

HISTORICAL AND REVISION NOTES—CONTINUED

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
53310(b)	46 App.:1161(g)(1)(B).	
53310(c)	46 App.:1161(h).	

In this section, the language about joint regulations in 46 App. U.S.C. 1161(g) and (h) is omitted as unnecessary because of section 53302(b) of the revised title.

In subsection (a), the words “(i) two years from the date of deposit or the date of any extension thereof which may be granted by the Secretary of Transportation pursuant to the provisions of subsection (h) of this section, in the case of deposits made prior to the date on which these amendatory provisions become effective, or” in 46 App. U.S.C. 1161(g)(1) and (2) are omitted as obsolete. In paragraph (1)(A), the words “or, with the approval of the Secretary of Transportation, for a part interest in a new vessel or for the reconstruction or reconditioning of a new vessel” are substituted for “(or in the discretion of the Secretary of Transportation, for a part interest therein), or, with the approval of the Secretary of Transportation, for the reconstruction or reconditioning of a new vessel or vessels” to eliminate unnecessary words.

In subsection (c), the proviso in 46 App. U.S.C. 1161(h) is omitted as obsolete.

§ 53311. Taxation of deposits on failure of conditions

A deposited gain, if otherwise taxable income under the law applicable to the taxable year in which the gain was realized, shall be included in gross income for that taxable year, except for purposes of the declared value excess profits tax and the capital stock tax, if—

- (1) the deposited gain is not expended or obligated within the appropriate period under section 53310 of this title;
- (2) the deposited gain is withdrawn before the end of that period;
- (3) the construction related to that deposited gain has not progressed to the extent of 5 percent of completion within the appropriate period under section 53310 of this title; or
- (4) the Secretary of Transportation finds and certifies to the Secretary of the Treasury that, for causes within the control of the taxpayer, the entire construction related to that deposited gain is not completed with reasonable dispatch.

(Pub. L. 109-304, §8(c), Oct. 6, 2006, 120 Stat. 1590.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
53311	46 App.:1161(i).	June 29, 1936, ch. 858, title V, §511(i), as added Oct. 10, 1940, ch. 849, 54 Stat. 1107; July 17, 1952, ch. 939, §13(b), 66 Stat. 764; Pub. L. 97-31, §12(92)(A), Aug. 6, 1981, 95 Stat. 161.

The last sentence of 46 App. U.S.C. 1161(i) is omitted as obsolete.

§ 53312. Assessment and collection of deficiency tax

Notwithstanding any other provision of law, a deficiency in tax for a taxable year resulting from the inclusion of an amount in gross income as provided by section 53311 of this title, and the amount to be treated as a deficiency under sec-

tion 53311 instead of as an adjustment for the declared value excess profits tax, may be assessed or a civil action may be brought to collect the deficiency without assessment, at any time. Interest on a deficiency or amount to be treated as a deficiency does not begin until the date the deposited gain or part of the deposited gain in question is required to be included in gross income under section 51111.

(Pub. L. 109-304, §8(c), Oct. 6, 2006, 120 Stat. 1590.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
53312	46 App.:1161(j).	June 29, 1936, ch. 858, title V, §511(j), as added Oct. 10, 1940, ch. 849, 54 Stat. 1108.

CHAPTER 534—TANKER SECURITY FLEET

- Sec.¹
- 53401. Definitions.
- 53402. Establishment of the Tanker Security Fleet.
- 53403. Award of operating agreements.
- 53404. Effectiveness of operating agreements.
- 53405. Obligations and rights under operating agreements.
- 53406. Payments.
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- 53408. Regulatory relief.
- 53409. Special rule regarding age of participating Fleet vessels.
- 53410. Regulations.
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§ 53401. Definitions

In this chapter:

- (1) FOREIGN COMMERCE.—The term “foreign commerce” means—
 - (A) commerce or trade between the United States, its territories or possessions, or the District of Columbia, and a foreign country; and
 - (B) commerce or trade between foreign countries.
- (2) PARTICIPATING FLEET VESSEL.—The term “participating Fleet vessel” means any product tank vessel covered by an operating agreement under this chapter on or after January 1, 2022, that—
 - (A) meets the requirements of one of paragraphs (1) through (4) of section 53402(b) of this title; and
 - (B) is no more than 20 years of age.

(3) PERSON.—The term “person” includes corporations, partnerships, and associations existing under, or authorized by, laws of the United States, or any State, territory, district, or possession thereof, or any foreign country.

(4) PRODUCT TANK VESSEL.—The term “product tank vessel” means a double-hulled tank vessel capable of carrying simultaneously more than 2 separated grades of refined petroleum products.

(5) PROGRAM PARTICIPANT.—The term “program participant” means an owner or operator of a vessel that enters into an operating agree-

¹ Editorially supplied.

ment covering a participating fleet vessel with the Secretary under section 53403.

(6) SECRETARY.—The term “Secretary” means the Secretary of Transportation, unless the context indicates otherwise.

(7) UNITED STATES CITIZEN TRUST.—The term “United States citizen trust”—

(A) means a trust for which—

(i) each of the trustees is a citizen of the United States; and

(ii) the application for documentation of the vessel under chapter 121 of this title includes an affidavit of each trustee stating that the trustee is not aware of any reason involving a beneficiary of the trust that is not a citizen of the United States, or involving any other person who is not a citizen of the United States, as a result of which the beneficiary or other person would hold more than 25 percent of the aggregate power to influence or limit the exercise of the authority of the trustee with respect to matters involving any ownership or operation of the vessel that may adversely affect the interests of the United States;

(B) does not include a trust for which any person that is not a citizen of the United States has authority to direct, or participate in directing, a trustee for a trust in matters involving any ownership or operation of the vessel that may adversely affect the interests of the United States or in removing a trustee without cause, either directly or indirectly through the control of another person, unless the trust instrument provides that persons who are not citizens of the United States may not hold more than 25 percent of the aggregate authority to so direct or remove a trustee; and

(C) may include a trust for which a person who is not a citizen of the United States holds more than 25 percent of the beneficial interest in the trust.

(Added Pub. L. 116-283, div. C, title XXXV, § 3511(a), Jan. 1, 2021, 134 Stat. 4408.)

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Pub. L. 116-283, div. C, title XXXV, § 3511(d), Jan. 1, 2021, 134 Stat. 4419, provided that:

“(1) IN GENERAL.—This section [enacting this chapter and provisions set out as a note under section 53402 of this title] shall take effect on the date on which the Secretary of Defense—

“(A) has completed the report on United States flagged fuel tanker vessel capacity as required by section 3519 of the National Defense Authorization Act for Fiscal Year 2020 [Pub. L. 116-92, 133 Stat. 1987];

“(B) has submitted that report to the appropriate committees of Congress;

“(C) publishes certification—

“(i) that a program for United States-flagged fuel tanker vessels as prescribed in chapter 534 of title 46, United States Code, as amended by this section, for the purpose of providing additional United States-flagged fuel tanker vessels is in the national security interest of the United States; and

“(ii) of the number of such additional tankers covered under such a program that could be necessary to meet Department of Defense wartime requirements.

“(2) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section the term ‘appropriate committees of Congress’ means—

“(A) the Committee on Commerce, Science, and Transportation and the Committee on Armed Services of the Senate; and

“(B) the Committee on Transportation and Infrastructure and the Committee on Armed Services of the House of Representatives.”

§ 53402. Establishment of the Tanker Security Fleet

(a) IN GENERAL.—The Secretary of Transportation, in consultation with the Secretary of Defense, shall establish a fleet of active, commercially viable, militarily useful, privately owned product tank vessels to meet national defense and other security requirements and maintain a United States presence in international commercial shipping. The fleet shall consist of privately owned vessels of the United States for which there are in effect operating agreements under this chapter, and shall be known as the “Tanker Security Fleet” (hereafter in this chapter referred to as the “Fleet”).

(b) VESSEL ELIGIBILITY.—A vessel is eligible to be included in the Fleet if the vessel—

(1) meets the requirements under paragraph (1), (2), (3), or (4) of subsection (c);

(2) is operated (or in the case of a vessel to be constructed, will be operated) in providing transportation in United States foreign commerce;

(3) is self-propelled;

(4) is not more than 10 years of age on the date the vessel is first included in the Fleet;

(5) is determined by the Secretary of Defense to be suitable for use by the United States for national defense or military purposes in time of war or national emergency;

(6) is commercially viable, as determined by the Secretary of Transportation; and

(7) is—

(A) a vessel of the United States; or

(B) not a vessel of the United States, but—

(i) the owner of the vessel has demonstrated an intent to have the vessel documented under chapter 121 of this title if it is included in the Fleet; and

(ii) at the time an operating agreement is entered into under this chapter, the vessel is eligible for documentation under chapter 121 of this title.

(c) REQUIREMENTS REGARDING CITIZENSHIP OF OWNERS, CHARTERERS, AND OPERATORS.—

(1) VESSELS OWNED AND OPERATED BY SECTION 50501 CITIZENS.—A vessel meets the requirements of this paragraph if, during the period of an operating agreement under this chapter that applies to the vessel, the vessel will be owned and operated by one or more persons that are citizens of the United States under section 50501 of this title.

(2) VESSELS OWNED BY A SECTION 50501 CITIZEN, OR UNITED STATES CITIZEN TRUST, AND CHARTERED TO A DOCUMENTATION CITIZEN.—A vessel meets the requirements of this paragraph if—

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

(i) owned by a person that is a citizen of the United States under section 50501 of

this title or that is a United States citizen trust; and

(ii) demise chartered to a person—

(I) that is eligible to document the vessel under chapter 121 of this title;

(II) the chairman of the board of directors, chief executive officer, and a majority of the members of the board of directors of which are citizens of the United States under section 50501 of this title, and are appointed and subjected to removal only upon approval by the Secretary of Transportation; and

(III) that certifies to the Secretary of Transportation that there are no treaties, statutes, regulations, or other laws that would prohibit the program participant for the vessel from performing its obligations under an operating agreement under this chapter;

(B) in the case of a vessel that will be demise chartered to a person that is owned or controlled by another person that is not a citizen of the United States under section 50501 of this title, the other person enters into an agreement with the Secretary of Transportation not to influence the operation of the vessel in a manner that will adversely affect the interests of the United States; and

(C) the Secretary of Transportation and the Secretary of Defense notify the Committee on Armed Services and the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Armed Services and the Committee on Transportation and Infrastructure of the House of Representatives that the Secretaries concur with the certification required under subparagraph (A)(ii)(III), and have reviewed and agree that there are no legal, operational, or other impediments that would prohibit the owner or operator for the vessel from performing its obligations under an operating agreement under this chapter.

(3) VESSELS OWNED AND OPERATED BY A DEFENSE CONTRACTOR.—A vessel meets the requirements of this paragraph if—

(A) during the period of an operating agreement under this chapter that applies to the vessel, the vessel will be owned and operated by a person that—

(i) is eligible to document a vessel under chapter 121 of this title;

(ii) operates or manages other vessels of the United States for the Secretary of Defense, or charters other vessels to the Secretary of Defense;

(iii) has entered into a special security agreement for the purpose of this paragraph with the Secretary of Defense;

(iv) makes the certification described in paragraph (2)(A)(ii)(III); and

(v) in the case of a vessel described in paragraph (2)(B), enters into an agreement referred to in that paragraph; and

(B) the Secretary of Transportation and the Secretary of Defense notify the Committee on Armed Services and the Committee on Commerce, Science, and Transpor-

tation of the Senate and the Committee on Armed Services and the Committee on Transportation and Infrastructure of the House of Representatives that they concur with the certification required under subparagraph (A)(iv), and have reviewed and agree that there are no legal, operational, or other impediments that would prohibit the program participant for the vessel from performing its obligations under an operating agreement under this chapter.

(4) VESSELS OWNED BY DOCUMENTATION CITIZENS AND CHARTERED TO SECTION 50501 CITIZENS.—A vessel meets the requirements of this paragraph if, during the period of an operating agreement under this chapter, the vessel will be—

(A) owned by a person who is eligible to document a vessel under chapter 121 of this title; and

(B) demise chartered to a person that is a citizen of the United States under section 50501 of this title.

(d) REQUEST BY SECRETARY OF DEFENSE.—The Secretary of Defense shall request that the Secretary of Homeland Security issue any waiver under section 501 of this title that the Secretary of Defense determines is necessary for purposes of this chapter.

(e) VESSEL STANDARDS.—

(1) CERTIFICATE OF INSPECTION.—A vessel used to provide oceangoing transportation the Secretary of the department in which the Coast Guard is operating determines meets the criteria of subsection (b) but which, on the date of enactment of this section, is not documented under chapter 121, shall be eligible for a certificate of inspection if the Secretary of the department in which the Coast Guard is operating determines that—

(A) the vessel is classed by and designed in accordance with the rules of the American Bureau of Shipping, or another classification society accepted by the Commandant of the Coast Guard;

(B) the vessel complies with applicable international agreements and associated guidelines, as determined by the country in which the vessel was documented immediately before becoming documented under chapter 121 of this title; and

(C) the country has not been identified by the Commandant of the Coast Guard as inadequately enforcing international vessel regulations as to that vessel.

(2) CONTINUED ELIGIBILITY FOR CERTIFICATE.—Subsection (a) shall not apply to any vessel that has failed to comply with the applicable international agreements and associated guidelines referred to in paragraph (1)(B).

(3) RELIANCE ON CLASSIFICATION SOCIETY.—

(A) IN GENERAL.—The Commandant of the Coast Guard may rely on a certification from the American Bureau of Shipping or, subject to subparagraph (B), another classification society accepted by the Commandant of the Coast Guard, to establish that a vessel is in compliance with the requirements of paragraph (1).

(B) FOREIGN CLASSIFICATION SOCIETY.—The Commandant of the Coast Guard may accept

certification from a foreign classification society under subparagraph (A) only—

(i) to the extent that the government of the foreign country in which the society is headquartered provides access on a reciprocal basis to the American Bureau of Shipping; and

(ii) if the foreign classification society has offices and maintains records in the United States.

(Added Pub. L. 116-283, div. C, title XXXV, § 3511(a), Jan. 1, 2021, 134 Stat. 4409.)

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective upon completion and submission to Congress of report on United States-flagged fuel tanker vessel capacity and upon publication of certification related to program for United States-flagged fuel tanker vessels, see section 3511(d) of Pub. L. 116-283, set out as a note under section 53401 of this title.

DEADLINE FOR ACCEPTING APPLICATIONS

Pub. L. 116-283, div. C, title XXXV, § 3511(c), Jan. 1, 2021, 134 Stat. 4419, provided that:

“(1) IN GENERAL.—The Secretary of Transportation shall begin accepting applications for enrollment of vessels in the Tanker Security Fleet established under chapter 534 of title 46, United States Code, as added by subsection (a), by not later than 60 days after the date of the enactment of this title [Jan. 1, 2021].

“(2) APPROVAL.—Not later than 90 days after receipt of an application for the enrollment of a vessel in the Tanker Security Fleet, the Secretary of Transportation, in coordination with the Secretary of Defense shall—

“(A) approve the application and enter into an operating agreement with the applicant; or

“(B) provide to the applicant a written explanation for the denial of the application.

“(3) VESSELS OPERATING IN MARITIME SECURITY FLEET.—Notwithstanding the requirements of section 53402(b) of title 46, United States Code, the Secretary of Transportation shall approve an application submitted under chapter 534 of title 46, United State Code, for a product tank vessel for which there is, on the date of enactment of this title, an effective operating agreement under chapter 531 of title 46, United States Code.”

§ 53403. Award of operating agreements

(a) IN GENERAL.—The Secretary of Transportation shall require, as a condition of including any vessel in the Fleet, that the program participant of the vessel enter into an operating agreement with the Secretary under this section.

(b) PROCEDURE FOR APPLICATIONS.—

(1) ELIGIBLE VESSELS.—The Secretary of Transportation shall accept an application for an operating agreement for an eligible product tank vessel under the priority under paragraph (2) only from a person that has authority to enter into an operating agreement under this chapter.

(2) ESTABLISHMENT OF PRIORITY.—The Secretary of Transportation may enter into a new operating agreement with an applicant that meets the requirements of section 53402(c) for a vessel that meets the qualifications of section 53402(b), and shall give priority to applications based on—

(A) vessel capabilities, as established by the Secretary of Defense; then

(B) after consideration of vessel type, according to an applicant’s record of owning and operating vessels; then

(C) after consideration of ownership and operation, according to such additional priorities as the Secretary of Transportation may consider appropriate.

(3) CONCURRENCE OF AWARD.—The Secretary of Transportation may not approve an application for an operating agreement without the concurrence of the Secretary of Defense.

(c) LIMITATION.—For any fiscal year, the Secretary of Transportation may not award operating agreements under this chapter that require payments under section 53406 of this title for more than 10 vessels.

(d) JUDICIAL REVIEW.—No court shall have jurisdiction to review the Secretary’s decision with respect to the award or non-award of an operating agreement issued under this chapter.

(Added Pub. L. 116-283, div. C, title XXXV, § 3511(a), Jan. 1, 2021, 134 Stat. 4412.)

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective upon completion and submission to Congress of report on United States-flagged fuel tanker vessel capacity and upon publication of certification related to program for United States-flagged fuel tanker vessels, see section 3511(d) of Pub. L. 116-283, set out as a note under section 53401 of this title.

§ 53404. Effectiveness of operating agreements

(a) IN GENERAL.—Subject to the availability of appropriations for such purpose, the Secretary may enter into an operating agreement under this chapter for fiscal year 2022 and any subsequent fiscal year. The agreement shall be effective only for 1 fiscal year, but shall be renewable, subject to the availability of appropriations, for each fiscal year through the end of fiscal year 2035.

(b) VESSELS UNDER CHARTER TO THE UNITED STATES.—The program participant of a vessel under charter to the United States is eligible to receive payments pursuant to any operating agreement that covers such vessel.

(c) TERMINATION.—

(1) TERMINATION BY SECRETARY FOR LACK OF PROGRAM PARTICIPANT COMPLIANCE.—If the program participant with respect to an operating agreement materially fails to comply with the terms of the agreement—

(A) the Secretary shall notify the program participant and provide a reasonable opportunity to comply with the operating agreement; and

(B) the Secretary shall terminate the operating agreement if the program participant fails to achieve such compliance.

(2) TERMINATION BY PROGRAM PARTICIPANT.—If a program participant provides notice of the intent to terminate an operating agreement under this chapter on a date specified by not later than 60 days prior to the date specified by the program participant for such termination, such agreement shall terminate on the date specified by the program participant.

(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 and the Committee on Transportation and Infrastructure 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 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 program participant for 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 the vessel after registration, then the vessel is available to be requisitioned by the Secretary pursuant to chapter 563 of this title.

(Added Pub. L. 116-283, div. C, title XXXV, § 3511(a), Jan. 1, 2021, 134 Stat. 4413.)

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective upon completion and submission to Congress of report on United States-flagged fuel tanker vessel capacity and upon publication of certification related to program for United States-flagged fuel tanker vessels, see section 3511(d) of Pub. L. 116-283, set out as a note under section 53401 of this title.

§ 53405. Obligations and rights under operating agreements

(a) **OPERATION OF VESSEL.**—An operating agreement under this chapter shall require that, during the period the vessel covered by the agreement is operating under the agreement the vessel shall—

(1) be operated in the United States foreign commerce, mixed United States foreign commerce and domestic trade allowed under a registry endorsement issued under section 12111 of this title, in foreign-to-foreign commerce, or under a charter to the United States;

(2) not be operated in the coastwise trade except as described in paragraph (1); and

(3) be documented under chapter 121 of this title.

(b) **ANNUAL PAYMENTS BY THE SECRETARY.**—

(1) **IN GENERAL.**—An operating agreement under this chapter shall require, subject to the availability of appropriations, that the Secretary make a payment to the program participant in accordance with section 53406.

(2) **OPERATING AGREEMENT IS AN OBLIGATION OF THE UNITED STATES GOVERNMENT.**—An oper-

ating 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 the operating agreement, including an agreement terminated under section 53404(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 program participant with respect to an operating agreement, including an agreement terminated under section 53404(c)(2), shall continue to be bound by the provisions of section 53407 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 53407 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 program participant, the Secretary of Transportation, and the Secretary of Defense.

(e) **TRANSFER OF OPERATING AGREEMENTS.**—A program participant may transfer an operating agreement (including all rights and obligations under the agreement) to any person that is eligible to enter into that operating agreement under this chapter, if the Secretary of Transportation and the Secretary of Defense determine that the transfer is in the best interests of the United States.

(f) **REPLACEMENT OF VESSELS COVERED BY AGREEMENTS.**—A program participant may replace the vessel with another vessel that is eligible to be included in the Fleet under section 53402(b), if the Secretary of Transportation, in coordination with the Secretary of Defense, approves the replacement of the vessel. No court shall have jurisdiction to review a decision by the Secretary of Transportation or the Secretary of Defense pertaining to the replacement of a vessel under this section.

(Added Pub. L. 116-283, div. C, title XXXV, § 3511(a), Jan. 1, 2021, 134 Stat. 4414.)

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective upon completion and submission to Congress of report on United States-flagged fuel tanker vessel capacity and upon publication of certification related to program for United States-flagged fuel tanker vessels, see section 3511(d) of Pub. L. 116-283, set out as a note under section 53401 of this title.

§ 53406. Payments

(a) **ANNUAL PAYMENT.**—Subject to the availability of appropriations for such purpose and the other provisions of this chapter, the Secretary shall pay to program participant for an operating agreement under this chapter an amount equal to \$6,000,000 for each vessel cov-

ered by the agreement for each fiscal year that the vessel is covered by the agreement. Such amount shall be paid in equal monthly installments on the last day of each month. The amount payable under this subsection may not be reduced except as provided by this section.

(b) **CERTIFICATION REQUIRED FOR PAYMENT.**—As a condition of receiving payment under this section for a fiscal year for a vessel, the program 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.)

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective upon completion and submission to Congress of report on United States-flagged fuel tanker vessel capacity and upon publication of certification related to program for United States-flagged fuel tanker vessels, see section 3511(d) of Pub. L. 116-283, set out as a note under section 53401 of this title.

§ 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 Secretary 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.)

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective upon completion and submission to Congress of report on United States-flagged fuel tanker vessel capacity and upon publication of certification related to program for United States-flagged fuel tanker vessels, see section 3511(d) of Pub. L. 116-283, set out as a note under section 53401 of this title.

§ 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.)

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective upon completion and submission to Congress of report on United States-flagged fuel tanker vessel capacity and upon publication of certification related to program for United States-flagged fuel tanker vessels, see section 3511(d) of Pub. L. 116-283, set out as a note under section 53401 of this title.

§ 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.)

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective upon completion and submission to Congress of report on United States-flagged fuel tanker vessel capacity and upon publication of certification related to program for United States-flagged fuel tanker vessels, see section 3511(d) of Pub. L. 116-283, set out as a note under section 53401 of this title.

§ 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.)

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective upon completion and submission to Congress of report on United States-flagged fuel tanker vessel capacity and upon publication of certification related to program for United States-flagged fuel tanker vessels, see section 3511(d) of Pub. L. 116-283, set out as a note under section 53401 of this title.

§ 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.)

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective upon completion and submission to Congress of report on United States-flagged fuel tanker vessel capacity and upon publication of certification related to program for United States-flagged fuel tanker vessels, see section 3511(d) of Pub. L. 116-283, set out as a note under section 53401 of this title.

§ 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

(2) meet recapitalization requirements for the Ready Reserve Force.

(c) FAIR MARKET VALUE.—A fair market value shall be established by the Maritime Administration for acquisition of an eligible vessel under this section.

(d) APPROPRIATIONS.—Vessel acquisitions under this section shall be subject to the avail-

ability of appropriations. Amounts made available to carry out this section shall be derived from amounts authorized to be appropriated for the National Defense Reserve Fleet. Amounts authorized to be appropriated to carry out the Maritime Security Program may not be used to carry out this section.

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

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective upon completion and submission to Congress of report on United States-flagged fuel tanker vessel capacity and upon publication of certification related to program for United States-flagged fuel tanker vessels, see section 3511(d) of Pub. L. 116-283, set out as a note under section 53401 of this title.

CHAPTER 535—CAPITAL CONSTRUCTION FUNDS

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§ 53501. Definitions

In this chapter:

(1) AGREEMENT VESSEL.—The term “agreement vessel” means—

(A) an eligible vessel or a qualified vessel that is subject to an agreement under this chapter; and

(B) a barge or container that is part of the complement of a vessel described in subparagraph (A) if provided for in the agreement.

(2) ELIGIBLE VESSEL.—The term “eligible vessel” means—

(A) a vessel—

(i) constructed in the United States (and, if reconstructed, reconstructed in the United States), constructed outside the United States but documented under the laws of the United States on April 15, 1970, or constructed outside the United States for use in the United States foreign trade pursuant to a contract made before April 15, 1970;

(ii) documented under the laws of the United States; and

(iii) operated in the foreign or domestic trade of the United States or in the fisheries of the United States; and

(B) a commercial fishing vessel—