

(i)(I) a binding contract for construction in the United States of a replacement vessel to be operated under the operating agreement is executed by not later than 9 months after the first date amounts are available to carry out this chapter; and

(II) the replacement vessel is eligible to be included in the Fleet under section 53102(b); or

(ii)(I) not later than 9 months after the first date amounts are available to carry out this chapter, the operator of the existing tank vessel enters into an agreement to charter one or more tank vessels to be built in the United States and operated as a documented vessel or documented vessels;

(II) the combined tonnage of the vessels required to be chartered under subclause (I) is equal to or greater than the tonnage of the existing tank vessel subject to an operating agreement;

(III) the operator enters into an agreement with the Secretary that is substantially the same as an Emergency Preparedness Agreement under section 53107 of this title, under which the operator shall make available commercial transportation resources as provided in that section;

(IV) if the person that is the owner or operator of the existing tank vessel owns or operates more than one existing tank vessel subject to an operating agreement, the combined tonnage of those vessels required to be chartered under subclause (I) by that person is equal to or greater than the combined tonnage of all such existing tank vessels owned or operated by such person that are subject to operating agreements.

(B) No payment under this chapter may be made for an existing tank vessel with respect to which a binding contract is entered into under subparagraph (A)(i) for which an operating agreement is awarded under this paragraph after the earlier of—

(i) 4 years after the first date amounts are available to carry out this chapter; or

(ii) the date of delivery of the replacement tank vessel.

(C) For purpose of subparagraph (A)(ii), tonnage shall be measured under section 14502 of this title, or an alternate tonnage measured under section 14302 of this title as prescribed by the Secretary under section 14104 of this title.

(D) No payment under this chapter may be made for an existing tank vessel with respect to which an agreement is entered into under subparagraph (A)(ii) for any period occurring—

(i) after the date that is 5 years after the first date that amounts became available to carry out this chapter, if the vessel or vessels required to be chartered under subparagraph (A)(ii) have not been delivered; or

(ii) after delivery of the vessel or vessels required to be chartered under such subparagraph, if any of such vessels is not chartered by the operator of the existing tank vessel.

(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.)

REFERENCES IN TEXT

The effective date of this chapter, referred to in subsecs. (b)(1), (c)(1)(A)(i), (2)(A), (4)(A), is Oct. 1, 2004, see section 3537(a) of Pub. L. 108-136, set out as an Effective Date note under section 53101 of this title.

AMENDMENTS

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)(ii) 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 2025.

(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.

(3) EARLY TERMINATION BY CONTRACTOR, WITH AVAILABLE REPLACEMENT.—An operating agreement under this chapter shall terminate upon the expiration of the 3-year period beginning on the date a vessel begins operating under the agreement, if—

(A) the contractor notifies the Secretary, by not later than 2 years after the date the vessel begins operating under the agreement, that the contractor intends to terminate the agreement under this paragraph; and

(B) the Secretary, in conjunction with the Secretary of Defense, determines that—

(i) an application for an operating agreement under this chapter has been received for a replacement vessel that is acceptable to the Secretaries; and

(ii) during the period of an operating agreement under this chapter that applies to the replacement vessel, the replacement vessel will be—

(I) owned and operated by one or more persons that are citizens of the United States under section 50501 of this title; or

(II) owned by a person that is eligible to document the vessel under chapter 121 of this title, and operated by a person that is a citizen of the United States under section 50501 of this title.

(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 an operating agreement under this chapter is terminated under subsection (c)(3), or 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.)

AMENDMENTS

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 in mixed foreign commerce and domestic trade allowed under a registry endorsement issued under section 1211 of this title; and

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

(2) 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