

Resolution, which is classified to section 1241-1 of the Appendix to this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 53103, 53105, 53109, 53111 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 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).

(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.

(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Agreement after the operating agreement with the contractor has expired according to its terms or is otherwise no longer in effect.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, terminal 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 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), 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 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)¹ 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 activation of commercial transportation resources under an Emergency Preparedness Agreement.

¹ So in original. Probably should be "1241f)".

(Added Pub. L. 108–136, div. C, title XXXV, § 3531(a), Nov. 24, 2003, 117 Stat. 1814.)

REFERENCES IN TEXT

Act of March 26, 1934, referred to in subsec. (f), is act Mar. 26, 1934, ch. 90, 48 Stat. 500, as amended, known as the Reconstruction Finance Corporation Exports Resolution, which is classified to section 1241–1 of the Appendix to this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 53104, 53105, 53106 of this title.

§ 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 901(b)(1) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1241(b)(1)) 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.)

§ 53109. Special rule regarding age of participating fleet vessel

Any age restriction under section 53102(b)(3) or 53106(c)(3) 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 title, if the Secretary determines that the contractor 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 53102(b).

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

§ 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 section 12102 of this title and sections 808 and 1162 of the Appendix to this title, repealing sections 1187 to 1187e and 1222 of the 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 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) \$156,000,000 for each of fiscal years 2006, 2007, and 2008;

(2) \$174,000,000 for each of fiscal years 2009, 2010, and 2011; and

(3) \$186,000,000 for each fiscal year thereafter through fiscal year 2015.

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

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CHAPTER 701—PORT SECURITY

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§ 70101. Definitions

For the purpose of this chapter:

¹ So in original. Does not conform to section catchline.