

MILITARY PROGRAMS

Fast Sealift Program

SEC. 1424.¹ FAST SEALIFT PROGRAM.

(a) **Establishment of Program.** The Secretary of the Navy shall establish a program for the construction and operation, or conversion and operation, of cargo vessels that incorporate features essential for military use of the vessels.

(b) **Program Requirements.** The program under this section shall be carried out as follows:

(1) The Secretary of the Navy shall establish the design requirements for vessels to be constructed or converted under the program.

(2) In establishing the design requirements for vessels to be constructed or converted under the program, the Secretary shall use commercial design standards and shall consult with the Administrator of the Maritime Administration.

(3) Construction or conversion of the vessels shall be accomplished in private United States shipyards.

(4) The vessels constructed or converted under the program shall incorporate propulsion systems whose main components (that is, the engines, reduction gears, and propellers) are manufactured in the United States.

(5) The vessels constructed or converted under the program shall incorporate bridge and machinery control systems and interior communications equipment which—

(A) are manufactured in the United States; and

(B) have more than half of their value, in terms of cost, added in the United States.

(6) The Secretary of Defense may waive the requirement of paragraph (5) with respect to a system or equipment described in that paragraph if—

(A) the system or equipment is not available; or

(B) the costs of compliance would be unreasonable compared to the costs of purchase from a foreign manufacturer.

(c) **Charter of Vessels Constructed.**

(1) Except when the Secretary determines that having a vessel immediately available with a full or partial crew is in the national interest, the Secretary, in consultation with the Administrator of the Maritime Administration, shall charter each vessel constructed before October 1, 1995, under the program for commercial operation. Any such charter—

¹ Section 1424 of Public Law 101-510, approved November 5, 1990 (104 STAT. 1485, 1683), the National Defense Authorization Act for Fiscal Year 1991, as amended (10 U.S.C. 7291, note).

(A) shall not permit the operation of the vessel other than in the foreign commerce of the United States;

(B) may be made only with an individual or entity that is a citizen of the United States (which, in the case of a corporation, partnership, or association, shall be determined in the manner specified in section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802));² and

(C) shall require that the vessel be documented (and remain documented) under the laws of the United States.

(2) The Secretary may enter into a charter under paragraph (1) only through the use of competitive bidding procedures that ensure that the highest charter rates are obtained by the United States consistent with good business practice, except that the Secretary may operate the vessel (or contract to have the vessel operated) in direct support of United States military forces during a time of war or national emergency and at other times when the Administrator of the Maritime Administration determines that operation would not unfairly compete with another United States-flag vessel.

(3) If the Secretary determines that a vessel previously chartered under the program no longer has commercial utility, the Secretary may transfer the vessel to the National Defense Reserve Fleet.

(4) A contract for the charter of a vessel under paragraph (1) shall include a provision that the charter may be terminated for national security reasons without cost to the United States.

(d) Reports to Congress.

(1) Not later than six months after the date of the enactment of this Act, the Secretary of the Navy shall submit to Congress a report describing the Secretary's plan for implementing the fast sealift program authorized by this section.

(2) Not later than three years after the date of the enactment of this Act, the Secretary shall submit to Congress a report on the implementation of the plan described in the report submitted under paragraph (1). The report shall include a description of vessels built or under contract to be built pursuant to this section, the use of such vessels, and the operating experience and manning of such vessels.

(3) The reports under paragraphs (1) and (2) shall be prepared in consultation with the Administrator of the Maritime Administration.

(e) Availability of Funds. Amounts appropriated to the Department of Defense for any fiscal year for acquisition of fast sealift vessels may be used for the program under this section.

² Section 2 of the Shipping Act, 1916 (followed by provisions that affect Section 2 citizenship requirements), is located at page 188, supra.

SEC. 1021.³ PROCUREMENT OF SHIPS FOR THE FAST SEALIFT PROGRAM.

(a) Acquisition and Conversion of U.S. Built Vessels.

Notwithstanding any other provision of law, the Secretary of the Navy may use funds available for the Fast Sealift Program—

(1) to acquire vessels for the program from among available vessels built in United States shipyards; and

(2) to convert in United States shipyards vessels built in United States shipyards.

(b) Acquisition of Five Foreign-Built Vessels. Notwithstanding any other provision of law, funds available for the Fast Sealift Program may be used for the acquisition of five vessels built in foreign shipyards and for conversion of those vessels in United States shipyards if the Secretary of the Navy determines that acquisition of those vessels is necessary to expedite the availability of vessels for sealift.

SEC. 375.⁴ CONSIDERATION OF VESSEL LOCATION FOR THE AWARD OF LAYBERTH CONTRACTS FOR SEALIFT VESSELS.

(a) Consideration of Vessel Location in the Award of LAYBERTH Contracts. As a factor in the evaluation of bids and proposals for the award of contracts to LAYBERTH sealift vessels of the Department of the Navy, the Secretary of the Navy shall include the location of the vessels, including whether the vessels should be layberthed at locations where—

(1) members of the Armed Forces are likely to be loaded onto the vessels; and

(2) layberthing the vessels maximizes the ability of the vessels to meet mobility and training needs of the Department of Defense.

(b) Establishment of Location as a Major Criterion. In the evaluation of bids and proposals referred to in subsection (a), the Secretary of the Navy shall give the same level of consideration to the location of the vessels as the Secretary gives to other major factors established by the Secretary.

(c) Applicability. Subsection (a) shall apply to any solicitation for bids or proposals issued after the end of the 120-day period beginning on the date of the enactment of this Act.

³ Section 1021 of Public Law 102-484, approved October 23, 1992 (106 STAT. 2485) (10 U.S.C. 7291, note).

⁴ Section 375 of Public Law 102-484, approved October 23, 1992 (106 STAT. 2385, 2315) the National Defense Authorization Act for Fiscal Year 1993, (10 U.S.C. 7291, note).

National Defense Sealift Fund¹

10 U.S.C. 2218 (2002). NATIONAL DEFENSE SEALIFT FUND.

(a) **Establishment.** There is established in the Treasury of the United States a fund to be known as the "National Defense Sealift Fund".

(b) **Administration of Fund.** The Secretary of Defense shall administer the Fund consistent with the provisions of this section.

(c) **Fund Purposes.**

(1) Funds in the National Defense Sealift Fund shall be available for obligation and expenditure only for the following purposes:

(A) Construction (including design of vessels), purchase, alteration, and conversion of Department of Defense sealift vessels.

(B) Operation, maintenance, and lease or charter of Department of Defense vessels for national defense purposes.

(C) Installation and maintenance of defense features for national defense purposes on privately owned and operated vessels that are constructed in the United States and documented under the laws of the United States.

(D) Research and development relating to national defense sealift.

(E) Expenses for maintaining the National Defense Reserve Fleet under section 11 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1744), and for the costs of acquisition of vessels for, and alteration and conversion of vessels in (or to be placed in), the fleet, but only for vessels built in United States shipyards.

(2) Funds in the National Defense Sealift Fund may be obligated or expended only in amounts authorized by law.

(3) Funds obligated and expended for a purpose set forth in subparagraph (B) or (D) of paragraph (1) may be derived only from funds deposited in the National Defense Sealift Fund pursuant to subsection (d)(1).

(d) **Deposits.** There shall be deposited in the Fund the following:

(1) All funds appropriated to the Department of Defense for—

(A) construction (including design of vessels), purchase, alteration, and conversion of national defense sealift vessels;

¹ Note that Public Law 106-65, approved October 5, 1999, (113 STAT. 512), the DOD Authorization Act FY2000, amended the provisions of the National Defense Sealift Fund in two significant respects. Section 1014(b) (113 STAT. 742), expanded the definition of "Department of Defense sealift vessel," now set forth in 10 U.S.C. 2218(l), to include a strategic sealift ship, a combat logistics force ship, a maritime prepositioned ship, and "any other auxiliary support vessel." Section 1015 (113 STAT. 743), added a new subsection (k) generally providing for DOD national defense features on a vessel.

(B) operations, maintenance, and lease or charter of national defense sealift vessels;

(C) installation and maintenance of defense features for national defense purposes on privately owned and operated vessels; and

(D) research and development relating to national defense sealift.

(2) All receipts from the disposition of national defense sealift vessels, excluding receipts from the sale, exchange, or scrapping of National Defense Reserve Fleet vessels under sections 508 and 510 of the Merchant Marine Act of 1936 (46 U.S.C. App. 1158, 1160), shall be deposited in the Fund.

(3) All receipts from the charter of vessels under section 1424(c) of the National Defense Authorization Act for Fiscal Year 1991 (10 U.S.C. 7291 note).²

(e) Acceptance of Support.

(1) The Secretary of Defense may accept from any person, foreign government, or international organization any contribution of money, personal property (excluding vessels), or assistance in kind for support of the sealift functions of the Department of Defense.

(2) Any contribution of property accepted under paragraph (1) may be retained and used by the Department of Defense or disposed of in accordance with procedures prescribed by the Secretary of Defense.

(3) The Secretary of Defense shall deposit in the Fund money and receipts from the disposition of any property accepted under paragraph (1).

(f) Limitations.

(1) Not more than a total of five vessels built in foreign ship yards may be purchased with funds in the National Defense Sealift Fund pursuant to subsection (c)(1).

(2) Construction, alteration, or conversion of vessels with funds in the National Defense Sealift Fund pursuant to subsection (c)(1) shall be conducted in United States ship yards and shall be subject to section 1424(b) of Public Law 101-510 (104 Stat. 1683).³

(g) Expiration of Funds after 5 Years. No part of an appropriation that is deposited in the National Defense Sealift Fund pursuant to subsection (d)(1) shall remain available for obligation more than five years after the end of fiscal year for which appropriated except to the extent specifically provided by law.

² Section 1424 is set forth under Fast Sealift Program, page 359, *supra*.

³ *Id.*

(h) **Budget Requests.** Budget requests submitted to Congress for the National Defense Sealift Fund shall separately identify—

(1) the amount requested for programs, projects, and activities for construction (including design of vessels), purchase, alteration, and conversion of national defense sealift vessels;

(2) the amount requested for programs, projects, and activities for operation, maintenance, and lease or charter of national defense sealift vessels;

(3) the amount requested for programs, projects, and activities for installation and maintenance of defense features for national defense purposes on privately owned and operated vessels that are constructed in the United States and documented under the laws of the United States; and

(4) the amount requested for programs, projects, and activities for research and development relating to national defense sealift.

(i) **Title or Management of Vessels.** Nothing in this section (other than subsection (c)(1)(E)) shall be construed to affect or modify title to, management of, or funding responsibilities for, any vessel of the National Defense Reserve Fleet, or assigned to the Ready Reserve Force component of the National Defense Reserve Fleet, as established by section 11 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1744).

(j) **Authority for Certain Use of Funds.** Upon a determination by the Secretary of Defense that such action serves the national defense interest and after consultation with the congressional defense committees, the Secretary may use funds available for obligation or expenditure for a purpose specified under subsection (c)(1) (A), (B), (C), and (D) for any purpose under subsection (c)(1).

(k) **Contracts for Incorporation of Defense Features in Commercial Vessels.**

(1) The head of an agency may enter into a contract with a company submitting an offer for that company to install and maintain defense features for national defense purposes in one or more commercial vessels owned or controlled by that company in accordance with the purpose for which funds in the National Defense Sealift Fund are available under subsection (c)(1)(C). The head of the agency may enter into such a contract only after the head of the agency makes a determination of the economic soundness of the offer.

As consideration for a contract with the head of an agency under this subsection, the company entering into the contract shall agree with the Secretary of Defense to make any vessel covered by the contract available to the Secretary, fully crewed and ready for sea, at any time at any port determined by the Secretary, and for whatever duration the Secretary determines necessary.

(2) The head of an agency may make advance payments to the contractor under a contract under paragraph (1) in a lump sum, in annual pay-

ments, or in a combination thereof for costs associated with the installation and maintenance of the defense features on a vessel covered by the contract, as follows:

(A) The costs to build, procure, and install a defense feature in the vessel.

(B) The costs to periodically maintain and test any defense feature on the vessel.

(C) Any increased costs of operation or any loss of revenue attributable to the installation or maintenance of any defense feature on the vessel.

(D) Any additional costs associated with the terms and conditions of the contract.

(E) Payments of such sums as the Government would otherwise expend, if the vessel were placed in the Ready Reserve Fleet, for maintaining the vessel in the status designated as "ROS-4 status" in the Ready Reserve Fleet for 25 years.

(3) For any contract under paragraph (1) under which the United States makes advance payments under paragraph (2) for the costs associated with installation or maintenance of any defense feature on a commercial vessel, the contractor shall provide to the United States such security interests in the vessel, by way of a preferred mortgage under section 31322 of title 46 or otherwise, as the head of the agency may prescribe in order to adequately protect the United States against loss for the total amount of those costs.

(4) Each contract entered into under this subsection shall-

(A) set forth terms and conditions under which, so long as a vessel covered by the contract is owned or controlled by the contractor, the contractor is to operate the vessel for the Department of Defense notwithstanding any other contract or commitment of that contractor; and

(B) provide that the contractor operating the vessel for the Department of Defense shall be paid for that operation at fair and reasonable rates.

(5) The head of an agency may not delegate authority under this subsection to any officer or employee in a position below the level of head of a procuring activity.

(6) The head of an agency may not enter into a contract under paragraph (1) that would provide for payments to the contractor as authorized in paragraph (2)(E) until notice of the proposed contract is submitted to the congressional defense committees and a period of 90 days has elapsed.

(1) **Definitions.** In this section:

(1) The term "Fund" means the National Defense Sealift Fund established by subsection (a).

(2) The term "Department of Defense sealift vessel" means any ship owned, operated, controlled, or chartered by the Department of Defense that is any of the following—

(A) A fast sealift ship, including any vessel in the Fast Sealift Program established under section 1424 of Public Law 101-510 (104 Stat. 1683)⁴

(B) A maritime positioning ship

(C) An afloat positioning ship

(D) An aviation maintenance support ship.

(E) A hospital ship.

(F) A strategic sealift ship.

(G) A combat logistics force ship.

(H) A maritime prepositioned ship.

(I) Any other auxiliary support vessel.

(3) The term "national defense sealift vessel" means—

(A) A Department of Defense sealift vessel; and

(B) A national defense reserve fleet vessel, including a vessel in the Ready Reserve Force maintained under section 11 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1744).

(4) The term "congressional defense committees" means—

(A) the Committee on Armed Services and the Committee on Appropriations of the Senate; and

(B) the Committee on Armed Services and the Committee on Appropriations of the House of Representatives.

(5) The term "head of an agency" has the meaning given that term in section 2302(1) of this title.⁵

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NATIONAL DEFENSE SEALIFT FUND FUNDING FY 2003

A. APPROPRIATIONS. Public Law 107-248, approved October 23, 2002 (116 STAT. 1519, 1533), the Department of Defense Appropriations Act, 2003, provides: "For National Defense Sealift Fund programs, projects, and activities, and for expenses of the National Defense Reserve Fleet, as established by section 11 of the Merchant Ship Sales Act of 1946 (50 U.S.C. App. 1744), and for the necessary expenses to maintain and preserve a U.S.-flag merchant fleet to serve

⁴ Section 1424 is set forth under Fast Sealift Program, page 337, supra.

⁵ 10 U.S.C. 2302(1) provides: "(1) The term 'head of an agency' means the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, the Secretary of Transportation, and the Administrator of the National Aeronautics and Space Administration."

the national security needs of the United States, \$942,629,000, to remain available until expended: Provided, That none of the funds provided in this paragraph shall be used to award a new contract that provides for the acquisition of any of the following major components unless such components are manufactured in the United States: auxiliary equipment, including pumps, for all ship-board services; propulsion system components (that is; engines, reduction gears, and propellers); shipboard cranes; and spreaders for shipboard cranes: Provided further, That the exercise of an option in a contract awarded through the obligation of previously appropriated funds shall not be considered to be the award of a new contract: Provided further, That the Secretary of the military department responsible for such procurement may waive the restrictions in the first proviso on a case-by-case basis by certifying in writing to the Committees on Appropriations of the House of Representatives and the Senate that adequate domestic supplies are not available to meet Department of Defense requirements on a timely basis and that such an acquisition must be made in order to acquire capability for national security purposes: Provided further, That, notwithstanding any other provision of law, \$8,500,000 of the funds available under this heading shall be available in addition to other amounts otherwise available, only to finance the cost of constructing additional sealift capacity.”

Note that Section 8142 of Public Law 107-248 (116 STAT. 1573), provides:

“Sec. 8142. Of the amount appropriated by title V under the heading “NATIONAL DEFENSE SEALIFT FUND”, up to \$10,000,000 may be available for implementing the recommendations resulting from the Navy’s Non-Self Deployable Watercraft (NDSW) Study and the Joint Chiefs of Staff Focused Logistics Study, which are to determine the requirements of the Navy for providing lift support for mine warfare ships and other vessels.”

B. AUTHORIZATIONS. Section 302 of Public Law 107-314, approved December 2, 2002 (116 STAT. 2506), the National Defense Authorization Act, FY 2003, provides:

Sec. 302. Working Capital Funds.

Funds are hereby authorized to be appropriated for fiscal year 2002 for the use of the Armed Forces and other activities and agencies of the Department of Defense for providing capital for working capital and revolving funds in amounts as follows:

* * * * *

(2) For the National Defense Sealift Fund, \$934,129,000.

DOD Lease Authority

A. Specific Provisions.¹

Long-term lease or charter authority for certain double-hull tankers and oceanographic vessels.²

(a) **Authority.** The Secretary of the Navy may enter into a long-term lease or charter for any double-hull tanker or oceanographic vessel constructed in a United States shipyard after the date of the enactment of this Act using assistance provided under the National Shipbuilding Initiative.

(b) **Conditions on obligation of funds.** Unless budget authority is specifically provided in an appropriations Act for the lease or charter of vessels pursuant to subsection (a), the Secretary may not enter into a contract for a lease or charter pursuant to that subsection unless the contract includes the following provisions:

(1) A statement that the obligation of the United States to make payments under the contract in any fiscal year is subject to appropriations being provided specifically for that fiscal year and specifically for that lease or charter or that kind of vessel lease or charter.

(2) A commitment to obligate the necessary amount for each fiscal year covered by the contract when and to the extent that funds are appropriated for that lease or charter, or that kind of lease or charter, for that fiscal year.

(3) A statement that such a commitment given under paragraph (2) does not constitute an obligation of the United States.

(c) **Inapplicability of certain laws.** A long-term lease or charter authorized by subsection (a) may be entered into without regard to the provisions of section 2401 or 2401a of title 10, United States Code.

(d) **Definition.** For purposes of subsection (a), the term 'long-term lease or charter' has the meaning given that term in subparagraph (A) of section 2401(d)(1) of title 10, United States Code.

¹ See also the provision on the charter of vessels constructed under the Fast Sealift Program provided in Section 1424(c) of Public Law 101-510, as amended (10 U.S.C. 7291, note), set forth on page 359, *supra*.

² Enacted by Section 126 of Public Law 103-160, approved November 30, 1993 (107 STAT. 1567), as amended by Section 4321(i)(1)(A) of Public Law 104-106, approved February 10, 1996 (110 STAT. 676)(10 U.S.C. 2401, note).

10 U.S.C. 7233 (2002). Auxiliary vessels; extended lease authority.³

(a) Authorized Contracts. Subject to subsection (b), the Secretary of the Navy may enter into contracts with private United States shipyards for the construction of new surface vessels to be acquired on a long-term lease basis by the United States from the shipyard or other private person for any of the following:

- (1) The combat logistics force of the Navy.
- (2) The strategic sealift force of the Navy.
- (3) Other auxiliary support vessels for the Department of Defense.

(b) Contracts Required to be Authorized by Law. A contract may be entered into under subsection (a) with respect to a specific vessel only if the Secretary is specifically authorized by law to enter into such a contract with respect to that vessel. As part of a request to Congress for enactment of any such authorization by law, the Secretary of the Navy shall provide to Congress the Secretary's findings under subsection (g).

(c) Term of Contract. In this section, the term "long-term lease" means a lease, bareboat charter, or conditional sale agreement with respect to a vessel the term of which (including any option period) is for a period of 20 years or more.

(d) Option to Buy. A contract entered into under subsection (a) may include options for the United States to purchase one or more of the vessels covered by the contract at any time during, or at the end of, the contract period (including any option period) upon payment of an amount equal to the lesser of (1) the unamortized portion of the cost of the vessel plus amounts incurred in connection with the termination of the financing arrangements associated with the vessel, or (2) the fair market value of the vessel.

(e) Domestic Construction. The Secretary shall require in any contract entered into under this section that each vessel to which the contract applies-

- (1) shall have been constructed in a shipyard within the United States, and
- (2) upon delivery, shall be documented under the laws of the United States.

³ 10 U.S.C. 7233 was added by Section 1014(a) of Public Law 106-65, approved October 5, 1999 (113 STAT. 741). Section 1014(b) substantially expanded the definition of a Fast Sealift Ship in 10 U.S.C. 2218(k)(2). Section 1014(c) provides that these provisions shall take effect on October 1, 1999.

(f) Vessel Operation.

(1) The Secretary may operate a vessel held by the Secretary under a long-term lease under this section through a contract with a United States corporation with experience in the operation of vessels for the United States. Any such contract shall be for a term as determined by the Secretary.

(2) The Secretary may provide a crew for any such vessel using civil service mariners only after an evaluation taking into account-

(A) the fully burdened cost of a civil service crew over the expected useful life of the vessel;

(B) the effect on the private sector manpower pool; and

(C) the operational requirements of the Department of the Navy.

(g) Contingent Waiver of Other Provisions of Law.

(1) The Secretary may waive the applicability of subsections (e)(2) and (f) of section 2401 of this title to a contract authorized by law as provided in subsection (b) if the Secretary makes the following findings with respect to that contract:

(A) The need for the vessels or services to be provided under the contract is expected to remain substantially unchanged during the contemplated contract or option period.

(B) There is a reasonable expectation that throughout the contemplated contract or option period the Secretary of the Navy (or, if the contract is for services to be provided to, and funded by, another military department, the Secretary of that military department) will request funding for the contract at the level required to avoid contract cancellation.

(C) The timeliness of consideration of the contract by Congress is such that such a waiver is in the interest of the United States.

(2) The Secretary shall submit a notice of any waiver under paragraph (1) to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives.

(h) Source of Funds for Termination Liability. If a contract entered into under this section is terminated, the costs of such termination may be paid from-

(1) amounts originally made available for performance of the contract;

(2) amounts currently available for operation and maintenance of the type of vessels or services concerned and not otherwise obligated; or

(3) funds appropriated for those costs.

B. General Provisions

10 U.S.C. 2401 (2002). Requirement for authorization by law of certain contracts relating to vessels and aircraft

(a) (1) The Secretary of a military department may make a contract for the lease of a vessel or aircraft or for the provision of a service through use by a contractor of a vessel or aircraft only as provided in subsection (b) if—

(A) the contract will be a long-term lease or charter; or

(B) the terms of the contract provide for a substantial termination liability on the part of the United States.

(2) The Secretary of a military department may make a contract that is an agreement to lease or charter or an agreement to provide services and that is (or will be) accompanied by a contract for the actual lease, charter, or provision of services only as provided in subsection (b) if the contract for the actual lease, charter, or provision of services is (or will be) a contract described in paragraph (1).

(b)(1) The Secretary may make a contract described in subsection (a)(1) if—

(A) the Secretary has been specifically authorized by law to make the contract;

(B) before a solicitation for proposals for the contract was issued the Secretary notified the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives of the Secretary's intention to issue such a solicitation; and

(C) the Secretary has notified those committees of the proposed contract and provided a detailed description of the terms of the proposed contract and a justification for entering into the proposed contract rather than providing for the lease, charter, or services involved through purchase of the vessel or aircraft to be used under the contract, and a period of 30 days of continuous session of Congress has expired following the date on which notice was received by such committees.

(2) For purposes of paragraph (1)(C), the continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days to which either House is not in session because of an adjournment of more than three days to a day certain are excluded in a computation of such 30-day period.

(c)(1) Funds may not be appropriated for any fiscal year to or for any armed force or obligated or expended for—

(A) the long-term lease or charter of any aircraft or naval vessel; or

(B) for the lease or charter of any aircraft or naval vessel the terms of which provide for a substantial termination liability on the part of the

United States, unless funds for that purpose have been specifically authorized by law.

(2) Funds appropriated to the Department of Defense may not be used to indemnify any person under the terms of a contract entered into under this section—

(A) for any amount paid or due by any person to the United States for any liability arising under the Internal Revenue Code of 1986; or

(B) to pay any attorneys' fees in connection with such contract.

(d) (1) (A) In this section, the term "long-term lease or charter" (except as provided in subparagraph (B)) means a lease, charter, service contract, or conditional sale agreement—

(i) the term of which is for a period of five years or longer or more than one-half the useful life of the vessel or aircraft; or

(ii) the initial term of which is for a period of less than five years but which contains an option to renew or extend the agreement for a period which, when added to the initial term (or any previous renewal or extension), is five years or longer.

Such term includes the extension or renewal of a lease or charter agreement if the term of the extension or renewal thereof is for a period of five years or longer or if the term of the lease or charter agreement being extended or renewed was for a period of five years or longer.

(B) In the case of an agreement under which the lessor first places the property in service under the agreement or the property has been in service for less than one year and there is allowable to the lessor or charterer an investment tax credit or depreciation for the property leased, chartered, or otherwise provided under the agreement under section 168 of the Internal Revenue Code of 1986 (unless the lessor or charterer has elected depreciation on a straightline method for such property), the term "long-term lease or charter" means a lease, charter, service contract, or conditional sale agreement—

(i) the term of which is for a period of three years or longer; or

(ii) the initial term of which is for a period of less than three years but which contains an option to renew or extend the agreement for a period which, when added to the initial term (or any previous renewal or extension), is three years or longer.

Such term includes the extension or renewal of a lease or charter agreement if the term of the extension or renewal thereof is for a period of three years or longer or if the term of the lease or charter agreement being extended or renewed was for a period of three years or longer.

(2) For the purposes of this section, the United States shall be considered to have a substantial termination liability under a contract—

(A) if there is an agreement by the United States under the contract to pay an amount not less than the amount equal to 25 percent of the

value of the vessel or aircraft under lease or charter, calculated on the basis of the present value of the termination liability of the United States under such charter or lease (as determined under regulations prescribed by the Secretary of Defense); or

(B) if (as determined under regulations prescribed by the Secretary of Defense) the sum of—

(i) the present value of the amount of the termination liability of the United States under the contract as of the end of the term of the contract (exclusive of any option to extend the contract); and

(ii) the present value of the total of the payments to be made by the United States under the contract (excluding any option to extend the contract) attributable to capital-hire,

is more than one-half the price of the vessel or aircraft involved.

(e)(1) Whenever a request is submitted to Congress for the authorization of the long-term lease or charter of aircraft or naval vessels or for the authorization of a lease or charter of aircraft or naval vessels which provides for a substantial termination liability on the part of the United States, the Secretary of Defense shall submit with that request an analysis of the cost to the United States (including lost tax revenues) of any such lease or charter arrangement compared with the cost to the United States of direct procurement of the aircraft or naval vessels by the United States.

(2) Any such analysis shall be reviewed and evaluated by the Director of the Office of Management and Budget and the Secretary of the Treasury within 30 days after the date on which the request and analysis are submitted to Congress. The Director and Secretary shall conduct such review and evaluation on the basis of the guidelines issued pursuant to subsection (f) and shall report to Congress in writing on the results of their review and evaluation at the earliest practicable date, but in no event more than 45 days after the date on which the request and analysis are submitted to the Congress.

(3) Whenever a request is submitted to Congress for the authorization of funds for the Department of Defense for the long-term lease or charter of aircraft or naval vessels authorized under this section, the Secretary of Defense—

(A) shall indicate in the request what portion of the requested funds is attributable to capital-hire; and

(B) shall reflect such portion in the appropriate procurement account in the request.

(f) The Director of the Office of Management and Budget and the Secretary of the Treasury shall jointly issue guidelines for determining under what circumstances the Department of Defense may use lease or

charter arrangements for aircraft and naval vessels rather than directly procuring such aircraft and vessels.

10 U.S.C. 2401a (2002). Lease of vehicles, equipment, vessels, and aircraft.

(a) Leasing of commercial vehicles and equipment. The Secretary of Defense may use leasing in the acquisition of commercial vehicles and equipment whenever the Secretary determines that such leasing is practicable and efficient.

(b) Limitation on contracts with terms of 18 months or more. The Secretary of Defense or the Secretary of a military department may not enter into any contract with a term of 18 months or more, or extend or renew any contract for a term of 18 months or more, for any vessel, aircraft, or vehicle, through a lease, charter, or similar agreement, unless the Secretary has considered all costs of such contract (including estimated termination liability) and has determined in writing that the contract is in the best interest of the Government.

DOD EXPORT LOAN GUARANTEE PROGRAM¹

10 U.S.C. 2540. (2002). Establishment of loan guarantee program.

(a) Establishment. In order to meet the national security objectives in section 2501(a) of this title, the Secretary of Defense shall establish a program under which the Secretary may issue guarantees assuring a lender against losses of principal or interest, or both principal and interest, arising out of the financing of the sale or long-term lease of defense articles, defense services, or design and construction services to a country referred to in subsection (b).

(b) Covered countries. The authority under subsection (a) applies with respect to the following countries:

(1) A member nation of the North Atlantic Treaty Organization (NATO).

(2) A country designated as of March 31, 1995, as a major non-NATO ally pursuant to section 2350a(i)(3) of this title.

(3) A country in Central Europe that, as determined by the Secretary of State—

(A) has changed its form of national government from a nondemocratic form of government to a democratic form of government since October 1, 1989; or

(B) is in the process of changing its form of national government from a nondemocratic form of government to a democratic form of government.

(4) A noncommunist country that was a member nation of the Asia Pacific Economic Cooperation (APEC) as of October 31, 1993.

(c) Authority subject to provisions of appropriations. The Secretary may guarantee a loan under this subchapter only to such extent or in such amounts as may be provided in advance in appropriations Acts.

10 U.S.C. 2540a. (2002). Transferability A guarantee issued under this subchapter shall be fully and freely transferable.

10 U.S.C. 2540b. (2002). Limitations

(a) Terms and conditions of loan guarantees. In issuing a guarantee under this subchapter for a medium-term or long-term loan, the Secretary

¹ Note that Title IX of Public Law 107-248, approved October 23, 2002 (116 STAT. 1519, 1573), the Department of Defense Appropriations Act, 2003, provides for the Commercial Reusable In-Space Transportation Act of 2002. The Conference Report (H. Rpt. 107-732) to accompany H.R. 5010, provides at page 330: "The conferees included a new title IX which provides the Secretary of Defense the authority to make loan guarantees to eligible U.S. commercial providers for the purpose of producing commercial reusable inspace transportation services or systems."

may not offer terms and conditions more beneficial than those that would be provided to the recipient by the Export-Import Bank of the United States under similar circumstances in conjunction with the provision of guarantees for nondefense articles and services.

(b) Losses arising from fraud or misrepresentation. No payment may be made under a guarantee issued under this subchapter for a loss arising out of fraud or misrepresentation for which the party seeking payment is responsible.

(c) No right of acceleration. The Secretary of Defense may not accelerate any guaranteed loan or increment, and may not pay any amount, in respect of a guarantee issued under this subchapter, other than in accordance with the original payment terms of the loan.

10 U.S.C. 2540c. (2002). Fees charged and collected

(a) Exposure fees. The Secretary of Defense shall charge a fee (known as "exposure fee") for each guarantee issued under this subchapter.

(b) Amount of exposure fee. To the extent that the cost of the loan guarantees under this subchapter is not otherwise provided for in appropriations Acts, the fee imposed under subsection (a) with respect to a loan guarantee shall be fixed in an amount that is sufficient to meet potential liabilities of the United States under the loan guarantee.

(c) Payment terms. The fee under subsection (a) for each guarantee shall become due as the guarantee is issued. In the case of a guarantee for a loan which is disbursed incrementally, and for which the guarantee is correspondingly issued incrementally as portions of the loan are disbursed, the fee shall be paid incrementally in proportion to the amount of the guarantee that is issued.

(d) Administrative fees. (1) The Secretary of Defense shall charge a fee for each guarantee issued under this subchapter to reflect the additional administrative costs of the Department of Defense that are directly attributable to the administration of the program under this subchapter. Such fees shall be credited to a special account in the Treasury. Amounts in the special account shall be available, to the extent and in amounts provided in appropriations Acts, for paying the costs of administrative expenses of the Department of Defense that are attributable to the loan guarantee program under this subchapter.

(2)(A) If for any fiscal year amounts in the special account established under paragraph (1) are not available (or are not anticipated to be available) in a sufficient amount for administrative expenses of the Department of Defense for that fiscal year that are directly attributable

to the administration of the program under this subchapter, the Secretary may use amounts currently available for operations and maintenance for Defense-wide activities, not to exceed \$500,000 in any fiscal year, for those expenses.

(B) The Secretary shall, from funds in the special account established under paragraph (1), replenish operations and maintenance accounts for amounts expended under subparagraph (A) as soon as the Secretary determines practicable.²

² Section 1081(a) of Public Law 106-398, approved October 30, 2000 (114 STAT. 1654A-284), the DOD Authorization Act for FY2001, amended 10 U.S.C. 2540c(d). Section 1081 (b) and (C) provided:

(b) EFFECTIVE DATE.—Paragraph (2) of section 2540c(d) of title 10, United States Code, as added by subsection (a), shall take effect on October 1, 2000.

(c) LIMITATION PENDING SUBMISSION OF REPORT.—The Secretary of Defense may not exercise the authority provided by paragraph (2) of section 2540c(d) of title 10, United States Code added by subsection (a), until the Secretary submits to Congress a report on the operation of the Defense Export Loan Guarantee Program under subchapter V of chapter 148 of title 10, United States Code. The report shall include the following:

(1) A discussion of the effectiveness of the loan guarantee program in furthering the sale of United States defense articles, defense services, and design and construction services to nations that are specified in section 2540(b) of such title, to include a comparison of the loan guarantee program with other United States Government programs that are intended to contribute to the sale of United States defense articles, defense services, and design and construction services and other comparisons of Secretary determines to be appropriate.

(2) A discussion of the requirements and resources (including personnel and funds) for continued administration of the loan guarantee program by the Defense Department, to include—

(A) an itemization of the requirements necessary and resources available (or that could be made available) to administer the loan guarantee program for each of the following entities: the Defense Security Cooperation Agency, the Department of Defense International Cooperation Office, and other Defense Department agencies, offices, or activities as the Secretary may specify; and

(B) for each such activity, agency, or office, a comparison of the use of Defense Department personnel exclusively to administer, manage, and oversee the program with the use of contracted commercial entities to administer and manage the program.

(3) Any legislative recommendations that the Secretary believes could improve the effectiveness of the program.

(4) A determination may by the Secretary of Defense indicating which Defense Department agency, office, or other activity should administer, manage, and oversee the loan guarantee program to increase sales of United States defense articles, defense services, and design and construction services, such determination to be made based on the information and analysis provided in the report.

10 U.S.C. 2540d. (2002). Definitions

In this subchapter:

(1) The terms "defense article", "defense services", and "design and construction services" have the meanings given those terms in section 47 of the Arms Export Control Act (22 U.S.C. 2794).

(2) The term "cost", with respect to a loan guarantee, has the meaning given that term in section 502 of the Congressional Budget and Impoundment Control Act of 1974 (2 U.S.C. 661a).

LOAN GUARANTEES. ADMINISTRATION. Section 8067 of Public Law 107-258, approved October 23, 2002 (116 STAT. 1519, 1551), provides: "To the extent authorized by subchapter VI of chapter 148 of title 10, United States Code, the Secretary of Defense may issue loan guarantees in support of United States defense exports not otherwise provided for: *Provided*, That the total contingent liability of the United States for guarantees issued under the PUBLIC LAW 107-248—OCT. 23, 2002 authority of this section may not exceed \$15,000,000,000: *Provided further*, That the exposure fees charged and collected by the Secretary for each guarantee shall be paid by the country involved and shall not be financed as part of a loan guaranteed by the United States: *Provided further*, That the Secretary shall provide quarterly reports to the Committees on Appropriations, Armed Services, and Foreign Relations of the Senate and the Committees on Appropriations, Armed Services, and International Relations in the House of Representatives on the implementation of this program: *Provided further*, That amounts charged for administrative fees and deposited to the special account provided for under section 2540c(d) of title 10, shall be available for paying the costs of administrative expenses of the Department of Defense that are attributable to the loan guarantee program under subchapter VI of chapter 148 of title 10, United States Code."

DOD MISCELLANEOUS

Navy Shipbuilding and Conversion.

Public Law 107-248, approved October 23, 2002 (116 STAT. 1529, 1530), The Department of Defense Appropriations Act, 2003, provides \$9,032,837,000 for Navy shipbuilding and conversion, to remain available until September 30, 2007.

“Provided further, That none of the funds provided under this heading for the construction or conversion of any naval vessel to be constructed in shipyards in the United States shall be expended in foreign facilities for the construction of major components of such vessel: Provided further, That none of the funds provided under this heading shall be used for the construction of any naval vessel in foreign shipyards.”

Transportation of Humanitarian Aid

10 U.S.C. 402 (2002). Transportation of humanitarian relief supplies to foreign countries.

(a) Notwithstanding any other provision of law, and subject to subsection (b), the Secretary of Defense may transport to any country, without charge, supplies which have been furnished by a nongovernmental source and which are intended for humanitarian assistance. Such supplies may be transported only on a space available basis.

(b)(1) The Secretary may not transport supplies under subsection (a) unless the Secretary determines that—

(A) the transportation of such supplies is consistent with the foreign policy of the United States;

(B) the supplies to be transported are suitable for humanitarian purposes and are in usable condition;

(C) there is a legitimate humanitarian need for such supplies by the people for whom they are intended;

(D) the supplies will in fact be used for humanitarian purposes; and

(E) adequate arrangements have been made for the distribution of such supplies in the destination country.

(2) The President shall establish procedures for making the determinations required under paragraph (1). Such procedures shall include inspection of supplies before acceptance for transport.

(3) It shall be the responsibility of the donor to ensure that supplies to be transported under this section are suitable for transport.

(c)(1) Supplies transported under this section may be distributed by an agency of the United States Government, a foreign government, an international organization, or a private nonprofit relief organization.

(2) Supplies transported under this section may not be distributed, directly or indirectly, to any individual, group, or organization engaged in a military or paramilitary activity.

(d) Not later than July 31 each year, the Secretary of State shall submit to the Committee on Armed Services and the Committee on Foreign Relations of the Senate and the Committee on Armed Services and the Committee on International Relations of the House of Representatives a report identifying the origin, contents, destination, and disposition of all supplies transported under this section during the 12-month period ending on the preceding June 30.

Motor Vehicle Transportation

10 U.S.C. 2634 (2002). Motor vehicles: transportation or storage for members on change of permanent station or extended deployment.

(a) When a member of an armed force is ordered to make a change of permanent station, one motor vehicle that is owned or leased by the member (or a dependent of the member) and is for the personal use of the member or his dependents may, unless a motor vehicle owned or leased by him (or a dependent of his) was transported in advance of that change of permanent station under section 406(h) of title 37, be transported, at the expense of the United States, to his new station or such other place as the Secretary concerned may authorize—

(1) on a vessel owned, leased, or chartered by the United States;

(2) by privately owned American shipping services;

(3) by foreign-flag shipping services if shipping services described in clauses (1) and (2) are not reasonably available;

(4) by other surface transportation if such means of transport does not exceed the cost to the United States of other authorized means.

When the Secretary concerned determines that a replacement for that motor vehicle is necessary for reasons beyond the control of the member and is in the interest of the United States, and he approves the transportation in advance, one additional motor vehicle of the member (or a dependent of the member) may be so transported.

* * * * *

(c) When there has been a shipping error, or when orders directing a change of permanent station have been canceled, revoked, or modified

after receipt by the member, a motor vehicle transported pursuant to this section may also be reshipped or transshipped in accordance with this section.

(d) When the Secretary concerned makes a determination under section 406(j) of title 37 that the dependents of a member on a permanent change of station are unable to accompany the member to an overseas duty station because of unexpected and uncontrollable circumstances, and the member shipped a motor vehicle pursuant to this section in anticipation of a dependent accompanying the member to the new duty station, the member may reship or tranship such motor vehicle in accordance with this section.

(e) The Secretary of Defense (and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy) may prescribe regulations limiting those leased motor vehicles that may be transported pursuant to this section based upon the length of the lease and other terms and conditions of the lease that the Secretary considers appropriate.

(f) No carrier, port agent, warehouseman, freight forwarder, or other person involved in the transportation of property may have any lien on, or hold, impound, or otherwise interfere with, the movement of a motor vehicle being transported under this section.

(g) If a motor vehicle of a member (or a dependent of the member) that is transported at the expense of the United States under this section does not arrive at the authorized destination of the vehicle by the designated delivery date, the Secretary concerned shall reimburse the member for expenses incurred after that date to rent a motor vehicle for the member's use, or for the use of the dependent for whom the delayed vehicle was transported. The amount reimbursed may not exceed \$30 per day, and the rental period for which reimbursement may be provided expires after 7 days or on the date on which the delayed vehicle arrives at the authorized destination (whichever occurs first).

(h) In this section:

(1) The term "change of permanent station" means the transfer or assignment of a member of the armed forces from a permanent station inside the continental United States to a permanent station outside the continental United States or from a permanent station outside the continental United States to another permanent station. It also includes an authorized change in home port of a vessel, or a transfer or assignment between two permanent stations in the continental United States when the member cannot, because of injury or the conditions of the order, drive the motor vehicle between the permanent duty stations.

(2) The term "continental United States" does not include Alaska.

Vessel Transfer Between Departments

10 U.S.C. 2578 (2002). Vessels: transfer between departments.

A vessel under the jurisdiction of a military department may be transferred or otherwise made available without reimbursement to another military department or to the Department of Transportation, and a vessel under the jurisdiction of the Department of Transportation may be transferred or otherwise made available without reimbursement to a military department. Any such transfer may be made only upon the request of the Secretary of the military department concerned or the Secretary of Transportation, as the case may be, and with the approval of the Secretary of the department having jurisdiction of the vessel.

Authority to Transfer Naval Vessels to Certain Foreign Countries.

Section 1701 of Public Law 107-228, approved September 30, 2002 (116 STAT. 1350, 1463), the Foreign Relations Authorization Act, Fiscal Year 2003, provides:

(a) Transfers by Grant.—The President is authorized to transfer vessels to foreign countries on a grant basis under section 516 of the Foreign Assistance Act of 1961 (22 U.S.C. 2321j) as follows:

(1) **POLAND.**—To the Government of Poland, the OLIVER HAZARD PERRY class guided missile frigate WADSWORTH (FFG 9).

(2) **TURKEY.**—To the Government of Turkey, the KNOX class frigates CAPODANNO (FF 1093), THOMAS C. HART (FF 1092), DONALD B. BEARY (FF 1085), McCANDLESS (FF 1084), REASONER (FF 1063), and BOWEN (FF 1079).

(b) Transfers by Sale.—TRANSFERS BY SALE.—The President is authorized to transfer vessels to foreign governments and foreign governmental entities on a sale basis under section 21 of the Arms Export Control Act (22 U.S.C. 2761) as follows:

(1) **MEXICO.**—To the Government of Mexico, the NEWPORT class tank landing ship FREDERICK (LST 1184).

(2) **TAIWAN.**—To the Taipei Economic and Cultural Representative Office in the United States (which is the Taiwan instrumentality designated pursuant to section 10(a) of the Taiwan Relations Act), the KIDD class guided missile destroyers KIDD (DDG 993), CALLAGHAN (DDG 994), SCOTT (DDG 995), and CHANDLER (DDG 996).

(3) **TURKEY.**—To the Government of Turkey, the OLIVER HAZARD PERRY class guided missile frigates ESTOCIN (FFG 15) and SAMUEL ELIOT MORISON (FFG 13).

(c) Grants Not Counted in Annual Total of Transferred excess Defense Articles.—The value of a vessel transferred to another country on a grant basis under section 516 of the Foreign Assistance Act of 1961 (22 U.S.C. 2321j) pursuant to authority provided by subsection (a) shall not be counted for the purposes of subsection (g) of that section in the aggregate value of excess defense articles transferred to countries under that section in any fiscal year.

(d) Costs of Transfers on Grant Basis—Any expense incurred by the United States in connection with a transfer authorized by this section shall be charged to the recipient (notwithstanding section 516(e)(1) of the Foreign Assistance Act of 1961 (22 U.S.C. 2321j(e)(1))) in the case of a transfer authorized to be made on a grant basis under subsection (a).

(e) Waiver Authority. A vessel transferred on a grant basis pursuant to authority provided by subsection (a)(2), the President may waive reimbursement of charges for the lease of that vessel under section 61(a) of the Arms Export Control Act (22 U.S.C. 2796(a)) for a period of one year before the date of the transfer of that vessel.

(f) Repair and Refurbishment in Untied States Shipyards. To the maximum extent practicable, the President shall require, as a condition of the transfer of a vessel under this section, that the country to which the vessel is transferred have such repair or refurbishment of the vessel as is needed, before the vessel joins the naval forces of that country, performed at a shipyard located in the United States, including a United States Navy shipyard.

Expiration of Authority—The authority to transfer a vessel under this section shall expire at the end of the two-year period beginning on the date of the enactment of this Act.

Competition Between DOD Maintenance Activities and Private Firms.

Section 8032 of Public Law 107-248, approved October 23, 2002 (116 STAT. 1543), the Department of Defense Appropriations Act, 2003, provides: “SEC. 8032. During the current fiscal year, the Department of Defense may acquire the modification, depot maintenance and repair of aircraft, vehicles and vessels as well as the production of components and other Defense-related articles, through competition between Department of Defense depot maintenance activities and private firms: *Provided*, That the Senior Acquisition Executive of the military department or defense agency concerned, with power of delegation, shall certify that successful bids include comparable estimates of all direct and

indirect costs for both public and private bids: *Provided further*, That Office of Management and Budget Certification. Circular A-76 shall not apply to competitions conducted under this section.”

Medical Supplies to Samoa.

Section 8061 of Public Law 107-248, approved October 23, 2002 (116 STAT. 1550), the Department of Defense Appropriations Act, 2003, a provision retained from previous years, provides: “SEC. 8061. Notwithstanding any other provision of law, funds available to the Department of Defense shall be made available to provide transportation of medical supplies and equipment, on a nonreimbursable basis, to American Samoa, and funds available to the Department of Defense shall be made available to provide transportation of medical supplies and equipment, on a nonreimbursable basis, to the Indian Health Service when it is in conjunction with a civil-military project.”