

(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 payment to the Contractor in accordance with section 53206.

(2) OPERATING AGREEMENT IS AN OBLIGATION OF THE 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 Operating Agreement to the extent of actual appropriations.

(c) DOCUMENTATION REQUIREMENT.—Each vessel covered by an Operating Agreement (including an Agreement terminated under section 53204(c)(2)) shall remain documented under chapter 121 of this title, until the date the Operating Agreement would terminate according to its own terms.

(d) NATIONAL SECURITY REQUIREMENTS.—

(1) IN GENERAL.—A Contractor with respect to an Operating Agreement (including an Agreement terminated under section 53204(c)(2)) shall continue to be bound by the provisions of section 53207 until the date the Operating Agreement would terminate according to its terms.

(2) CONTINGENCY AGREEMENT WITH OPERATING AGENCY.—All terms and conditions of a Contingency Agreement entered into under section 53207 shall remain in effect until a date the Operating Agreement would terminate according to its terms, except that the terms of such Contingency Agreement may be modified by the mutual consent of the Contractor, and the Operating Agency.

(e) TRANSFER OF OPERATING AGREEMENTS.—Operating Agreements shall not be transferrable by the Contractor.

(f) REPLACEMENT VESSEL.—A Contractor may replace a vessel under an Operating Agreement with another vessel that is eligible to be included in the Fleet under section 53202(b), if the Secretary and the Operating Agency jointly determine that the replacement vessel meets national security requirements and approve the replacement.

(Added Pub. L. 116-92, div. C, title XXXV, § 3521(a), Dec. 20, 2019, 133 Stat. 1994.)

§ 53206. Payments

(a) ANNUAL PAYMENT.—

(1) IN GENERAL.—The Secretary, subject to availability of appropriations and 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 \$5,000,000 for each fiscal year 2021 through 2035.

(2) TIMING.—This 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 that the vessel has

been and will be operated in accordance with section 53205(a)(1) for 365 days in each fiscal year. Up to thirty (30) 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 shall 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; or

(2) more than 40 years of age.

(d) REDUCTIONS IN PAYMENTS.—With respect to payments under this chapter for a vessel covered by an Operating Agreement, the Secretary shall make a pro rata reduction for each day less than 365 in a fiscal year that the vessel is not operated in accordance with section 53205(a)(1), with days during which the vessel is drydocked or undergoing survey, inspection or repair to be considered days on which the vessel is operated as provided in subsection (b).

(Added Pub. L. 116-92, div. C, title XXXV, § 3521(a), Dec. 20, 2019, 133 Stat. 1995; amended Pub. L. 117-263, div. C, title XXXV, § 3517(b)(2), 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”.

§ 53207. National security requirements

(a) CONTINGENCY AGREEMENT REQUIRED.—The Secretary shall include in each Operating Agreement under this chapter a requirement that the Contractor enter into a Contingency Agreement with the Operating Agency. The Operating Agency shall negotiate and enter into a Contingency Agreement with each Contractor as promptly as practicable after the Contractor has entered into an Operating Agreement under this chapter.

(b) TERMS OF CONTINGENCY AGREEMENT.—

(1) IN GENERAL.—A Contingency Agreement under this section shall require that a Contractor for a vessel covered by an Operating Agreement under this chapter make the vessel, including all necessary resources to engage in Cable Services required by the Operating Agency, available upon request by the Operating Agency.

(2) TERMS.—

(A) IN GENERAL.—The basic terms of a Contingency Agreement shall be established (subject to subparagraph (B)) by the Operating Agency.

(B) ADDITIONAL TERMS.—The Operating Agency and a Contractor may agree to additional or modifying terms appropriate to the Contractor’s circumstances.

(c) DEFENSE MEASURES AGAINST UNAUTHORIZED SEIZURES.—(1) The Contingency Agreement shall require that any vessel operating under the direction of the Operating Agency operating in area that is designated by the Coast Guard as an area of high risk of piracy shall be equipped

with, at a minimum, appropriate non-lethal defense measures to protect the vessel and crew from unauthorized seizure at sea.

(2) 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.

(d) PARTICIPATION AFTER EXPIRATION OF OPERATING AGREEMENT.—Except as provided by section 53205(d), the Operating Agency may not require, through a Contingency Agreement or an Operating Agreement, that a Contractor continue to participate in a Contingency Agreement after the Operating Agreement with the Contractor has expired according to its terms or is otherwise no longer in effect.

(e) RESOURCES MADE AVAILABLE.—The resources to be made available in addition to the vessel under a Contingency Agreement shall include all equipment, personnel, supplies, management services, and other related services as the Operating Agency may determine to be necessary to provide the Cable Services required by the Operating Agency.

(f) COMPENSATION.—

(1) IN GENERAL.—The Operating Agency shall include in each Contingency Agreement provisions under which the Operating Agency shall pay fair and reasonable compensation for use of the vessel and all Cable Services provided pursuant to this section and the Contingency Agreement.

(2) SPECIFIC REQUIREMENTS.—Compensation under this subsection—

(A) shall be at the rate specified in the Contingency Agreement;

(B) shall be provided from the time that a vessel is required by the Operating Agency under the Contingency Agreement until the time it is made available by the Operating Agency available to reenter commercial service; and

(C) shall be in addition to and shall not in any way reflect amounts payable under section 53206.

(g) LIABILITY OF THE UNITED STATES FOR DAMAGES.—

(1) LIMITATION ON THE LIABILITY OF THE U.S.—Except as otherwise provided by law, the Government shall not be liable for disruption of a Contractor's commercial business or other consequential damages to a Contractor arising from the activation of the Contingency Agreement.

(2) AFFIRMATIVE DEFENSE.—In any action in any Federal or State court for breach of third-party contract, there shall be available as an affirmative defense that the alleged breach of contract was caused predominantly by action taken to carry out a Contingent Agreement. Such defense shall not release the party asserting it from any obligation under applicable law to mitigate damages to the greatest extent possible.

(Added Pub. L. 116-92, div. C, title XXXV, § 3521(a), Dec. 20, 2019, 133 Stat. 1995.)

§ 53208. Regulatory relief

The telecommunications and other electronic equipment on an existing vessel that is redocu-

mented under the laws of the United States for operation under an Operating Agreement under this chapter shall be deemed to satisfy all Federal Communication Commission equipment certification 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 of the Department in which the Coast Guard is operating 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 Communication Commission equipment certification standards.

(Added Pub. L. 116-92, div. C, title XXXV, § 3521(a), Dec. 20, 2019, 133 Stat. 1997.)

§ 53209. Authorization of appropriations

There are authorized to be appropriated for payments under section 53206, \$10,000,000 for each of the fiscal years 2021 through 2035.

(Added Pub. L. 116-92, div. C, title XXXV, § 3521(a), Dec. 20, 2019, 133 Stat. 1997.)

CHAPTER 533—CONSTRUCTION RESERVE FUNDS

Sec.	Definitions.
53301.	Authority for construction reserve funds.
53302.	Persons eligible to establish funds.
53303.	Vessel ownership.
53304.	Eligible fund deposits.
53305.	Recognition of gain for tax purposes.
53306.	Basis for determining gain or loss and for depreciating new vessels.
53307.	Order and proportions of deposits and withdrawals.
53308.	Accumulation of deposits.
53309.	Obligation of deposits and period for construction of certain vessels.
53310.	Taxation of deposits on failure of conditions.
53311.	Assessment and collection of deficiency tax.
53312.	

§ 53301. Definitions

(a) IN GENERAL.—In this chapter:

(1) CONSTRUCTION CONTRACT.—The term “construction contract” includes, for a taxpayer constructing a new vessel in a shipyard owned by that taxpayer, an agreement between the taxpayer and the Secretary of Transportation for that construction containing provisions the Secretary considers advisable to carry out this chapter.

(2) NEW VESSEL.—The term “new vessel” means—

(A) a vessel—

(i) constructed in the United States after December 31, 1939, constructed with a construction-differential subsidy under title V of the Merchant Marine Act, 1936, or constructed with financing or a financing guarantee under chapter 537 or 575 of this title;

(ii) documented or agreed with the Secretary to be documented under the laws of the United States; and