

STATEMENT

OF

**H. E. SHEAR
MARITIME ADMINISTRATOR**

ON

BEHALF OF

THE

**MARITIME ADMINISTRATION
DEPARTMENT OF TRANSPORTATION**

BEFORE THE

**SUBCOMMITTEE ON MERCHANT MARINE
OF THE
COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION
U.S. SENATE**

WITH RESPECT TO

ODS CONTRACT TERMINATION

JUNE 28, 1984

STATEMENT OF ADMIRAL HAROLD E. SHEAR, MARITIME ADMINISTRATOR,
DEPARTMENT OF TRANSPORTATION, BEFORE THE SUBCOMMITTEE ON MERCHANT
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Mr. Chairman and Members of the Subcommittee on Merchant Marine. My name is Harold E. Shear, and I am the Maritime Administrator of the Department of Transportation. I appreciate the opportunity to take part in this Oversight Hearing on so-called Operating-differential Subsidy (ODS) Contract Termination.

Mr. Chairman. At the start, I would like to distinguish between what we refer to as an ODS Termination Agreement and an ODS Contract Amendment.

An ODS Termination Agreement is an agreement between an ODS contractor and the Maritime Administration to terminate an existing ODS contract in return for certain settlement payments by the Government and for certain agreed non-ODS obligations to be rendered by the contractor.

An ODS Termination Agreement is not to be confused with what we refer to as an ODS Contract Amendment. An amendment may provide for a significantly earlier termination than provided in the existing agreement, with ODS payments being made only for services actually performed. The Secretary clearly does have statutory authority to enter into such ODS contract amendments, and did so in the case of U.S. LINES. In that transaction, ODS was paid for the

subsidized operation of an increased number of U.S.-flag vessels, but for only a five year period so that there was a net saving to the Government. Such an ODS contract amendment does not constitute an ODS Termination Agreement.

With respect to ODS Termination Agreements, I would like to comment briefly on the two applications currently on file with the Maritime Administration; Delta Steamship Lines (DELTA) and Lykes Bros. Steamship Co., Inc. (LYKES).

The application for an ODS Termination Agreement by DELTA proposes that the Secretary agree to pay DELTA \$525 million in six payments over the next five years. The payments would be in settlement of the Government's long-term obligations under ODS agreements that run through 1995 and 1997. The existing ODS agreements would be terminated effective upon the execution of an ODS Termination Agreement and thereafter Delta would be relieved of all ODS contractual, regulatory and statutory requirements. DELTA would agree to use \$35 million of the funds to cover payments required to ease labor's transition to high productivity ships. The remaining \$490 million would be used to acquire ten new diesel-propelled dry cargo containerships, with a capacity of 1000 to 1600 TEUs each, and related equipment including containers; to reconstruct or otherwise obtain adequate container terminal facilities; and to cover losses incurred from unsubsidized

operations during the transition period. Alternatively, and in the event the Secretary determines that the public interest would be better served by a smaller vessel replacement program, DELTA proposes that the Secretary agree to pay DELTA \$325 million, plus the \$35 million for the labor payments described above, in exchange for which DELTA would agree to acquire only five new containerships and related equipment. DELTA would agree to document these vessels under the U.S.-flag and to operate them with U.S. labor for the vessels' statutory lives. DELTA would further agree to provide minimum service levels between the United States and South America and Africa. Notice of the DELTA application was published in the Federal Register, on August 22, 1983, and comments have been received. A hearing was requested, and the matter is currently pending before the Maritime Administration.

LYKES has proposed to forego what it estimates to be \$3.5 to \$4.5 billion in subsidy over the remaining 17 years of its contract based on a 44 ship fleet and eight separate services. It proposes to receive eight annual installments of \$137 million each and upon termination be relieved of all ODS contractual regulatory and statutory requirements. LYKES would also agree to continue as a U.S.-flag operator and to provide service between U.S. ports and overseas areas with U.S.-flag vessels for a period of time to be agreed upon. LYKES also expects to maintain or upgrade its service through a fleet modernization program, commencing with the

construction of up to six container vessels of 2,500 TEU capacity for its Far East service and three to four container/bulk vessels for its Mediterranean service. LYKES further proposes to construct a portion of the vessels under the modernization program in domestic shipyards, provided the Secretary agrees to provide additional subsidy termination payments, within contract limitations, until the additional expenses incurred by U.S. construction have been recouped by LYKES. Notice of the LYKES application was published in the Federal Register on November 16, 1983, and numerous comments have been received. A hearing was requested. The matter is currently pending before the Maritime Administration.

Additionally, on October 17, 1983, the Maritime Administration published Notice in the Federal Register proposing guidelines for considering the applications of subsidized operators for ODS contract amendments or terminations. In the same notice, comments were requested on proposed guidelines by Sea-Land Service, Inc., dated May 16, 1983, and the Council of American-Flag Ship Operators dated September 8, 1983, concerning early termination of ODS contracts. Extensive comments were received regarding the guidelines, particularly on the issue of whether there is statutory authority for ODS Termination Agreements.

Mr. Chairman. The Maritime Administration is close to a decision on whether the Secretary of Transportation (Secretary) has sufficient statutory authority to enter into and use ODS for

payments under an ODS Termination Agreement. It is anticipated that a decision on the legal authority issue will be announced within the next 30 to 60 days. It is appreciated that substantial time has elapsed in review of this issue but the point is that the issue is still under review.

With respect to the merits of an ODS Termination Agreement, since specific applications are pending before the Maritime Administration, I can only indicate the range of viewpoints filed with the agency. Comments received from unsubsidized operators, unions and a shipyard association in response to notices of the applications of DELTA and LYKES and of the guidelines essentially oppose the concept because they claim:

- There is no statutory authority for an ODS Termination Agreement and Congress should devise an alternative to the ODS Program.
- ODS was intended to benefit American seamen; payments under an ODS Termination Agreement would abrogate this intention.
- ODS Termination Agreements would not have the safeguards of the ODS program.
- Payments under the ODS Termination Agreement would give "subsidized" operators an unfair advantage in operating in the Jones Act market.
- Payments under ODS Termination Agreements would allow the subsidized operators an unfair competitive advantage over unsubsidized operators in the foreign trade.

The subsidized operators and an association of subsidized operators supported the concept because they claim:

- There is legal authority for ODS Termination Agreements.
- The Agreements would relieve Government of immense on-going subsidy dollar obligations.
- The Agreements would enable subsidized operators to modernize their fleets and transition to unsubsidized status.
- The Agreements would be consistent with Administration deregulation efforts to remove unnecessary restraints on competition.

That concludes my prepared statement, except to note that we welcome the interest of this Subcommittee in this issue. We will include in the appropriate dockets the transcript of this hearing. I will be pleased to answer any questions that you or the Members of the Subcommittee may have, subject to such constraints as exist on discussing particular applications pending before the Maritime Administration for decision.