

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.**—For any fiscal year, the Secretary of Transportation may not award operating agreements under this chapter that require payments under section 53406 of this title for more than 10 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.)

**§ 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 2035.

(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

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 and the Committee on Transportation and Infrastructure 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 program participant for 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 the vessel after registration, then the vessel is available to be requisitioned by the Secretary pursuant to chapter 563 of this title.

(Added Pub. L. 116–283, div. C, title XXXV, §3511(a), Jan. 1, 2021, 134 Stat. 4413; amended Pub. L. 117–81, div. C, title XXXV, §3515(b), Dec. 27, 2021, 135 Stat. 2243.)

#### Editorial Notes

##### AMENDMENTS

2021—Subsec. (b). Pub. L. 117–81 substituted “Any” for “The program participant of a”, inserted “long term” before “charter” and “not” before “eligible”, and substituted “participate in the Fleet” for “receive payments pursuant to any operating agreement that covers such vessel”.

#### § 53405. Obligations and rights under operating agreements

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

(1) be operated in the United States foreign commerce, mixed United States foreign commerce and domestic trade allowed under a registry endorsement issued under section 12111 of this title, in foreign-to-foreign commerce, or under a charter to the United States;

(2) not be operated in the coastwise trade except as described in paragraph (1); and

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

(b) **ANNUAL PAYMENTS BY THE SECRETARY.**—

(1) **IN GENERAL.**—An operating agreement under this chapter shall require, subject to the availability of appropriations, that the Secretary make a payment to the program participant in accordance with section 53406.

(2) **OPERATING AGREEMENT IS AN OBLIGATION OF THE UNITED STATES GOVERNMENT.**—An oper-

ating 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 the operating agreement, including an agreement terminated under section 53404(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 program participant with respect to an operating agreement, including an agreement terminated under section 53404(c)(2), shall continue to be bound by the provisions of section 53407 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 53407 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 program participant, the Secretary of Transportation, and the Secretary of Defense.

(e) **TRANSFER OF OPERATING AGREEMENTS.**—A program participant may transfer an operating agreement (including all rights and obligations under the agreement) to any person that is eligible to enter into that operating agreement under this chapter, if the Secretary of Transportation and the Secretary of Defense determine that the transfer is in the best interests of the United States.

(f) **REPLACEMENT OF VESSELS COVERED BY AGREEMENTS.**—A program participant may replace the vessel with another vessel that is eligible to be included in the Fleet under section 53402(b), if the Secretary of Transportation, in coordination with the Secretary of Defense, approves the replacement of the vessel. No court shall have jurisdiction to review a decision by the Secretary of Transportation or the Secretary of Defense pertaining to the replacement of a vessel under this section.

(Added Pub. L. 116–283, div. C, title XXXV, §3511(a), Jan. 1, 2021, 134 Stat. 4414.)

#### § 53406. Payments

(a) **ANNUAL PAYMENT.**—Subject to the availability of appropriations for such purpose and the other provisions of this chapter, the Secretary shall pay to program participant for an operating agreement under this chapter an amount equal to \$6,000,000 for each vessel covered by the agreement for each fiscal year that the vessel is covered by the agreement. Such amount shall be paid in equal monthly installments on the last day of each month. The amount payable under this subsection may not be reduced except as provided by this section.

(b) **CERTIFICATION REQUIRED FOR PAYMENT.**—As a condition of receiving payment under this section for a fiscal year for a vessel, the program