

§ 295.3

(m) *Emergency Preparedness Program Agreement*, means the agreement, required by section 653 of the act, between a Contractor and the Secretary of Transportation (acting through MARAD) to make certain commercial transportation resources available during time of war or national emergency.

(n) *Enrollment*, means the entry into a MSP Operating Agreement with the MARAD to operate a vessel(s) in the MSP Fleet in accordance with §295.20 of this part.

(o) *Fiscal Year*, means any annual period beginning on October 1 and ending on September 30.

(p) *LASH Vessel*, means a lighter aboard ship vessel.

(q) *Militarily Useful*, is defined according to DOD Joint Strategic Planning Capabilities Plan (JSCAP) guidance as follows:

(1) *U.S. Sources*—All active and inactive ocean-going ships (and certain other specially selected vessels) within the following types and criteria from United States sources with a minimum speed of 12 knots.

(2) *Dry Cargo*—All dry cargo ships, including integrated tug/barges (ITBs) with a minimum capacity of 6,000 tons (DWT) capable of carrying, without significant modification, any of the following cargoes: unit equipment, ammunition, or sustaining supplies.

(r) *MSP Fleet*, means the fleet of vessels operating under MSP Operating Agreements.

(s) *MSP Operating Agreement*, means the MSP Operating Agreement, providing for MSP payments entered into by a Contractor and MARAD.

(t) *MSP Payments*, means the payments made for the operation of U.S.-flag vessels in the foreign trade or mixed foreign and domestic trade of the United States allowed under a registry endorsement issued under 46 U.S.C. 12105, to maintain intermodal shipping capability and to meet national defense and security requirements in accordance with the terms and conditions of the MSP Operating Agreement.

(u) *Ocean Common Carrier*, means a carrier that meets the requirements of the MSA, section 654(3).

46 CFR Ch. II (10–1–24 Edition)

(v) *ODS*, means Operating-Differential Subsidy provided by Subtitle A, Title VI, of the Act.

(w) *Operating Day*, means any day during which a vessel is operated in accordance with the terms and conditions of the MSP Operating Agreement.

(x) *Related party*, means:

(1) a holding company, subsidiary, affiliate, or associate of a contractor who is a party to an operating agreement under Subtitle B, Title VI, of the Act; and

(2) an officer, director, agent, or other executive of a contractor or of a person referred to in paragraph (x)(1) of this section.

(y) *Roll-on/Roll-off Vessel*, means a vessel that has ramps allowing cargo to be loaded and discharged by means of wheeled vehicles so that cranes are not required.

(z) *Secretary*, means the Secretary of Transportation.

(aa) *United States Documented Vessel*, means a vessel documented under Chapter 121 of Title 46, United States Code.

§ 295.3 Waivers.

In special circumstances, and for good cause shown, the procedures prescribed in this part may be waived in writing by the Maritime Administration, by mutual agreement of the Maritime Administration and the Contractor, so long as the procedures adopted are consistent with the Act and with the objectives of these regulations.

Subpart B—Establishment of MSP Fleet and Eligibility

§ 295.10 Eligibility requirements.

(a) *Applicant*. Any person may apply to MARAD for Enrollment of Eligible Vessels in MSP Operating Agreements for inclusion in the MSP Fleet pursuant to the provisions of subtitle B, title VI, of the act. Applications shall be addressed to the Secretary, Maritime Administration, 400 Seventh Street, S.W., Washington, D.C. 20590.

(b) *Eligible Vessel*. A vessel eligible for enrollment in a MSP Operating Agreement shall be self-propelled and meet the following requirements:

(1) *Vessel Type*—(i) *Liner Vessel*. The vessel shall be operated by a person as an Ocean Common Carrier.

(ii) *Specialty vessel*. Whether in commercial service, on charter to the DOD, or in other employment, the vessel shall be either:

(A) a Roll-on/Roll-off vessel with a carrying capacity of at least 80,000 square feet or 500 twenty-foot equivalent units; or

(B) a LASH vessel with a barge capacity of at least 75 barges; or

(iii) *Other vessel*. Any other type of vessel that is determined by the MARAD to be suitable for use by the United States for national defense or military purposes in time of war or national emergency; and

(2) *Vessel Requirements*—(i) *U.S. Documentation*. Except as provided in paragraph (b)(2)(iv) of this section, the vessel is a U.S.-documented vessel; and

(ii) *Age*. Except as provided in paragraph (b)(2)(iii), on the date a MSP Operating Agreement covering the vessel is first entered into is:

(A) a LASH Vessel that is 25 years of age or less; or

(B) any other type of vessel that is 15 years of age or less.

(iii) *Waiver Authority*. In accordance with section 651(b)(2) of the act, MARAD is authorized to waive the application of paragraph (b)(2)(ii) of this section if MARAD, in consultation with the Secretary of Defense, determines that the waiver is in the national interest.

(iv) *Intent to document U.S.* Although the vessel may not be a U.S.-documented vessel, it shall be considered an Eligible Vessel if the vessel meets the criteria for documentation under 46 U.S.C. chapter 121, the vessel owner has demonstrated an intent to have the vessel documented under 46 U.S.C. chapter 121, and the vessel will be less than 10 years of age on the date of that documentation; and

(3) *MARAD's determination*. MARAD determines that the vessel is necessary to maintain a United States presence in international commercial shipping and the applicant possesses the ability, experience, resources and other qualifications necessary to execute the obligations of the MSP Operating Agreement, or MARAD, after consultation

with the Secretary of Defense, determines that the vessel is militarily useful for meeting the sealift needs of the United States.

§ 295.11 Applications.

(a) *Action by MARAD*—(1) *Time Deadlines*. Not later than 30 days after the enactment of the Maritime Security Act of 1996, Pub. L. 104-239, MARAD shall accept applications for Enrollment of vessels in the MSP Fleet. Within 90 days after receipt of a completed application, MARAD shall enter into a MSP Operating Agreement with the applicant or provide in writing the reason for denial of that application.

(2) *Closure of Applications*. Applications for MSP Operating Agreements shall be made only at such time as, and in response to, publication of invitations to apply by MARAD in the FEDERAL REGISTER. After the Administrator has fully allocated authorized contracting authority through the award of the maximum number of vessels allowed under § 295.30(a), MARAD will not accept any applications for award of new Operating Agreements until additional contracting authority becomes available, or existing contracting authority reverts back to MARAD.

(3) *Reflagging for Eligible vessels*. Except as provided in paragraph (a)(4) of this section, an applicant may remove a vessel from U.S. registry without MARAD approval if an application for a MSP Operating Agreement has been filed for that vessel, the applicant is qualified, and it has been determined by MARAD to be eligible under MSA section 651(b)(1) under a priority for which sufficient funds are available and the Administrator has not awarded an Operating Agreement for the vessel within 90 days of that application.

(4) *Reflagging ODS and MSC chartered vessels*. Vessels eligible under MSA section 651(b)(1) which are also subject to ODS contracts or on charter to MSC, and for which applications have been denied pursuant to § 295.11(a)(1) of this part, may be removed from U.S. registry only after those agreements have expired and only after the age requirement in section 9(e)(3) of the Shipping Act, 1916 (46 App. U.S.C. 808) has been met.

§ 295.12

(b) *Action by the Applicant.* Applicants for MSP Payments shall submit information on the following (Note: MARAD will accept electronic options (such as facsimile and Internet) for transmission of required information to MARAD, if practicable):

(1) *Intermodal network.* A statement describing its operating and transportation assets, including vessels, container stocks, trucks, railcars, terminal facilities, and systems used to link such assets together;

(2) *Diversity of trading patterns.* A list of countries and trade routes serviced along with the types and volumes of cargo carried;

(3) *Vessel construction date;*

(4) *Vessel type and size;* and

(5) *Military Utility.* An assessment of the value of the vessel to DOD sealift requirements.

(Approved by the Office of Management and Budget under Control Number 2133-0525)

[62 FR 37737, July 15, 1997, as amended at 68 FR 62537, Nov. 5, 2003; 69 FR 61451, Oct. 19, 2004]

§ 295.12 Priority for awarding agreements.

Subject to the availability of appropriations, MARAD shall enter into individual MSP Operating Agreements for Eligible Vessels according to the following priorities:

(a) *First priority requirements.* First priority shall be accorded to any Eligible Vessel meeting the following requirements:

(1) *U.S. citizen ownership.* Vessels owned and operated by persons who are Citizens of the United States as defined in § 295.2; or

(2) *Other corporations.* Vessels less than 10 years of age and owned and operated by a corporation that is:

(i) eligible to document a vessel under 46 U.S.C. chapter 121; and

(ii) affiliated with a corporation operating or managing for the Secretary of Defense other vessels documented under 46 U.S.C. chapter 121, or chartering other vessels to the Secretary of Defense.

(3) *Limitation on number of vessels.* Limitation on the total number of Eligible Vessels awarded under paragraph (a) of this section shall be:

(i) For any U.S. citizen under paragraph (a)(1), the number of vessels may not exceed the sum of:

(A) the number of U.S.-flag documented vessels that the Contractor or a related party operated in the foreign commerce of the United States on May 17, 1995, except mixed coastwise and foreign commerce; and

(B) the number of U.S.-flag documented vessels the person chartered to the Secretary of Defense on that date; and

(ii) For any corporation under paragraph (a)(2) of this section, not more than five Eligible Vessels.

(4) *Related party.* For the purpose of this section a related party with respect to a person shall be treated as the person.

(b) *Second priority requirements.* To the extent that appropriated funds are available after applying the first priority in paragraph (a) of this section, the MARAD shall enter into individual MSP Operating Agreements for Eligible Vessels owned and operated by a person who is:

(1) *U.S. citizen.* A Citizen of the United States, as defined in § 295.2(g), that has not been awarded a MSP Operating Agreement under the priority in paragraph (a) of this section, or

(2) *Other.* A person (individual or entity) eligible to document a vessel under 46 U.S.C. chapter 121, and affiliated with a person or corporation operating or managing other U.S.-documented vessels for the Secretary of Defense or chartering other vessels to the Secretary of Defense.

(c) *Third priority.* To the extent that appropriated funds are available after applying the first and second priority, any other Eligible Vessel.

(d) *Number of MSP Operating Agreements Awarded.* If appropriated funds are not sufficient to award agreements to all vessels within a priority set forth herein, MARAD shall award to each eligible applicant in that priority a number of Operating Agreements that bears approximately the same ratio to the total number of Operating Agreements requested under that priority, and for which timely applications have been made, as the amount of appropriations

available for MSP Operating Agreements for Eligible Vessels in the priority bears to the amount of appropriations necessary for MSP Operating Agreements for all Eligible Vessels in the priority.

Subpart C—Maritime Security Program Operating Agreements

§ 295.20 General conditions.

(a) *Approval.* MARAD may approve applications to enter into a MSP Operating Agreement and make MSP Payments with respect to vessels that are determined to be necessary to maintain a United States presence in international commercial shipping or those that are deemed, after consultation with the Secretary of Defense, to be militarily useful for meeting the sea-lift needs of the United States in national emergencies.

(b) *Effective date—(1) General Rule.* Unless otherwise provided in the contract, the effective date of a MSP Operating Agreement is the date when executed by the Contractor and MARAD.

(2) *Exceptions.* In the case of an Eligible Vessel to be included in a MSP Operating Agreement that is subject to an ODS contract under subtitle A, title VI, of the act or on charter to the U.S. Government, other than a charter under the provisions of an Emergency Preparedness Program Agreement provided by section 653 of the act, unless an earlier date is requested by the applicant, the effective date for a MSP Operating Agreement shall be:

(i) The expiration or termination date of the ODS contract or Government charter covering the vessel, respectively, or

(ii) Any earlier date on which the vessel is withdrawn from that contract or charter.

(c) *Replacement Vessels.* MARAD may approve the replacement of an Eligible Vessel in a MSP Operating Agreement provided the replacement vessel is eligible under § 295.10.

(d) *Notice to shipbuilders.* The Contractor agrees that no later than 30 days after soliciting any offer or bid for the construction of any vessel in a foreign shipyard, and before entering into any contract for construction of a vessel in a foreign shipyard, the Con-

tractor shall provide notice of its intent to enter into such a contract (for vessels being considered for U.S.-flag registry) to MARAD. Within 10 business days after the receipt of such notification, MARAD shall issue a notice in the FEDERAL REGISTER of the Contractor's intent. The Contractor is prohibited from entering into any such contract until 10 business days after the date of publication of such notice.

(e) *Early termination.* A MSP Operating Agreement shall terminate on a date specified by the Contractor if the Contractor notifies MARAD not later than 60 days before the effective date of the proposed termination, that the Contractor intends to terminate the Agreement. The Contractor shall be bound by the provisions relating to vessel documentation and national security commitments to the extent and for the period contained in section 652(m) of the Act.

(f) *Non-renewal for lack of funds.* If, by the first day of a fiscal year, insufficient funds have been appropriated under section 655 of the act for that fiscal year, MARAD shall notify the Congress that MSP Operating Agreements for which insufficient funds are available will be terminated on the 60th day of that fiscal year if sufficient funds are not appropriated or otherwise made available by that date. If only partial funding is appropriated by the 60th day of such fiscal year, then MSP Operating Agreements for which funds are not available shall be terminated using the pro rata distribution method used to award MSP Operating Agreements set forth in § 295.12(d). With respect to each terminated agreement the Contractor shall be released from any further obligation under the agreement, and the Contractor may transfer and register the applicable vessel under a foreign registry deemed acceptable by MARAD. In the event that no funds are appropriated, then all MSP Operating Agreements shall be terminated and each Contractor shall be released from its obligations under the agreement. Final payments under the terminated agreements shall be made in accordance with § 295.30. To the extent that funds are appropriated in a subsequent