

(f) This section does not alter in any respect the law pertaining to the establishment of a maritime lien, the remedy provided by such a lien, or the defenses thereto, including any defense under the doctrine of laches.

(Pub. L. 100-710, title I, § 102(c), Nov. 23, 1988, 102 Stat. 4748; Pub. L. 107-295, title II, § 205(a)(1), Nov. 25, 2002, 116 Stat. 2095.)

HISTORICAL AND REVISION NOTES

<i>Revised section</i>	<i>Source section (U.S. Code)</i>
31343	46:925

Section 31343 provides that any person claiming a lien on a vessel covered by a preferred mortgage may record a notice of lien. This notice must state the nature of the lien, date it was established; the amount; and the name and address of the person claiming a lien, and it must be acknowledged. The Secretary must record a notice of lien if it complies with these requirements. When any part of the indebtedness is discharged, the claimant shall provide the Secretary with a written, acknowledged certificate of discharge of the indebtedness, and the Secretary shall record the certificate. This section makes no substantive change to law.

Section 31343(c) provides that, on the full and final discharge of an indebtedness that is the basis for a claim, the person having the claim shall provide the Secretary with an acknowledged certificate of discharge on the request of the Secretary or owner of the vessel. This subsection makes a substantive change to law by not requiring partial discharges to be filed, as well as making the filing of discharge certificates only at the request of the Secretary or owner of the vessel.

HOUSE FLOOR STATEMENT

Subsection (d) of this section requires a person claiming a lien on a vessel covered by a preferred mortgage under section 31322(d) to record and discharge the lien as provided by the law of the State in which the vessel is titled.

AMENDMENTS

2002—Pub. L. 107-295, § 205(a)(1)(A), substituted “notices of claim of maritime lien” for “liens on preferred mortgage vessels” in section catchline.

Subsec. (a). Pub. L. 107-295, § 205(a)(1)(B), substituted “documented, or for which an application for documentation has been filed, under chapter 121” for “covered by a preferred mortgage filed or recorded under this chapter” in introductory provisions.

Subsec. (b). Pub. L. 107-295, § 205(a)(1)(C), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “The Secretary shall record a notice complying with subsection (a) of this section.”

Subsec. (c). Pub. L. 107-295, § 205(a)(1)(D), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “On full and final discharge of the indebtedness that is the basis for a claim recorded under subsection (b) of this section, on request of the Secretary or owner, the person having the claim shall provide the Secretary with an acknowledged certificate of discharge of the indebtedness. The Secretary shall record the certificate.”

Subsecs. (e), (f). Pub. L. 107-295, § 205(a)(1)(E), added subsecs. (e) and (f).

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-295 effective Jan. 1, 2003, see section 205(e) of Pub. L. 107-295, set out as a note under section 12111 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12111, 31325 of this title.

[CHAPTER 315—RESERVED]

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 30101 of this title.

[Subtitle IV—Reserved]

Subtitle V—Merchant Marine

Chap.	Sec.
531.	Maritime Security Fleet 53101

CHAPTER 531—MARITIME SECURITY FLEET

Sec.	
53101.	Definitions.
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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 808 of Appendix to this title.

§ 53101. Definitions

In this chapter:

(1) BULK CARGO.—The term “bulk cargo” means cargo that is loaded and carried in bulk without mark or count.

(2) CONTRACTOR.—The term “contractor” means an owner or operator of a vessel that enters into an operating agreement for the vessel with the Secretary under section 53103.

(3) FLEET.—The term “Fleet” means the Maritime Security Fleet established under section 53102(a).

(4) FOREIGN COMMERCE.—The term “foreign commerce”—

(A) subject to subparagraph (B), means—

(i) commerce or trade between the United States, its territories or possessions, or the District of Columbia, and a foreign country; and

(ii) commerce or trade between foreign countries; and

(B) includes, in the case of liquid and dry bulk cargo carrying services, trading between foreign ports in accordance with normal commercial bulk shipping practices in such manner as will permit United States-documented vessels freely to compete with foreign-flag bulk carrying vessels in their operation or in competing for charters, subject to rules and regulations promulgated by the Secretary of Transportation pursuant to this chapter or subtitle D of the Maritime Security Act of 2003.

(5) LASH VESSEL.—The term “LASH vessel” means a lighter aboard ship vessel.

(6) PARTICIPATING FLEET VESSEL.—The term “participating fleet vessel” means any vessel that—

(A) on October 1, 2005—

(i) meets the requirements of paragraph (1), (2), (3), or (4) of section 53102(c); and

(ii) is less than 25 years of age, or less than 30 years of age in the case of a LASH vessel; and

(B) on December 31, 2004, is covered by an operating agreement under subtitle B of title VI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1187 et seq.).

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

(8) **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.

(9) **SECRETARY.**—The term “Secretary” means the Secretary of Transportation.

(10) **TANK VESSEL.**—The term “tank vessel” has the meaning that term has under section 2101 of this title.

(11) **UNITED STATES.**—The term “United States” includes the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, the Virgin Islands.

(12) **UNITED STATES CITIZEN TRUST.**—(A) Subject to subparagraph (C), the term “United States citizen trust” means a trust that is qualified under this paragraph.

(B) A trust is qualified under this paragraph with respect to a vessel only if—

(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 the 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 that 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.

(C) If 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 for a trust without cause, either directly or indirectly through the control of another person, the trust is not qualified under this paragraph 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.

(D) This paragraph shall not be considered to prohibit a person who is not a citizen of the United States from holding more than 25 percent of the beneficial interest in a trust.

(13) **UNITED STATES-DOCUMENTED VESSEL.**—The term “United States-documented vessel” means a vessel documented under chapter 121 of this title.

(Added Pub. L. 108-136, div. C, title XXXV, § 3531(a), Nov. 24, 2003, 117 Stat. 1803.)

REFERENCES IN TEXT

The Maritime Security Act of 2003, referred to in par. (4)(B), is title XXXV of div. C of Pub. L. 108-136, Nov. 24, 2003, 117 Stat. 1788. Subtitle D of the Act amended section 1273 of the Appendix to this title and enacted provisions set out as a note under this section. For complete classification of this Act to the Code, see Short Title note set out under this section and Tables.

The Merchant Marine Act, 1936, referred to in par. (6)(B), is act June 29, 1936, ch. 858, 49 Stat. 1985, as amended. Subtitle B of title VI of the Act is classified generally to part B (§1187 et seq.) of subchapter VI of chapter 27 of the Appendix to this title. For complete classification of this Act to the Code, see section 1245 of the Appendix to this title and Tables.

EFFECTIVE DATE

Pub. L. 108-136, div. C, title XXXV, §3537, Nov. 24, 2003, 117 Stat. 1819, provided that:

“(a) **IN GENERAL.**—Except as provided in subsections (b) and (c), 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 53110 of this title, and amending provisions set out as a note under section 1187 of the Appendix to this title] shall take effect October 1, 2004.”

“(b) **REPEALS AND CONFORMING AMENDMENTS.**—Section 3534 [amending section 12102 of this title, repealing sections 1187 to 1187e and 1222 of the Appendix to this title, and amending provisions set out as a note under section 1187 of the Appendix to this title] shall take effect October 1, 2005.”

“(c) **OTHER PROVISIONS.**—Sections 3533 [enacting provisions set out as a note under section 53110 of this title], 3535 [not classified to the Code], and this section shall take effect on the date of the enactment of this Act [Nov. 24, 2003].”

SHORT TITLE

Pub. L. 108-136, div. C, title XXXV, §3501, Nov. 24, 2003, 117 Stat. 1789, provided that: “This title [enacting this chapter and section 1280b of the Appendix to this title, amending section 12102 of this title and sections 808, 1158, 1162, 1241f, 1271, 1273, 1275, 1279a, 1295a to 1295c and 1295e of the Appendix to this title, repealing sections 1187 to 1187e and 1222 of the Appendix to this title, enacting provisions set out as notes under this section, section 53110 of this title, and section 1271 of the Appendix to this title, and amending provisions set out as notes under section 1220 of Title 16, Conservation, and section 1187 of the Appendix to this title] may be cited as the ‘Maritime Security Act of 2003.’”

MAINTENANCE AND REPAIR REIMBURSEMENT PILOT PROGRAM

Pub. L. 108-136, div. C, title XXXV, §3517, Nov. 24, 2003, 117 Stat. 1796, provided that:

“(a) **AUTHORITY TO ENTER AGREEMENTS.**—

“(1) **IN GENERAL.**—The Secretary of Transportation may carry out a pilot program under which the Secretary may enter into an agreement with a contractor under chapter 531 of title 46, United States Code, as amended by this Act, regarding maintenance and repair of a vessel that is subject to an operating agreement under that chapter.

“(2) **LIMITATION.**—The Secretary may not require a person to enter into an agreement under this section, including as a condition of awarding an operating

agreement to the person under chapter 531 of title 46, United States Code, as amended by this Act.

“(b) TERMS OF AGREEMENT.—An agreement under this section—

“(1) shall require that except as provided in subsection (c), all qualified maintenance or repair on the vessel shall be performed in the United States;

“(2) shall require that the Secretary shall reimburse the contractor in accordance with subsection (d) for the costs of qualified maintenance or repair performed in the United States; and

“(3) shall apply to maintenance and repair performed during the 5-year period beginning on the date the vessel begins operating under the operating agreement under chapter 531 of title 46, United States Code.

“(c) EXCEPTION TO REQUIREMENT TO PERFORM WORK IN THE UNITED STATES.—A contractor shall not be required to have qualified maintenance or repair work performed in the United States under this section, if the Secretary determines that—

“(1) there is no facility in the United States available to perform the work; or

“(2) there is not available to the Secretary sufficient funds to pay reimbursement under subsection (d) with respect to the work.

“(d) REIMBURSEMENT.—

“(1) IN GENERAL.—The Secretary shall, subject to the availability of appropriations, reimburse a contractor for costs incurred by the contractor for qualified maintenance or repair performed in the United States under this section.

“(2) AMOUNT.—The amount of reimbursement shall be equal to 80 percent of the difference between—

“(A) the fair and reasonable cost of obtaining the qualified maintenance or repair in the United States; and

“(B) the fair and reasonable cost of obtaining the qualified maintenance or repair outside the United States, in the geographic region in which the vessel generally operates.

“(3) DETERMINATION OF FAIR AND REASONABLE COSTS.—The Secretary shall determine fair and reasonable costs for purposes of paragraph (2).

“(e) NOTIFICATION REQUIREMENTS.—

“(1) NOTIFICATION BY CONTRACTOR.—The Secretary is not required to pay reimbursement to a contractor under this section for qualified maintenance or repair, unless the contractor—

“(A) notifies the Secretary of the intent of the contractor to obtain the qualified maintenance or repair, by not later than 180 days before the date of the performance of the qualified maintenance or repair; and

“(B) includes in such notification—

“(i) a description of all qualified maintenance or repair that the contractor should reasonably expect may be performed;

“(ii) an estimate of the cost of obtaining such qualified maintenance or repair in the United States; and

“(iii) an estimate of the cost of obtaining such qualified maintenance or repair outside the United States, in the geographic region in which the vessel generally operates.

“(2) CERTIFICATION BY SECRETARY.—Not later than 60 days after the date of receipt of notification under paragraph (1), the Secretary shall certify to the contractor—

“(A) whether there is a facility in the United States available to perform the qualified maintenance or repair described in the notification by the contractor under paragraph (1); and

“(B) whether there is available to the Secretary sufficient funds to pay reimbursement under subsection (d) with respect to such work.

“(f) QUALIFIED MAINTENANCE OR REPAIR DEFINED.—In this section the term ‘qualified maintenance or repair’—

“(1) except as provided in paragraph (2), means—

“(A) any inspection of a vessel that is—

“(i) required under chapter 33 of title 46, United States Code; and

“(ii) performed in the period in which the vessel is subject to an agreement under this section; and

“(B) any maintenance or repair of a vessel that is determined, in the course of an inspection referred to in subparagraph (A), to be necessary to comply with the laws of the United States; and

“(2) does not include—

“(A) routine maintenance or repair; or

“(B) any emergency work that is necessary to enable a vessel to return to a port in the United States.

“(g) ANALYSIS.—

“(1) IN GENERAL.—Not later than October 1, 2004, the Secretary of Transportation shall submit to the Committee on Armed Services of the House of Representatives and the Committee on Armed Services and the Committee on Commerce, Science, and Transportation of the Senate, an analysis of the need for agreements authorized by this section.

“(2) CONDUCT AND CONSIDERATIONS.—In conducting the analysis, the Secretary shall consider the overall costs and benefits of the pilot program, including the following:

“(A) The impact on operations of vessels in the program.

“(B) The availability of repair shipyards and drydocks in the various regions of the United States (as that term is defined in such chapter) that are capable of handling such vessels that are ocean-going vessels.

“(C) The experience of such shipyards in repairing the types of such vessels.

“(D) A comparison of drydock and repair costs between available United States and foreign shipyards located within the geographic range of the trading area of such vessels.

“(E) A comparison of the time period required for the drydocking and repair of such vessels between available United States shipyards and foreign shipyards.

“(F) The impact of the voyage deviation of such vessels to United States shipyards.

“(G) The benefits to the Department of Defense of having a vessel repair base in the United States to accelerate the activation of the Ready Reserve Fleet.

“(H) The benefits of extending the program to all vessels that are subject to operating agreements under chapter 531 of title 46, United States Code, as amended by this Act.

“(3) RECOMMENDATIONS.—The Secretary shall include in the analysis recommendations of any additional incentives that are necessary to encourage participation in the program.

“(h) AUTHORIZATION OF APPROPRIATIONS.—In addition to the other amounts authorized by this subtitle [subtitle A (§§3511–3517) of title XXXV of div. C of Pub. L. 108–136, see Tables for classification], for reimbursement of costs of qualified maintenance or repair under this section there is authorized to be appropriated to the Secretary of Transportation \$19,500,000 for each of fiscal years 2006 through 2011.”

NATIONAL DEFENSE TANK VESSEL CONSTRUCTION ASSISTANCE

Pub. L. 108–136, div. C, title XXXV, subtitle D, Nov. 24, 2003, 117 Stat. 1820, provided that:

“SEC. 3541. NATIONAL DEFENSE TANK VESSEL CONSTRUCTION PROGRAM.

“The Secretary of Transportation shall establish a program for the provision of financial assistance for the construction in the United States of a fleet of up to 5 privately owned product tank vessels—

“(1) to be operated in commercial service in foreign commerce; and

“(2) to be available for national defense purposes in time of war or national emergency pursuant to an

Emergency Preparedness Plan approved by the Secretary of Defense pursuant to section 3543(e).

“SEC. 3542. APPLICATION PROCEDURE.

“(a) REQUEST FOR PROPOSALS.—Within 90 days after the date of the enactment of this subtitle [Nov. 24, 2003], and on an as-needed basis thereafter, the Secretary, in consultation with the Secretary of Defense, shall publish in the Federal Register a request for competitive proposals for the construction of new product tank vessels necessary to meet the commercial and national security needs of the United States and to be built with assistance under this subtitle.

“(b) QUALIFICATION.—Any citizen of the United States or any shipyard in the United States may submit a proposal to the Secretary of Transportation for purposes of constructing a product tank vessel with assistance under this subtitle.

“(c) REQUIREMENT.—The Secretary, with the concurrence of the Secretary of Defense, may enter into an agreement with the submitter of a proposal for assistance under this subtitle if the Secretary determines that—

“(1) the plans and specifications call for construction of a new product tank vessel of not less than 35,000 deadweight tons and not greater than 60,000 deadweight tons, that—

“(A) will meet the requirements of foreign commerce;

“(B) is capable of carrying militarily useful petroleum products, and will be suitable for national defense or military purposes in time of war, national emergency, or other military contingency; and

“(C) will meet the construction standards necessary to be documented under the laws of the United States;

“(2) the shipyard in which the vessel will be constructed has the necessary capacity and expertise to successfully construct the proposed number and type of product tank vessels in a reasonable period of time as determined by the Secretary of Transportation, taking into consideration the recent prior commercial shipbuilding history of the proposed shipyard in delivering a vessel or series of vessels on time and in accordance with the contract price and specifications; and

“(3) the person proposed to be the operator of the proposed vessel possesses the ability, experience, financial resources, and any other qualifications determined to be necessary by the Secretary for the operation and maintenance of the vessel.

“(d) PRIORITY.—The Secretary—

“(1) subject to paragraph (2), shall give priority consideration to a proposal submitted by a person that is a citizen of the United States under section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802) [46 App. U.S.C. 802, 803]; and

“(2) may give priority to consideration of proposals that provide the best value to the Government, taking into consideration—

“(A) the costs of vessel construction; and

“(B) the commercial and national security needs of the United States.

“SEC. 3543. AWARD OF ASSISTANCE.

“(a) IN GENERAL.—If after review of a proposal, the Secretary determines that the proposal fulfills the requirements under this subtitle, the Secretary may enter into a contract with the proposed purchaser and the proposed shipyard for the construction of a product tank vessel with assistance under this subtitle.

“(b) AMOUNT OF ASSISTANCE.—The contract shall provide that the Secretary shall pay, subject to the availability of appropriations, up to 75 percent of the actual construction cost of the vessel, but in no case more than \$50,000,000 per vessel.

“(c) CONSTRUCTION IN UNITED STATES.—A contract under this section shall require that construction of a vessel with assistance under this subtitle shall be performed in a shipyard in the United States.

“(d) DOCUMENTATION OF VESSEL.—

“(1) CONTRACT REQUIREMENT.—A contract under this section shall require that, upon delivery of a vessel constructed with assistance under the contract, the vessel shall be documented under chapter 121 of title 46, United States Code, with a registry endorsement only.

“(2) RESTRICTION ON COASTWISE ENDORSEMENT.—A vessel constructed with assistance under this subtitle shall not be eligible for a certificate of documentation with a coastwise endorsement.

“(3) AUTHORITY TO REFLAG NOT APPLICABLE.—Section 9(g) of the Shipping Act, 1916, (46 U.S.C. App. 808(g)) shall not apply to a vessel constructed with assistance under this subtitle.

“(e) EMERGENCY PREPAREDNESS AGREEMENT.—

“(1) IN GENERAL.—A contract under this section shall require that the person who will be the operator of a vessel constructed with assistance under the contract shall enter into an Emergency Preparedness Agreement for the vessel under section 53107 of title 46, United States Code, as amended by this Act.

“(2) TREATMENT AS CONTRACTOR.—For purposes of the application, under paragraph (1), of section 53107 of title 46, United States Code, to a vessel constructed with assistance under this subtitle, the term ‘contractor’ as used in that section means the person who will be the operator of a vessel constructed with assistance under this subtitle.

“(f) ADDITIONAL TERMS.—The Secretary shall incorporate in the contract the requirements set forth in this subtitle, and may incorporate in the contract any additional terms the Secretary considers necessary.

“SEC. 3544. PRIORITY FOR TITLE XI ASSISTANCE.

[Amended section 1273 of the Appendix to this title.]

“SEC. 3545. DEFINITIONS.

“In this subtitle the definitions set forth in section 53101 of title 46, United States Code, as amended by this Act, shall apply.

“SEC. 3546. AUTHORIZATION OF APPROPRIATIONS.

“There are authorized to be appropriated to the Secretary to carry out this subtitle a total of \$250,000,000 for fiscal years after fiscal year 2004.”

§ 53102. Establishment of Maritime 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 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, United States-documented vessels for which there are in effect operating agreements under this chapter, and shall be known as the Maritime Security Fleet.

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

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

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

(3) the vessel is self-propelled and is—

(A) a roll-on/roll-off vessel with a carrying capacity of at least 80,000 square feet or 500 twenty-foot equivalent units and that is 15 years of age or less on the date the vessel is included in the Fleet;

(B) a tank vessel that is constructed in the United States after the date of the enactment of this chapter;

(C) a tank vessel that is 10 years of age or less on the date the vessel is included in the Fleet;

(D) a LASH vessel that is 25 years of age or less on the date the vessel is included in the Fleet; or

(E) any other type of vessel that is 15 years of age or less on the date the vessel is included in the Fleet;

(4) the vessel is—

(A) 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; and

(B) determined by the Secretary to be commercially viable; and

(5) the vessel—

(A) is a United States-documented vessel; or

(B) is not a United States-documented vessel, 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 for the vessel 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) VESSEL OWNED AND OPERATED BY SECTION 2 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 2 of the Shipping Act, 1916 (46 U.S.C. App. 802).

(2) VESSEL OWNED BY SECTION 2 CITIZEN OR UNITED STATES CITIZEN TRUST, AND CHARTERED TO 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 2 of the Shipping Act, 1916 (46 U.S.C. App. 802) 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 2 of the Shipping Act, 1916 (46 U.S.C. App. 802), and are appointed and subjected to removal only upon approval by the Secretary; and

(III) that certifies to the Secretary that there are no treaties, statutes, regulations, or other laws that would prohibit the contractor 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 2

of the Shipping Act, 1916 (46 U.S.C. App. 802), the other person enters into an agreement with the Secretary 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 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 of the House of Representatives that they concur with the certification required under subparagraph (A)(ii)(III), and have reviewed and agree that there are no other legal, operational, or other impediments that would prohibit the contractor for the vessel from performing its obligations under an operating agreement under this chapter.

(3) VESSEL OWNED AND OPERATED BY 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 United States-documented vessels for the Secretary of Defense, or charters other vessels to the Secretary of Defense;

(iii) has entered into a special security agreement for purposes 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 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 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 other legal, operational, or other impediments that would prohibit the contractor for the vessel from performing its obligations under an operating agreement under this chapter.

(4) VESSEL OWNED BY DOCUMENTATION CITIZEN AND CHARTERED TO SECTION 2 CITIZEN.—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—

(A) owned by a person that 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 2 of the Shipping Act, 1916 (46 U.S.C. App. 802).

(d) REQUEST BY SECRETARY OF DEFENSE.—The Secretary of Defense shall request the Secretary of Homeland Security to issue any waiver under the first section of Public Law 81-891 (64 Stat.

1120; 46 U.S.C. App. note prec. 3) that is necessary for purposes of this chapter.

(e) VESSEL STANDARDS.—

(1) CERTIFICATE OF INSPECTION.—A vessel used to provide oceangoing transportation which the Secretary of the department in which the Coast Guard is operating determines meets the criteria of subsection (b) of this section but which, on the date of enactment of the Maritime Security Act of 2003, is not a documented vessel (as that term is defined in section 12101 of this title) shall be eligible for a certificate of inspection if the Secretary 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 Secretary;

(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 a documented vessel (as defined in that section); and

(C) that country has not been identified by the Secretary as inadequately enforcing international vessel regulations as to that vessel.

(2) CONTINUED ELIGIBILITY FOR CERTIFICATE.—Paragraph (1) does not apply to a vessel after any date on which the vessel fails 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 Secretary may rely on a certification from the American Bureau of Shipping or, subject to subparagraph (B), another classification society accepted by the Secretary to establish that a vessel is in compliance with the requirements of paragraphs (1) and (2).

(B) FOREIGN CLASSIFICATION SOCIETY.—The Secretary 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.

(f) WAIVER OF AGE RESTRICTION.—The Secretary of Defense, in conjunction with the Secretary of Transportation, may waive the application of an age restriction under subsection (b)(3) if the Secretaries jointly determine that the waiver—

(1) is in the national interest;

(2) is appropriate to allow the maintenance of the economic viability of the vessel and any associated operating network; and

(3) is necessary due to the lack of availability of other vessels and operators that comply with the requirements of this chapter.

(Added Pub. L. 108-136, div. C, title XXXV, § 3531(a), Nov. 24, 2003, 117 Stat. 1805.)

REFERENCES IN TEXT

The date of the enactment of this chapter, referred to in subsec. (b)(3)(B), is the date of enactment of Pub. L. 108-136, which was approved Nov. 24, 2003.

Section 2 of the Shipping Act, 1916, referred to in subsec. (c)(1), (2)(A)(i), (ii)(II), (B), (4)(B), is classified to sections 802 and 803 of the Appendix to this title.

The date of enactment of the Maritime Security Act of 2003, referred to in subsec. (e)(1), is the date of enactment of Pub. L. 108-136, which was approved Nov. 24, 2003.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 53101, 53103, 53105, 53109 of this title.

§ 53103. Award of operating agreements

(a) IN GENERAL.—The Secretary shall require, as a condition of including any vessel in the Fleet, that the person that is the owner or operator of the vessel for purposes of section 53102(c) enter into an operating agreement with the Secretary under this section.

(b) PROCEDURE FOR APPLICATIONS.—

(1) ACCEPTANCE OF APPLICATIONS.—Beginning no later than 30 days after the effective date of this chapter, the Secretary shall accept applications for enrollment of vessels in the Fleet.

(2) ACTION ON APPLICATIONS.—Within 90 days after receipt of an application for enrollment of a vessel in the Fleet, the Secretary shall approve the application in conjunction with the Secretary of Defense, and shall enter into an operating agreement with the applicant, or provide in writing the reason for denial of that application.

(3) PARTICIPATING FLEET VESSELS.—

(A) IN GENERAL.—The Secretary shall accept an application for an operating agreement for a participating fleet vessel under the priority under subsection (c)(1)(B) only from a person that has authority to enter into an operating agreement for the vessel with respect to the full term of the operating agreement.

(B) VESSEL UNDER DEMISE CHARTER.—For purposes of subparagraph (A), in the case of a vessel that is subject to a demise charter that terminates by its terms on September 30, 2005 (without giving effect to any extension provided therein for completion of a voyage or to effect the actual redelivery of the vessel), or that is terminable at will by the owner of the vessel after such date, only the owner of the vessel shall be treated as having the authority referred to in paragraph (1).

(C) VESSEL OWNED BY UNITED STATES CITIZEN TRUST.—For purposes of subparagraph (B), in the case of a vessel owned by a United States citizen trust, the term “owner of the vessel” includes a beneficial owner of the vessel with respect to such trust.

(c) PRIORITY FOR AWARDED AGREEMENTS.—

(1) IN GENERAL.—Subject to the availability of appropriations, the Secretary shall enter into operating agreements according to the following priority:

(A) NEW TANK VESSELS.—First, for any tank vessel that—

(i) is constructed in the United States after the effective date of this chapter;

(ii) is eligible to be included in the Fleet under section 53102(b); and

(iii) during the period of an operating agreement under this chapter that applies to the vessel, will be owned and operated by one or more persons that are citizens of the United States under section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802),

except that the Secretary shall not enter into operating agreements under this subparagraph for more than 5 such vessels.

(B) PARTICIPATING FLEET VESSELS.—Second, to the extent amounts are available after applying subparagraphs (A), for any participating fleet vessel, except that the Secretary shall not enter into operating agreements under this subparagraph for more than 47 vessels.

(C) CERTAIN VESSELS OPERATED BY SECTION 2 CITIZENS.—Third, to the extent amounts are available after applying subparagraphs (A) and (B), for any other vessel that is eligible to be included in the Fleet under section 53102(b), and that, during the period of an operating agreement under this chapter that applies to the vessel, will be—

(i) owned and operated by one or more persons that are citizens of the United States under section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802); or

(ii) owned by a person that is eligible to document the vessel under chapter 121 of this title, and operated by a person that is a citizen of the United States under section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802).

(D) OTHER ELIGIBLE VESSELS.—Fourth, to the extent amounts are available after applying subparagraphs (A), (B), and (C), for any other vessel that is eligible to be included in the Fleet under section 53102(b).

(2) REDUCTION IN NUMBER OF SLOTS FOR PARTICIPATING FLEET VESSELS.—The number in paragraph (1)(B) shall be reduced by 1—

(A) for each participating fleet vessel for which an application for enrollment in the Fleet is not received by the Secretary within the 90-day period beginning on the effective date of this chapter; and

(B) for each participating fleet vessel for which an application for enrollment in the Fleet received by the Secretary is not approved by the Secretary and the Secretary of Defense within the 90-day period beginning on the date of such receipt.

(3) DISCRETION WITHIN PRIORITY.—The Secretary—

(A) subject to subparagraph (B), may award operating agreements within each priority under paragraph (1) as the Secretary considers appropriate; and

(B) shall award operating agreement within a priority—

(i) in accordance with operational requirements specified by the Secretary of Defense;

(ii) in the case of operating agreements awarded under subparagraph (C) or (D) of paragraph (1), according to applicants'

records of owning and operating vessels; and

(iii) subject to the approval of the Secretary of Defense.

(4) TREATMENT OF TANK VESSEL TO BE REPLACED.—(A) For purposes of the application of paragraph (1)(A) with respect to the award of an operating agreement, the Secretary may treat an existing tank vessel that is eligible to be included in the Fleet under section 53102(b) as a vessel that is constructed in the United States after the effective date of this chapter, if—

(i) a binding contract for construction in the United States of a replacement vessel to be operated under the operating agreement is executed by not later than 9 months after the first date amounts are available to carry out this chapter; and

(ii) the replacement vessel is eligible to be included in the Fleet under section 53102(b).

(B) No payment under this chapter may be made for an existing tank vessel for which an operating agreement is awarded under this paragraph after the earlier of—

(i) 4 years after the first date amounts are available to carry out this chapter; or

(ii) the date of delivery of the replacement tank vessel.

(d) LIMITATION.—The Secretary may not award operating agreements under this chapter that require payments under section 53106 for a fiscal year for more than 60 vessels.

(Added Pub. L. 108-136, div. C, title XXXV, § 3531(a), Nov. 24, 2003, 117 Stat. 1808.)

REFERENCES IN TEXT

The effective date of this chapter, referred to in subssecs. (b)(1), (c)(1)(A)(i), (2)(A), (4)(A), is Oct. 1, 2004, see section 3537(a) of Pub. L. 108-136, set out as an Effective Date note under section 53101 of this title.

Section 2 of the Shipping Act, 1916, referred to in subsec. (c)(1)(A)(iii), (C)(i), (ii), is classified to sections 802 and 803 of the Appendix to this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 53101 of this title.

§ 53104. Effectiveness of operating agreements

(a) EFFECTIVENESS, GENERALLY.—The Secretary may enter into an operating agreement under this chapter for fiscal year 2006. Except as provided in subsection (b), the agreement shall be effective only for 1 fiscal year, but shall be renewable, subject to the availability of appropriations, for each subsequent fiscal year through the end of fiscal year 2015.

(b) VESSELS UNDER CHARTER TO UNITED STATES.—Unless an earlier date is requested by the applicant, the effective date for an operating agreement with respect to a vessel that is, on the date of entry into an operating agreement, on charter to the United States Government, other than a charter pursuant to an Emergency Preparedness Agreement under section 53107, shall be the expiration or termination date of the Government charter covering the vessel, or any earlier date the vessel is withdrawn from that charter.

(c) TERMINATION.—

(1) TERMINATION BY SECRETARY.—If the contractor with respect to an operating agreement materially fails to comply with the terms of the agreement—

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

(B) the Secretary shall terminate the operating agreement if the contractor fails to achieve such compliance; and

(C) upon such termination, any funds obligated by the agreement shall be available to the Secretary to carry out this chapter.

(2) EARLY TERMINATION BY CONTRACTOR, GENERALLY.—An operating agreement under this chapter shall terminate on a date specified by the contractor if the contractor notifies the Secretary, by not later than 60 days before the effective date of the termination, that the contractor intends to terminate the agreement.

(3) EARLY TERMINATION BY CONTRACTOR, WITH AVAILABLE REPLACEMENT.—An operating agreement under this chapter shall terminate upon the expiration of the 3-year period beginning on the date a vessel begins operating under the agreement, if—

(A) the contractor notifies the Secretary, by not later than 2 years after the date the vessel begins operating under the agreement, that the contractor intends to terminate the agreement under this paragraph; and

(B) the Secretary, in conjunction with the Secretary of Defense, determines that—

(i) an application for an operating agreement under this chapter has been received for a replacement vessel that is acceptable to the Secretaries; and

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

(I) owned and operated by one or more persons that are citizens of the United States under section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802); or

(II) owned by a person that is eligible to document the vessel under chapter 121 of this title, and operated by a person that is a citizen of the United States under section 2 of the Shipping Act, 1916 (46 U.S.C. App. 802).

(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 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 an operating agreement under this chapter is

terminated under subsection (c)(3), or 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 owner or operator of 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 9 of the Shipping Act, 1916 (46 U.S.C. App. 808); and

(3) if section 902 of the Merchant Marine Act, 1936 (46 U.S.C. App. 1242) is applicable to such vessel after registration of the vessel under such a registry, then the vessel is available to be requisitioned by the Secretary of Transportation pursuant to section 902 of such Act.

(Added Pub. L. 108–136, div. C, title XXXV, § 3531(a), Nov. 24, 2003, 117 Stat. 1810.)

REFERENCES IN TEXT

Section 2 of the Shipping Act, 1916, referred to in subsec. (c)(3)(B)(ii), is classified to sections 802 and 803 of the Appendix to this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 53105 of this title.

§ 53105. Obligations and rights under operating agreements

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

(1) the vessel—

(A) shall be operated exclusively in the foreign commerce or in mixed foreign commerce and domestic trade allowed under a registry endorsement issued under section 12105 of this title; and

(B) shall not otherwise be operated in the coastwise trade; and

(2) the vessel shall be documented under chapter 121 of this title.

(b) ANNUAL PAYMENTS BY SECRETARY.—

(1) IN GENERAL.—An operating agreement under this chapter shall require, subject to the availability of appropriations, that the Secretary make a payment each fiscal year to the contractor in accordance with section 53106.

(2) OPERATING AGREEMENT IS OBLIGATION OF 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 agreement to the extent of actual appropriations.

(c) DOCUMENTATION REQUIREMENT.—Each vessel covered by an operating agreement (including an agreement terminated under section 53104(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 contractor with respect to an operating agreement (including an agreement terminated under section 53104(c)(2)) shall continue to be bound by the provisions of section 53107 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 53107 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 contractor, the Secretary of Transportation, and the Secretary of Defense.

(e) TRANSFER OF OPERATING AGREEMENTS.—A contractor under an operating agreement may transfer the 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 transfer is approved by the Secretary and the Secretary of Defense.

(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 53102(b), if the Secretary, in conjunction with the Secretary of Defense, approve replacement of the vessel.

(Added Pub. L. 108-136, div. C, title XXXV, § 3531(a), Nov. 24, 2003, 117 Stat. 1812.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 53106, 53107 of this title.

§ 53106. Payments

(a) ANNUAL PAYMENT.—

(1) IN GENERAL.—The Secretary, subject to the availability of appropriations and the 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—

- (A) \$2,600,000 for each of fiscal years 2006, 2007, and 2008;
- (B) \$2,900,000, for each of fiscal years 2009, 2010, and 2011; and
- (C) \$3,100,000 for each fiscal years 2012, 2013, 2014, and 2015.

(2) TIMING.—The 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.

(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, in accordance with regulations issued by the Secretary, that the vessel has been and will be operated in accordance with section 53105(a)(1) for at least 320 days in 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 of Transportation shall not make any payment

under this chapter for a vessel with respect to any days for which the vessel is—

(1) under a charter to the United States Government, other than a charter pursuant to an Emergency Preparedness Agreement under section 53107;

(2) not operated or maintained in accordance with an operating agreement under this chapter; or

(3) more than—

(A) 25 years of age, except as provided in subparagraph (B) or (C);

(B) 20 years of age, in the case of a tank vessel; or

(C) 30 years of age, in the case of a LASH vessel.

(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), shall not reduce any payment for the operation of the vessel to carry military or other preference cargoes under 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;

(2) shall not make any payment for any day that the vessel is engaged in transporting more than 7,500 tons of civilian bulk preference cargoes pursuant to section 901(a), 901(b), or 901b of the Merchant Marine Act, 1936 (46 U.S.C. App. 1241(a), 1241(b), or 1241f), that is bulk cargo; and

(3) shall make a pro rata reduction in payment for each day less than 320 in a fiscal year that the vessel is not operated in accordance with section 53105(a)(1), with days during which the vessel is drydocked or undergoing survey, inspection, or repair considered to be days on which the vessel is operated.

(e) LIMITATION REGARDING NONCONTIGUOUS DOMESTIC TRADE.—

(1) IN GENERAL.—No contractor 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 any person that is a citizen of the United States within the meaning of section 2(c) of the Shipping Act, 1916 (46 U.S.C. App. 802(c)).

(3) PARTICIPATES IN A NONCONTIGUOUS DOMESTIC 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. 108-136, div. C, title XXXV, § 3531(a), Nov. 24, 2003, 117 Stat. 1813.)

REFERENCES IN TEXT

Act of March 26, 1934, referred to in subsec. (d)(1), 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 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.)

Subtitle VI—Miscellaneous

Chap. 701. Port Security Sec. 70101

CHAPTER 701—PORT SECURITY

Sec. 70101. Definitions.
70102. United States facility and vessel vulnerability assessments.
70103. Maritime transportation security plans.
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70108. Foreign port assessment.
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70111. Enhanced crewmember identification.
70112. Maritime security advisory committees.1
70113. Maritime intelligence.
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70117. Civil penalty.

§ 70101. Definitions

For the purpose of this chapter:

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