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106 th CONGRESS

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[Report No. 106○]

TITLETo revise the laws of the United States appertaining to United States cruise vessels, and for other purposes.

Rule

IN THE SENATE OF THE UNITED STATES

DATEAugust __, 1999

Mr. McCain (for himself, Mrs. Hutchison , Mrs. Feinstein , and Mr. Murkowski) introduced the following bill; which was read twice and referred to the Committee on

Rule

A BILL

TITLETo revise the laws of the United States appertaining to United States cruise vessels, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF SECTIONS.

(a) Short Title._ This Act may be cited as the ``United States Cruise Ship Tourism Development Act of 1999".

(b) Table of Sections._ The table of sections for this Act is as follows:

Sec. 1. Short title; table of sections.

Sec. 2. Definitions.

Title I_Operations Under Permit

Sec. 101. Domestic cruise vessel.

Sec. 102. Domestic itinerary operating requirements.

Sec. 103. Certain operations prohibited.

Sec. 104. Limited employment of eligible cruise vessels in the coastwise trade of the United States.

Sec. 105. Priorities within domestic markets.

Sec. 106. Construction standards.

Title II_Post-Permit Operations of Eligible Cruise Vessels

Sec. 201. Continued operation in domestic itinerary requirements.

Title III_Other Provisions

Sec. 301. Amendment of title XI of the Merchant Marine Act, 1936

Sec. 302. Application with Jones Act and other Acts.

Sec. 303. Glacier Bay and other National Park Service area permits.

SEC. 2. DEFINITIONS.

In this Act:

(1) Eligible cruise vessel._ The term ``eligible cruise vessel" means a cruise vessel that_

(A) is documented under the laws of the United States or the laws of another country;

(B) is not otherwise qualified to engage in the coastwise trade between ports in the United States;

(C) was delivered after January 1, 1980;

(D) provides a full range of overnight accommodations, entertainment, dining, and other services for its passengers;

(E) has a fixed smoke detection and sprinkler system installed throughout the accommodation and service spaces, or will have such a system installed within the time period required by the 1992 Amendments to the Safety of Life at Sea Convention of 1974; and

(F) displaces_

(i) greater than 20,000 gross registered tons; or

(ii) more than 9,000 gross registered tons and has an all-suites luxury configuration with a minimum of 240 square feet per revenue room.

(2) Itinerary._ The term "itinerary" means the route travelled by a cruise vessel on a single voyage that begins at the first port of embarkation for passengers on that voyage, includes each port at which the vessel docks before the last port of disembarkation for such passengers, and ends at that last port of disembarkation.

(3) Operating day._ The term "operating day" means a day of the week on which a vessel embarks, transports, or disembarks passengers.

(4) Operator._ The term "operator" means the owner, operator, or charterer.

(5) Secretary._ The term "Secretary" means the Secretary of Transportation.

(6) United States-flag vessel._ The term "United States-flag vessel" means a vessel documented under subsection (a) or (d) of section 12102 of title 46, United States Code.

TITLE I OPERATIONS UNDER PERMIT

SEC. 101. DOMESTIC CRUISE VESSEL.

(a) In General._ Notwithstanding the provisions of section 8 of the Act of June 19, 1886 (46 U.S.C. App. 289), or any other provision of law, the Secretary may issue a permit for an eligible cruise vessel to operate in domestic itineraries in the transportation of passengers in the coastwise trade between ports in the United States.

(b) Maximum Operating Days._ An eligible cruise vessel not documented under the laws of the United States that is operated under a permit issued by the Secretary under subsection (a) may not be operated under that permit for more than 200 operating days.

(c) Expiration of Permit Authority._ Except as otherwise provided in section 201 of this Act, a permit issued by the Secretary under subsection (a) shall terminate December 31, 2006.

(d) Operating Window._ The authority of the Secretary to issue a permit under subsection (a) begins on the day after the date of enactment of this Act and terminates on the day that is 3 years after that date.

SEC. 102. DOMESTIC ITINERARY OPERATING REQUIREMENTS.

(a) In General._ Except as provided in section 104 of this Act, the Secretary may not approve an itinerary for a voyage commencing less than 1 year after the date of enactment of this Act requested by an eligible cruise vessel that is not documented under the laws of the United States.

(b) Regulatory Requirements._ The Secretary may not issue a permit under section 101(a) for an eligible cruise vessel not documented under the laws of the United States unless the operator establishes to the satisfaction of the Secretary that, except as otherwise provided in this Act, the vessel will be operated in full compliance with all rules, regulations, and operating requirements relating to health, safety, environmental protection and other appropriate operational standards (as determined by the Secretary), that would apply to any United States-flag cruise vessel operating in domestic itineraries in the transportation of passengers under a permit issued under section 101(a). The Secretary shall issue final rules under this section within 180 days after the date of enactment of this Act.

(c) Repairs._

(1) In general._ The Secretary may not issue a permit under section 101(a) for an eligible cruise vessel unless the operator establishes to the satisfaction of the Secretary that_

(A) any repair, maintenance, alteration, or other preparation of the vessel for operation under a permit issued under section 101(a) has been, or will be, performed in a United States shipyard; and

(B) any repair or maintenance of the vessel after a permit is issued under that section and before the expiration of the operating limitation period in section 101(b) will be performed in a United States shipyard.

(2) Waiver._ The Secretary may waive the requirements of paragraph (1) if the Secretary finds that the repair, maintenance, alterations, or other preparation services are not available in the United States or if an emergency dictates that the ship proceed to a foreign port.

(d) Escrow Account._ The Secretary may not issue a permit under section 101(a) for

an eligible cruise vessel unless the operator agrees to deposit \$5 for each passenger embarking on that vessel while operating under the permit into the escrow fund established under section 1108 of the Merchant Marine Act, 1936 (46 U.S.C. App. 1270a).

(e) Compliance._ If the Secretary determines that an eligible cruise vessel is not in compliance with any commitment made to the Secretary by its operator under this Act, the permit issued for that vessel under section 101(a) shall be null and void.

SEC. 103. CERTAIN OPERATIONS PROHIBITED.

An eligible cruise vessel operating in domestic itineraries under a permit issued under section 101(a) may not_

- (1) operate as a ferry;
- (2) regularly carry for hire both passengers and vehicles or other cargo; or
- (3) operate between or among the islands of Hawaii.

SEC. 104. LIMITED EMPLOYMENT OF FOREIGN-FLAG CRUISE SHIPS IN THE COASTWISE TRADE OF THE UNITED STATES.

(a) In general._ Notwithstanding section 12106 of title 46, United States Code, section 27 of the Merchant Marine Act, 1920 (46 U.S.C. App. 883), and section 8 of the Act of June 19, 1886 (46 U.S.C. App. 289), the Secretary may approve the employment in the coastwise trade of the United States of an eligible cruise vessel operating under a permit issued under section 101(a) of this Act for repositioning as provided by under subsection (b) or for charter as provided by subsection (c).

(b) Repositioning._ An eligible cruise vessel not documented under the laws of the United States operating under a permit issued under section 101(a) of this Act may be employed in the coastwise trade during the first year after the date of enactment of this Act for not more than 2 voyages, the coastwise trade portion of which does not exceed 2 weeks and includes transportation of passengers for hire_

- (1) from one coast of the United States through the Panama Canal to another coast of the United States; or
- (2) along one coast of the United States during a voyage between 2 foreign countries.

(c) Charters._ An eligible cruise vessel not documented under the laws of the United States operating under a permit issued under section 101(a) of this Act may be employed in the coastwise trade during the first year after the date of enactment of this Act if it is time-chartered to a charterer that_

- (1) does not own or operate a cruise ship; and
- (2) is not affiliated with an owner or operator of a cruise ship.

(d) Priorities._ Section 105 applies to vessels employed in the coastwise trade under this section.

SEC. 105. PRIORITIES WITHIN DOMESTIC MARKETS.

(a) In General._ The Secretary shall, by regulation, establish a priority system for cruise vessels providing passenger service in domestic itineraries within 180 days after the date of enactment of this Act.

(b) Priority to U.S.-Built or U.S.-Rebuilt Vessels._ Under the regulations to be prescribed by the Secretary, a cruise vessel built or rebuilt in the United States and documented under the laws of the United States shall have priority over any other cruise vessel of comparable size operating in a comparable market under a permit issued under section 101(a).

(c) Priority to U.S.-Flag Vessels._ The Secretary shall prescribe regulations under which a cruise vessel documented under the laws of the United States that is not built or rebuilt in the United States has priority over an eligible cruise vessel of comparable size not documented under the laws of the United States that is operating in a comparable market.

(d) Factors Considered._ In determining and assigning priorities under the regulations, the Secretary shall consider, among other factors determined by the Secretary to be appropriate_

(A) the scope of a vessel's itinerary;

(B) the time frame within which the vessel will serve a particular itinerary; and

(C) the size of the vessel.

(e) Implementation._

(1) Itinerary submission required._ An eligible cruise vessel may not be operated in a domestic itinerary unless the operator has submitted a proposed itinerary for that vessel, in accordance with this subsection, for cruise itineraries for the calendar year beginning 2 years after the date on which the itinerary is required to be submitted under paragraph (2).

(2) Time and manner of submission._ Each operator of an eligible cruise vessel to be operated in a domestic itinerary shall submit a proposed itinerary to the Secretary in the form required by the Secretary in February of each year beginning after the date of

enactment of this Act.

(3) Revisions and later submissions._ The Secretary shall permit late submissions and revisions of submissions after the final list of approved itineraries is published under paragraph (4)(C) and before the date that is 90 days before the start date of a requested itinerary, but a late submission or revision by a higher priority cruise vessel may not displace a priority assigned on the basis of timely submission by a lower priority cruise vessel. If operators of comparable vessels submit comparable requests within 30 days of each other, the priorities of this section apply at the discretion of the Secretary.

(4) Scheduling._

(A) Action by secretary._ Within 60 days after receiving an itinerary submitted under this subsection, the Secretary shall_

(i) review the schedule for compliance with the priorities established by this section;

(ii) advise affected cruise ship operators of any specific itinerary that is not available and the reason it is not available; and

(iii) publish a proposed list of approved itineraries.

(B) Operators response._ If the Secretary advises an operator under subparagraph (A)(ii) that a requested itinerary is not available, the operator may respond to the Secretary's advice within 30 days after it is received by the operator by appealing the Secretary's decision or by submitting a new itinerary proposal.

(C) Resolution of conflicts._ As soon as practicable after the end of the 30-day period described in subparagraph (B), the Secretary shall_

(i) resolve any appeals and consider new itinerary proposals;

(ii) advise cruise ship operators who responded under subparagraph (B) of the Secretary's decision with respect to the appeal or the new itinerary proposal; and

(iii) publish a final list of approved itineraries.

(f) Itineraries Before Final List Is First Published._

(1) Requests._ For itineraries before the first calendar year for which the Secretary publishes a final list of approved itineraries under subsection (e), the operator of a cruise vessel may submit a request for an itinerary to be sailed before that calendar year.

(2) Conflicting higher priority use._ If the itinerary submitted by an operator under paragraph (1) conflicts with an itinerary in use by a vessel with a higher priority under this section, the Secretary shall disapprove the request and notify the operator of the disapproval and the reason for the disapproval within 5 days (Saturdays, Sundays, and legal public holidays (as defined in section 6103 of title 5, United States Code, excepted) after the request is received.

(3) No initial conflict._ If the itinerary submitted by an operator under paragraph (1) does not conflict with an itinerary in use by a vessel with a higher priority under this section, the Secretary shall publish the request and the requested itinerary immediately. If, within 30 days after the request is published, the operator of a cruise vessel with a higher priority under this section requests the use of the published itinerary, then the Secretary shall deny the published request and approve the request for the higher priority vessel. If no operator of a cruise vessel with a higher priority under this section requests the use of the published itinerary within 30 days after it is published, the Secretary shall approve the requested itinerary and publish notice of the approval.

(4) Publication of interim itineraries._ Until the first publication of a final list of approved itineraries under subsection (e), the Secretary shall publish, on a quarterly basis, a list of itineraries approved under this subsection.

(g) Report._ The Secretary shall issue an annual report on the number of operating days used by each cruise vessel assigned a priority under this section.

SEC. 106. CONSTRUCTION STANDARDS.

An eligible cruise vessel for which the Secretary has issued a permit under section 101(a) is deemed to be in compliance with the requirements of section 3309 of title 46, United States Code, if it meets the standards and conditions for the issuance of a control verification certificate for a cruise vessel documented under the laws of a foreign country embarking passengers in the United States.

TITLE II_POST-PERMIT OPERATIONS OF ELIGIBLE CRUISE VESSELS

SEC. 201. CONTINUED OPERATION IN DOMESTIC ITINERARY REQUIREMENTS.

(a) In General._ After the expiration of its period of operations under a permit issued under section 101(a), an eligible cruise vessel not documented under the laws of the United States may not operate in domestic itineraries unless it meets the following conditions:

(1) Documentation._ The vessel has been issued a certificate of documentation with a coastwise endorsement.

(2) Operating crew; support staff._ Each member of the vessel's operating crew licensed or certified by the United States Coast Guard is a citizen or resident alien of

the United States as required by section 8103 of title 46, United States Code, and each individual employed aboard the vessel who is not a member of the operating crew is a citizen or permanent resident of the United States.

(b) Construction plan._ The operator of an eligible cruise vessel issued a permit under section 101(a) of this Act shall demonstrate to the satisfaction of the Secretary that, as of the date on which the vessel is documented under the laws of the United States_

(1) it has a plan for the construction of a cruise vessel in the United States; or

(2) it is a party to, or has made substantial progress toward entering into, an enforceable contract for the construction of such a vessel in the United States.

(c) Expiration of Coastwise Endorsement._ The coastwise endorsement for an eligible cruise vessel operating under subsection (a) shall expire 24 months after the date on which construction is completed on the last vessel the operator of the eligible cruise vessel is obligated to construct in the United States under the contract described in subsection (b).

(d) Reflagging under Foreign Registry._ Notwithstanding section 9(c) of the Shipping Act, 1916 (46 U.S.C. App. 808), the operator of an eligible cruise ship issued a certificate of documentation with a coastwise endorsement, or a cruise vessel constructed under a contract described in subsection (a)(4), may place that vessel under foreign registry. The Secretary shall revoke the coastwise endorsement for any such vessel placed under foreign registry under this subsection permanently. Any vessel the coastwise endorsement for which is revoked under this subsection is not eligible thereafter for coastwise endorsement.

TITLE III_OTHER PROVISIONS

SEC. 301. AMENDMENT OF TITLE XI OF THE MERCHANT MARINE ACT, 1936.

(a) Risk Factor._ Section 1103(h) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1103(h)) is amended by adding at the end thereof the following:

“(5) For purposes of the risk factor described in paragraph (3)(l), the Secretary shall consider an applicant for a guarantee, or a commitment to guarantee, under subsection (a) an obligation in connection with a contract described in section 201(a)(4) of the United States Cruise Ship Tourism Development Act of 1999 to possess the necessary operating ability, experience, and expertise required if the applicant demonstrates to satisfaction of the Secretary that its personnel have the experience and ability to operate cruise vessels.”.

(b) Qualifications._ Section 1104A(b) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1274(b)) is amended by adding at the end thereof the following:

“For purposes of paragraph (1), the Secretary shall consider an obligor with a contract described in section 201(b)(2) of the United States Cruise Ship Tourism Development Act of 1999 to possess the ability necessary to the adequate operation and maintenance of the cruise vessel that serves as security for the guarantee of the Secretary if the obligor demonstrates to the satisfaction of the Secretary that its personnel have the experience and ability to operate cruise vessels.”.

SEC. 302. APPLICATION WITH JONES ACT AND OTHER ACTS.

(a) In General._ Nothing in this Act affects or otherwise modifies the authority contained in_

(1) Public Law 87-77 (46 U.S.C. App. 289b) authorizing the transportation of passengers and merchandise in Canadian vessels between ports in Alaska and the United States; or

(2) Public Law 98-563 (46 U.S.C. App. 289c) permitting the transportation of passengers between Puerto Rico and other United States ports.

(b) Jones Act._ Nothing in this Act affects or modifies the Merchant Marine Act, 1920 (46 U.S.C. App. 861 et seq.).

SEC. 303. GLACIER BAY AND OTHER NATIONAL PARK SERVICE AREA PERMITS.

Notwithstanding the last sentence of section 3(g) of Public Law 91-383 (16 U.S.C. 1a-2(g)), the Secretary of the Interior, after consultation with the Secretary of Transportation, may issue new or otherwise available permits to United States-flag vessels carrying passengers for hire to enter Glacier Bay or any other area within the jurisdiction of the National Park Service. Any such permit shall not affect the rights of any person that, on the date of enactment of this Act, holds a valid permit to enter Glacier Bay or such other area.