law in which no change is proposed is shown in roman):

MERCHANT MARINE ACT, 1936

* * * * *

TITLE V—CONSTRUCTION-DIFFERENTIAL SUBSIDY

* * * * *

SEC. 512. LIMITATION ON RESTRICTIONS.

Notwithstanding any other provision of law or contract, all restrictions and requirements under sections 503, 506, and 802 applicable to a liner vessel constructed, reconstructed, or reconditioned with the aid of construction-differential subsidy shall terminate upon the expiration of the 25-year period beginning on the date of the original delivery of the vessel from the shipyard.

* * * * *

【TITLE VI—OPERATING-DIFFERENTIAL SUBSIDY】

TITLE VI—VESSEL OPERATING ASSISTANCE PROGRAMS

Subtitle A—Operating-Differential Subsidy Program

* * * * *

SEC. 605. (a) * * *

【(b) No operating-differential subsidy shall be paid for the operation of a vessel that is more than twenty-five years of age unless the Secretary of Transportation finds that it is to the public interest to grant such financial aid for the operation of such vessel and enters a formal order thereon.】

(b) No operating-differential subsidy shall be paid for the operation of a vessel after the calendar year the vessel becomes 25 years of age, unless the Secretary of Transportation has determined, before the date of enactment of the Maritime Security Act of 1995, that it is in the public interest to grant such financial aid for the operation of such vessel.

* * * * *

SEC. 616. (a) After the date of enactment of the Maritime Security Act of 1995, the Secretary of Transportation shall not enter into any new contract for operating-differential subsidy under this subtitle.

(b) Notwithstanding any other provision of this Act, any operating-differential subsidy contract in effect under this title on the day before the date of enactment of the Maritime Security Act of 1995 shall continue in effect and terminate as set forth in the contract, unless voluntarily terminated at an earlier date by the parties (other than the United States Government) to the contract.

(c) The essential service requirements of section 601(a) and 603(b), and the provisions of sections 605(c) and 809(a), shall not apply to

the operating-differential subsidy program under this subtitle effective upon the earlier of—

(1) the date that a payment is made, under the Maritime Security Program established by subtitle B to a contractor under that subtitle who is not party to an operating-differential subsidy contract under this subtitle, with the Secretary to cause notice of the date of such payment to be published in the Federal Register as soon as possible; or

(2) with respect to a particular contractor under the operating-differential subsidy program, the date that contractor enters into a contract with the Secretary under the Maritime Security Program established by subtitle B.

(d)(1) Notwithstanding any other provision of law, a vessel may be transferred and registered under an effective United States-controlled foreign flag if—

(A) the operator of the vessel receives an operating-differential subsidy pursuant to a contract under this subtitle which is in force on October 1, 1994, and the Secretary approves the replacement of such vessel with a comparable vessel, or

(B) the vessel is covered by an operating agreement under subtitle B, and the Secretary approves the replacement of such vessel with a comparable vessel for inclusion in the Maritime Security Fleet established under subtitle B.

(2) Any such vessel may be requisitioned by the Secretary of Transportation pursuant to section 902.

Subtitle B—Maritime Security Fleet Program

ESTABLISHMENT OF FLEET

SEC. 651. (a) *IN GENERAL.*—The Secretary of Transportation shall establish a fleet of active, militarily useful, privately-owned vessels to meet national defense and other security requirements and maintain a United States presence in international commercial shipping. The Fleet shall consist of privately owned, United States-flag vessels for which there are in effect operating agreements under this subtitle, and shall be known as the Maritime Security Fleet.

(b) *VESSEL ELIGIBILITY.*—A vessel is eligible to be included in the Fleet if the vessel is self-propelled and—

(1)(A) is operated by a person as an ocean common carrier (as that term is used in the Shipping Act of 1984 (46 App. U.S.C. 1701 et seq.));

(B) whether in commercial service, on charter to the Department of Defense, or in other employment, is either—

(i) a roll-on/roll-off vessel with a carrying capacity of at least 80,000 square feet or 500 twenty-foot equivalent units; or

(ii) a lighter aboard ship vessel with a barge capacity of at least 75 barges; or

(C) any other type of vessel that is determined by the Secretary to be suitable for use by the United States for national defense or military purposes in time of war or national emergency;

(2)(A)(i) is a United States-documented vessel; and

(ii) on the date an operating agreement covering the vessel is entered into under this subtitle, is—

(I) a LASH vessel that is 25 years of age or less; or

(II) any other type of vessel that is 15 years of age or less; except that the Secretary of Transportation may waive the application of clause (ii) if the Secretary, in consultation with the Secretary of Defense, determines that the waiver is in the national interest; or

(B) it is not a United States-documented vessel, but the owner of the vessel has demonstrated an intent to have the vessel documented under chapter 121 of title 46, United States Code, if it is included in the Fleet, and the vessel will be less than 10 years of age on the date of that documentation;

(3) the Secretary of Transportation determines that the vessel is necessary to maintain a United States presence in international commercial shipping or, after consultation with the Secretary of Defense, determines that the vessel is militarily useful for meeting the sealift needs of the United States with respect to national emergencies; and

(4) at the time an operating agreement for the vessel is entered into under this subtitle, the vessel will be eligible for documentation under chapter 121 of title 46, United States Code.

OPERATING AGREEMENTS

SEC. 652. (a) IN GENERAL.—The Secretary of Transportation shall require, as a condition of including any vessel in the Fleet, that the owner or operator of the vessel enter into an operating agreement with the Secretary under this section. Notwithstanding subsection (g), the Secretary may enter into an operating agreement for, among other vessels that are eligible to be included in the Fleet, any vessel which continues to operate under an operating-differential subsidy contract under subtitle A or which is under charter to the Department of Defense.

(b) *REQUIREMENTS FOR OPERATION.*—An operating agreement under this section shall require that, during the period a vessel is operating under the agreement—

(1) the vessel—

(A) shall be operated exclusively in the foreign trade or in mixed foreign and domestic trade allowed under a registry endorsement issued under section 12105 of title 46, United States Code, and

(B) shall not otherwise be operated in the coastwise trade; and

(2) the vessel shall be documented under chapter 121 of title 46, United States Code.

(c) *CERTAIN REQUIREMENTS NOT TO APPLY.*—A contractor of a vessel included in an operating agreement under this subtitle may operate the vessel in the foreign commerce of the United States without restriction, and shall not be subject to any requirement under section 801, 808, 809, or 810.

(d) *EFFECTIVENESS AND ANNUAL PAYMENT REQUIREMENTS OF OPERATING AGREEMENTS.*—

(1) *EFFECTIVENESS.*—The Secretary of Transportation may enter into an operating agreement under this subtitle for fiscal

year 1996. The agreement shall be effective only for 1 fiscal year, but shall be renewable, subject to the availability of appropriations, for each subsequent fiscal year through the end of fiscal year 2005.

(2) ANNUAL PAYMENT.—An operating agreement under this subtitle shall require, subject to the availability of appropriations and the other provisions of this section, that the Secretary of Transportation pay each fiscal year to the contractor, for each vessel that is covered by the operating agreement, an amount equal to \$2,300,000 for fiscal year 1996 and \$2,100,000 for each fiscal year thereafter in which the agreement is in effect. The amount shall be paid in equal monthly installments at the end of each month. The amount shall not be reduced except as provided by this section.

(e) CERTIFICATION REQUIRED FOR PAYMENT.—As a condition of receiving payment under this section for a fiscal year for a vessel, the owner or operator of the vessel shall certify, in accordance with regulations issued by the Secretary of Transportation, that the vessel has been and will be operated in accordance with subsection (b)(1) for at least 320 days in the fiscal year. Days during which the vessel is drydocked, surveyed, inspected, or repaired shall be considered days of operation for purposes of this subsection.

(f) OPERATING AGREEMENT IS OBLIGATION OF UNITED STATES GOVERNMENT.—An operating agreement under this subtitle constitutes a contractual obligation of the United States Government to pay the amounts provided for in the agreement to the extent of actual appropriations.

(g) LIMITATIONS.—The Secretary of Transportation shall not make any payment under this subtitle for a vessel with respect to any days for which the vessel is—

(1) subject to an operating-differential subsidy contract under subtitle A or under a charter to the United States Government, other than a charter pursuant to section 653;

(2) not operated or maintained in accordance with an operating agreement under this subtitle; or

(3) more than 25 years of age, except that the Secretary may make such payments for a LASH vessel for any day for which the vessel is more than 25 years of age if that vessel—

(A) is modernized after January 1, 1994,

(B) is modernized before it is 25 years of age, and

(C) is not more than 30 years of age.

(h) PAYMENTS.—With respect to payments under this subtitle for a vessel covered by an operating agreement, the Secretary of Transportation—

(1) except as provided in paragraph (2), shall not reduce any payment for the operation of a vessel to carry military or other preference cargoes under section 2631 of title 10, United States Code, the Act of March 26, 1934 (46 App. U.S.C. 1241-1), section 901(a), 901(b), or 901b of this Act, or any other cargo preference law of the United States;

(2) shall not make any payment for any day that a vessel is engaged in transporting more than 7,500 tons of civilian bulk preference cargoes pursuant to section 901(a), 901(b), or 901b

that is bulk cargo (as that term is defined in section 3 of the Shipping Act of 1984 (46 App. U.S.C. 1702)); and

(3) shall make a pro rata reduction in payment for each day less than 320 in a fiscal year that a vessel covered by an operating agreement is not operated in accordance with subsection (b)(1), with days during which the vessel is drydocked or undergoing survey, inspection, or repair considered to be days on which the vessel is operated.

(i) *PRIORITY FOR AWARDING AGREEMENTS.*—Subject to the availability of appropriations, the Secretary shall enter into operating agreements according to the following priority:

(1) *VESSELS OWNED BY CITIZENS.*—

(A) *PRIORITY.*—First, for any vessel that is—

(i) owned and operated by persons who are citizens of the United States under section 2 of the Shipping Act, 1916; or

(ii) less than 10 years of age and owned and operated by a corporation that is—

(I) eligible to document a vessel under chapter 121 of title 46, United States Code; and

(II) affiliated with a corporation operating or managing for the Secretary of Defense other vessels documented under that chapter, or chartering other vessels to the Secretary of Defense.

(B) *LIMITATION ON NUMBER OF OPERATING AGREEMENTS.*—The total number of operating agreements that may be entered into by a person under the priority in subparagraph (A)—

(i) for vessels described in subparagraph (A)(i), may not exceed the sum of—

(I) the number of United States-documented vessels the person operated in the foreign commerce of the United States (except mixed coastwise and foreign commerce) on May 17, 1995; and

(II) the number of United States-documented vessels the person chartered to the Secretary of Defense on that date; and

(ii) for vessels described in subparagraph (A)(ii), may not exceed 5 vessels.

(C) *TREATMENT OF RELATED PARTIES.*—For purposes of subparagraph (B), a related party with respect to a person shall be treated as the person.

(2) *OTHER VESSELS OWNED BY CITIZENS AND GOVERNMENT CONTRACTORS.*—To the extent that amounts are available after applying paragraph (1), any vessel that is owned and operated by a person who is—

(A) a citizen of the United States under section 2 of the Shipping Act, 1916, that has not been awarded an operating agreement under the priority established under paragraph (1); or

(B)(i) eligible to document a vessel under chapter 121 of title 46, United States Code; and

(ii) affiliated with a corporation operating or managing other United States-documented vessels for the Secretary of

Defense or chartering other vessels to the Secretary of Defense.

(3) *OTHER VESSELS.*—To the extent that amounts are available after applying paragraphs (1) and (2), any other eligible vessel.

(j) *TRANSFER OF OPERATING AGREEMENTS.*—A contractor under an operating agreement may transfer the agreement (including all rights and obligations under the agreement) to any person eligible to enter into that operating agreement under this subtitle after notification of the Secretary in accordance with regulations prescribed by the Secretary, unless the transfer is disapproved by the Secretary within 90 days after the date of that notification. A person to whom an operating agreement is transferred may receive payments from the Secretary under the agreement only if each vessel to be covered by the agreement after the transfer is an eligible vessel under section 651(b).

(k) *REVERSION OF UNUSED AUTHORITY.*—The obligation of the Secretary to make payments under an operating agreement under this subtitle shall terminate with respect to a vessel if the contractor fails to engage in operation of the vessel for which such payment is required—

(1) *within one year after the effective date of the operating agreement, in the case of a vessel in existence on the effective date of the agreement, or*

(2) *within 30 months after the effective date of the operating agreement, in the case of a vessel to be constructed after that effective date.*

(l) *PROCEDURE FOR CONSIDERING APPLICATION; EFFECTIVE DATE FOR CERTAIN VESSELS.*—

(1) *PROCEDURES.*—Within 90 days after receipt of an application for enrollment of a vessel in the Fleet, the Secretary shall enter into an operating agreement with the applicant or provide in writing the reason for denial of that application.

(2) *EFFECTIVE DATE.*—Unless an earlier date is requested by the applicant, the effective date for an operating agreement with respect to a vessel which is, on the date of entry into an operating agreement, either subject to a contract under subtitle A or on charter to the United States Government, other than a charter under section 653, shall be the expiration or termination date of the contract under subtitle A or of the Government charter covering the vessel, respectively, or any earlier date the vessel is withdrawn from that contract or charter.

(m) *EARLY TERMINATION.*—An operating agreement under this subtitle shall terminate on a date specified by the contractor if the contractor notifies the Secretary, by not later than 60 days before the effective date of the termination, that the contractor intends to terminate the agreement. Vessels covered by an operating agreement terminated under to this subsection shall remain documented under chapter 121 of title 46, United States Code, until the date the operating agreement would have terminated according to its terms. A contractor who terminates an operating agreement pursuant to this subsection shall continue to be bound by the provisions of section 653 until the date the operating agreement would have terminated according to its terms. All terms and conditions of an Emergency

Preparedness Agreement entered into under to section 653 shall remain in effect until the date the operating agreement would have terminated according to its terms, except that the terms of such Emergency Preparedness Agreement may be modified by the mutual consent of the contractor and the Secretary of Transportation.

(n) *TERMINATION FOR LACK OF FUNDS.—If funds are not appropriated under the authority provided by section 655 for any fiscal year, then each vessel covered by an operating agreement under this subtitle is thereby released from any further obligation under the operating agreement, the operating agreement shall terminate, and the vessel owner or operator may transfer and register such vessel under an effective United States-controlled foreign flag, notwithstanding any other provision of law. If section 902 is applicable to such vessel after registry under an effective United States-controlled foreign flag, the vessel is available to be requisitioned by the Secretary of Transportation pursuant to section 902.*

(o) *AWARD OF OPERATING AGREEMENTS.—*

(1) *IN GENERAL.—The Secretary of Transportation, subject to paragraph (4), shall award operating agreements within each priority under subsection (i) (1), (2), and (3) under regulations prescribed by the Secretary.*

(2) *NUMBER OF AGREEMENTS AWARDED.—Regulations under paragraph (1) shall provide that if appropriated amounts are not sufficient for operating agreements for all vessels within a priority under subsection (i) (1), (2), or (3), the Secretary shall award to each person submitting a request a number of operating agreements that bears approximately the same ratio to the total number of vessels in the priority, as the amount of appropriations available for operating agreements for vessels in the priority bears to the amount of appropriations necessary for operating agreements for all vessels in the priority.*

(3) *TREATMENT OF RELATED PARTIES.—For purposes of paragraph (2), a related party with respect to a person shall be treated as the person.*

(4) *PREFERENCE FOR U.S.-BUILT VESSELS.—In awarding operating agreements for vessels within a priority under subsection (i) (1), (2), or (3), the Secretary shall give preference to a vessel that was constructed in the United States, to the extent such preference is consistent with establishment of a fleet described in the first sentence of section 651(a) (taking into account the age of the vessel, the nature of service provided by the vessel, and the commercial viability of the vessel).*

(p) *NOTICE TO U.S. SHIPBUILDERS REQUIRED.—The Secretary shall include in any operating agreement under this subtitle a requirement that the contractor under the agreement shall, by not later than 30 days after soliciting any bid or offer for the construction of any vessel in a foreign shipyard and before entering into a contract for construction of a vessel in a foreign shipyard, provide notice of the intent of the contractor to enter into such a contract to each shipyard in the United States that is capable of constructing the vessel.*

NATIONAL SECURITY REQUIREMENTS

SEC. 653. (a) EMERGENCY PREPAREDNESS AGREEMENT.—

(1) *REQUIREMENT TO ENTER AGREEMENT.*—The Secretary of Transportation shall establish an Emergency Preparedness Program under this section that is approved by the Secretary of Defense. Under the program, the Secretary of Transportation shall include in each operating agreement under this subtitle a requirement that the contractor enter into an Emergency Preparedness Agreement under this section with the Secretary. The Secretary shall negotiate and enter into an Emergency Preparedness Agreement with each contractor as promptly as practicable after the contractor has entered into an operating agreement under this subtitle.

(2) *TERMS OF AGREEMENT.*—An Emergency Preparedness Agreement under this section shall require that upon a request by the Secretary of Defense during time of war or national emergency, an owner or operator of a vessel covered by an operating agreement under this subtitle shall make available commercial transportation resources (including services). The basic terms of the Emergency Preparedness Agreement shall be established pursuant to consultations among the Secretary, the Secretary of Defense, and Maritime Security Program contractors. In any Emergency Preparedness Agreement, the Secretary and a contractor may agree to additional or modifying terms appropriate to the contractor's circumstances.

(b) *RESOURCES MADE AVAILABLE.*—The commercial transportation resources to be made available under an Emergency Preparedness Agreement shall include vessels or capacity in vessels, intermodal systems and equipment, terminal facilities, intermodal and management services, and other related services, or any agreed portion of such nonvessel resources for activation as the Secretary may determine to be necessary, seeking to minimize disruption of the contractor's service to commercial shippers.

(c) *COMPENSATION.*—

(1) *IN GENERAL.*—The Secretary of Transportation shall provide in each Emergency Preparedness Agreement for reasonable compensation for all commercial transportation resources provided pursuant to this section.

(2) *SPECIFIC REQUIREMENTS.*—Compensation under this subsection—

(A) shall not be less than the contractor's commercial market charges for like transportation resources;

(B) shall include all the contractor's costs associated with provision and use of the contractor's commercial resources to meet emergency requirements;

(C) in the case of a charter of an entire vessel, shall be fair and reasonable;

(D) shall be in addition to and shall not in any way reflect amounts payable under section 652; and

(E) shall be provided from the time that a vessel or resource is diverted from commercial service until the time that reenters commercial service.

(d) *TEMPORARY REPLACEMENT VESSELS.*—Notwithstanding any other provision of this subtitle or of other law to the contrary—

(1) a contractor may operate or employ in foreign commerce a foreign-flag vessel or foreign-flag vessel capacity, as a tem-

porary replacement for a United States-documented vessel or United States-documented vessel capacity that is activated under an Emergency Preparedness Agreement; and

(2) such replacement vessel or vessel capacity shall be eligible during the replacement period to transport preference cargoes subject to section 2631 of title 10, United States Code, the Act of March 26, 1934 (46 App. U.S.C. 1241-1), and sections 901(a), 901(b), and 901b of this Act to the same extent as the eligibility of the vessel or vessel capacity replaced.

(e) REDELIVERY AND LIABILITY OF U.S. FOR DAMAGES.—

(1) IN GENERAL.—All commercial transportation resources activated under an Emergency Preparedness Agreement shall, upon termination of the period of activation, be redelivered to the contractor in the same good order and condition as when received, less ordinary wear and tear, or the Government shall fully compensate the contractor for any necessary repair or replacement.

(2) LIMITATION ON LIABILITY OF U.S.—Except as may be expressly agreed to in an Emergency Preparedness Agreement, or as otherwise provided by law, the Government shall not be liable for disruption of a contractor's commercial business or other consequential damages to a contractor arising from activation of commercial transportation resources under an Emergency Preparedness Agreement.

(3) LIMITATION ON APPLICATION OF OTHER REQUIREMENTS.—Sections 902 and 909 of this Act shall not apply to a vessel while it is covered by an Emergency Preparedness Agreement under this subtitle. Any Emergency Preparedness Agreement entered into by a contractor shall supersede any other agreement between that contractor and the Government for vessel availability in time of war or national emergency.

DEFINITIONS

SEC. 654. In this subtitle:

(1) FLEET.—The term "Fleet" means the Maritime Security Fleet established pursuant to section 651(a).

(2) LASH VESSEL.—The term "LASH vessel" means a lighter aboard ship vessel.

(3) UNITED STATES-DOCUMENTED VESSEL.—The term "United States-documented vessel" means a vessel documented under chapter 121 of title 46, United States Code.

AUTHORIZATION OF APPROPRIATIONS

SEC. 655. There are authorized to be appropriated for operating agreements under this subtitle, to remain available until expended, \$100,000,000 for fiscal year 1996 and such sums as may be necessary, not to exceed \$100,000,000, for each fiscal year thereafter through fiscal year 2005.

* * * * *

TITLE VIII—CONTRACT PROVISIONS

* * * * *

SEC. 804. (a) * * *

* * * * *

(f) The provisions of subsection (a) shall not preclude a contractor receiving assistance under subtitle A or B of title VI, or any holding company, subsidiary, or affiliate of the contractor, or any officer, director, agent, or executive thereof, from—

(1) owning, chartering, or operating any foreign-flag vessel on a voyage or a segment of a voyage that does not call at a port in the United States;

(2) owning, chartering, or operating any foreign-flag vessel in line haul service between the United States and foreign ports if—

(A) the foreign-flag vessel was operated by, or is a replacement for a foreign-flag vessel operated by, such owner or operator, or any holding company, subsidiary, affiliate, or associate of such owner or operator, on the date of enactment of the Maritime Security Act of 1995;

(B) the owner or operator, with respect to each additional foreign-flag vessel, other than a time chartered vessel, has first applied to have that vessel covered by an operating agreement under to subtitle B of title VI, and the Secretary has not awarded an operating agreement with respect to that vessel within 90 days after the filing of the application; or

(C) the vessel has been placed under foreign documentation pursuant to section 9 of the Shipping Act, 1916 (46 App. U.S.C. 808), except that any foreign-flag vessel, other than a time chartered vessel, a replacement vessel under section 653(d), or a vessel operated by the owner or operator on the date of enactment of the Maritime Security Act of 1995, in line haul service between the United States and foreign ports is registered under the flag of an effective United States-controlled foreign flag, and available to be requisitioned by the Secretary of Transportation pursuant to section 902 of this Act;

(3) owning, chartering, or operating foreign-flag bulk cargo vessels that are operated in foreign-to-foreign service or the foreign commerce of the United States;

(4) chartering or operating foreign-flag vessels that are operated solely as replacement vessels for United States-flag vessels or vessel capacity that are made available to the Secretary of Defense pursuant to section 653 of this Act; or

(5) entering into time or space charter or other cooperative agreements with respect to foreign-flag vessels or acting as agent or broker for a foreign-flag vessel or vessels.

SEC. 805. (a) It shall be unlawful to award or pay any subsidy to any contractor under authority of title VI of this Act, or to charter any vessel to any person under title VII of this Act, if said contractor or charterer, or any holding company, subsidiary, affiliate, or associate of such contractor or charterer, or any officer, director, agent, or executive thereof, directly or indirectly, shall own, operate, or charter any vessel or vessels engaged in the domestic intercoastal or coastwise service, or own any pecuniary interest, directly or indirectly, in any person or concern that owns, charters,

or operates any vessel or vessels in the domestic intercoastal or coastwise service, without the written permission of the Secretary of Transportation. Every person, firm or corporation having any interest in such application shall be permitted to intervene and the Secretary of Transportation shall give a hearing to the applicant and the intervenors. The Secretary of Transportation shall not grant any such application if the Secretary of Transportation finds it will result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or intercoastal service or that it would be prejudicial to the objects and policy of this Act: *Provided*, That if such contractor or other person above-described or a predecessor in interest was in bona-fide operation as a common carrier by water in the domestic, intercoastal, or coastwise trade in [1935] 1995 over the route or routes or in the trade or trades for which application is made and has so operated since that time or if engaged in furnishing seasonal service only, was in bona-fide operation in [1935] 1995 during the season ordinarily covered by its operation, except in either event, as to interruptions of service over which the applicant or its predecessor in interest had no control, the Secretary of Transportation shall grant such permission without requiring further proof that public interest and convenience will be served by such operation, and without further proceedings as to the competition in such route or trade.

If such application be allowed, it shall be unlawful for any of the persons mentioned in this section to divert, directly or indirectly, any moneys, property, or other thing of value, used in foreign-trade operations, for which a subsidy is paid by the United States, into any such coastwise or intercoastal operations; and whosoever shall violate this provision shall be guilty of a misdemeanor.

* * * * *

SECTION 9 OF THE SHIPPING ACT, 1916

SEC. 9. (a) * * *

* * * * *

(e) 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 subpart B of title VI of the Merchant Marine Act, 1936 has expired.

* * * * *

