

States citizen under section 50501 of this title. The Secretary may not approve an application without the consent of the Secretary of Defense. The Secretary shall enter into an operating agreement with the applicant or provide a written reason for denying the application.

(d) LIMITATION.—The Secretary may not award operating agreements under this chapter that require payments under section 53106 for a fiscal year for more than 60 vessels.

(Added Pub. L. 108–136, div. C, title XXXV, § 3531(a), Nov. 24, 2003, 117 Stat. 1808; amended Pub. L. 109–304, § 13(a)(2), Oct. 6, 2006, 120 Stat. 1700; Pub. L. 109–364, div. C, title XXXV, § 3502(b)(1), Oct. 17, 2006, 120 Stat. 2515; Pub. L. 112–239, div. C, title XXXV, § 3508(c), Jan. 2, 2013, 126 Stat. 2224; Pub. L. 116–92, div. C, title XXXV, § 3502(a), Dec. 20, 2019, 133 Stat. 1969.)

#### Editorial Notes

##### REFERENCES IN TEXT

The date of enactment of this paragraph, referred to in subsec. (b)(1), probably means the date of enactment of Pub. L. 112–239, which amended subsec. (b) generally and was approved Jan. 2, 2013.

##### AMENDMENTS

2019—Subsec. (b)(1), (3). Pub. L. 116–92 substituted “2035” for “2025”.

2013—Subsec. (b). Pub. L. 112–239, § 3508(c)(1), amended subsec. (b) generally. Prior to amendment, subsec. (b) related to procedure for applications.

Subsec. (c). Pub. L. 112–239, § 3508(c)(2), amended subsec. (c) generally. Prior to amendment, subsec. (c) related to priority for awarding agreements.

2006—Subsec. (c)(1). Pub. L. 109–304, § 13(a)(2)(A)–(C), substituted “section 50501 of this title” for “section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802)” in subpars. (A)(iii) and (C)(i) and (ii), “applying subparagraph” for “applying subparagraphs” in subpar. (B), and “section 50501” for “section 2” in subpar. (C) heading.

Subsec. (c)(3)(B). Pub. L. 109–304, § 13(a)(2)(D), substituted “agreements” for “agreement”.

Subsec. (c)(4)(A). Pub. L. 109–364, § 3502(b)(1)(A)–(D), redesignated cls. (i) and (ii) as cl. (i), subcls. (I) and (II), respectively, in subcl. (II) substituted “; or” for period at end, and added cl. (ii).

Subsec. (c)(4)(B). Pub. L. 109–364, § 3502(b)(1)(E), inserted “with respect to which a binding contract is entered into under subparagraph (A)(i)” after “existing tank vessel”.

Subsec. (c)(4)(C), (D). Pub. L. 109–364, § 3502(b)(1)(F), added subpars. (C) and (D).

#### § 53104. Effectiveness of operating agreements

(a) EFFECTIVENESS, GENERALLY.—The Secretary may enter into an operating agreement under this chapter for fiscal year 2006. Except as provided in subsection (b), the agreement shall be effective only for 1 fiscal year, but shall be renewable, subject to the availability of appropriations, for each subsequent fiscal year through the end of fiscal year 2035.

(b) VESSELS UNDER CHARTER TO UNITED STATES.—Unless an earlier date is requested by the applicant, the effective date for an operating agreement with respect to a vessel that is, on the date of entry into an operating agreement, on charter to the United States Government, other than a charter pursuant to an Emergency Preparedness Agreement under section 53107, shall be the expiration or termination date of the Government charter covering the vessel, or

any earlier date the vessel is withdrawn from that charter.

(c) TERMINATION.—

(1) TERMINATION BY 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 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 CONTRACTOR, GENERALLY.—An operating agreement under this chapter shall terminate on a date specified by the contractor if the contractor notifies the Secretary, by not later than 60 days before 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, 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.

(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 that fiscal year, then—

(1) each vessel covered by the operating agreement is thereby released from any further obligation under the operating agreement;

(2) the owner or operator of the vessel may transfer and register such vessel under a foreign registry that is acceptable to the Secretary of Transportation and the Secretary of Defense, notwithstanding section 56101 of this title; and

(3) if chapter 563 of this title is applicable to such vessel after registration of the vessel under such a registry, then the vessel is available to be requisitioned by the Secretary of Transportation pursuant to chapter 563.

(Added Pub. L. 108–136, div. C, title XXXV, § 3531(a), Nov. 24, 2003, 117 Stat. 1810; amended Pub. L. 109–304, § 13(a)(3), Oct. 6, 2006, 120 Stat. 1701; Pub. L. 111–383, div. C, title XXXV, § 3502(1), Jan. 7, 2011, 124 Stat. 4518; Pub. L. 112–239, div. C, title XXXV, § 3508(d), Jan. 2, 2013, 126 Stat. 2224; Pub. L. 116–92, div. C, title XXXV, § 3502(b), Dec. 20, 2019, 133 Stat. 1969.)

#### Editorial Notes

##### AMENDMENTS

2019—Subsec. (a). Pub. L. 116–92 substituted “2035” for “2025”.

2013—Subsec. (c)(3). Pub. L. 112-239, § 3508(d)(1), struck out par. (3) which related to early termination by contractor, with available replacement.

Subsec. (e). Pub. L. 112-239, § 3508(d)(2), struck out “an operating agreement under this chapter is terminated under subsection (c)(3), or if” after “If” in introductory provisions.

2011—Subsec. (a). Pub. L. 111-383 substituted “2025” for “2015”.

2006—Subsec. (c)(3)(B)(ii). Pub. L. 109-304, § 13(a)(3)(A), substituted “section 50501 of this title” for “section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802)” in subcls. (I) and (II).

Subsec. (e)(2). Pub. L. 109-304, § 13(a)(3)(B), substituted “section 56101 of this title” for “section 9 of the Shipping Act, 1916 (46 U.S.C. App. 808)”.

Subsec. (e)(3). Pub. L. 109-304, § 13(a)(3)(C), substituted “chapter 563 of this title” and “chapter 563” for “section 902 of the Merchant Marine Act, 1936 (46 U.S.C. App. 1242)” and “section 902 of such Act”, respectively.

### § 53105. Obligations and rights under operating agreements

(a) OPERATION OF VESSEL.—An operating agreement under this chapter shall require that, during the period a vessel is operating under the agreement—

(1) the vessel—

(A) shall be operated exclusively in the foreign commerce or, except as provided in paragraph (2), in mixed foreign commerce and domestic trade allowed under a registry endorsement issued under section 12111 of this title; and

(B) shall not otherwise be operated in the coastwise trade;

(2) in the case of a vessel, other than a replacement vessel under subsection (f), first covered by an operating agreement after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2018, the vessel shall not be operated in the transportation of cargo between points in the United States and its territories either directly or via a foreign port; and

(3) the vessel shall be documented under chapter 121 of this title.

(b) ANNUAL PAYMENTS BY SECRETARY.—

(1) IN GENERAL.—An operating agreement under this chapter shall require, subject to the availability of appropriations, that the Secretary make a payment each fiscal year to the contractor in accordance with section 53106.

(2) OPERATING AGREEMENT IS OBLIGATION OF UNITED STATES GOVERNMENT.—An operating agreement under this chapter constitutes a contractual obligation of the United States Government to pay the amounts provided for in the agreement to the extent of actual appropriations.

(c) DOCUMENTATION REQUIREMENT.—Each vessel covered by an operating agreement (including an agreement terminated under section 53104(c)(2)) shall remain documented under chapter 121 of this title, until the date the operating agreement would terminate according to its terms.

(d) NATIONAL SECURITY REQUIREMENTS.—

(1) IN GENERAL.—A contractor with respect to an operating agreement (including an agreement terminated under section 53104(c)(2)) shall continue to be bound by the

provisions of section 53107 until the date the operating agreement would terminate according to its terms.

(2) EMERGENCY PREPAREDNESS AGREEMENT.—All terms and conditions of an Emergency Preparedness Agreement entered into under section 53107 shall remain in effect until the date the operating agreement would terminate according to its terms, except that the terms of such Emergency Preparedness Agreement may be modified by the mutual consent of the contractor, the Secretary of Transportation, and the Secretary of Defense.

(e) TRANSFER OF OPERATING AGREEMENTS.—A contractor under an operating agreement may transfer the agreement (including all rights and obligations under the operating agreement) to any person that is eligible to enter into the operating agreement under this chapter if the Secretary and the Secretary of Defense determine that the transfer is in the best interests of the United States. A transaction shall not be considered a transfer of an operating agreement if the same legal entity with the same vessels remains the contracting party under the operating agreement.

(f) REPLACEMENT VESSELS.—A contractor may replace a vessel under an operating agreement with another vessel that is eligible to be included in the Fleet under section 53102(b), if the Secretary, in conjunction with the Secretary of Defense, approves the replacement of the vessel.

(Added Pub. L. 108-136, div. C, title XXXV, § 3531(a), Nov. 24, 2003, 117 Stat. 1812; amended Pub. L. 109-304, § 13(a)(4), Oct. 6, 2006, 120 Stat. 1701; Pub. L. 109-364, div. C, title XXXV, § 3502(a), Oct. 17, 2006, 120 Stat. 2514; Pub. L. 110-181, div. C, title XXXV, § 3526(f), Jan. 28, 2008, 122 Stat. 602; Pub. L. 112-239, div. C, title XXXV, § 3508(e), Jan. 2, 2013, 126 Stat. 2225; Pub. L. 115-91, div. C, title XXXV, § 3503(a), Dec. 12, 2017, 131 Stat. 1911.)

### Editorial Notes

#### REFERENCES IN TEXT

The date of the enactment of the National Defense Authorization Act for Fiscal Year 2018, referred to in subsec. (a)(2), is the date of enactment of Pub. L. 115-91, which was approved Dec. 12, 2017.

#### AMENDMENTS

2017—Subsec. (a)(1)(A). Pub. L. 115-91, § 3503(a)(1), inserted “, except as provided in paragraph (2),” after “in the foreign commerce or”.

Subsec. (a)(2), (3). Pub. L. 115-91, § 3503(a)(2)-(4), added par. (2) and redesignated former par. (2) as (3).

2013—Subsec. (e). Pub. L. 112-239, § 3508(e)(1), amended subsec. (e) generally. Prior to amendment, subsec. (e) related to transfer of operating agreements, with limitation based on citizenship of recipient.

Subsec. (f). Pub. L. 112-239, § 3508(e)(2), amended subsec. (f) generally. Prior to amendment, text read as follows: “A contractor may replace a vessel under an operating agreement with another vessel that is eligible to be included in the Fleet under section 53102(b), if the Secretary, in conjunction with the Secretary of Defense, approves replacement of the vessel.”

2008—Subsec. (e)(2). Pub. L. 110-181 substituted “section 50501 of this title” for “section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802),”.

2006—Subsec. (a)(1)(A). Pub. L. 109-304, § 13(a)(4)(A), substituted “section 12111” for “section 12105”.

Subsec. (e). Pub. L. 109-364 designated existing provisions as par. (1), inserted heading and aligned margins in par. (1), and added par. (2).