

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

(3) at the end of its useful life, such equipment will be replaced with equipment that meets Federal Communications Commission equipment certification standards.

(Added Pub. L. 108-136, div. C, title XXXV, §3531(a), Nov. 24, 2003, 117 Stat. 1816; amended Pub. L. 109-304, §13(a)(7), Oct. 6, 2006, 120 Stat. 1701.)

#### AMENDMENTS

2006—Subsec. (b). Pub. L. 109-304 substituted “section 55305(a) of this title” for “section 901(b)(1) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1241(b)(1))”.

#### [§ 53109. Repealed. Pub. L. 112-239, div. C, title XXXV, § 3508(h), Jan. 2, 2013, 126 Stat. 2225]

Section, Pub. L. 108-136, div. C, title XXXV, §3531(a), Nov. 24, 2003, 117 Stat. 1817, related to special rule regarding age of participating fleet vessel.

#### § 53110. Regulations

The Secretary and the Secretary of Defense may each prescribe rules as necessary to carry out their respective responsibilities under this chapter.

(Added Pub. L. 108-136, div. C, title XXXV, §3531(a), Nov. 24, 2003, 117 Stat. 1817.)

#### INTERIM RULES

Pub. L. 108-136, div. C, title XXXV, §3533, Nov. 24, 2003, 117 Stat. 1818, provided that: “The Secretary of Transportation and the Secretary of Defense may each prescribe interim rules necessary to carry out their respective responsibilities under this subtitle [subtitle C (§§3531-3537) of title XXXV of div. C of Pub. L. 108-136, enacting this chapter, amending former section 12102 of this title and sections 808 and 1162 of the former Appendix to this title, repealing sections 1187 to 1187e and 1222 of the former Appendix to this title, enacting provisions set out as a note under section 53101 of this title, and amending provisions set out as a note under section 1187 of the former Appendix to this title] and the amendments made by this subtitle. For this purpose, the Secretaries are excepted from compliance with the notice and comment requirements of section 553 of title 5, United States Code. All interim rules prescribed under the authority of this section that are not earlier superseded by final rules shall expire no later than 270 days after the effective date of this subtitle [see Effective Date note set out under section 53101 of this title].”

#### § 53111. Authorization of appropriations

There are authorized to be appropriated for payments under section 53106, to remain available until expended—

- (1) \$300,000,000 for each of fiscal years 2018, 2019, and 2020;
- (2) \$314,007,780 for fiscal year 2021; and
- (3) \$222,000,000 for each fiscal year thereafter through fiscal year 2025.

(Added Pub. L. 108-136, div. C, title XXXV, §3531(a), Nov. 24, 2003, 117 Stat. 1817; amended Pub. L. 111-383, div. C, title XXXV, §3502(3), Jan. 7, 2011, 124 Stat. 4518; Pub. L. 112-239, div. C, title XXXV, §3508(i), Jan. 2, 2013, 126 Stat. 2225; Pub. L. 114-92, div. C, title XXXV, §3504(b), Nov. 25, 2015, 129 Stat. 1219; Pub. L. 114-113, div. O, title I, §101(e)(2), Dec. 18, 2015, 129 Stat. 2988; Pub. L. 115-232, div. C, title XXXV, §3546(p), Aug. 13, 2018, 132 Stat. 2327.)

#### AMENDMENTS

2018—Pub. L. 115-232 redesignated pars. (5) to (7) as (1) to (3), respectively, and struck out former pars. (1) to (4) which set out authorized amounts for fiscal years 2006 to 2017.

2015—Par. (3). Pub. L. 114-113, §101(e)(2)(A), substituted “and 2015” for “2015, 2017, and 2018;”.

Pub. L. 114-92 struck out “2016,” after “2015;”.

Pars. (4) to (7). Pub. L. 114-113, §101(e)(2)(B), (C), added pars. (4) to (6), redesignated former par. (5) as (7), and struck out former par. (4) which read as follows: “\$210,000,000 for each of fiscal years 2019, 2020, and 2021; and”.

2013—Par. (2). Pub. L. 112-239, §3508(i)(1), struck out “and” at end.

Pars. (3) to (5). Pub. L. 112-239, §3508(i)(2), which directed amendment of par. (3) “to read as follows” and then set out pars. (3) to (5), was executed by amending par. (3) generally and adding pars. (4) and (5) to reflect the probable intent of Congress. Prior to amendment, par. (3) read as follows: “\$186,000,000 for each fiscal year thereafter through fiscal year 2025.”

2011—Par. (3). Pub. L. 111-383 substituted “2025” for “2015”.

### CHAPTER 533—CONSTRUCTION RESERVE FUNDS

Sec.	
53301.	Definitions.
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#### § 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

(iii) (I) of a type, size, and speed that the Secretary determines is suitable for use on the high seas or Great Lakes in carrying out this subtitle, but not less than 2,000 gross tons or less than 12 knots speed unless the Secretary certifies in each case that a vessel of lesser tonnage or speed is