

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

participant shall certify, in accordance with regulations issued by the Secretary, that the vessel has been and will be operated in accordance with section 53405(a) of this title for at least 320 days during the fiscal year. Days during which the vessel is drydocked, surveyed, inspected, or repaired shall be considered days of operation for purposes of this subsection.

(c) GENERAL LIMITATIONS.—The Secretary may not make any payment under this chapter for a vessel with respect to any days for which the vessel is—

- (1) not operated or maintained in accordance with an operating agreement under this chapter;
- (2) more than 20 years of age; or
- (3) simultaneously operating under an agreement pursuant to chapter 531 of this title.

(d) REDUCTIONS IN PAYMENTS.—With respect to payments under this chapter for a vessel covered by an operating agreement, the Secretary—

(1) except as provided in paragraph (2), may not reduce such a payment for—

- (A) the operation of the vessel to carry military or other preference cargoes under section 55302(a), 55304, 55305, or 55314 of this title, section 2631 of title 10, or any other cargo preference law of the United States; or
- (B) any days in which the vessel is operated under charter to the United States Government;

(2) may not make such a payment for any day that the vessel is engaged in transporting more than 7,500 tons of civilian bulk preference cargoes pursuant to section 55302(a), 55305, or 55314 of this title; and

(3) shall make a pro rata reduction for each day less than 320 in a fiscal year that the vessel is not operated in accordance with section 53405 of this title.

(e) LIMITATIONS REGARDING NONCONTIGUOUS DOMESTIC TRADE.—

(1) IN GENERAL.—No program participant shall receive payments pursuant to this chapter during a period in which it participates in noncontiguous domestic trade.

(2) LIMITATION ON APPLICATION.—Paragraph (1) shall not apply to a program participant that is a citizen of the United States within the meaning of section 50501 of this title, applying the 75 percent ownership requirement of that section.

(3) PARTICIPATES IN A NONCONTIGUOUS TRADE DEFINED.—In this subsection the term “participates in a noncontiguous domestic trade” means directly or indirectly owns, charters, or operates a vessel engaged in transportation of cargo between a point in the contiguous 48 States and a point in Alaska, Hawaii, or Puerto Rico, other than a point in Alaska north of the Arctic Circle.

(Added Pub. L. 116-283, div. C, title XXXV, § 3511(a), Jan. 1, 2021, 134 Stat. 4415.)

### § 53407. National security requirements

(a) EMERGENCY PREPAREDNESS AGREEMENT REQUIRED.—The Secretary of Transportation, in coordination with the Secretary of Defense, shall establish an emergency preparedness program

under this section under which the program participant for an operating agreement under this chapter shall agree, as a condition of the operating agreement, to enter into an emergency preparedness agreement with the Secretary. The Secretary shall negotiate and enter into an Emergency Preparedness Agreement with each program participant as promptly as practicable after the program participant has entered into the operating agreement.

(b) TERMS OF AGREEMENT.—The terms of an agreement under this section—

(1) shall provide that upon request by the Secretary of Defense during time of war or national emergency, or whenever determined by the Secretary of Defense to be necessary for national security or contingency operation (as that term is defined in section 101 of title 10), the program participant shall make available commercial transportation resources (including services) described in subsection (d) to the Secretary of Defense;

(2) shall include such additional terms as may be established by the Secretary of Transportation and the Secretary of Defense; and

(3) shall allow for the modification or addition of terms upon agreement by the Secretary of Transportation and the program participant and the approval by the Secretary of Defense.

(c) PARTICIPATION AFTER EXPIRATION OF OPERATING AGREEMENT.—Except as provided by section 53406, the Secretary of Transportation may not require, through an emergency preparedness agreement or an operating agreement, that a program participant covered by an operating agreement continue to participate in an emergency preparedness agreement after the operating agreement has expired according to its terms or is otherwise no longer in effect. After the expiration of an emergency preparedness agreement, a program participant may voluntarily continue to participate in the agreement.

(d) RESOURCES MADE AVAILABLE.—The commercial transportation resources to be made available under an emergency preparedness agreement shall include vessels or capacity in vessels, terminal facilities, management services, and other related services, or any agreed portion of such nonvessel resources for activation as the Secretary of Defense may determine to be necessary, seeking to minimize disruption of the program participant’s service to commercial customers.

(e) COMPENSATION.—

(1) IN GENERAL.—The Secretary of Transportation shall include in each Emergency Preparedness Agreement provisions approved by the Secretary of Defense under which the Secretary of Defense shall pay fair and reasonable compensation for all commercial transportation resources provided pursuant to this section.

(2) SPECIFIC REQUIREMENTS.—Compensation under this subsection—

(A) shall not be less than the program participant’s commercial market charges for like transportation resources;

(B) shall be fair and reasonable considering all circumstances;

(C) shall be provided from the time that a vessel or resource is required by the Sec-