

ignated by the Secretary of Defense under this chapter.

(8) OPERATING AGREEMENT OR AGREEMENT.—The terms “Operating Agreement” or “Agreement” mean the agreement required by section 53203.

(9) PERSON.—The term “person” includes corporations, partnerships, and associations existing under or authorized by the laws of the United States, or any State, Territory, District, or possession thereof, or of any foreign country.

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

(11) UNITED STATES.—The term “United States” includes the States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, and the Virgin Islands.

(12) UNITED STATES CITIZEN TRUST.—

(A) Subject to paragraph (C), the term “United States citizen trust” means a trust that is qualified under this paragraph.

(B) A trust is qualified under this paragraph with respect to a vessel only if—

(i) it was created under the laws of a state of the United States;

(ii) each of the trustees is a citizen of the United States; and

(iii) the application for documentation of the vessel under chapter 121 of this title includes the affidavit of each trustee stating that the trustee is not aware of any reason involving a beneficiary of the trust that is not a citizen of the United States, or involving any other person that is not a citizen of the United States, as a result of which the beneficiary or other person would hold more than 25 percent of the aggregate power to influence, or limit the exercise of the authority of, the trustee with respect to matters involving any ownership or operation of the vessel that may adversely affect the interests of the United States.

(C) If any person that is not a citizen of the United States has authority to direct, or participate in directing, the trustee for a trust in matters involving any ownership or operation of the vessel that may adversely affect the interests of the United States or in removing a trustee for a trust without cause, either directly or indirectly through the control of another person, the trust is not qualified under this paragraph unless the trust instrument provides that persons who are not citizens of the United States may not hold more than 25 percent of the aggregate authority to direct or remove a trustee.

(D) This paragraph shall not be considered to prohibit a person who is not a citizen of the United States from holding more than 25 percent of the beneficial interest in a trust.

(Added Pub. L. 116-92, div. C, title XXXV, § 3521(a), Dec. 20, 2019, 133 Stat. 1988.)

### § 53202. Establishment of the Cable Security Fleet

(a) IN GENERAL.—(1) The Secretary, in consultation with the Operating Agency, shall es-

tablish a fleet of active, commercially viable, cable vessels to meet national security requirements. The fleet shall consist of privately owned, United States-documented cable vessels for which there are in effect Operating Agreements under this chapter, and shall be known as the Cable Security Fleet.

(2) The Fleet described under this section shall include two vessels.

(b) VESSEL ELIGIBILITY.—A cable 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 commercial service providing cable services;

(3) the vessel is 40 years of age or less on the date the vessel is included in the Fleet;

(4) the vessel is—

(A) determined by the Operating Agency to be suitable for engaging in cable services by the United States in the interest of national security; and

(B) determined by the Secretary to be commercially viable, whether independently or taking any payments which are the consequence of participation in the Cable Fleet into account; 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 Cable Fleet; and

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

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

(1) VESSELS 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<sup>1</sup> under section 50501 of this title.

(2) VESSELS OWNED BY A SECTION 50501 CITIZEN, OR UNITED STATES CITIZEN TRUST, AND CHARTERED TO A 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 and operated by 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 major-

<sup>1</sup> So in original. Probably should be capitalized.

ity 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 subject 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 Operating Agency 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, and have reviewed the certification required under subparagraph (A)(ii)(III) and determined that there are no 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 A 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 Committee on Commerce, Science, and Transportation of the Senate and the Committee on Armed Services of the House of Representatives that they have reviewed the certification required by subparagraph (A)(iv) and determined 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 A DOCUMENTATION CITIZEN AND CHARTERED TO A SECTION 50501 CIT-

IZEN.—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) VESSEL STANDARDS.—

(1) CERTIFICATE OF INSPECTION.—A cable vessel 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 Act, is not documented under chapter 121 of this title, shall be eligible for a certificate of inspection if that 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 that 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 that 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 of the Department in which the Coast Guard is operating may rely on a certification from the American Bureau of Shipping or, subject to subparagraph (B), another classification society accepted by that Secretary to establish that a vessel is in compliance with the requirements of paragraphs (1) and (2).

(B) FOREIGN CLASSIFICATION SOCIETY.—The Secretary of the Department in which the Coast Guard is operating 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.

(e) WAIVER OF AGE REGISTRATION.—The Secretary, in conjunction with the Operating Agency, may waive the application of the age restriction under subsection (b)(3) if they jointly determine that the waiver—

(1) is in the national interest;

(2) the subject cable vessel and any associated operating network is and will continue to be economically viable; and

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

(Added Pub. L. 116-92, div. C, title XXXV, § 3521(a), Dec. 20, 2019, 133 Stat. 1989.)

#### Editorial Notes

##### REFERENCES IN TEXT

The date of enactment of the Act, referred to in subsec. (d)(1), means the date of enactment of Pub. L. 116-92, which was approved Dec. 20, 2019.

#### § 53203. Award of operating agreements

(a) IN GENERAL.—The Secretary shall require, as a condition of including any vessel in the Cable Fleet, that the person that is the owner or operator of the vessel for purposes of section 53202(c) enter into an Operating Agreement with the Secretary under this section.

(b) PROCEDURE FOR APPLICATIONS.—

(1) ACCEPTANCE OF APPLICATIONS.—Beginning no later than 60 days after the effective date of this chapter, the Secretary shall accept applications for enrollment of vessels in the Cable Fleet.

(2) ACTION ON APPLICATIONS.—Within 120 days after receipt of an application for enrollment of a vessel in the Cable Fleet, the Secretary shall approve the application in conjunction with the Operating Agency, and shall enter into an Operating Agreement with the applicant, or provide in writing the reason for denial of that application.

(c) Priority for Awarding Agreements.—Subject to the availability of appropriations, the Secretary shall enter into Operating Agreements with those vessels determined by the Operating Agency, in its sole discretion, to best meet the national security requirements of the United States. After consideration of national security requirements, priority shall be given to an applicant that is a United States citizen under section 50501 of this title.

(Added Pub. L. 116-92, div. C, title XXXV, § 3521(a), Dec. 20, 2019, 133 Stat. 1992.)

#### Editorial Notes

##### REFERENCES IN TEXT

The effective date of this chapter, referred to in subsec. (b)(1), probably means the date of enactment of Pub. L. 116-92, which enacted this chapter and was approved Dec. 20, 2019.

#### § 53204. Effectiveness of operating agreements

(a) EFFECTIVENESS GENERALLY.—The Secretary may enter into an Operating Agreement under this chapter for fiscal year 2021. Except as provided in subsection (d), the agreement shall be effective only for one fiscal year, but shall be renewable, subject to available appropriations, for each subsequent year.

(b) VESSELS UNDER CHARTER TO THE UNITED STATES.—Vessels under charter to the United States are eligible to receive payments pursuant to their Operating Agreements.

(c) TERMINATION.—

(1) TERMINATION BY THE 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 for it 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 A CONTRACTOR.—An Operating Agreement under this chapter shall terminate on a date specified by the Contractor if the Contractor notifies the Secretary, not fewer than 60 days prior to 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 for all Operating Agreements, 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. If only partial funding is appropriated by the 60th day of such fiscal year, then the Secretary, in consultation with the Operating Agency, shall select the vessels to retain under Operating Agreements, based on their determinations of which vessels are most useful for national security. In the event that no funds are appropriated, then no Operating Agreements shall be renewed and each Contractor shall be released from its obligations under the Operating Agreement. Final payments under an Operating Agreement that is not renewed shall be made in accordance with section 53206. To the extent that sufficient funds are appropriated in a subsequent fiscal year, an Operating Agreement that has not been renewed pursuant to this subsection may be reinstated if mutually acceptable to the Secretary, in consultation with the Operating Agency, and the Contractor, provided the vessel remains eligible for participation pursuant to section 53202, without regard to subsection 53202 (b)(3).

(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 a fiscal year, and the Secretary, in consultation with the Operating Agency determines to not renew a Contractor's Operating Agreement for a vessel, then—

(1) each vessel covered by the Operating Agreement that is not renewed is thereby released from any further obligation under the Operating Agreement;

(2) the owner or operator of the vessel whose Operating Agreement was not renewed may transfer and register such vessel under a for-