

Pub. L. 109-304, §§14(b), 19, Oct. 6, 2006, 120 Stat. 1702, 1710, which consisted of subsecs. (a) and (b), related to requirement that contracts designed equitably for all ports, minimum allocation of funds, report to Congress, and preference to citizens of United States, prior to repeal by Pub. L. 114-120, title III, §313(a), Feb. 8, 2016, 130 Stat. 58. Subsec. (b) of section 809 had already been repealed by Pub. L. 109-304, §19, Oct. 6, 2006, 120 Stat. 1710.

ENROLLMENT IN SEALIFT READINESS PROGRAM

Act June 29, 1936, ch. 858, title IX, §909, as added by Pub. L. 97-35, title XVI, §1605, Aug. 13, 1981, 95 Stat. 752, provided that: "No vessel may receive construction differential subsidy or operating differential subsidy if it is not offered for enrollment in a sealift readiness program approved by the Secretary of Defense."

§ 53102. Establishment of Maritime Security Fleet

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

(b) VESSEL ELIGIBILITY.—A vessel is eligible to be included in the Fleet if—

(1) the vessel meets the requirements of paragraph (1), (2), (3), or (4) of subsection (c);

(2) the vessel is operated (or in the case of a vessel to be constructed, will be operated) in providing transportation in foreign commerce;

(3) the vessel is self-propelled and—

(A) is a tank vessel that is 10 years of age or less on the date the vessel is included in the Fleet; or

(B) is any other type of vessel that is 15 years of age or less on the date the vessel is included in the Fleet;

(4) the vessel—

(A) is suitable for use by the United States for national defense or military purposes in time of war or national emergency, as determined by the Secretary of Defense; and

(B) is commercially viable, as determined by the Secretary; and

(5) the vessel—

(A) is a United States-documented vessel; or

(B) is not a United States-documented vessel, but—

(i) the owner of the vessel has demonstrated an intent to have the vessel documented under chapter 121 of this title if it is included in the Fleet; and

(ii) at the time an operating agreement for the vessel is entered into under this chapter, the vessel is eligible for documentation under chapter 121 of this title.

(c) REQUIREMENTS REGARDING CITIZENSHIP OF OWNERS, CHARTERERS, AND OPERATORS.—

(1) VESSEL OWNED AND OPERATED BY SECTION 50501 CITIZENS.—A vessel meets the requirements of this paragraph if, during the period of an operating agreement under this chapter that applies to the vessel, the vessel will be

owned and operated by one or more persons that are citizens of the United States under section 50501 of this title.

(2) VESSEL OWNED BY SECTION 50501 CITIZEN OR UNITED STATES CITIZEN TRUST, AND CHARTERED TO DOCUMENTATION CITIZEN.—A vessel meets the requirements of this paragraph if—

(A) during the period of an operating agreement under this chapter that applies to the vessel, the vessel will be—

(i) owned by a person that is a citizen of the United States under section 50501 of this title or that is a United States citizen trust; and

(ii) demise chartered to a person—

(I) that is eligible to document the vessel under chapter 121 of this title;

(II) the chairman of the board of directors, chief executive officer, and a majority of the members of the board of directors of which are citizens of the United States under section 50501 of this title, and are appointed and subjected to removal only upon approval by the Secretary; and

(III) that certifies to the Secretary that there are no treaties, statutes, regulations, or other laws that would prohibit the contractor for the vessel from performing its obligations under an operating agreement under this chapter;

(B) in the case of a vessel that will be demise chartered to a person that is owned or controlled by another person that is not a citizen of the United States under section 50501 of this title, the other person enters into an agreement with the Secretary not to influence the operation of the vessel in a manner that will adversely affect the interests of the United States; and

(C) the Secretary and the Secretary of Defense notify the Committee on Armed Services and the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Armed Services of the House of Representatives that they concur with the certification required under subparagraph (A)(ii)(III), and have reviewed and agree that there are no other legal, operational, or other impediments that would prohibit the contractor for the vessel from performing its obligations under an operating agreement under this chapter.

(3) VESSEL OWNED AND OPERATED BY DEFENSE CONTRACTOR.—A vessel meets the requirements of this paragraph if—

(A) during the period of an operating agreement under this chapter that applies to the vessel, the vessel will be owned and operated by a person that—

(i) is eligible to document a vessel under chapter 121 of this title;

(ii) operates or manages other United States-documented vessels for the Secretary of Defense, or charters other vessels to the Secretary of Defense;

(iii) has entered into a special security agreement for purposes of this paragraph with the Secretary of Defense;

(iv) makes the certification described in paragraph (2)(A)(ii)(III); and

(v) in the case of a vessel described in paragraph (2)(B), enters into an agreement referred to in that paragraph; and

(B) the Secretary and the Secretary of Defense notify the Committee on Armed Services and the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Armed Services of the House of Representatives that they concur with the certification required under subparagraph (A)(iv), and have reviewed and agree that there are no other legal, operational, or other impediments that would prohibit the contractor for the vessel from performing its obligations under an operating agreement under this chapter.

(4) VESSEL OWNED BY DOCUMENTATION CITIZEN AND CHARTERED TO SECTION 50501 CITIZEN.—A vessel meets the requirements of this paragraph if, during the period of an operating agreement under this chapter that applies to the vessel, the vessel will be—

(A) owned by a person that is eligible to document a vessel under chapter 121 of this title; and

(B) demise chartered to a person that is a citizen of the United States under section 50501 of this title.

(d) REQUEST BY SECRETARY OF DEFENSE.—The Secretary of Defense shall request the Secretary of Homeland Security to issue any waiver under section 501 of this title that is necessary for purposes of this chapter.

(e) VESSEL STANDARDS.—

(1) CERTIFICATE OF INSPECTION.—A vessel used to provide oceangoing transportation which the Secretary of the department in which the Coast Guard is operating determines meets the criteria of subsection (b) of this section but which, on the date of enactment of the Maritime Security Act of 2003, is not documented under chapter 121 of this title, shall be eligible for a certificate of inspection if the Secretary determines that—

(A) the vessel is classed by and designed in accordance with the rules of the American Bureau of Shipping, or another classification society accepted by the Secretary;

(B) the vessel complies with applicable international agreements and associated guidelines, as determined by the country in which the vessel was documented immediately before becoming documented under chapter 121; and

(C) that country has not been identified by the Secretary as inadequately enforcing international vessel regulations as to that vessel.

(2) CONTINUED ELIGIBILITY FOR CERTIFICATE.—Paragraph (1) does not apply to a vessel after any date on which the vessel fails to comply with the applicable international agreements and associated guidelines referred to in paragraph (1)(B).

(3) RELIANCE ON CLASSIFICATION SOCIETY.—

(A) IN GENERAL.—The Secretary may rely on a certification from the American Bureau of Shipping or, subject to subparagraph (B), another classification society accepted by

the Secretary to establish that a vessel is in compliance with the requirements of paragraphs (1) and (2).

(B) FOREIGN CLASSIFICATION SOCIETY.—The Secretary may accept certification from a foreign classification society under subparagraph (A) only—

(i) to the extent that the government of the foreign country in which the society is headquartered provides access on a reciprocal basis to the American Bureau of Shipping; and

(ii) if the foreign classification society has offices and maintains records in the United States.

(f) AUTHORITY TO WAIVE AGE RESTRICTION FOR ELIGIBILITY OF A VESSEL TO BE INCLUDED IN FLEET.—The Secretary of Defense, in conjunction with the Secretary of Transportation, may waive the application of an age restriction under subsection (b)(3) if the Secretaries jointly determine that the waiver—

(1) is in the national interest;

(2) is appropriate to allow the maintenance of the economic viability of the vessel and any associated operating network; and

(3) is necessary due to the lack of availability of other vessels and operators that comply with the requirements of this chapter.

(g) AUTHORITY TO EXTEND MAXIMUM SERVICE AGE FOR VESSEL.—The Secretary of Defense, in conjunction with the Secretary of Transportation, may, for a particular participating fleet vessel, treat the ages specified in section 53101(5)(A)(ii) and section 53106(c)(3) as increased by up to 5 years if the Secretaries jointly determine that it is in the national interest to do so.

(Added Pub. L. 108-136, div. C, title XXXV, §3531(a), Nov. 24, 2003, 117 Stat. 1805; amended Pub. L. 109-304, §13(a)(1), Oct. 6, 2006, 120 Stat. 1700; Pub. L. 112-239, div. C, title XXXV, §3508(b), Jan. 2, 2013, 126 Stat. 2223; Pub. L. 114-328, div. C, title XXXV, §3502(a), Dec. 23, 2016, 130 Stat. 2774.)

REFERENCES IN TEXT

The date of enactment of the Maritime Security Act of 2003, referred to in subsec. (e)(1), is the date of enactment of Pub. L. 108-136, which was approved Nov. 24, 2003.

AMENDMENTS

2016—Subsec. (f). Pub. L. 114-328, §3502(a)(2), substituted “Authority To Waive Age Restriction for Eligibility of a Vessel To Be Included in Fleet” for “Waiver of Age Restriction” in heading.

Subsec. (g). Pub. L. 114-328, §3502(a)(1), added subsec. (g).

2013—Subsec. (b). Pub. L. 112-239 amended subsec. (b) generally. Prior to amendment, subsec. (b) related to vessel eligibility, including provisions for certain roll-on/roll-off and LASH vessels.

2006—Subsec. (c). Pub. L. 109-304, §13(a)(1)(A), (B), substituted “section 50501” for “section 2” in the headings of pars. (1), (2), and (4) and substituted “section 50501 of this title” for “section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802)” in pars. (1), (2)(A)(i), (ii)(II), (B), and (4)(B).

Subsec. (d). Pub. L. 109-304, §13(a)(1)(C), substituted “section 501 of this title” for “the first section of Public Law 81-891 (64 Stat. 1120; 46 U.S.C. App. note prec. 3)”.

Subsec. (e)(1). Pub. L. 109-304, §13(a)(1)(D), substituted “documented under chapter 121 of this title,” for “a

documented vessel (as that term is defined in section 12101 of this title)” in introductory provisions and “documented under chapter 121” for “a documented vessel (as defined in that section)” in subpar. (B).

VESSEL STANDARDS

Pub. L. 104-324, title XI, §1137, Oct. 19, 1996, 110 Stat. 3988, as amended by Pub. L. 108-136, div. C, title XXXV, §3534(b)(2), Nov. 24, 2003, 117 Stat. 1818, provided that:

“(a) CERTIFICATE OF INSPECTION.—A vessel used to provide transportation service as a common carrier which the Secretary of Transportation determines meets the criteria of section 53102(b) of title 46, United States Code, but which on the date of enactment of this Act [Oct. 19, 1996] is not a documented vessel (as that term is defined in section 2101 [now section 106] of title 46, United States Code), shall be eligible for a certificate of inspection if the Secretary determines that—

“(1) the vessel is classed by and designed in accordance with the rules of the American Bureau of Shipping or another classification society accepted by the Secretary;

“(2) the vessel complies with applicable international agreements and associated guidelines, as determined by the country in which the vessel was documented immediately before becoming a documented vessel (as defined in that section); and

“(3) that country has not been identified by the Secretary as inadequately enforcing international vessel regulations as to that vessel.

“(b) CONTINUED ELIGIBILITY FOR CERTIFICATE.—Subsection (a) does not apply to a vessel after any date on which the vessel fails to comply with the applicable international agreements and associated guidelines referred to in subsection (a)(2).

“(c) RELIANCE ON CLASSIFICATION SOCIETY.—

“(1) IN GENERAL.—The Secretary may rely on a certification from the American Bureau of Shipping or, subject to paragraph (2), another classification society accepted by the Secretary to establish that a vessel is in compliance with the requirements of subsections (a) and (b).

“(2) FOREIGN CLASSIFICATION SOCIETY.—The Secretary may accept certification from a foreign classification society under paragraph (1) only—

“(A) to the extent that the government of the foreign country in which the society is headquartered provides access on a reciprocal basis to the American Bureau of Shipping; and

“(B) if the foreign classification society has offices and maintains records in the United States.”

§ 53103. Award of operating agreements

(a) IN GENERAL.—The Secretary shall require, as a condition of including any vessel in the Fleet, that the person that is the owner or operator of the vessel for purposes of section 53102(c) enter into an operating agreement with the Secretary under this section.

(b) EXTENSION OF EXISTING OPERATING AGREEMENTS.—

(1) OFFER TO EXTEND.—Not later than 60 days after the date of enactment of this paragraph, the Secretary shall offer, to an existing contractor, to extend, through September 30, 2025, an operating agreement that is in existence on the date of enactment of this paragraph. The terms and conditions of the extended operating agreement shall include terms and conditions authorized under this chapter, as amended from time to time.

(2) TIME LIMIT.—An existing contractor shall have not later than 120 days after the date the Secretary offers to extend an operating agreement to agree to the extended operating agreement.

(3) SUBSEQUENT AWARD.—The Secretary may award an operating agreement to an applicant that is eligible to enter into an operating agreement for fiscal years 2016 through 2025 if the existing contractor does not agree to the extended operating agreement under paragraph (2).

(c) PROCEDURE FOR AWARDED NEW OPERATING AGREEMENTS.—The Secretary may enter into a new operating agreement with an applicant that meets the requirements of section 53102(c) (for vessels that meet the qualifications of section 53102(b)) on the basis of priority for vessel type established by military requirements of the Secretary of Defense. The Secretary shall allow an applicant at least 30 days to submit an application for a new operating agreement. After consideration of military requirements, priority shall be given to an applicant that is a United States citizen under section 50501 of this title. The Secretary may not approve an application without the consent of the Secretary of Defense. The Secretary shall enter into an operating agreement with the applicant or provide a written reason for denying the application.

(d) LIMITATION.—The Secretary may not award operating agreements under this chapter that require payments under section 53106 for a fiscal year for more than 60 vessels.

(Added Pub. L. 108-136, div. C, title XXXV, §3531(a), Nov. 24, 2003, 117 Stat. 1808; amended Pub. L. 109-304, §13(a)(2), Oct. 6, 2006, 120 Stat. 1700; Pub. L. 109-364, div. C, title XXXV, §3502(b)(1), Oct. 17, 2006, 120 Stat. 2515; Pub. L. 112-239, div. C, title XXXV, §3508(c), Jan. 2, 2013, 126 Stat. 2224.)

REFERENCES IN TEXT

The date of enactment of this paragraph, referred to in subsec. (b)(1), probably means the date of enactment of Pub. L. 112-239, which amended subsec. (b) generally and was approved Jan. 2, 2013.

AMENDMENTS

2013—Subsec. (b). Pub. L. 112-239, §3508(c)(1), amended subsec. (b) generally. Prior to amendment, subsec. (b) related to procedure for applications.

Subsec. (c). Pub. L. 112-239, §3508(c)(2), amended subsec. (c) generally. Prior to amendment, subsec. (c) related to priority for awarding agreements.

2006—Subsec. (c)(1). Pub. L. 109-304, §13(a)(2)(A)–(C), substituted “section 50501 of this title” for “section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802)” in subpars. (A)(iii) and (C)(i) and (ii), “applying subparagraph” for “applying subparagraphs” in subpar. (B), and “section 50501” for “section 2” in subpar. (C) heading.

Subsec. (c)(3)(B). Pub. L. 109-304, §13(a)(2)(D), substituted “agreements” for “agreement”.

Subsec. (c)(4)(A). Pub. L. 109-364, §3502(b)(1)(A)–(D), redesignated cls. (i) and (ii) as cl. (i), subcls. (I) and (II), respectively, in subcl. (II) substituted “; or” for period at end, and added cl. (ii).

Subsec. (c)(4)(B). Pub. L. 109-364, §3502(b)(1)(E), inserted “with respect to which a binding contract is entered into under subparagraph (A)(i)” after “existing tank vessel”.

Subsec. (c)(4)(C), (D). Pub. L. 109-364, §3502(b)(1)(F), added subpars. (C) and (D).

§ 53104. Effectiveness of operating agreements

(a) EFFECTIVENESS, GENERALLY.—The Secretary may enter into an operating agreement under this chapter for fiscal year 2006. Except as