

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.)

AMENDMENTS

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).

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 minimum, 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, ter-

minal 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

(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 to the same extent as the eligibility of the vessel or vessel capacity replaced.

(g) REDELIVERY AND LIABILITY OF 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 contractor in the same good order and condition as when received, less ordinary wear and tear, or the Secretary of Defense shall fully compensate the contractor for any necessary repair or replacement.

(2) LIMITATION ON LIABILITY OF U.S.—Except as may be expressly agreed to in an Emergency Preparedness Agreement, or 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 activa-

tion of commercial transportation resources under an Emergency Preparedness Agreement.

(Added Pub. L. 108-136, div. C, title XXXV, §3531(a), Nov. 24, 2003, 117 Stat. 1814; amended Pub. L. 109-304, §13(a)(6), Oct. 6, 2006, 120 Stat. 1701; Pub. L. 111-84, div. C, title XXXV, §3505, Oct. 28, 2009, 123 Stat. 2720; Pub. L. 112-239, div. C, title XXXV, §3508(g), Jan. 2, 2013, 126 Stat. 2225.)

REFERENCES IN TEXT

The date of enactment of the National Defense Authorization Act for Fiscal Year 2010, referred to in subsec. (b)(3)(A), is the date of enactment of Pub. L. 111-84, which was approved Oct. 28, 2009.

AMENDMENTS

2013—Subsec. (b)(1). Pub. L. 112-239 amended par. (1) generally. Prior to amendment, text read as follows: “An Emergency Preparedness Agreement under this section shall require that upon a 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, United States Code), a contractor for a vessel covered by an operating agreement under this chapter shall make available commercial transportation resources (including services).”

2009—Subsec. (b)(3). Pub. L. 111-84 added par. (3).

2006—Subsec. (f). Pub. L. 109-304 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)” in introductory provisions and “sections 55302(a), 55304, 55305, and 55314 of this title and 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), and sections 901(a), 901(b), and 901b of the Merchant Marine Act, 1936 (46 U.S.C. App. 1241(a), 1241(b), and 1241b)” in par. (2).

§ 53108. Regulatory relief

(a) OPERATION IN FOREIGN COMMERCE.—A contractor 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 that vessel is receiving payments for 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 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 as inadequately enforcing international regulations as to that vessel; and