

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

provided in subsection (b), the agreement shall be effective only for 1 fiscal year, but shall be renewable, subject to the availability of appropriations, for each subsequent fiscal year through the end of fiscal year 2025.

(b) **VESSELS UNDER CHARTER TO UNITED STATES.**—Unless an earlier date is requested by the applicant, the effective date for an operating agreement with respect to a vessel that is, on the date of entry into an operating agreement, on charter to the United States Government, other than a charter pursuant to an Emergency Preparedness Agreement under section 53107, shall be the expiration or termination date of the Government charter covering the vessel, or any earlier date the vessel is withdrawn from that charter.

(c) **TERMINATION.**—

(1) **TERMINATION BY SECRETARY.**—If the contractor with respect to an operating agreement materially fails to comply with the terms of the agreement—

(A) the Secretary shall notify the contractor and provide a reasonable opportunity to comply with the operating agreement;

(B) the Secretary shall terminate the operating agreement if the contractor fails to achieve such compliance; and

(C) upon such termination, any funds obligated by the agreement shall be available to the Secretary to carry out this chapter.

(2) **EARLY TERMINATION BY CONTRACTOR, GENERALLY.**—An operating agreement under this chapter shall terminate on a date specified by the contractor if the contractor notifies the Secretary, by not later than 60 days before the effective date of the termination, that the contractor intends to terminate the agreement.

(d) **NONRENEWAL FOR LACK OF FUNDS.**—If, by the first day of a fiscal year, sufficient funds have not been appropriated under the authority provided by this chapter for that fiscal year, then the Secretary shall 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 operating agreements authorized under this chapter for which sufficient funds are not available will not be renewed for that fiscal year if sufficient funds are not appropriated by the 60th day of that fiscal year.

(e) **RELEASE OF VESSELS FROM OBLIGATIONS.**—If funds are not appropriated for payments under an operating agreement under this chapter for any fiscal year by the 60th day of that fiscal year, then—

(1) each vessel covered by the operating agreement is thereby released from any further obligation under the operating agreement;

(2) the owner or operator of the vessel may transfer and register such vessel under a foreign registry that is acceptable to the Secretary of Transportation and the Secretary of Defense, notwithstanding section 56101 of this title; and

(3) if chapter 563 of this title is applicable to such vessel after registration of the vessel

under such a registry, then the vessel is available to be requisitioned by the Secretary of Transportation pursuant to chapter 563.

(Added Pub. L. 108–136, div. C, title XXXV, §3531(a), Nov. 24, 2003, 117 Stat. 1810; amended Pub. L. 109–304, §13(a)(3), Oct. 6, 2006, 120 Stat. 1701; Pub. L. 111–383, div. C, title XXXV, §3502(1), Jan. 7, 2011, 124 Stat. 4518; Pub. L. 112–239, div. C, title XXXV, §3508(d), Jan. 2, 2013, 126 Stat. 2224.)

AMENDMENTS

2013—Subsec. (c)(3), Pub. L. 112–239, §3508(d)(1), struck out par. (3) which related to early termination by contractor, with available replacement.

Subsec. (e), Pub. L. 112–239, §3508(d)(2), struck out “an operating agreement under this chapter is terminated under subsection (c)(3), or if” after “If” in introductory provisions.

2011—Subsec. (a), Pub. L. 111–383 substituted “2025” for “2015”.

2006—Subsec. (c)(3)(B)(ii), Pub. L. 109–304, §13(a)(3)(A), substituted “section 50501 of this title” for “section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802)” in subcls. (I) and (II).

Subsec. (e)(2), Pub. L. 109–304, §13(a)(3)(B), substituted “section 56101 of this title” for “section 9 of the Shipping Act, 1916 (46 U.S.C. App. 808)”.

Subsec. (e)(3), Pub. L. 109–304, §13(a)(3)(C), substituted “chapter 563 of this title” and “chapter 563” for “section 902 of the Merchant Marine Act, 1936 (46 U.S.C. App. 1242)” and “section 902 of such Act”, respectively.

§ 53105. Obligations and rights under operating agreements

(a) **OPERATION OF VESSEL.**—An operating agreement under this chapter shall require that, during the period a vessel is operating under the agreement—

(1) the vessel—

(A) shall be operated exclusively in the foreign commerce or, except as provided in paragraph (2), in mixed foreign commerce and domestic trade allowed under a registry endorsement issued under section 12111 of this title; and

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

(2) in the case of a vessel, other than a replacement vessel under subsection (f), first covered by an operating agreement after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2018, the vessel shall not be operated in the transportation of cargo between points in the United States and its territories either directly or via a foreign port; and

(3) the vessel shall be documented under chapter 121 of this title.

(b) **ANNUAL PAYMENTS BY SECRETARY.**—

(1) **IN GENERAL.**—An operating agreement under this chapter shall require, subject to the availability of appropriations, that the Secretary make a payment each fiscal year to the contractor in accordance with section 53106.

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

(c) **DOCUMENTATION REQUIREMENT.**—Each vessel covered by an operating agreement (includ-