

includes an 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 who 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;

(B) does not include a trust for which any person that is not a citizen of the United States has authority to direct, or participate in directing, a 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 without cause, either directly or indirectly through the control of another person, 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 so direct or remove a trustee; and

(C) may include a trust for which a person who is not a citizen of the United States holds more than 25 percent of the beneficial interest in the trust.

(8) LONG TERM CHARTER.—The term “long term charter” means any time charter of a product tank vessel to the United States Government that, together with options, occurs for a continuous period of more than 180 days.

(Added Pub. L. 116-283, div. C, title XXXV, § 3511(a), Jan. 1, 2021, 134 Stat. 4408; amended Pub. L. 117-81, div. C, title XXXV, § 3515(a), Dec. 27, 2021, 135 Stat. 2243.)

#### Editorial Notes

##### AMENDMENTS

2021—Par. (8). Pub. L. 117-81 added par. (8).

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

Pub. L. 116-283, div. C, title XXXV, § 3511(d), Jan. 1, 2021, 134 Stat. 4419, provided that:

“(1) IN GENERAL.—This section [enacting this chapter and provisions set out as a note under section 53402 of this title] shall take effect on the date on which the Secretary of Defense—

“(A) has completed the report on United States flagged fuel tanker vessel capacity as required by section 3519 of the National Defense Authorization Act for Fiscal Year 2020 [Pub. L. 116-92, 133 Stat. 1987];

“(B) has submitted that report to the appropriate committees of Congress;

“(C) publishes certification—

“(i) that a program for United States-flagged fuel tanker vessels as prescribed in chapter 534 of title 46, United States Code, as amended by this section, for the purpose of providing additional United States-flagged fuel tanker vessels is in the national security interest of the United States; and

“(ii) of the number of such additional tankers covered under such a program that could be necessary to meet Department of Defense wartime requirements.

“(2) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section the term ‘appropriate committees of Congress’ means—

“(A) the Committee on Commerce, Science, and Transportation and the Committee on Armed Services of the Senate; and

“(B) the Committee on Transportation and Infrastructure and the Committee on Armed Services of the House of Representatives.”

#### § 53402. Establishment of the Tanker 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 product tank 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 vessels of the United States for which there are in effect operating agreements under this chapter, and shall be known as the “Tanker Security Fleet” (hereafter in this chapter referred to as the “Fleet”).

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

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

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

(3) is self-propelled;

(4) is not more than 10 years of age on the date the vessel is first included in the Fleet;

(5) is determined by the Secretary of Defense to be suitable for use by the United States for national defense or military purposes in time of war or national emergency;

(6) is commercially viable, as determined by the Secretary of Transportation; and

(7) is—

(A) a vessel of the United States; or

(B) not a vessel of the United States, 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 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) 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 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 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 of Transportation; and

(III) that certifies to the Secretary of Transportation that there are no treaties, statutes, regulations, or other laws that would prohibit the program participant 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 of Transportation 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 of Transportation 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 and the Committee on Transportation and Infrastructure of the House of Representatives that the Secretaries concur with the certification required under subparagraph (A)(ii)(III), and have reviewed and agree that there are no legal, operational, or other impediments that would prohibit the owner or operator for the vessel from performing its obligations under an operating agreement under this chapter.

(3) VESSELS 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 vessels of the United States for the Secretary of Defense, or charters other vessels to the Secretary of Defense;

(iii) has entered into a special security agreement for the purpose 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 of Transportation and the Secretary of Defense notify the Committee on Armed Services and the Committee on Commerce, Science, and Transpor-

tation of the Senate and the Committee on Armed Services and the Committee on Transportation and Infrastructure 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 legal, operational, or other impediments that would prohibit the program participant for the vessel from performing its obligations under an operating agreement under this chapter.

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

(A) owned by a person who 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 that the Secretary of Homeland Security issue any waiver under section 501 of this title that the Secretary of Defense determines is necessary for purposes of this chapter.

(e) VESSEL STANDARDS.—

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

(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 of this title; and

(C) the country has not been identified by the Commandant of the Coast Guard as inadequately enforcing international vessel regulations as to that vessel.

(2) CONTINUED ELIGIBILITY FOR CERTIFICATE.—Subsection (a) shall not apply to any vessel that has failed 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 Commandant of the Coast Guard may rely on a certification from the American Bureau of Shipping or, subject to subparagraph (B), another classification society accepted by the Commandant of the Coast Guard, to establish that a vessel is in compliance with the requirements of paragraph (1).

(B) FOREIGN CLASSIFICATION SOCIETY.—The Commandant of the Coast Guard 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.

(Added Pub. L. 116-283, div. C, title XXXV, §3511(a), Jan. 1, 2021, 134 Stat. 4409.)

#### Statutory Notes and Related Subsidiaries

##### DEADLINE FOR ACCEPTING APPLICATIONS

Pub. L. 116-283, div. C, title XXXV, §3511(c), Jan. 1, 2021, 134 Stat. 4419, provided that:

“(1) IN GENERAL.—The Secretary of Transportation shall begin accepting applications for enrollment of vessels in the Tanker Security Fleet established under chapter 534 of title 46, United States Code, as added by subsection (a), by not later than 60 days after the date of the enactment of this title [Jan. 1, 2021].

“(2) APPROVAL.—Not later than 90 days after receipt of an application for the enrollment of a vessel in the Tanker Security Fleet, the Secretary of Transportation, in coordination with the Secretary of Defense shall—

“(A) approve the application and enter into an operating agreement with the applicant; or

“(B) provide to the applicant a written explanation for the denial of the application.

“(3) VESSELS OPERATING IN MARITIME SECURITY FLEET.—Notwithstanding the requirements of section 53402(b) of title 46, United States Code, the Secretary of Transportation shall approve an application submitted under chapter 534 of title 46, United States Code, for a product tank vessel for which there is, on the date of enactment of this title, an effective operating agreement under chapter 531 of title 46, United States Code.”

#### § 53403. Award of operating agreements

(a) IN GENERAL.—The Secretary of Transportation shall require, as a condition of including any vessel in the Fleet, that the program participant of the vessel enter into an operating agreement with the Secretary under this section.

(b) PROCEDURE FOR APPLICATIONS.—

(1) ELIGIBLE VESSELS.—The Secretary of Transportation shall accept an application for an operating agreement for an eligible product tank vessel under the priority under paragraph (2) only from a person that has authority to enter into an operating agreement under this chapter.

(2) ESTABLISHMENT OF PRIORITY.—The Secretary of Transportation may enter into a new operating agreement with an applicant that meets the requirements of section 53402(c) for a vessel that meets the qualifications of section 53402(b), and shall give priority to applications based on—

(A) vessel capabilities, as established by the Secretary of Defense; then

(B) after consideration of vessel type, according to an applicant’s record of owning and operating vessels; then

(C) after consideration of ownership and operation, according to such additional priorities as the Secretary of Transportation may consider appropriate.

(3) CONCURRENCE OF AWARD.—The Secretary of Transportation may not approve an application for an operating agreement without the concurrence of the Secretary of Defense.

(c) LIMITATION.—The Secretary of Transportation may not award operating agreements under this chapter that require payments under section 53406 of this title for more than—<sup>1</sup>

(1) for each of fiscal years 2022 and 2023, 10 vessels; and

(2) for any subsequent fiscal year, 20 vessels.

(d) JUDICIAL REVIEW.—No court shall have jurisdiction to review the Secretary’s decision with respect to the award or non-award of an operating agreement issued under this chapter.

(Added Pub. L. 116-283, div. C, title XXXV, §3511(a), Jan. 1, 2021, 134 Stat. 4412; amended Pub. L. 117-263, div. C, title XXXV, §3501(b)(2), Dec. 23, 2022, 136 Stat. 3064.)

#### Editorial Notes

##### AMENDMENTS

2022—Subsec. (c). Pub. L. 117-263 substituted “The Secretary” for “For any fiscal year, the Secretary” and “more than—” for “more than 10 vessels”, designated existing provisions as introductory provisions, and added pars. (1) and (2).

#### § 53404. Effectiveness of operating agreements

(a) IN GENERAL.—Subject to the availability of appropriations for such purpose, the Secretary may enter into an operating agreement under this chapter for fiscal year 2022 and any subsequent fiscal year. The agreement shall be effective only for 1 fiscal year, but shall be renewable, subject to the availability of appropriations, for each fiscal year through the end of fiscal year 2040.

(b) VESSELS UNDER CHARTER TO THE UNITED STATES.—Any vessel under long term charter to the United States is not eligible to participate in the Fleet.

(c) TERMINATION.—

(1) TERMINATION BY SECRETARY FOR LACK OF PROGRAM PARTICIPANT COMPLIANCE.—If the program participant with respect to an operating agreement materially fails to comply with the terms of the agreement—

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

(B) the Secretary shall terminate the operating agreement if the program participant fails to achieve such compliance.

(2) TERMINATION BY PROGRAM PARTICIPANT.—If a program participant provides notice of the intent to terminate an operating agreement under this chapter on a date specified by not later than 60 days prior to the date specified by the program participant for such termination, such agreement shall terminate on the date specified by the program participant.

(d) NONRENEWAL FOR LACK OF FUNDS.—If, by the first day of a fiscal year, sufficient funds have not been appropriated under the authority

<sup>1</sup> So in original. The period probably should not appear.