

Statutory Notes and Related Subsidiaries

AIR TRANSPORTATION OF CIVILIAN DEPARTMENT OF DEFENSE PERSONNEL TO AND FROM AFGHANISTAN

Pub. L. 115-91, div. A, title X, §1098, Dec. 12, 2017, 131 Stat. 1626, provided that:

“(a) **POLICY REVIEW.**—Not later than 90 days after the date of the enactment of this Act [Dec. 12, 2017], the Secretary of Defense shall conduct a policy review regarding the use of commercial air transportation or alternative forms of air transportation to transport civilian personnel of the Department of Defense to and from Afghanistan.

“(b) **REPORT TO CONGRESS.**—Not later than 90 days after the completion of the policy review required by subsection (a), the Secretary shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the results of such review.

“(c) **UPDATED GUIDELINES.**—Not later than 90 days after the completion of the policy review required by subsection (a), the Secretary shall issue updated guidelines, based on the report submitted under subsection (b), regarding the use of commercial air transportation or alternative forms of air transportation to transport civilian personnel of the Department to and from Afghanistan.”

§ 2631. Preference for United States vessels in transporting supplies by sea

(a) **IN GENERAL.**—Supplies bought for the Army, Navy, Air Force, Marine Corps, or Space Force, or for a Defense Agency, or otherwise transported by the Department of Defense, may only be transported by sea in—

- (1) a vessel belonging to the United States; or
- (2) a vessel of the United States (as such term is defined in section 116 of title 46).

(b) **WAIVER AND NOTIFICATION.**—(1) The Secretary of Defense may waive the requirement under subsection (a) if such a vessel is—

- (A) not available at a fair and reasonable rate for commercial vessels of the United States; or
- (B) otherwise not available.

(2) At least once each fiscal year, the Secretary of Defense shall submit, in writing, to the appropriate congressional committees a notice of any waiver granted under this subsection and the reasons for such waiver.

(c) **REQUIREMENTS FOR REFLAGGING OR REPAIR WORK.**—(1) In each request for proposals to enter into a time-charter contract for the use of a vessel for the transportation of supplies under this section, the Secretary of Defense shall require that—

(A) any reflagging or repair work on a vessel for which a proposal is submitted in response to the request for proposals be performed in the United States (including any territory of the United States); and

(B) any corrective and preventive maintenance or repair work on a vessel under contract pursuant to this section relevant to the purpose of such contract be performed in the United States (including any territory of the United States) for the duration of the contract, to the greatest extent practicable.

(2) The Secretary of Defense may waive a requirement under paragraph (1) if the Secretary determines that such waiver is critical to the national security of the United States. The Sec-

retary shall immediately submit, in writing, to the appropriate congressional committees a notice of any waiver granted under this paragraph and the reasons for such waiver.

(3) In this subsection:

(A) The term “reflagging or repair work” means work performed on a vessel—

- (i) to enable the vessel to meet applicable standards to become a vessel of the United States; or
- (ii) to convert the vessel to a more useful military configuration.

(B) The term “corrective and preventive maintenance or repair” means—

- (i) maintenance or repair actions performed as a result of a failure in order to return or restore equipment to acceptable performance levels; and
- (ii) scheduled maintenance or repair actions to prevent or discover functional failures.

(d) **COMPLIANCE.**—The Secretary of Defense shall ensure that contracting officers of the Department of Defense award contracts under this section to responsible offerors and monitor and ensure compliance with the requirements of this section. The Secretary shall—

(1) ensure that timely, accurate, and complete information on contractor performance under this section is included in any contractor past performance database used by an executive agency; and

(2) exercise appropriate contractual rights and remedies against contractors who fail to comply with this section, or subchapter I of chapter 553 of title 46, as determined by the Secretary of Transportation under such subchapter, including by—

- (A) determining that a contractor is ineligible for an award of such a contract; or
- (B) terminating such a contract or suspension or debarment of the contractor for such contract.

(e) **APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.**—In this section, the term “appropriate congressional committees” means—

- (1) the Committees on Armed Services of the Senate and the House of Representatives;
- (2) the Committee on Transportation and Infrastructure of the House of Representatives; and
- (3) the Committee on Commerce, Science, and Transportation of the Senate.

(Aug. 10, 1956, ch. 1041, 70A Stat. 146; Pub. L. 103-160, div. A, title III, §315(a), Nov. 30, 1993, 107 Stat. 1619; Pub. L. 116-92, div. A, title X, §1033, Dec. 20, 2019, 133 Stat. 1580; Pub. L. 116-283, div. A, title IX, §924(b)(3)(GG), title X, §1024(a)(1), Jan. 1, 2021, 134 Stat. 3822, 3841.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
2631	10:1365. 34:528.	Apr. 28, 1904, ch. 1766, 33 Stat. 518.

The word “supplies” is substituted for the words “coal, provisions, fodder, or supplies of any description”, in 10:1365 and 34:528. The words “pursuant to law” and “the use of”, in 10:1365 and 34:528, are omitted

as surplusage. The words “as otherwise provided by law”, in 10:1365 and 34:528, are used rather than the words “under the law as it now exists”, in section 1 of the Act of April 28, 1904, ch. 1766, 33 Stat. 518. The word “may” is substituted for the word “shall”. The words “However, if” are substituted for the words “unless * * * in which case”. The words “private persons” are substituted for the words “private parties or companies”, in 10:1365 and 34:528. The last sentence is substituted for the proviso of 10:1365 and 34:528.

Editorial Notes

AMENDMENTS

2021—Pub. L. 116-283, §1024(a)(1), amended section generally. Prior to amendment, section related to preference to United States vessels for transportation by sea of supplies.

Subsec. (a). Pub. L. 116-283, §924(b)(3)(GG), which directed amendment of subsec. (a) by substituting “Marine Corps, or Space Force” for “or Marine Corps”, was executed by making the substitution in subsec. (a) as amended by section 1024(a)(1) of Pub. L. 116-283, to reflect the probable intent of Congress.

2019—Subsec. (a). Pub. L. 116-92, §1033(1), inserted “or for a Defense Agency” after “Marine Corps” in first sentence.

Subsec. (b)(2) to (4). Pub. L. 116-92, §1033(2), added par. (2), redesignated former pars. (2) and (3) as (3) and (4), respectively, and in par. (4), substituted “a requirement under paragraph (1) or (2)” for “the requirement described in paragraph (1)”.

1993—Pub. L. 103-160 designated existing provisions as subsec. (a) and added subsec. (b).

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EFFECTIVE DATE OF 1993 AMENDMENT

Pub. L. 103-160, div. A, title III, §315(b), Nov. 30, 1993, 107 Stat. 1619, provided that: “The amendment made by subsection (a) [amending this section] shall apply to a vessel for which reflagging or repair work is necessary to be performed after the date of the enactment of this Act [Nov. 30, 1993].”

OBTAINING CARRIAGE BY VESSEL: CRITERION REGARDING OVERHAUL, REPAIR, AND MAINTENANCE OF VESSELS IN THE UNITED STATES

Pub. L. 109-364, div. A, title X, §1017, Oct. 17, 2006, 120 Stat. 2379, as amended by Pub. L. 110-181, div. A, title X, §1063(c)(9), div. C, title XXXV, §3526(a), Jan. 28, 2008, 122 Stat. 323, 601, provided that:

“(a) ACQUISITION POLICY.—In order to maintain the national defense industrial base, the Secretary of Defense shall issue an acquisition policy that establishes, as a criterion required to be considered in obtaining carriage by vessel of cargo for the Department of Defense, the extent to which an offeror of such carriage had overhaul, repair, and maintenance work for covered vessels of the offeror performed in shipyards located in the United States.

“(b) COVERED VESSELS.—A vessel is a covered vessel of an offeror under this section if the vessel is—

“(1) owned, operated, or controlled by the offeror; and

“(2) qualified to engage in the carriage of cargo in the coastwise or non-contiguous trade under sections 12112 and 50501 and chapter 551 of title 46, United States Code.

“(c) APPLICATION OF POLICY.—The acquisition policy shall include rules providing for application of the policy to covered vessels as expeditiously as is practicable based on the nature of carriage obtained, and by no later than June 1, 2007.

“(d) REGULATIONS.—

“(1) IN GENERAL.—The Secretary shall prescribe regulations as necessary to carry out the acquisition policy and submit such regulations to the Committees on Armed Services of the Senate and the House of Representatives, by not later than June 1, 2007.

“(2) INTERIM REGULATIONS.—

“(A) IN GENERAL.—The Secretary may prescribe interim regulations as necessary to carry out the acquisition policy. For this purpose, the Secretary is excepted from compliance with the notice and comment requirements of section 553 of title 5, United States Code.

“(B) SUBMISSION TO CONGRESS.—Upon the issuance of interim regulations under this paragraph, the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives the interim regulations and a description of the acquisition policy developed (or being developed) under subsection (a).

“(C) EXPIRATION.—All interim regulations prescribed under the authority of this paragraph that are not earlier superseded by final regulations shall expire no later than June 1, 2007.

“(e) ANNUAL REPORT.—The Secretary, acting through the United States Transportation Command, shall annually submit to the Committees on Armed Services of the Senate and the House of Representatives a report regarding overhaul, repair, and maintenance performed on covered vessels of each offeror of carriage to which the acquisition policy applies.

“(f) DEFINITIONS.—In this section:

“(1) FOREIGN SHIPYARD.—The term ‘foreign shipyard’ means a shipyard that is not located in the United States.

“(2) UNITED STATES.—The term ‘United States’ means—

“(A) any State of the United States; and

“(B) Guam.”

[Pub. L. 110-181, div. C, title XXXV, §3526(a), Jan. 28, 2008, 122 Stat. 601, which directed amendment of section 1017(b)(2) of Pub. L. 109-364, set out above, by substituting “sections 12112, 50501, and 55102 of title 46, United States Code” for “section 27 of the Merchant Marine Act, 1920 (46 U.S.C. 883), section 12106 of title 46, United States Code, and section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802)”, could not be executed because those words did not appear subsequent to amendment by section 1063(c)(9) of Pub. L. 110-181, which was effective as of Oct. 17, 2006, and as if included in Pub. L. 109-364 as enacted. See Effective Date of 2008 Amendment note under section 624 of this title.]

Executive Documents

DELEGATION OF AUTHORITY UNDER THE CARGO PREFERENCE ACT

Memorandum of the President of the United States, Aug. 7, 1985, 50 F.R. 36565, provided:

Memorandum for the Honorable Caspar W. Weinberger, the Secretary of Defense

By virtue of the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 301 of Title 3 of the United States Code, I hereby delegate to the Secretary of Defense all the functions vested in me by the Cargo preference Act of 1904, 10 U.S.C. 2631. This authority may be redelegated.

This memorandum shall be published in the Federal Register.

RONALD REAGAN.

§ 2631a. Contingency planning: sealift and related intermodal transportation requirements

(a) CONSIDERATION OF PRIVATE CAPABILITIES.—The Secretary of Defense shall ensure that all studies and reports of the Department of Defense, and all actions taken in the Department of Defense, concerning sealift and related intermodal transportation requirements take into consideration the full range of the transportation and distribution capabilities that are