

2013—Subsec. (c)(3). Pub. L. 112-239, § 3508(d)(1), struck out par. (3) which related to early termination by contractor, with available replacement.

Subsec. (e). Pub. L. 112-239, § 3508(d)(2), struck out “an operating agreement under this chapter is terminated under subsection (c)(3), or if” after “If” in introductory provisions.

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, except as provided in paragraph (2), in mixed foreign commerce and domestic trade allowed under a registry endorsement issued under section 12111 of this title; and

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

(2) in the case of a vessel, other than a replacement vessel under subsection (f), first 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 accordance 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