
PART III—CARGO PREFERENCE LAWS

[As Amended Through P.L. 107-223, August 21, 2002]

EXPLANATORY NOTE

This part of the compilation contains various laws relating to cargo preference requirements that govern or affect certain programs or functions of the Department of Agriculture.

1. GENERAL REQUIREMENTS

a. Cargo Preference Act⁹⁰¹⁻¹

AN ACT⁹⁰¹⁻² To amend the Merchant Marine Act, 1936, to provide permanent legislation for the transportation of a substantial portion of waterborne cargoes in United States-flag vessels

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 901 of the Merchant Marine Act, 1936, as amended, [46 U.S.C. App. 1241] is hereby amended by inserting “(a)” after “SEC. 901.” and by adding at the end of the section the following new subsection:

“(b)(1)⁹⁰¹⁻³ Whenever the United States shall procure, contract for, or otherwise obtain for its own account, or shall furnish to or for the account of any foreign nation without provision for reimbursement, any equipment, materials, or commodities, within or without the United States, or shall advance funds or credits or guarantee the convertibility of foreign currencies in connection with the furnishing of such equipment, materials, or commodities, the appropriate agency or agencies shall take such steps as may be necessary and practicable to assure that at least 50 per centum of the gross tonnage of such equipment, materials, or commodities (computed separately for dry bulk carriers, dry cargo liners, and tankers), which may be transported on ocean vessels shall be transported on privately owned United States-flag commercial vessels, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels, in such manner as will insure a fair and reasonable participation of United States-flag commercial vessels in such cargoes by geographic areas: *Provided*, That the provisions of this subsection may be waived whenever the Congress by concurrent resolution or otherwise, or the President of the United States or the Secretary of Defense declares that an emergency exists justifying a temporary waiver of the provisions of section 901(b) and so notifies the appropriate agency or agencies: *And provided further*, That the provisions of this subsection shall not apply to cargoes carried in the vessels of the Panama Canal Company. Nothing herein shall repeal or otherwise modify the provisions of Public Resolution Numbered 17, Seventy-third Congress (48 Stat. 500), as amended. For purposes of this section, the term “privately owned United States-flag commercial vessels” shall not be deemed to include any vessel which, subsequent to the date of enactment of this amendment, shall have been either (a) built outside the United States, (b) rebuilt outside the United States, or (c) documented under any foreign registry, until such vessel shall have been documented under the laws of the United States for a period of three years: *Provided, however*, That the provisions of this amendment shall not apply where, (1) prior to the enactment of this amendment the owner of a vessel, or contractor for the purchase of

⁹⁰¹⁻¹ See also Public Resolution 17 of March 26, 1934 (15 U.S.C. 616a).

⁹⁰¹⁻² Pub. L. 83-664, 68 Stat. 832, Aug. 26, 1954. Amended by Pub. L. 87-266, 75 Stat. 565, Sept. 21, 1961. Section 3 of the Act of August 3, 1956, Pub. L. 84-961, 70 Stat. 988, provides that the sales of fresh fruit and the products thereof under Title I of the Agricultural Trade Development and Assistance Act of 1954 shall be exempt from the requirements of the cargo preference laws.

⁹⁰¹⁻³ Subsection (b) was redesignated as subsection (b)(1) by Pub. L. 91-469, 84 Stat. 1034, Oct. 21, 1970.

⁹⁰¹⁻⁴ Subsection (b)(2) was added by Pub. L. 97-469, 84 Stat. 1034, Oct. 21 1970. Secretary of Transportation was substituted for Secretary of Commerce by Pub. L. 97-31, 95

a vessel, originally constructed in the United States and rebuilt abroad or contracted to be rebuilt abroad, has notified the Maritime Administration in writing of its intent to document such vessel under United States registry, and such vessel is so documented on its first arrival at a United States port not later than one year subsequent to the date of the enactment of this amendment, or (2) where prior to the enactment of this amendment, the owner of a vessel under United States registry has made a contract for the rebuilding abroad of such vessel and has notified the Maritime Administration of such contract, and such rebuilding is completed and such vessel is thereafter documented under United States registry on its first arrival at a United States port not later than one year subsequent to the date of the enactment of this amendment.

“(2)⁹⁰¹⁻⁴ Every department or agency having responsibility under this subsection shall administer its programs with respect to this subsection under regulations issued by the Secretary of Transportation. The Secretary of Transportation shall review such administration and shall annually report to the Congress with respect thereto.”

b. Exemption of Certain Agricultural Exports From the Requirements of the Cargo Preference Laws

MERCHANT MARINE ACT, 1936^{901a-1}

SEC. 901a.^{901a-2} [46 U.S.C. App. 1241e] The requirements of section 901(b)(1) of this Act and the Joint Resolution of March 26, 1934 (46 U.S.C. App. 1241-1), shall not apply to any export activities of the Secretary of Agriculture or the Commodity Credit Corporation—

(1) under which agricultural commodities or the products thereof acquired by the Commodity Credit Corporation are made available to United States exporters, users, processors, or foreign purchasers for the purpose of developing, maintaining, or expanding export markets for United States agricultural commodities or the products thereof at prevailing world market prices;

(2) under which payments are made available to United States exporters, users, or processors or, except as provided in section 901b, cash grants are made available to foreign purchasers, for the purpose described in paragraph (1);

(3) under which commercial credit guarantees are blended with direct credits from the Commodity Credit Corporation to reduce the effective rate of interest on export sales of United States agricultural commodities or the products thereof;

(4) under which credit or credit guarantees for not to exceed 3 years are extended by the Commodity Credit Corporation to finance or guarantee export sales of United States agricultural commodities or the products thereof; or

⁹⁰¹⁻⁴ Subsection (b)(2) was added by Pub. L. 97-469, 84 Stat. 1034, Oct. 21 1970. Secretary of Transportation was substituted for Secretary of Commerce by Pub. L. 97-31, 95 Stat. 165, Aug. 6, 1981.

^{901a-1} Act of June 29, 1936, 49 Stat. 1985.

^{901a-2} Sections 901a-901k were added to the Merchant Marine Act, 1936, by sec. 1142 of the Food Security Act of 1985, Pub. L. 99-198, 99 Stat. 1490, Dec. 23, 1985. Section 1142 was included in Subtitle C of Title IX of Pub. L. 99-198, Section 1143 of Pub. L. 99-198, provided as follows:

“SEC. 1143. This subtitle shall not be construed as modifying in any manner the provisions of section 4(b)(8) of the Food for Peace Act of 1966 (7 U.S.C. 1707a(b)(8)) or chapter 5 of title 5, United States Code.” (46 U.S.C. App. 1241p.)

(5) under which agricultural commodities or the products thereof owned or controlled by or under loan from the Commodity Credit Corporation are exchanged or bartered for materials, goods, equipment, or services, but only if such materials, goods, equipment, or services are of a value at least equivalent to the value of the agricultural commodities or products exchanged or bartered therefor (determined on the basis of prevailing world market prices at the time of the exchange or barter), but nothing in this subsection shall be construed to exempt from the cargo preference provisions referred to in section 901b any requirement otherwise applicable to the materials, goods, equipment, or services imported under any such transaction.

c. Shipment Requirements for Certain Exports Sponsored by the Department of Agriculture

MERCHANT MARINE ACT, 1936

SEC. 901b. [46 U.S.C. App. 1241f] (a)(1) In addition to the requirement for United States-flag carriage of a percentage of gross tonnage imposed by section 901(b)(1) of this Act, 25 percent of the gross tonnage of agricultural commodities or the products thereof specified in subsection (b) shall be transported on United States-flag commercial vessels.

(2) In order to achieve an orderly and efficient implementation of the requirement of paragraph (1)—

(A) an additional quantity equal to 10 percent of the gross tonnage referred to in paragraph (1) shall be transported in United States-flag vessels in calendar year 1986;

(B) an additional quantity equal to 20 percent of the gross tonnage shall be transported in such vessels in calendar year 1987; and

(C) an additional quantity equal to 25 percent of the gross tonnage shall be transported in such vessels in calendar year 1988 and in each calendar year thereafter.

(b) This section shall apply to any export activity of the Commodity Credit Corporation or the Secretary of Agriculture—

(1) carried out under the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1691 et seq.);

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

(3) carried out under the Bill Emerson Humanitarian Trust Act (7 U.S.C. 1736f-1 et seq.);^{901b-1}

(4) under which agricultural commodities or the products thereof are—

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

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

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

^{901b-1} Sec. 212(b)(5) of the Bill Emerson Humanitarian Trust Act of 1998, P.L. 105-385, 112 Stat. 3467, Nov. 13, 1998, amended para. (3) by striking “Food Security Wheat Reserve Act of 1980 (7 U.S.C. 1736f-1)” and inserting “Bill Emerson Humanitarian Trust Act (7 U.S.C. 1736f-1 et seq.)”.

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

(7) under which agricultural commodities owned or controlled by or under loan from the Commodity Credit Corporation are exchanged or bartered for materials, goods, equipment, or services produced in foreign countries, other than export activities described in section 901a(5).

(c)(1) The requirement for United States-flag transportation imposed by subsection (a) shall be subject to the same terms and conditions as provided in section 901(b) of this Act.

(2) In order to provide for effective and equitable administration of the cargo preference laws the calendar year for the purpose of compliance with minimum percentage requirements shall be for 12 month periods commencing April 1, 1986.

(3)(A)^{901b-2} Subject to subparagraph (B), in administering sections 901(b) and 901b (46 U.S.C. App. 1241(b) and 1241f), and, subject to subparagraph (B) of this paragraph, consistent with those sections,^{901b-3} the Commodity Credit Corporation shall take such steps as may be necessary and practicable without detriment to any port range to allocate, on the principle of lowest landed cost without regard to the country of documentation of the vessel, 25 percent^{901b-4} of the bagged, processed, or fortified commodities furnished pursuant to title II of the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1751 et seq.).

(B)^{901b-5} In carrying out this paragraph, there shall first be calculated the allocation of 100 percent of the quantity to be procured on an overall lowest landed cost basis without regard to the country of documentation of the vessel and there shall be allocated to the Great Lakes port range any cargoes for which it has the lowest landed cost under that calculation. The requirements for United States-flag transportation under section 901(b) and this section shall not apply to commodities allocated under subparagraph (A) to the Great Lakes port range, and commodities allocated under subparagraph (A) to that port range may not be reallocated or diverted to another port range to meet those requirements to the extent that the total tonnage of commodities to which subparagraph (A) applies that is furnished and transported from the Great Lakes port range is less than 25 percent of the total annual tonnage of such commodities furnished.

(C)^{901b-6} In awarding any contract for the transportation by vessel of commodities from the Great Lakes port range pursuant to an export activity referred to in subsection (b), each agency or instrumentality—

^{901b-2} Paragraphs (3), (4), and (5) was added by Pub. L. 101-624, 104 Stat. 3667-8, Nov. 28, 1990.

^{901b-3} Sec. 17(a)(1)(A) of Pub. L. 104-239, 110 Stat. 3138, Oct. 8, 1996, amended subpara. (A) by striking "and consistent with those sections," and inserting "and, subject to subparagraph (B) of this paragraph, consistent with those sections,".

^{901b-4} Sec. 17(a)(1)(B) of Pub. L. 104-239, 110 Stat. 3139, Oct. 8, 1996, amended subpara. (A) by striking "50 percent" and inserting "25 percent".

^{901b-5} Sec. 17(a)(2) of Pub. L. 104-239, 110 Stat. 3139, Oct. 8, 1996, struck former subpara. (B) and inserted subpara. (B) and (C).

^{901b-6} See note 901b-5.

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

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

(4)^{901b-7} Any determination of nonavailability of United States-flag vessels resulting from the application of this subsection shall not reduce the gross tonnage of commodities required by sections 901(b) and 901b to be transported on United States-flag vessels.

(d) As used in subsection (b), the term 'export activity' does not include inspection or weighing activities, other activities carried out for health or safety purposes, or technical assistance provided in the handling of commercial transactions.

(e)(1) The prevailing world market price as to agricultural commodities or the products thereof shall be determined under sections 901a through 901d in accordance with procedures established by the Secretary of Agriculture. The Secretary shall prescribe such procedures by regulation, with notice and opportunity for public comment, pursuant to section 553 of title 5, United States Code.

(2) In the event that a determination of the prevailing world market price of any other type of materials, goods, equipment, or service is required in order to determine whether a barter or exchange transaction is subject to subsection (b)(6) or (b)(7), such determination shall be made by the Secretary of Agriculture in consultation with the heads of other appropriate Federal agencies.

d. Minimum Tonnage

MERCHANT MARINE ACT, 1936

SEC. 901c. [46 U.S.C. App. 1241g] (a)(1) For fiscal year 1986 and each fiscal year there-after, the minimum quantity of agricultural commodities to be exported under programs subject to section 901b shall be the average of the tonnage exported under such programs during the base period defined in subsection (b), discarding the high and low years.

(2) The President may waive the minimum quantity for any fiscal year required under paragraph (1) if he determines and reports to the Congress, together with his reasons, that such quantity cannot be effectively used for the purposes of such programs or, based on a certification by the Secretary of Agriculture, that the commodities are not available for reasons which include the unavailability of funds.

(b) The base period utilized for computing the minimum tonnage quantity referred to in subsection (a) for any fiscal year shall be the five fiscal years beginning with the sixth fiscal year preceding such fiscal year and ending with the second fiscal year preceding such fiscal year.

^{901b-7} Sec. 17(b) of Pub. L. 104-239, 110 Stat. 3138, Oct. 8, 1996, struck former para. (4) and redesignated former para. (5) as para. (4).

e. Financing of Shipment of Agricultural Commodities in United States-Flag Vessels

MERCHANT MARINE ACT, 1936

SEC. 901d. [46 U.S.C. App. 1241h] (a) The Secretary of Transportation shall finance any increased ocean freight charges incurred in any fiscal year which result from the application of section 901b.

(b) If in any fiscal year the total cost of ocean freight and ocean freight differential for which obligations are incurred by the Department of Agriculture and the Commodity Credit Corporation on exports of agricultural commodities and products thereof under the agricultural export programs specified in section 901b(b) exceeds 20 percent of the value of such commodities and products and the cost of such ocean freight and ocean freight differential on which obligations are incurred by such Department and Corporation during such year, the Secretary of Transportation shall reimburse the Department of Agriculture and the Commodity Credit Corporation for the amount of such excess. For the purpose of this subsection, commodities shipped from the inventory of the Commodity Credit Corporation shall be valued as provided in section 403(b) of the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1733(b)).

(c) For the purpose of meeting those expenses required to be assumed under subsections (a) and (b), the Secretary of Transportation shall issue to the Secretary of the Treasury such obligations in such forms and denominations, bearing such maturities and subject to such terms and conditions, as may be prescribed by the Secretary of Transportation with the approval of the Secretary of the Treasury. Such obligations shall be at a rate of interest as determined by the Secretary of the Treasury, taking into consideration the average market yield on outstanding marketable obligations of the United States with remaining periods of maturity comparable to the average maturities of such obligations during the month preceding the issuance of such obligations of the Secretary of Transportation. The Secretary of the Treasury shall purchase any obligations of the Secretary of Transportation issued under this subsection and, for the purpose of purchasing such obligations, the Secretary of the Treasury may use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, United States Code, after the date of the enactment of this Act and the purposes for which securities may be issued under such chapter are extended to include any purchases of the obligations of the Secretary of Transportation under this subsection. All redemptions and purchases by the Secretary of the Treasury of the obligations of the Secretary of Transportation shall be treated as public-debt transactions of the United States.

(d) There is authorized to be appropriated annually for each fiscal year, commencing with the fiscal year beginning October 1, 1986, an amount sufficient to reimburse the Secretary of Transportation for the costs, including administrative expenses and the principal and interest due on the obligations to the Secretary of the Treasury incurred under this section. Reimbursement of any such costs shall be made with appropriated funds, as provided in this section, rather than through cancellation of notes.

(e) Notwithstanding the provisions of this section, in the event that the Secretary of Transportation is unable to obtain the funds

necessary to finance the increased ocean freight charges resulting from the requirements of subsections (a) and (b) and section 901b(a), the Secretary of Transportation shall so notify the Congress within 10 working days of the discovery of such insufficiency.

f. Authorization of Appropriations

MERCHANT MARINE ACT, 1936

SEC. 901e. [46 U.S.C. App. 1241i] There are authorized to be appropriated such sums as may be necessary to carry out the provisions of sections 901a through 901k.

g. Termination of Sections 901a through 901k

MERCHANT MARINE ACT, 1936

SEC. 901f. [46 U.S.C. App. 1241j] The operation of sections 901a through 901k shall terminate 90 days after the date on which a notification is made pursuant to section 901d(e), except with respect to shipments of agricultural commodities and products subject to contracts entered into before the expiration of such 90-day period, unless within such 90-day period the Secretary of Transportation proclaims that funds are available to finance increased freight charges resulting from the requirements of sections 901b(a) and 901d (a) and (b). In the event of termination under this section, nothing in sections 901a through 901d shall be construed as exempting export activities from or subjecting export activities to the cargo preference laws except to the extent those activities are exempt under section 4(b) of Public Law 95-501 (7 U.S.C. 1707a(b)). In the event of termination under this section, the 50 percent requirement in section 901(b) of the Merchant Marine Act, 1936 shall be in full effect.

h. National Advisory Commission on Agricultural Export Transportation Policy

MERCHANT MARINE ACT, 1936

SEC. 901g. [46 U.S.C. App. 1241k] (a) There is hereby established an advisory commission to be known as the National Advisory Commission on Agricultural Export Transportation Policy (hereafter in this section through section 901j referred to as the "Commission").

(b)(1) The Commission shall be composed of 16 members.

(2) Eight members of the Commission shall be appointed by the President.

(3) The chairman and ranking minority members of the Senate Committee on Agriculture, Nutrition, and Forestry, of the Subcommittee on Merchant Marine of the Senate Committee on Commerce, Science, and Transportation, of the House Committee on Agriculture, and of the House Committee on Merchant Marine and Fisheries shall serve as members of the Commission.

(4)(A) Four of the members appointed by the President shall be representatives of agricultural producers, cooperatives, merchandisers, and processors of agricultural commodities.

(B) The remaining four members appointed by the President shall be representatives of the United States-flag maritime industry, two of whom shall represent labor and two of whom shall represent management.

(c)(1) The members of the Commission shall elect a Chairman from among its members.

(2) Any vacancy in the Commission does not affect its powers but shall be filled in the same manner in which the original appointment was made.

SEC. 901h. [46 U.S.C. App. 1241l] (a) It shall be the duty of the Commission to conduct a comprehensive study and review of the ocean transportation of agricultural exports subject to the cargo preference laws referred to in section 901b and to make recommendations to the President and the Congress for improving the efficiency of such transportation on United States-flag vessels in order to reduce the costs incurred by the United States in connection with such transportation. In carrying out such study and review, the Commission shall consider the extent to which any unfair or discriminatory practices of foreign governments increase the cost to the United States of transporting agricultural commodities subject to such cargo preference laws.

(b)(1) The Commission shall submit an interim report to the President and the Congress not later than one year after the date of the enactment of this subtitle and such other interim reports as the Commission considers advisable.

(2) The Commission shall submit a final report containing its findings and recommendations to the President and the Congress not later than two years after the date of the enactment of this subtitle. The report shall include recommendations for any changes in the provisions of paragraph (1) that would help assure that the cost of ocean freight and ocean freight differential incurred by the Department of Agriculture and the Commodity Credit Corporation on the agricultural export programs specified in section 901b, is not increased above historical levels as a result of the extra demand for United States-flag vessels caused by section 901b.

(3) Sixty days after the submission of the final report, the Commission shall cease to exist.

(c) The Commission shall include in its reports submitted pursuant to subsection (b) recommendations concerning the feasibility and desirability of achieving the following goals with respect to the ocean transportation of agricultural commodities subject to the cargo preference laws referred to in section 901b:

(1) Ensuring that the timing of commodity purchase agreements entered into by the United States in connection with the export of such commodities, and the methods of implementing such agreements, will minimize cost to the United States.

(2) Ensuring that shipments of such commodities are made on the most modern and efficient United States-flag vessels available.

(3) Ensuring that shipments of such commodities are made under the most advantageous terms available, including—

(A) charters for full shiploads;

(B) charters for intermediate or long term;

(C) charters for consecutive voyages and contracts of affreightment; and

(D) adjustment of rates in the event that vessels used for shipments of such commodities also carry cargoes on return voyages.

(4) Reduction and elimination of impediments, including delays in port, to the efficient loading and operation of the vessels employed for shipment of such commodities.

(5) Utilization of open and competitive bidding for the ocean transportation of such commodities.

SEC. 901i. [46 U.S.C. App. 1241m] (a) Each department, agency, and instrumentality of the United States, including independent agencies, shall furnish to the Commission, upon request made by the Chairman, such statistical data, reports, and other information as the Commission considers necessary to carry out its functions.

(b) The Secretary of Agriculture and the Secretary of Transportation shall make available to the Commission such staff, personnel, and administrative services as may reasonably be required to carry out the Commission's duties.

SEC. 901j. [46 U.S.C. App. 1241n] Members of the Commission shall serve without compensation in addition to compensation they may otherwise be entitled to receive as employees of the United States or as Members of Congress, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of duties vested in the Commission.

i. Definition of United States Flag Vessel Eligible To Carry Cargoes Under Certain Sections

MERCHANT MARINE ACT, 1936

SEC. 901k. [46 U.S.C. App. 1241o] A United States flag vessel eligible to carry cargoes under sections 901b through 901d means a vessel, as defined in section 3 of title 1, United States Code, that is necessary for national security purposes and, if more than 25 years old, is within five years of having been substantially rebuilt and certified by the Secretary of Transportation as having a useful life of at least five years after that rebuilding

j. Use of United States Vessels

JOINT RESOLUTION OF MARCH 26, 1934²⁰⁴⁻¹

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled. [46 U.S.C. 1241-1] That it is the sense of Congress that in any loans made by any instrumentality of the Government to foster the exporting of agricultural or other products, provision shall be made that such products shall be carried exclusively in vessels of the United States, unless, as to any or all of such products, the Secretary of Transportation, after investigation, shall certify to the instrumentality of the Government that vessels of the United States are not available in sufficient numbers, or in sufficient tonnage capacity, or on necessary sailing schedule, or at reasonable rates.

2. AMERICAN GREAT LAKES VESSELS

FOOD, AGRICULTURE, CONSERVATION, AND TRADE ACT OF 1990

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²⁰⁴⁻¹ Mar. 26, 1984, c. 90, 48 Stat. 500; June 29, 1936, c. 858, Title II, §204, 49 Stat. 1987; 1950 Reorg. Plan No. 21 §§204, 305, 306, eff. May 24, 1950, 15 F.R. 3178, 64 Stat. 1276, 1277; 1961 Reorg. Plan No. 7, §§201, 202, 305, eff. Aug. 12, 1961, 26 F.R. 7815, 75 Stat. 840; Aug. 6, 1981, Pub. L. 97-31, § 12(127), 95 Stat. 165.

SEC. 1521.¹⁵²¹⁻¹ [46 U.S.C. App. 1241q] **EXEMPTION OF AMERICAN GREAT LAKES VESSELS FROM RESTRICTION ON CARRIAGE OF PREFERENCE CARGOES.**

(a) **EXEMPTION FROM RESTRICTION.**—The restriction described in subsection (b) shall not apply to an American Great Lakes vessel while it is so designated.

(b) **RESTRICTION DESCRIBED.**—The restriction referred to in subsection (a) is the restriction in section 901(b)(1) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1241(b)(1)), that a vessel that is—

- (1) built outside the United States;
- (2) rebuilt outside the United States; or
- (3) documented under any foreign registry;

shall not be a privately owned United States-flag commercial vessel under that section until the vessel is documented under the laws of the United States for a period of 3 years.

(c) **SUBSEQUENT APPLICATION OF RESTRICTION.**—Upon the revocation or termination of a designation of a vessel as an American Great Lakes vessel, the restriction described in subsection (b) shall apply as if the vessel had never been a vessel documented under the laws of the United States.

SEC. 1522. [46 U.S.C. App. 1241r] **DESIGNATION OF AMERICAN GREAT LAKES VESSELS.**

(a) **IN GENERAL.**—The Secretary shall designate a vessel as an American Great Lakes vessel for purposes of this subtitle if—

- (1) the vessel is documented under the laws of the United States;
- (2) the Secretary receives an application for such designation submitted in accordance with regulations issued by the Secretary under subsection (d);
- (3) the owner of the vessel enters into an agreement in accordance with subsection (b);
- (4)(A) the vessel is not more than 6 years old, and not less than 1 year old, on the effective date of the designation; or
(B) the vessel is not more than 11 years old, and not less than 1 year old on the effective date of the designation, and the Secretary determines that suitable vessels are not available for providing the type of service for which the vessel will be used after designation; and
- (5) the vessel has not been previously designated as an American Great Lakes vessel.

(b) **CONSTRUCTION AND PURCHASE AGREEMENT.**—As a condition of designating a vessel as an American Great Lakes vessel under this section, the Secretary shall require the person who will be the owner of the vessel at the time of that designation to enter into an agreement with the Secretary which provides that if the Secretary determines that the vessel is necessary to the defense of the United States, the United States Government shall have, during the 120-day period following the date of any revocation of such designation under section 1524, an exclusive right to purchase the vessel for a price equal to—

- (1) the approximate world market value of the vessel; or
 - (2) the cost of the vessel to the owner less an amount representing reasonable depreciation of the vessel;
- whichever is greater.

¹⁵²¹⁻¹ Pub. L. 101-624, 104 Stat. 3665-3668, Nov. 28, 1993.

(c) CERTAIN FOREIGN REGISTRY AND SALE NOT PROHIBITED.—Notwithstanding any other provision of law, if the United States does not purchase a vessel in accordance with its right of purchase under a construction and purchase agreement under subsection (b), the owner of the vessel shall not be prohibited from—

(1) transferring the vessel to a foreign registry; or

(2) selling the vessel to a person who is not a citizen of the United States.

(d) ISSUANCE OF REGULATIONS.—Not later than 60 days after the date of the enactment of this Act, the Secretary shall issue regulations establishing requirements for submission of applications for designation of vessels as American Great Lakes vessels under this section.

SEC. 1523. [46 U.S.C. App. 1241s] RESTRICTIONS ON OPERATIONS OF AMERICAN GREAT LAKES VESSELS.

(a) IN GENERAL.—Subject to subsection (b), an American Great Lakes vessel shall not be used—

(1) to engage in trade—

(A) from a port in the United States that is not located on the Great Lakes; or

(B) between ports in the United States;

(2) to carry bulk cargo (as that term is defined in section 3 of the Shipping Act of 1984 (46 U.S.C. App. 1702(4)) which is subject to section 901(b) or 901b of the Merchant Marine Act, 1936 (46 U.S.C. App. 1241(b) or 1241(f), or section 2631 of title 10, United States Code; or

(3) to provide any service other than ocean freight service—

(A) as a contract carrier; or

(B) as a common carrier on a fixed advertised schedule offering frequent sailings at regular intervals in the foreign commerce of the United States.

(b) OFF-SEASON CARRIAGE EXCEPTION.—

(1) IN GENERAL.—Subject to paragraph (2), an American Great Lakes vessel may be used to engage in trade otherwise prohibited by subsection (a)(1)(A) for not more than 90 days during any 12-month period.

(2) LIMITATION.—An American Great Lakes vessel shall not be used during the Great Lakes shipping season to engage in trade referred to in paragraph (1).

SEC. 1524. [46 U.S.C. App. 1241t] REVOCATION AND TERMINATION OF DESIGNATION.

(a) REVOCATION.—The Secretary, after notice and an opportunity for a hearing, may revoke the designation of a vessel under section 1522 as an American Great Lakes vessel if the Secretary determines that—

(1) the vessel does not meet a requirement for such designation;

(2) the vessel has been operated in violation of this subtitle; or

(3) the owner or operator of the vessel has violated a construction and purchase agreement under section 1522(b).

(b) CIVIL PENALTY.—The Secretary, after notice and an opportunity for a hearing, may assess a civil penalty of not more than \$1,000,000 against the owner of an American Great Lakes vessel, for any act for which the designation of that vessel as an American Great Lakes vessel may be revoked under subsection (a).

(c) **TERMINATION OF DESIGNATION.**—The Secretary may terminate the designation of a vessel as an American Great Lakes vessel under this subtitle upon petition and a showing of good cause for that termination by the owner of the vessel. The Secretary may impose conditions or restrictions in a termination order to prevent significant adverse effects on other United States-flag vessel operators.

SEC. 1525. ALLOCATION BASED ON LOWEST LANDED COST.

【Amends section 901b(c) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1241f(c))】

SEC. 1526. [46 U.S.C. App. 1241u] STUDY AND REPORT.

(a) **STUDY.**—The Secretary, in consultation with the Secretary of Agriculture, shall conduct a study on the implementation of this subtitle. The study shall include analysis of—

(1) the effects of that implementation on diversions of cargo to and from the Great Lakes port range and any resulting effects on the cost of transporting commodities furnished pursuant to title II of the Agricultural Trade Development and Assistance Act of 1954 (7 U.S.C. 1751 et seq.); and

(2) whether the authority to designate vessels as American Great Lakes vessels has increased United States-flag vessel service to Great Lakes ports.

(b) **REPORT.**—Not later than December 31, 1994, the Secretary shall submit a report to the Congress on the findings of the study under subsection (a).

SEC. 1527. [46 U.S.C. App. 1241v] DEFINITIONS.

As used in this subtitle—

(1) **AMERICAN GREAT LAKES VESSEL.**—The term “American Great Lakes vessel” means a vessel which is so designated by the Secretary in accordance with section 1522.

(2) **GREAT LAKES.**—The term “Great Lakes” means Lake Superior; Lake Michigan; Lake Huron; Lake Erie; Lake Ontario; the Saint Lawrence River west of Saint Regis, New York; and their connecting and tributary waters.

(3) **GREAT LAKES SHIPPING SEASON.**—The term “Great Lakes shipping season” means the period of each year during which the Saint Lawrence Seaway is open for navigation by vessels, as declared by the Saint Lawrence Seaway Development Corporation created by the Act of May 13, 1954 (33 U.S.C. 981 et seq.).

(4) **SECRETARY.**—The term “Secretary” means the Secretary of Transportation.