

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-

retary of Defense until the time it is redelivered to the program participant and is available to reenter commercial service; and

(D) shall be in addition to and shall not in any way reflect amounts payable under section 53406 of this title.

(f) **TEMPORARY REPLACEMENT VESSELS.**—Notwithstanding 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—

(1) a program participant may operate or employ in foreign commerce a foreign-flag vessel or foreign-flag vessel capacity as a temporary replacement for a vessel of the United States or vessel of the United States capacity that is activated by the Secretary of Defense under an emergency preparedness agreement or a primary Department of Defense sealift-approved readiness program; and

(2) such replacement vessel or vessel capacity shall be eligible during the replacement period to transport preference cargoes subject to sections 55302(a), 55304, 55305, and 55314 of this title and section 2631 of title 10, United States Code, to the same extent as the eligibility of the vessel or vessel capacity replaced.

(g) **REDELIVERY AND LIABILITY OF THE UNITED STATES FOR DAMAGES.**—

(1) **IN GENERAL.**—All commercial transportation resources activated under an emergency preparedness agreement shall, upon termination of the period of activation, be redelivered to the program participant in the same good order and condition as when received, less ordinary wear and tear, or the Secretary of Defense shall fully compensate the program participant for any necessary repair or replacement.

(2) **LIMITATION ON UNITED STATES LIABILITY.**—Except as may be expressly agreed in an emergency preparedness agreement, or as otherwise provided by law, the Government shall not be liable for disruption of a program participant's commercial business or other consequential damages to the program participant arising from the activation of commercial transportation resources under an emergency preparedness agreement.

(Added Pub. L. 116-283, div. C, title XXXV, § 3511(a), Jan. 1, 2021, 134 Stat. 4416.)

§ 53408. Regulatory relief

(a) **OPERATION IN FOREIGN COMMERCE.**—A program participant for a vessel included in an operating agreement under this chapter may operate the vessel in the foreign commerce of the United States without restriction.

(b) **OTHER RESTRICTIONS.**—The restrictions of section 55305(a) of this title concerning the building, rebuilding, or documentation of a vessel in a foreign country shall not apply to a vessel for any day the operator of the vessel is receiving payments for the operation of that vessel under an operating agreement under this chapter.

(c) **TELECOMMUNICATIONS EQUIPMENT.**—The telecommunications and other electronic equipment on an existing vessel that is redocumented

under the laws of the United States for operation under an operating agreement under this chapter shall be deemed to satisfy all Federal Communications Commission equipment approval requirements, if—

(1) such equipment complies with all applicable international agreements and associated guidelines as determined by the country in which the vessel was documented immediately before becoming documented under the laws of the United States;

(2) that country has not been identified by the Secretary as inadequately enforcing international regulations as to that vessel; and

(3) at the end of its useful life, such equipment shall be replaced with equipment that meets Federal Communications Commission equipment approval standards.

(Added Pub. L. 116-283, div. C, title XXXV, § 3511(a), Jan. 1, 2021, 134 Stat. 4417.)

§ 53409. Special rule regarding age of participating Fleet vessels

Any age restriction under section 53402(b)(4) of this title shall not apply to a participating Fleet vessel during the 30-month period beginning on the date the vessel begins operating under an operating agreement under this chapter, if the Secretary determines that the program participant for the vessel has entered into an arrangement to obtain and operate under the operating agreement for the participating Fleet vessel a replacement vessel that, upon commencement of such operation, will be eligible to be included in the Fleet under section 53402(b) of this title.

(Added Pub. L. 116-283, div. C, title XXXV, § 3511(a), Jan. 1, 2021, 134 Stat. 4418.)

§ 53410. Regulations

The Secretary of Transportation and the Secretary of Defense may each prescribe rules as necessary to carry out their respective responsibilities under this chapter.

(Added Pub. L. 116-283, div. C, title XXXV, § 3511(a), Jan. 1, 2021, 134 Stat. 4418.)

§ 53411. Authorization of appropriations

There is authorized to be appropriated for payments under section 53406, \$60,000,000 for each of fiscal years 2022 through 2035, to remain available until expended.

(Added Pub. L. 116-283, div. C, title XXXV, § 3511(a), Jan. 1, 2021, 134 Stat. 4418.)

§ 53412. Acquisition of Fleet vessels

(a) **IN GENERAL.**—Upon replacement of a Fleet vessel under an operating agreement under this chapter, and subject to agreement by the program participant of the vessel, the Secretary of Transportation is authorized, subject to the concurrence of the Secretary of Defense, acquire the vessel being replaced for inclusion in the National Defense Reserve Fleet.

(b) **REQUIREMENTS.**—To be eligible for acquisition by the Secretary of Transportation under this section a vessel shall—

(1) have been covered by an operating agreement under this chapter for not less than 3 years; and