

covered by an operating agreement after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2018, the vessel shall not be operated in the transportation of cargo between points in the United States and its territories either directly or via a foreign port; and

(3) 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 contractor, the Secretary of Transportation, and the Secretary of Defense.

(e) TRANSFER OF OPERATING AGREEMENTS.—A contractor under an operating agreement may transfer the agreement (including all rights and obligations under the operating agreement) to any person that is eligible to enter into the operating agreement under this chapter if the Secretary and the Secretary of Defense determine that the transfer is in the best interests of the United States. A transaction shall not be considered a transfer of an operating agreement if the same legal entity with the same vessels remains the contracting party under the operating agreement.

(f) REPLACEMENT VESSELS.—A contractor may replace a vessel under an operating agreement with another vessel that is eligible to be included in the Fleet under section 53102(b), if the Secretary, in conjunction with the Secretary of Defense, approves the replacement of the vessel.

(Added Pub. L. 108-136, div. C, title XXXV, § 3531(a), Nov. 24, 2003, 117 Stat. 1812; amended Pub. L. 109-304, § 13(a)(4), Oct. 6, 2006, 120 Stat.

1701; Pub. L. 109-364, div. C, title XXXV, § 3502(a), Oct. 17, 2006, 120 Stat. 2514; Pub. L. 110-181, div. C, title XXXV, § 3526(f), Jan. 28, 2008, 122 Stat. 602; Pub. L. 112-239, div. C, title XXXV, § 3508(e), Jan. 2, 2013, 126 Stat. 2225; Pub. L. 115-91, div. C, title XXXV, § 3503(a), Dec. 12, 2017, 131 Stat. 1911.)

Editorial Notes

REFERENCES IN TEXT

The date of the enactment of the National Defense Authorization Act for Fiscal Year 2018, referred to in subsec. (a)(2), is the date of enactment of Pub. L. 115-91, which was approved Dec. 12, 2017.

AMENDMENTS

2017—Subsec. (a)(1)(A). Pub. L. 115-91, § 3503(a)(1), inserted “, except as provided in paragraph (2),” after “in the foreign commerce or”.

Subsec. (a)(2), (3). Pub. L. 115-91, § 3503(a)(2)–(4), added par. (2) and redesignated former par. (2) as (3).

2013—Subsec. (e). Pub. L. 112-239, § 3508(e)(1), amended subsec. (e) generally. Prior to amendment, subsec. (e) related to transfer of operating agreements, with limitation based on citizenship of recipient.

Subsec. (f). Pub. L. 112-239, § 3508(e)(2), amended subsec. (f) generally. Prior to amendment, text read as follows: “A contractor may replace a vessel under an operating agreement with another vessel that is eligible to be included in the Fleet under section 53102(b), if the Secretary, in conjunction with the Secretary of Defense, approves replacement of the vessel.”

2008—Subsec. (e)(2). Pub. L. 110-181 substituted “section 50501 of this title” for “section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802).”

2006—Subsec. (a)(1)(A). Pub. L. 109-304, § 13(a)(4)(A), substituted “section 12111” for “section 12105”.

Subsec. (e). Pub. L. 109-364 designated existing provisions as par. (1), inserted heading and aligned margins in par. (1), and added par. (2).

Subsec. (f). Pub. L. 109-304, § 13(a)(4)(B), substituted “approves” for “approve”.

§ 53106. Payments

(a) ANNUAL PAYMENT.—

(1) IN GENERAL.—The Secretary, subject to the availability of appropriations and the other provisions of this section, shall pay to the contractor for an operating agreement, for each vessel that is covered by the operating agreement, an amount equal to—

(A) \$5,000,000 for each of fiscal years 2018, 2019, and 2020;

(B) \$8,233,463 for fiscal year 2021;

(C) \$5,300,000 for each of fiscal years 2022, 2023, 2024, and 2025;

(D) \$5,800,000 for each of fiscal years 2026, 2027, and 2028;

(E) \$6,300,000 for each of fiscal years 2029, 2030, and 2031; and

(F) \$6,800,000 for each of fiscal years 2032, 2033, 2034, and 2035.

(2) TIMING.—The amount shall be paid in equal monthly installments at the end of each month. The amount shall not be reduced except as provided by this section or section 51307(b).

(b) CERTIFICATION REQUIRED FOR PAYMENT.—As a condition of receiving payment under this section for a fiscal year for a vessel, the contractor for the vessel shall certify, in accordance with regulations issued by the Secretary, that the vessel has been and will be operated in accord-

ance with paragraph (1) and (2) of section 53105(a), as otherwise applicable with respect to such vessel, for at least 320 days in 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 of Transportation shall not make any payment under this chapter for a vessel with respect to any days for which the vessel is—

(1) under a charter to the United States Government, other than a charter pursuant to an Emergency Preparedness Agreement under section 53107;

(2) not operated or maintained in accordance with an operating agreement under this chapter; or

(3) more than—

(A) 25 years of age, except as provided in subparagraph (B); or

(B) 20 years of age, in the case of a tank vessel.

(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), shall not reduce any payment for 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;

(2) shall not make any 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 that is bulk cargo; and

(3) shall make a pro rata reduction in payment for each day less than 320 in a fiscal year that the vessel is not operated in accordance with paragraph (1) and (2) of section 53105(a), as otherwise applicable with respect to such vessel, with days during which the vessel is drydocked or undergoing survey, inspection, or repair considered to be days on which the vessel is operated.

(e) LIMITATION REGARDING NONCONTIGUOUS DOMESTIC TRADE.—

(1) IN GENERAL.—No contractor 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 any person 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 DOMESTIC 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. 108–136, div. C, title XXXV, § 3531(a), Nov. 24, 2003, 117 Stat. 1813; amended

Pub. L. 109–304, § 13(a)(5), Oct. 6, 2006, 120 Stat. 1701; Pub. L. 109–364, div. C, title XXXV, § 3502(c), Oct. 17, 2006, 120 Stat. 2516; Pub. L. 111–383, div. C, title XXXV, § 3502(2), Jan. 7, 2011, 124 Stat. 4518; Pub. L. 112–239, div. C, title XXXV, § 3508(f), Jan. 2, 2013, 126 Stat. 2225; Pub. L. 114–113, div. O, title I, § 101(e)(1), Dec. 18, 2015, 129 Stat. 2988; Pub. L. 114–328, div. C, title XXXV, § 3502(b), Dec. 23, 2016, 130 Stat. 2775; Pub. L. 115–91, div. C, title XXXV, § 3503(b), Dec. 12, 2017, 131 Stat. 1911; Pub. L. 115–232, div. C, title XXXV, § 3546(o), Aug. 13, 2018, 132 Stat. 2327; Pub. L. 116–92, div. C, title XXXV, § 3502(c), Dec. 20, 2019, 133 Stat. 1969; Pub. L. 116–283, div. C, title XXXV, § 3501(b), Jan. 1, 2021, 134 Stat. 4397; Pub. L. 117–263, div. C, title XXXV, § 3517(b)(1), Dec. 23, 2022, 136 Stat. 3074.)

Editorial Notes

AMENDMENTS

2022—Subsec. (a)(2). Pub. L. 117–263 inserted “or section 51307(b)” after “this section”.

2021—Subsec. (a)(1)(B). Pub. L. 116–283 substituted “\$8,233,463” for “\$5,233,463”.

2019—Subsec. (a)(1)(C) to (F). Pub. L. 116–92 substituted “\$5,300,000 for each of fiscal years 2022, 2023, 2024, and 2025;” for “\$3,700,000 for each of fiscal years 2022, 2023, 2024, and 2025.” in subpar. (C) and added subpars. (D) to (F).

2018—Subsec. (a)(1). Pub. L. 115–232 redesignated subpars. (E) to (G) as (A) to (C), respectively, and struck out former subpars. (A) to (D) which set out payment amounts for fiscal years 2006 to 2017.

2017—Subsec. (b). Pub. L. 115–91, § 3503(b)(1), substituted “paragraph (1) and (2) of section 53105(a), as otherwise applicable with respect to such vessel,” for “section 53105(a)(1)”.

Subsec. (d)(3). Pub. L. 115–91, § 3503(b)(2), substituted “paragraph (1) and (2) of section 53105(a), as otherwise applicable with respect to such vessel” for “section 53105(a)(1)”.

2016—Subsec. (c)(3). Pub. L. 114–328 substituted “; or” for “or (C);” at end of subpar. (A) and a period for “; or” at end of subpar. (B) and struck out subpar. (C) which read as follows: “30 years of age, in the case of a lighter aboard ship vessel.”

2015—Subsec. (a)(1)(B). Pub. L. 114–113, § 101(e)(1)(A), struck out comma before “for each”.

Subsec. (a)(1)(C). Pub. L. 114–113, § 101(e)(1)(B), substituted “and 2015;” for “2015, 2016, 2017, and 2018;”.

Subsec. (a)(1)(D) to (G). Pub. L. 114–113, § 101(e)(1)(C), (D), added subpars. (D) to (F), redesignated former subpar. (E) as (G), and struck out former subpar. (D) which read as follows: “\$3,500,000 for each of fiscal years 2019, 2020, and 2021; and”.

2013—Subsec. (a)(1)(B) to (E). Pub. L. 112–239, § 3508(f)(1), added subpars. (C) to (E) and struck out former subpar. (C) which read as follows: “\$3,100,000 for each of fiscal years 2012 through 2025.”

Subsec. (c)(3)(C). Pub. L. 112–239, § 3508(f)(2), substituted “a lighter aboard ship vessel.” for “a LASH vessel.”

Subsec. (f). Pub. L. 112–239, § 3508(f)(3), struck out subsec. (f). Text read as follows: “If the amount available for a fiscal year for making payments under operating agreements under this chapter is not sufficient to pay the full amount authorized under each agreement pursuant to this section for such fiscal year, the amount available shall be allocated among such agreements in a manner that gives priority to payments for vessels that are subject to agreements under section 3517 of the Maritime Security Act of 2003 (46 U.S.C. 53101 note).”

2011—Subsec. (a)(1)(C). Pub. L. 111–383 substituted “for each of fiscal years 2012 through 2025” for “for each fiscal years 2012, 2013, 2014, and 2015”.

2006—Subsec. (d)(1). Pub. L. 109–304, § 13(a)(5)(A), substituted “section 55302(a), 55304, 55305, or 55314 of this

title, section 2631 of title 10” for “section 2631 of title 10, United States Code, the Act of March 26, 1934 (46 U.S.C. App. 1241-1), section 901(a), 901(b), or 901b of the Merchant Marine Act, 1936 (46 U.S.C. App. 1241(a), 1241(b), or 1241f)”.

Subsec. (d)(2), Pub. L. 109-304, §13(a)(5)(B), substituted “section 55302(a), 55305, or 55314 of this title” for “section 901(a), 901(b), or 901b of the Merchant Marine Act, 1936 (46 U.S.C. App. 1241(a), 1241(b), or 1241f)”.

Subsec. (e)(2), Pub. L. 109-304, §13(a)(5)(C), substituted “section 50501 of this title, applying the 75 percent ownership requirement of that section” for “section 2(c) of the Shipping Act, 1916 (46 U.S.C. App. 802(c))”.

Subsec. (f), Pub. L. 109-364 added subsec. (f).

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2013 AMENDMENT

Amendment by section 3508(f)(2) of Pub. L. 112-239 effective Dec. 31, 2014, see section 3508(j)(2) of Pub. L. 112-239, set out as a note under section 53101 of this title.

§ 53107. National security requirements

(a) EMERGENCY PREPAREDNESS AGREEMENT REQUIRED.—The Secretary shall establish an Emergency Preparedness Program under this section that is approved by the Secretary of Defense. Under the program, the Secretary, in conjunction with the Secretary of Defense, shall include in each operating agreement under this chapter 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 chapter.

(b) TERMS OF AGREEMENT.—

(1) IN GENERAL.—An Emergency Preparedness Agreement under this section shall require that a contractor for a vessel covered by an operating agreement under this chapter shall make commercial transportation resources (including services) available, upon request by the Secretary of Defense during a time of war or national emergency, or whenever the Secretary of Defense determines that it is necessary for national security or contingency operation (as that term is defined in section 101 of title 10, United States Code).

(2) BASIC TERMS.—(A) The basic terms of the Emergency Preparedness Agreement shall be established (subject to subparagraph (B)) by the Secretary and the Secretary of Defense.

(B) 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) DEFENSE MEASURES AGAINST UNAUTHORIZED SEIZURES.—(A) The Emergency Preparedness Agreement for any operating agreement that first takes effect or is renewed after the date of enactment of the National Defense Authorization Act for Fiscal Year 2010 shall require that any vessel operating under the agreement in the carriage of cargo for the Department of Defense in an area that is designated by the Coast Guard as an area of high risk of piracy shall be equipped with, at a min-

imum, appropriate non-lethal defense measures to protect the vessel, crew, and cargo from unauthorized seizure at sea.

(B) The Secretary of Defense and the Secretary of the department in which the Coast Guard is operating shall jointly prescribe the non-lethal defense measures that are required under this paragraph.

(c) PARTICIPATION AFTER EXPIRATION OF OPERATING AGREEMENT.—Except as provided by section 53105(d), the Secretary may not require, through an Emergency Preparedness Agreement or operating agreement, that a contractor continue to participate in an Emergency Preparedness Agreement after 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.

(d) 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 of Defense may determine to be necessary, seeking to minimize disruption of the contractor's service to commercial shippers.

(e) COMPENSATION.—

(1) IN GENERAL.—The Secretary 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 contractor'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 Secretary of Defense until the time that it is redelivered to the contractor 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 53106.

(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 contractor may operate or employ in foreign commerce a foreign-flag vessel or foreign-flag vessel capacity as a temporary replacement for a United States-documented vessel or United States-documented vessel capacity that is activated by the Secretary of Defense under an Emergency Preparedness Agreement or under a primary Department of Defense-approved sealift readiness program; and