

COMMITTEE AMENDMENT

[STAFF WORKING DRAFT]

June 25, 2003

Purpose: To reauthorize the Maritime Security Fleet program, and for other purposes.

**IN THE COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION—108TH Cong., 1ST Sess.**

S. 1262, 108TH Congress, 1ST Session

JUNE 26, 2003

INTENDED to be proposed by Mr. MCCAIN (for himself and
Mr. HOLLINGS)

Viz:

1 **TITLE II—MARITIME SECURITY**
2 **FLEET PROGRAM**

3 **SEC. 201. SHORT TITLE.**

4 This Act may be cited as the “Maritime Security
5 Fleet Program Reauthorization Act of 2003”.

6 **SEC. 202. AMENDMENT OF MERCHANT MARINE ACT, 1936.**

7 Except as otherwise expressly provided, whenever in
8 this Act an amendment or repeal is expressed in terms
9 of an amendment to, or a repeal of, a section or other
10 provision, the reference shall be considered to be made to
11 a section or other provision of the Merchant Marine Act,
12 1936 (46 U.S.C. App. 1101 et seq.).

1 **SEC. 203. CHANGES TO MARITIME SECURITY FLEET ESTAB-**
2 **LISHMENT PROVISIONS.**

3 Section 651 (46 U.S.C. App. 1187) is amended—

4 (1) by striking “Transportation” in subsection
5 (a) and inserting “Transportation, in consultation
6 with the Secretary of Defense,”;

7 (2) by inserting “commercially viable,” after
8 “active,” in subsection (a);

9 (3) by inserting “(including a tank vessel)”
10 after “vessel” the first place it appears in the text
11 of subsection (b);

12 (4) by striking “as an ocean common carrier;”
13 in subsection (b)(1)(A) and inserting “in oceangoing
14 transportation;”;

15 (5) by striking subparagraph (B) of subsection
16 (b)(1) and inserting the following:

17 “(B) is in commercial service, on charter
18 to the Department of Defense, or in other em-
19 ployment;”;

20 (6) by striking “is determined by the Secretary
21 to be” in subsection (b)(1)(C) and inserting “the
22 Secretary, in conjunction with the Secretary of De-
23 fense, has determined to be commercially viable
24 and”;

1 (7) by striking so much of subsection (b)(2) as
2 precedes subparagraph (B) and inserting the fol-
3 lowing:

4 “(2)(A)(i) is a United States-documented ves-
5 sel; and

6 “(ii) on the date an operating agreement cov-
7 ering the vessel is entered into under this subtitle is
8 15 years of age or less;
9 except that the Secretary of Transportation may
10 waive the application of clause (ii) if the Secretary,
11 in conjunction with the Secretary of Defense, deter-
12 mines that the waiver—

13 “(I) is in the national interest;

14 “(II) is appropriate to allow the mainte-
15 nance of the economic viability of the vessel and
16 any associated operating network;

17 “(III) is necessary due to the availability
18 of appropriate vessels that meet the operations
19 and commercial requirements; and

20 “(IV) is consistent with such other factors
21 as the Secretaries consider appropriate; or”;

22 (8) by striking “or, after consultation” in sub-
23 section (b)(3) and inserting “and, in conjunction”;

24 (9) by striking “and” after the semicolon in
25 subsection (b)(3);

1 (10) by striking “Code.” in subsection (b)(4)
2 and inserting “Code; and”;

3 (11) by adding at the end of subsection (b) the
4 following:

5 “(5) meets the requirements of paragraph (1),
6 (2), (3), or (4) of subsection (c).”; and

7 (12) by adding at the end the following:

8 “(c) REQUIREMENTS REGARDING CITIZENSHIP OF
9 OWNERS AND CHARTERERS.—

10 “(1) VESSEL OWNED AND OPERATED BY SEC-
11 TION 2 CITIZENS.—A vessel meets the requirements
12 of this paragraph if, during the period of an oper-
13 ating agreement under this subtitle that applies to
14 the vessel, the vessel will be owned and operated by
15 a person that is a citizen of the United States under
16 section 2 of the Shipping Act, 1916 (46 U.S.C. App.
17 802).

18 “(2) VESSEL OWNED BY DOCUMENTATION CIT-
19 IZEN AND CHARTERED TO SECTION 2 CITIZEN.—A
20 vessel meets the requirements of this paragraph if,
21 during the period of an operating agreement under
22 this subtitle that applies to the vessel, the vessel will
23 be—

1 “(A) owned by a person that is eligible to
2 document a vessel under chapter 121 of title
3 46, United States Code; and

4 “(B) demise chartered to a person that is
5 a citizen of the United States under section 2
6 of the Shipping Act, 1916 (46 U.S.C. App.
7 802).

8 (3) VESSEL OWNED AND OPERATED BY DE-
9 FENSE CONTRACTOR.—A vessel meets the require-
10 ments of this paragraph if—

11 “(A) during the period of an operating
12 agreement under this subtitle that applies to
13 the vessel, the vessel will be owned and oper-
14 ated by a person that—

15 “(i) is eligible to document a vessel
16 under chapter 121 of title 46, United
17 States Code;

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

22 “(iii) has entered into a special secu-
23 rity agreement for purposes of this para-
24 graph with the Secretary of Defense;

1 “(iv) makes the certification described
2 in paragraph (4)(A)(ii)(III); and

3 “(v) in the case of a vessel described
4 in paragraph (2)(B), enters into an agree-
5 ment referred to in that paragraph; and

6 “(B) the Secretary and the Secretary of
7 Defense certify to the House Armed Services
8 Committee and the Senate Commerce, Science
9 and Transportation Committee that they concur
10 with the certification, and have reviewed and
11 agree that there are no other legal, operational,
12 or other impediments that would prohibit the
13 contractor for the vessel from performing its
14 obligations under an operating agreement under
15 this subtitle.

16 “(4) VESSEL OWNED BY SECTION 2 CITIZEN
17 AND CHARTERED TO DOCUMENTATION CITIZEN.—A
18 vessel meets the requirements of this paragraph if—

19 “(A) during the period of an operating
20 agreement under this subtitle that applies to
21 the vessel, the vessel will be—

22 “(i) owned by a person that is a cit-
23 izen of the United States under section 2
24 of the Shipping Act, 1916 (46 U.S.C. App.
25 802); and

1 “(ii) demise chartered to a person—

2 “(I) that is eligible to document
3 the vessel under chapter 121 of title
4 46, United States Code;

5 “(II) the chairman of the board
6 of directors, chief executive officer,
7 and a majority of the members of the
8 board of directors of which are United
9 States citizens, are appointed and
10 subjected to removal only upon ap-
11 proval by the Secretary;

12 “(III) that certifies that there
13 are no treaties, statutes, regulations,
14 or other laws that would prohibit the
15 contractor for the vessel from per-
16 forming its obligations under an oper-
17 ating agreement under this subtitle;
18 and

19 “(IV) the Secretary and the Sec-
20 retary of Defense certify to the House
21 Armed Services Committee and the
22 Senate Commerce, Science, and
23 Transportation Committee that they
24 concur with the certification, and have
25 reviewed and agree that there are no

1 other legal, operational, or other im-
2 pediments that would prohibit the
3 contractor for the vessel from per-
4 forming its obligations under an oper-
5 ating agreement under this subtitle;
6 and

7 “(B) in the case of a vessel that will be
8 chartered to a person that is owned or con-
9 trolled by another person that is not a citizen
10 of the United States under section 2 of the
11 Shipping Act, 1916 (46 U.S.C. App. 802), the
12 other person enters into an agreement with the
13 Secretary not to influence the operation of the
14 vessel in a manner that will adversely affect the
15 interests of the United States.

16 “(d) DEEMED OWNERSHIP.—Notwithstanding sec-
17 tion 12102(d)(4) of title 46, United States Code, in the
18 case of a vessel that is owned by a trust and that is demise
19 chartered to a person meeting the requirements of sub-
20 section (c)(3), the vessel is deemed, for purposes of the
21 eligibility requirements of this section, to be owned and
22 operated by a person that is a citizen of the United States
23 under section 2 of the Shipping Act, 1916 (46 U.S.C. App.
24 802) if the trust meets the requirements of paragraph (2)

1 of section 12102(d) of title 46, United States Code, as
2 qualified by paragraph (4) of that section.

3 “(e) VESSEL STANDARDS.—

4 “(1) CERTIFICATE OF INSPECTION.—A vessel
5 used to provide oceangoing transportation which the
6 Secretary of the department in which the Coast
7 Guard is operating determines meets the criteria of
8 subsection (b) of this section but which, on the date
9 of enactment of the Maritime Security Fleet Pro-
10 gram Reauthorization Act of 2003, is not a docu-
11 mented vessel (as that term is defined in section
12 2101 of title 46, United States Code) shall be eligi-
13 ble for a certificate of inspection if the Secretary de-
14 termines that—

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

19 “(B) the vessel complies with applicable
20 international agreements and associated guide-
21 lines, as determined by the country in which the
22 vessel was documented immediately before be-
23 coming a documented vessel (as defined in that
24 section); and

1 “(C) that country has not been identified
2 by the Secretary as inadequately enforcing
3 international vessel regulations as to that ves-
4 sel.

5 “(2) CONTINUED ELIGIBILITY FOR CERTIFI-
6 CATE.—Paragraph (1) does not apply to a vessel
7 after any date on which the vessel fails to comply
8 with the applicable international agreements and as-
9 sociated guidelines referred to in paragraph (1)(B).

10 “(3) RELIANCE ON CLASSIFICATION SOCIETY.—

11 (A) IN GENERAL.—The Secretary may rely
12 on a certification from the American Bureau of
13 Shipping or, subject to subparagraph (B), an-
14 other classification society accepted by the Sec-
15 retary to establish that a vessel is in compliance
16 with the requirements of paragraphs (1) and
17 (2).

18 “(B) FOREIGN CLASSIFICATION SOCI-
19 ETY.—The Secretary may accept certification
20 from a foreign classification society under sub-
21 paragraph (A) only—

22 “(i) to the extent that the government
23 of the foreign country in which the society
24 is headquartered provides access on a re-

1 reciprocal basis to the American Bureau of
2 Shipping; and
3 “(ii)if the foreign classification society
4 has offices and maintains records in the
5 United States.”.

6 **SEC. 204. CHANGES TO OPERATING AGREEMENTS RE-**
7 **QUIREMENTS.**

8 (a) IN GENERAL.—Section 652 (46 U.S.C. App.
9 1187a) is amended—

10 (1) by striking “which continues to operate
11 under an operating differential subsidy contract
12 under subtitle A or” in subsection (a);

13 (2) by striking “trade” the first place it ap-
14 pears in subsection (b)(1)(A) and inserting “trade,
15 as that term is defined in section 905(a) of this Act
16 (without regard to ‘in the context of section 607 of
17 this Act concerning capital construction funds and
18 except that in the context of title V of this Act con-
19 cerning construction-differential subsidy,’),”;

20 (3) by inserting “(1) IN GENERAL.—” after
21 “(c) REGULATORY RELIEF.—” IN SUBSECTION (C);

22 (4) by adding at the end of subsection (c) the
23 following:

24 “(2) TELECOMMUNICATIONS EQUIPMENT.—The tele-
25 communications and other electronic equipment on an ex-

1 isting vessel that is redocumented under the laws of the
2 United States for operation under an operating agreement
3 under this subtitle shall be deemed to satisfy all Federal
4 Communications Commission equipment certification re-
5 quirements, if—

6 “(A) such equipment complies with all applica-
7 ble international agreements and associated guide-
8 lines as determined by the country in which the ves-
9 sel was documented immediately before becoming
10 documented under the laws of the United States;

11 “(B) that country has not been identified by
12 the Secretary as inadequately enforcing international
13 regulations as to that vessel; and

14 “(C) at the end of its useful life, such equip-
15 ment will be replaced with equipment that meets
16 Federal Communications Commission equipment
17 certification standards.”;

18 (5) by striking “2005.” in subsection (d)(1)
19 and inserting “2015.”;

20 (6) by striking “1996 and” in subsection (d)(2)
21 and inserting “1996,”;

22 (7) by inserting “for each of fiscal years 1997
23 through 2005, and \$3,100,000” in subsection (d)(2)
24 after “\$2,100,000”;

1 (8) by striking “subject to an operating dif-
2 ferential subsidy contract under subtitle A or” in
3 subsection (g)(1);

4 (9) by striking paragraph (3) of subsection (g)
5 and inserting the following:

6 “(3) beyond its economic life, as determined by
7 the Secretary.”;

8 (9) by striking “7,500” in subsection (h)(2)
9 and inserting “2,500”;

10 (10) by inserting “or bagged” after “bulk” each
11 place it appears in subsection (h)(2);

12 (11) by striking “cargo; and” in subsection
13 (h)(2) and inserting “cargo unless the vessel is
14 owned and operated by persons that are citizens of
15 the United States under section 2 of the Shipping
16 Act, 1916 (46 U.S.C. App. 802); and”;

17 (12) by redesignating subsections (j) through
18 (p) as subsections (l) through (r), respectively, and
19 inserting after subsection (i) the following:

20 “(j) AWARDING NEW AGREEMENTS.—Subject to the
21 availability of appropriations and without regard to sub-
22 section (i), the Secretary of Transportation shall enter
23 into operating agreements according to a priority deter-
24 mined by the applicant’s record of owning and operating
25 vessels in accordance with section 2 of the Shipping Act,

1 1916 (46 U.S.C. App. 802) under the United States flag
2 and its capability to provide a sufficient level of military
3 utility to the United States, as determined jointly by the
4 Secretary of Transportation and the Secretary of Defense,
5 based on the type and number of vessels, and non-vessel
6 assets the applicant offers to the program.

7 “(k) REISSUANCE OF OPERATING AGREEMENTS.—
8 Subject to the availability of appropriations the Secretary
9 of Transportation, in conjunction with the Secretary of
10 Defense, may reissue operating agreements for partici-
11 pating fleet vessels. If the Secretary fails to reissue an
12 operating agreement, or if the Secretary does not receive
13 an application for reissuance of an operating agreement
14 for a participating fleet vessel, the operating agreement
15 will be awarded subject to subsection (j).”;

16 (13) by striking “Secretary within” in sub-
17 section (l), as redesignated, and inserting “Secretary
18 and the Secretary of Defense within”;

19 (14) by inserting “(1)” in subsection (m), as re-
20 designating, after “AUTHORITY.—” and redesignating
21 paragraphs (1) and (2) as subparagraphs (A) and
22 (B), respectively;

23 (15) by adding at the end of subsection (m), as
24 redesignated, the following:

1 “(2) If the Secretary of Transportation makes a de-
2 termination that the requirements set forth in this section
3 are not fulfilled while an operating agreement is in effect,
4 the Secretary may terminate the agreement and the Sec-
5 retary shall be free to enter into an operating agreement
6 with another party capable of fulfilling the requirements
7 for an operating agreement under this subtitle.”;

8 (16) by redesignating subsections (n) through
9 (r), as redesignated, as subsections (o) through (s),
10 respectively, and inserting after subsection (m), as
11 redesignated, the following:

12 “(n) REPLACEMENT VESSEL.—The Secretary shall
13 require the replacement of any participating fleet vessel
14 that does not meet the requirements of section 651(b), and
15 the Secretary, in conjunction with the Secretary of De-
16 fense, may approve the replacement of any participating
17 vessel if the replacement vessel is eligible under section
18 651(b).”; and

19 (17) by adding at the end of subsection (o), as
20 redesignated, the following:

21 “(3) PROCEDURES FOR NEW AWARDS.—No later
22 than 60 days after the date of issuance of interim final
23 rules (or, if earlier, 60 days after the date of issuance of
24 the a final rule under section 657), the Secretary shall
25 accept applications for enrollment of 13 additional vessels

1 in the Fleet, and within 90 days after receipt of an appli-
2 cation for enrollment of a vessel in the Fleet, the Secretary
3 shall enter into an operating agreement with the applicant
4 or provide in writing the reason for denial of that applica-
5 tion.

6 “(4) PROCEDURES FOR REISSUANCE OF OPERATING
7 AGREEMENTS.—Not later than 60 days after the date of
8 issuance of interim final rules (or, if earlier, 60 days after
9 the date of issuance of the a final rule under section 657),
10 the Secretary shall accept applications for the reissuance
11 of operating agreements of participating fleet vessels, and
12 within 90 days after receipt of an application for such a
13 reissuance, or for an operating agreement for a partici-
14 pating fleet vessel, the Secretary shall enter into an agree-
15 ment with the applicant, or provide in writing a reason
16 for the denial.

17 “(5) LIMITATION.—The Secretary may not award op-
18 erating agreements under this subtitle that require pay-
19 ments under this section for more than 60 vessels in any
20 fiscal year.”.

21 “(6) EFFECTIVE DATE.—The effective date for an
22 operating agreement under paragraph (3) or (4) shall be
23 October 1, 2005, except for a vessel which is, on the date
24 of entry into an operating agreement, on charter to the
25 United States Government, other than a charter under

1 section 653, the effective date shall be the expiration or
2 termination date of the Government charter covering the
3 vessel, or any earlier date the vessel is withdrawn from
4 that contract or charter.

5 (b) CONFORMING AMENDMENTS.—Section 653 (46
6 U.S.C. App. 1187b) is amended—

7 (1) by striking “Secretary” in subsection (b)
8 and inserting “Secretary, in conjunction with the
9 Secretary of Defense,”; and

10 (2) by striking “Transportation” in subsection
11 (c)(1) and inserting “Transportation , in conjunction
12 with the Secretary of Defense,”.

13 **SEC. 205. PARTICIPATING FLEET VESSEL DEFINED.**

14 Section 654 (46 U.S.C. App. 1187c) is amended by
15 adding at the end the following:

16 “(7) PARTICIPATING FLEET VESSEL.—The
17 term ‘participating fleet vessel’ means—

18 “(A) any vessel that is owned or demise
19 chartered and that—

20 “(i) on October 1, 2005—

21 “(I) will meet the requirements
22 of paragraph (1), (2), (3), or (4) of
23 section 651(c); and

1 “(II) will be less than 25 years of
2 age, or less than 30 years of age in
3 the case of a LASH vessel; and

4 “(ii) on April 30, 2005, is covered by
5 an operating agreement under subtitle B
6 of title VI of the Merchant Marine Act,
7 1936 (46 U.S.C. App. 1187 et seq.); or

8 “(B) any vessel that—

9 “(i) is a replacement for a vessel de-
10 scribed in subparagraph (A);

11 “(ii) is controlled by the person that
12 controls such replaced vessel;

13 “(iii) is eligible to be included in the
14 Fleet under section 651(b); and

15 “(iv) is approved by the Secretary and
16 the Secretary of Defense.”.

17 **SEC. 206. AUTHORIZATION OF APPROPRIATIONS.**

18 Section 655 (46 U.S.C. App. 1187d) is amended—

19 (1) by striking “1996 and” and inserting
20 “1996,”;

21 (2) by striking “\$100,000,000, for each fiscal
22 year thereafter through fiscal year 2005.” and in-
23 serting “\$100,000,000 for each of fiscal years 1997
24 through 2005, and such sums as may be necessary,

1 not to exceed \$186,000,000, for each fiscal year
2 thereafter through fiscal year 2015.”.

3 **SEC. 207. NONCONTIGUOUS DOMESTIC TRADE.**

4 Section 656 (46 U.S.C. App. 1187e) is amended to
5 read as follows:

6 **“SEC. 656. NONCONTIGUOUS DOMESTIC TRADES.**

7 “(a) IN GENERAL.—Except as otherwise provided in
8 this section, no contractor or related party shall receive
9 payments pursuant to this part during a period when it
10 participates in a noncontiguous domestic trade, except
11 upon written permission of the Secretary of Transpor-
12 tation that is granted after a hearing on the record under
13 section 554 of title 5, United States Code, and that states
14 the capacity that may be offered in that trade. The Sec-
15 retary may grant such written permission pursuant to
16 written application of such contractor or related party un-
17 less the Secretary finds that—

18 “(1) existing service in that trade is adequate;

19 or

20 “(2) the service sought to be provided by the
21 contractor or related party—

22 “(A) would result in unfair competition to
23 any other person operating vessels in such non-
24 contiguous domestic trade, or

1 “(B) would be contrary to the objects and
2 policy of this Act.

3 “(b) GRANDFATHER.—

4 “(1) Subsection (a) shall not apply to provision
5 by a contractor of service within the level of service
6 provided by that contractor as of the date of enact-
7 ment of the Maritime Security Fleet Program Reau-
8 thorization Act of 2003, adjusted for increases in
9 the real gross product of the State or Common-
10 wealth served since that date.

11 “(2) Subsection (a) shall not apply to operation
12 by a contractor of a self-propelled tank vessel in a
13 noncontiguous domestic trade, or to ownership by a
14 contractor of an interest in a self-propelled tank ves-
15 sel that operates in a noncontiguous domestic trade.

16 “(c) DEFINITIONS.—In this section:

17 “(1) PARTICIPATES IN A NONCONTIGUOUS DO-
18 MESTIC TRADE.—The term ‘participates in a non-
19 contiguous domestic trade’ means directly or indi-
20 rectly owns, charters, or operates a vessel engaged
21 in transportation of cargo between a point in the
22 contiguous 48 states and a point in Alaska, Hawaii,
23 or Puerto Rico.

24 “(2) RELATED PARTY.—The term ‘related
25 party’ means—

1 “(A) a holding company, subsidiary, affil-
2 iate, or associate of a contractor who is a party
3 to an operating agreement under this part; and

4 “(B) an officer, director, agent, or other
5 executive of a contractor or of a person referred
6 to in subparagraph (A).”.

7 **SEC. 208. REGULATIONS.**

8 Subtitle B of title VI of the Merchant Marine Act,
9 1936 (46 U.S.C. App. 1187 et seq.) is amended by adding
10 at the end the following:

11 **“SEC. 657. REGULATIONS.**

12 “(a) IN GENERAL.—The Secretary of Transpor-
13 tation, in consultation with the Secretary of Defense, may
14 prescribe rules as necessary to carry out this subtitle and
15 the amendments made by this subtitle.

16 “(b) INTERIM RULES.—The Secretary of Transpor-
17 tation, in consultation with the Secretary of Defense, may
18 prescribe interim rules necessary to carry out this subtitle.
19 For this purpose the Secretary is excepted from compli-
20 ance with the notice and comment requirements of section
21 553 of title 5, United States Code. All interim rules pre-
22 scribed under the authority of this subsection that are not
23 superseded by final rules shall expire no later than 270

- 1 days after the date of enactment of the Maritime Security
- 2 Fleet Program Reauthorization Act of 2003.”.

