

the agreement only if each vessel to be covered by the agreement after the transfer is an eligible vessel under section 1187(b) of this Appendix.

**(k) Reversion of unused authority**

The obligation of the Secretary to make payments under an operating agreement under this part shall terminate with respect to a vessel if the contractor fails to engage in operation of the vessel for which such payment is required—

(1) within one year after the effective date of the operating agreement, in the case of a vessel in existence on the effective date of the agreement, or

(2) within 30 months after the effective date of the operating agreement, in the case of a vessel to be constructed after that effective date.

**(l) Procedure for considering application; effective date for certain vessels**

**(1) Procedures**

No later than 30 days after October 8, 1996, the Secretary shall accept applications for enrollment of vessels in the Fleet, and within 90 days after receipt of an application for enrollment of a vessel in the Fleet, the Secretary shall enter into an operating agreement with the applicant or provide in writing the reason for denial of that application.

**(2) Effective date**

Unless an earlier date is requested by the applicant, the effective date for an operating agreement with respect to a vessel which is, on the date of entry into an operating agreement, either subject to a contract under part A of this subchapter or on charter to the United States Government, other than a charter under section 1187b of this Appendix, shall be the expiration or termination date of the contract under part A of this subchapter or of the Government charter covering the vessel, respectively, or any earlier date the vessel is withdrawn from that contract or charter.

**(m) Early termination**

An operating agreement under this part 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. Vessels covered by an operating agreement terminated under this subsection shall remain documented under chapter 121 of title 46 until the date the operating agreement would have terminated according to its terms. A contractor who terminates an operating agreement pursuant to this subsection shall continue to be bound by the provisions of section 1187b of this Appendix until the date the operating agreement would have terminated according to its terms. All terms and conditions of an Emergency Preparedness Agreement entered into under section 1187b of this Appendix shall remain in effect until the date the operating agreement would have terminated according to its terms, except that the terms of such Emergency Preparedness Agreement may be modified by the mutual consent of the contractor and the Secretary of Transportation and the Secretary of Defense.

**(n) 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 section 1187d of this Appendix for that fiscal year, the Secretary of Transportation shall notify the Congress that operating agreements authorized under this part 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. If funds are not appropriated under the authority provided by section 1187d of this Appendix for any fiscal year by the 60th day of that fiscal year, then each vessel covered by an operating agreement under this part for which funds are not available is thereby released from any further obligation under the operating agreement, and the vessel owner or operator may transfer and register such vessel under a foreign registry deemed acceptable by the Secretary of Transportation, notwithstanding any other provision of law. If section 1242 of this Appendix is applicable to such vessel after registration of the vessel under such a registry, the vessel is available to be requisitioned by the Secretary of Transportation pursuant to section 1242 of this Appendix.

**(o) Award of operating agreements**

**(1) In general**

The Secretary of Transportation, subject to paragraph (4), shall award operating agreements within each priority under subsection (i)(1), (2), and (3) of this section under regulations prescribed by the Secretary.

**(2) Number of agreements awarded**

Regulations under paragraph (1) shall provide that if appropriated amounts are not sufficient for operating agreements for all vessels within a priority under subsection (i)(1), (2), or (3) of this section, the Secretary shall award to each person submitting a request a number of operating agreements that bears approximately the same ratio to the total number of vessels in the priority, as the amount of appropriations available for operating agreements for vessels in the priority bears to the amount of appropriations necessary for operating agreements for all vessels in the priority.

**(3) Treatment of related parties**

For purposes of paragraph (2), a related party with respect to a person shall be treated as the person.

**(4) Preference for United States-built vessels**

In awarding operating agreements for vessels within a priority under subsection (i)(1), (2), or (3) of this section, the Secretary shall give preference to a vessel that was constructed in the United States, to the extent such preference is consistent with establishment of a fleet described in the first sentence of section 1187(a) of this Appendix (taking into account the age of the vessel, the nature of service provided by the vessel, and the commercial viability of the vessel).

**(p) Notice to United States shipbuilders required**

The Secretary shall include in any operating agreement under this part a requirement that

the contractor under the agreement shall, by not later than 30 days after soliciting any bid or offer for the construction of any vessel in a foreign shipyard and before entering into a contract for construction of a vessel in a foreign shipyard, provide notice of the intent of the contractor to enter into such a contract to each shipyard in the United States that is capable of constructing the vessel.

(June 29, 1936, ch. 858, title VI, § 652, as added Pub. L. 104-239, § 2(2), Oct. 8, 1996, 110 Stat. 3119; amended Pub. L. 105-85, div. C, title XXXVI, § 3603(b), Nov. 18, 1997, 111 Stat. 2075.)

#### AMENDMENTS

1997—Subsec. (c). Pub. L. 105-85 inserted at end “The restrictions of section 1241(b)(1) of this Appendix 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 that vessel is receiving payments under an operating agreement under this part.”

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1187b, 1187c of this Appendix.

### § 1187b. National security requirements

#### (a) Emergency Preparedness Agreement

##### (1) Requirement to enter Agreement

The Secretary of Transportation shall establish an Emergency Preparedness Program under this section that is approved by the Secretary of Defense. Under the program, the Secretary of Transportation shall include in each operating agreement under this part a requirement that the contractor enter into an Emergency Preparedness Agreement under this section with the Secretary. The Secretary shall negotiate and enter into an Emergency Preparedness Agreement with each contractor as promptly as practicable after the contractor has entered into an operating agreement under this part.

##### (2) Terms of Agreement

An Emergency Preparedness Agreement under this section shall require that upon a 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 (including any natural disaster, international peace operation, or contingency operation (as that term is defined in section 101 of title 10)), a contractor for a vessel covered by an operating agreement under this part shall make available commercial transportation resources (including services). The basic terms of the Emergency Preparedness Agreements shall be established pursuant to consultations among the Secretary, the Secretary of Defense, and Maritime Security Program contractors. In any Emergency Preparedness Agreement, the Secretary and a contractor may agree to additional or modifying terms appropriate to the contractor's circumstances if those terms have been approved by the Secretary of Defense.

##### (3) Participation after expiration of operating agreement

Except as provided by section 1187a(m) of this Appendix, the Secretary may not require,

through an Emergency Preparedness Agreement or operating agreement, that a contractor continue to participate in an Emergency Preparedness Agreement when the operating agreement with the contractor has expired according to its terms or is otherwise no longer in effect. After expiration of an Emergency Preparedness Agreement, a contractor may volunteer to continue to participate in such an agreement.

#### (b) Resources made available

The commercial transportation resources to be made available under an Emergency Preparedness Agreement shall include vessels or capacity in vessels, intermodal systems and equipment, terminal facilities, intermodal and management services, and other related services, or any agreed portion of such nonvessel resources for activation as the Secretary may determine to be necessary, seeking to minimize disruption of the contractor's service to commercial shippers.

#### (c) Compensation

##### (1) In general

The Secretary of Transportation shall provide in each Emergency Preparedness Agreement for 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 contractor's commercial market charges for like transportation resources;

(B) shall include all the contractor's costs associated with provision and use of the contractor's commercial resources to meet emergency requirements;

(C) in the case of a charter of an entire vessel, shall be fair and reasonable;

(D) shall be in addition to and shall not in any way reflect amounts payable under section 1187a of this Appendix; and

(E) shall be provided from the time that a vessel or resource is diverted from commercial service until the time that it reenters commercial service.

##### (3) Approval of amount by Secretary of Defense

No compensation may be provided for a vessel under this subsection unless the amount of the compensation is approved by the Secretary of Defense.

#### (d) Temporary replacement vessels

Notwithstanding any other provision of this part or of other law to the contrary—

(1) a contractor or other person that commits to make available a vessel or vessel capacity under the Emergency Preparedness Program or another primary sealift readiness program approved by the Secretary of Defense may, during the activation of that vessel or capacity under that program, operate or employ in foreign commerce a foreign-flag vessel or foreign-flag vessel capacity as a temporary replacement for the activated vessel or capacity; and

(2) such replacement vessel or vessel capacity shall be eligible during the replacement