Geographic Region: Maine to Florida.
Dated: September 16, 2005.
By order of the Maritime Administrator.

Joel C. Richard,
Secretary, Maritime Administration.

[FR Doc. 05–18979 Filed 9–22–05; 8:45 am]
BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION
Maritime Administration
[Docket No. 2005 22502]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel SNOW GOOSE.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD for the vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2005–22502xxxx at http://dms.dot.gov. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels.

If MARAD determines, in accordance with Pub. L. 105–383 and MARAD’s regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter’s interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD’s regulations at 46 CFR part 388.

DATES: Submit comments on or before October 24, 2005.

ADDRESSES: Comments should refer to docket number MARAD–2005 22502.

Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at http://dmses.dot.gov/submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at http://dms.dot.gov.


SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SNOW GOOSE is: Intended Use: “SNOW GOOSE is in the charter fleet at San Juan Sailing, Bellingham WA. She is used for bareboat charters and for sailing instruction in the sailing school. In the latter capacity, a San Juan Sailing skipper (USCG licensed) takes 6 or fewer passengers for American Sailing Association instruction. These are generally multi-day cruises.” Geographic Region: “Washington State, USA: Primarily Bellingham area and San Juan Islands.”

Dated: September 16, 2005.

By order of the Maritime Administrator.

Joel C. Richard,
Secretary, Maritime Administration.

[FR Doc. 05–18984 Filed 9–22–05; 8:45 am]
BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION
Maritime Administration

Voluntary Intermodal Sealift Agreement

AGENCY: Maritime Administration, DOT.

ACTION: Notice of Voluntary Intermodal Sealift Agreement (VISA).

SUMMARY: The Maritime Administration (MARAD) announces the extension of the Voluntary Intermodal Sealift Agreement (VISA) until October 1, 2007, pursuant to the Defense Production Act of 1950, as amended, (50 U.S.C. App. 2158), as implemented by regulations of the Federal Emergency Management Agency (44 CFR Part 332), “Voluntary agreements for preparedness programs and expansion of production capacity and supply”, authorizes the President, upon a finding that conditions exist which may pose a direct threat to the national defense or its preparedness programs, “* * * to consult with representatives of industry, business, financing, agriculture, labor and other interests * * *” in order to provide the making of such voluntary agreements. It further authorizes the President to delegate that authority to individuals who are appointed by and with the advice and consent of the Senate, upon the condition that such individuals obtain the prior approval of the Attorney General after the Attorney General’s consultation with the Federal Trade Commission. Section 501 of Executive Order 12919, as amended, delegated this authority of the President to the Secretary of Transportation (Secretary), among others. By DOT Order 1900.9, the Secretary delegated to the Maritime Administrator the authority under which the VISA is sponsored. Through advance arrangements in joint planning, it is intended that participants in VISA will provide capacity to support a significant portion of surge and sustainment requirements in the deployment of U.S. military forces during war or other national emergency.

The text of the VISA was first published in the Federal Register on February 13, 1997, to be effective for a two-year term until February 13, 1999. The VISA document has been extended and subsequently published in the Federal Register every two years. The last extension was published on March 16, 2005. The text of the VISA herein has been amended to reflect the Emergency Preparedness Agreement requirements as contained in the Maritime Security Act of 2003 for participants in the Maritime Security Program. The text published herein will not be implemented. Copies will be made available to the public upon request.

FOR FURTHER INFORMATION CONTACT: Taylor E. Jones II, Director, Office of Sealift Support, Room 7304, Maritime Administration, 400 Seventh Street, SW., Washington, DC 20590. (202) 366–2323, Fax (202) 366–3128.

SUPPLEMENTARY INFORMATION: Section 708 of the Defense Production Act of 1950, as amended, (50 U.S.C. App. 2158), as implemented by regulations of the Federal Emergency Management Agency (44 CFR Part 332), “Voluntary agreements for preparedness programs and expansion of production capacity and supply”, authorizes the President, upon a finding that conditions exist which may pose a direct threat to the national defense or its preparedness programs, “* * * to consult with representatives of industry, business, financing, agriculture, labor and other interests * * *” in order to provide the making of such voluntary agreements. It further authorizes the President to delegate that authority to individuals who are appointed by and with the advice and consent of the Senate, upon the condition that such individuals obtain the prior approval of the Attorney General after the Attorney General’s consultation with the Federal Trade Commission. Section 501 of Executive Order 12919, as amended, delegated this authority of the President to the Secretary of Transportation (Secretary), among others. By DOT Order 1900.9, the Secretary delegated to the Maritime Administrator the authority under which the VISA is sponsored. Through advance arrangements in joint planning, it is intended that participants in VISA will provide capacity to support a significant portion of surge and sustainment requirements in the deployment of U.S. military forces during war or other national emergency.

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Text of the Voluntary Intermodal Sealift Agreement:

**Voluntary Intermodal Sealift Agreement (VISA)**

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**Definitions**

For purposes of this agreement, the following definitions apply:

**Administrador**—Maritime Administrator.

**Agreement**—Agreement (proper noun) refers to the Voluntary Intermodal Sealift Agreement (VISA).

**Attorney General**—Attorney General of the United States.

**Broker**—A person who arranges for transportation of cargo for a fee.

**Carrier Coordination Agreement (CCA)**—An agreement between two or more Participants or between Participant and non-Participant carriers to coordinate their services in a Contingency, including agreements to: (i) Charter vessels or portions of the cargo-carrying capacity of vessels; (ii) share cargo handling equipment, chassis, containers and ancillary transportation equipment; (iii) share warehouses, warehouse, marshaling yards and other marine terminal facilities; and (iv) coordinate the movement of vessels.

**Chairman**—FTC—Chairman of the Federal Trade Commission (FTC).

**Charter**—Any agreement or commitment by which the possession or services of a vessel are secured for a period of time, or for one or more voyages, whether or not a demise of the vessel.

**Commercial**—Transportation service provided for profit by privately owned (not government owned) vessels to a private or government shipper. The type of service may be either common carrier or contract carriage.

**Contingency**—Includes, but is not limited to a “contingency operation” as defined at 10 U.S.C. 101(a)(13), and a JCS-directed, NCA-approved action undertaken with military forces in response to: (i) Natural disasters; (ii) terrorists or subversive activities; or (iii) required military operations, whether or not there is a declaration of war or national emergency.

**Contingency contracts**—DoD contracts in which Participants implement advance commitments of capacity and services to be provided in the event of a Contingency.

**Contract carrier**—A for-hire carrier who does not hold out regular service to the general public, but instead contracts, for agreed compensation, with a particular shipper for the carriage of cargo in all or a particular part of a ship for a specified period of time or on a specified voyage or voyages.

**Controlling interest**—More than a 50-percent interest by stock ownership.

**Director—FEMA**—Director of Federal Emergency Management Agency (FEMA). The Director—FEMA is also Under Secretary for Emergency Preparedness and Response, Department of Homeland Security.

**Effective U.S. Control (EUSC)**—U.S. citizen-owned ships which are registered in certain open registry countries and which the United States can rely upon for defense in national security emergencies. The term has no legal or other formal significance. U.S. citizen-owned ships registered in Liberia, Panama, Honduras, the Bahamas and the Republic of the Marshall Islands are considered under effective U.S. control because these do not have any laws that prohibit U.S. requisition. EUSC registries are recognized by the Maritime Administration after consultation with DoD. (MARAD OPLAN 001A, 17 July 1990)

**Enrollment Contract**—The document, executed and signed by MSC, and the individual carrier enrolling that carrier into VISA Stage III.

**Foreign flag vessel**—A vessel registered or documented under the law of a country other than the United States of America.

**Intermodal equipment**—Containers (including specialized equipment), chassis, trailers, tractors, cranes and other materiel handling equipment, as well as other ancillary items.

**Linier**—Type of service offered on a definite, advertised schedule and giving relatively frequent sailings at regular intervals between specific ports or ranges.

**Linier throughput capacity**—The system/intermodal capacity available and committed, used or unused, depending on the system cycle time
necessary to move the designated capacity through to destination. Liner
throughput capacity shall be calculated as: Static capacity (outbound from
CONUS) X VISA X voyage frequency X 5.

Management services—Management expertise and experience, intermodal
terminal management, information resources, and control and tracking
systems.

Ocean common carrier—An entity holding itself out to the general public
to provide transportation by water of passengers or cargo for compensation;
which assumes responsibility for transportation from port or point of
receipt to port or point of destination; and which operates and utilizes a vessel
operating on the high seas for all or part of that transportation. (As defined in 46
App. U.S.C. 1702 and 801 regarding international and interstate commerce
respectively).

Operator—An ocean common carrier or contract carrier that owns or controls
or manages vessels by which ocean transportation is provided.

Organic sealift—For the purposes of this agreement ships considered to be
under government control or long-term charter—Fast Sealift Ships, Ready
Reserve Force and commercial ships under long-term charter to DoD.

Participant—A signatory party to
VISA, and otherwise as defined within
Section VI of this document.

Person—Includes individuals and
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 a foreign
country.

Service contract—A contract between
a shipper (or a shipper's association)
and an ocean common carrier (or
conference) in which the shipper makes
a commitment to provide a certain
minimum quantity of cargo or freight
revenue over a fixed time period, and
the ocean common carrier or conference
comits to a certain rate or rate
schedule, as well as a defined service
level (such as assured space, transit
time, port rotation, or similar service
features), as defined in the Shipping Act
of 1984. The contract may also specify
provisions in the event of
nonperformance on the part of either
party.

Standby period—The interval
between the effective date of a
Participant's acceptance into the
Agreement and the activation of any
stage, and the periods between
deactivation of all stages and any later
activation of any stage.

U.S.-flag Vessel—A vessel registered
or documented under the laws of the
United States of America.

Vessel Sharing Agreement (VSA)
Capacity—Space chartered to a
Participant for carriage of cargo, under
its commercial contracts, service
contracts or in common carriage, aboard
vessels shared with another carrier or
carriers pursuant to a commercial vessel
sharing agreement under which the
carriers may compete with each other
for the carriage of cargo. In U.S. foreign
trades the agreement is filed with the
Federal Maritime Commission (FMC) in
conformity with the Shipping Act of
1984 and implementing regulations.

Volunteers—Any vessel owner/operator
who is an ocean carrier and
who offers to make capacity, resources
or systems available to support
contingency requirements.

Preface
The Administrator, pursuant to the
authority contained in Section 708 of
the Defense Production Act of 1950, as
amended (50 App. U.S.C. 2158[Section
708](DPA)), in cooperation with DoD,
has developed this Agreement [hereafter
called the Voluntary Intermodal Sealift
Agreement (VISA)] to provide DoD the
commercial sealift and intermodal
shipping services/systems necessary to
meet national defense contingency
requirements.

US Transcom procures commercial
shipping capacity to meet requirements
for ships and intermodal shipping
services/systems through arrangements
with common carriers, with contract
carriers and by charter, DoD (through
US Transcom) and DOT (through
MARAD) maintain and operate a fleet of
ships owned by or under charter to the
Federal Government to meet the logistic
needs of the military services which
cannot be met by existing commercial
service. Government controlled ships
are selectively activated for peacetime
military tests and exercises, and to
satisfy military operational
requirements which cannot be met by
commercial shipping in time of war,
national emergency, or military
Contingency. Foreign-flag shipping is
used in accordance with applicable
laws, regulations and policies.

The objective of VISA is to provide
DoD a coordinated, seamless transition
from peacetime to wartime for the
acquisition of commercial sealift and
intermodal capability to augment DoD's
organic sealift capabilities. This
Agreement establishes the terms,
conditions and general procedures by
which persons or parties may become
VISA Participants. Through advance
joint planning among US Transcom,
MARAD and the Participants,
Participants may provide predetermined
capacity in designated stages to support
DoD Contingency requirements.

VISA is designed to create close
working relationships among MARAD,
US Transcom and Participants
through which Contingency needs and
the needs of the civil economy can be
met by cooperative action. During
Contingencies, Participants are afforded
maximum flexibility to adjust
commercial operations by Carrier
Coordination Agreements (CCA), in
accordance with applicable law.

Participants will be afforded the first
opportunity to meet DoD peacetime and
Contingency sealift requirements within
applicable law and regulations, to the
extent that operational requirements are
met. In the event VISA Participants are
unable to fully meet Contingency
requirements, the shipping capacity
made available under VISA may be
supplemented by ships/capacity from
non-Participants in accordance with
applicable law and by ships
requisitioned under Section 902 of the
Merchant Marine Act, 1936 (as
addition, containers and chassis made
available under VISA may be
supplemented by services and
equipment acquired by US Transcom
or accessed by the Administrator
through the provisions of 46 CFR Part
340.

The SECDEF has approved VISA as a
sealift readiness program for the
purpose of Section 909 of the Merchant
Marine Act, 1936, as amended (46 App.

Voluntary Intermodal Sealift
Agreement
I. Purpose
A. The Administrator has made a
determination, in accordance with
Section 708(c)(1) of the Defense
Production Act (DPA) of 1950, that
conditions exist which may pose a
direct threat to the national defense of
the United States or its preparedness
programs and, under the provisions of
Section 708, has certified to the
Attorney General that a standby
agreement for utilization of intermodal
shipping services/systems is necessary
for the national defense. The Attorney
General, in consultation with the
Chairman of the Federal Trade
Commission, has issued a finding that
dry cargo shipping capacity to meet
national defense requirements cannot be
provided by the industry through a
voluntary agreement having less
anticompetitive effects or without a
voluntary agreement.
B. The purpose of VISA is to provide a responsive transition from peace to Contingency operations through pre-coordinated agreements for sealift capacity to support DoD Contingency requirements. VISA establishes procedures for the commitment of intermodal shipping services/systems to satisfy such requirements. VISA will change from standby to active status upon activation by appropriate authority of any of the Stages, as described in Section V.

C. It is intended that VISA promote and facilitate DoD’s use of existing commercial transportation resources and integrated intermodal transportation systems, in a manner which minimizes disruption to commercial operations, whenever possible.

D. Participants’ capacity which may be committed pursuant to this Agreement may include all intermodal shipping services/systems and all ship types, including container, partial container, container/bulk, container/roll-on/roll-off, roll-on/roll-off (of all varieties), breakbulk ships, tug and barge combinations, and barge carrier (LASH, Seabee).

II. Authorities

A. MARAD


2. Section 501 of Executive Order 12919, as amended, delegated the authority of the President under Section 708 to SecTrans, among others. By DOT Order 1900.9, SecTrans delegated to the Administrator the authority under which VISA is sponsored.

B. USTRANSCOM

1. Section 113 and Chapter 6 of Title 10 of the United States Code.

2. DoD Directive 5158.4 designating the Commander to provide common user air, land, and sea transportation for DoD.

III. General

A. Concept

1. VISA provides for the staged, time-phased availability of Participants’ shipping services/systems to meet NCA-directed DoD Contingency requirements in the most demanding defense oriented sealift emergencies and for less demanding defense oriented situations through prenegotiated Contingency contracts between the government and Participants (see Figure 1). Such arrangements will be jointly planned with MARAD, USTRANSCOM, and Participants in peacetime to allow effective, and efficient and best valued use of commercial sealift capacity, provide DoD assured Contingency access, and minimize commercial disruption, whenever possible.

2. Activation will be in accordance with procedures outlined in Section V of this Agreement.

3. Following is the prioritized order for utilization of commercial sealift capacity to meet DoD peacetime and Contingency requirements:

   b. U.S.-flag vessel capacity operated by a non-Participant.
   c. Combination U.S./foreign flag vessel capacity operated by a Participant and combination U.S./foreign flag VSA capacity of a Participant.
   d. Combination U.S./foreign flag vessel capacity operated by a non-Participant.
   e. U.S. owned or operated foreign flag vessel capacity and VSA capacity of a Participant.
   f. U.S. owned or operated foreign flag vessel capacity and VSA capacity of a non-Participant.
   g. Foreign-owned or operated foreign flag vessel capacity of a non-Participant.

4. Under Section VIF of this Agreement, Participants may implement CCAs to fulfill their contractual commitments to meet VISA requirements.

B. Responsibilities

1. The SecDef, through USTRANSCOM, shall:

   a. Define time-phased requirements for Contingency sealift capacity and resources required in Stages I, II and III to augment DoD sealift resources.
   b. Keep MARAD and Participants apprised of Contingency sealift capacity required and resources committed to Stages I and II.
   c. Obtain Contingency sealift capacity through the implementation of specific prenegotiated DoD Contingency contracts with Participants.
   d. Notify the Administrator upon activation of any stage of VISA.

2. The SecTrans, through MARAD, shall:

   a. Review the amount of sealift resources committed in DoD contracts to Stages I and II and notify USTRANSCOM if a particular level of VISA commitment will have serious adverse impact on the commercial sealift industry’s ability to provide essential services. MARAD’s analysis shall be based on the consideration that all VISA Stage I and II capacity committed will be activated. This notification will occur on an as required basis upon the Commander’s acceptance of VISA commitments from the Participants. If so advised by MARAD, USTRANSOM will adjust the size of the stages or provide MARAD with justification for maintaining the size of those stages. USTRANSCOM and MARAD will coordinate to ensure that the amount of sealift assets committed to Stages I and II will not have an adverse, national economic impact.
   b. Coordinate with DoJ for the expedited approval of CCAs.

3. Upon request by the Commander and approval by SecDef to activate Stage III, allocate sealift capacity and intermodal assets to meet DoD Contingency requirements. DoD shall have priority consideration in any allocation situation.

4. Establish procedures, pursuant to section 53107(f) of the Maritime
Security Act of 2003 (MSA 2003) (Pub. L. 108–136, 117 Stat. 1392), for determinations regarding the equivalency and duration of the use of foreign flag vessels to replace U.S.-flag vessel capacity to transport the cargo of a Participant which has entered into an operating agreement under section 53103 of the MSA 2003 and whose U.S.-flag vessel capacity has been removed from regular service to meet VISA contingency requirements. Such foreign flag vessels shall be eligible to transport cargo that is subject to the Cargo Preference Act of 1904 (10 U.S.C. 2631), P.R. 17 (46 App. U.S.C. 1241–1), and Pub. L. 664 (46 App. U.S.C. 1241(a) and (b)). However, any procedures regarding the use of such foreign flag vessels to transport cargo subject to the Cargo Preference Act of 1904 must have the concurrence of USTRANSCOM before it becomes effective.

2. In the event of general requisitioning of ships under 46 App. U.S.C. 1242, the Administrator shall consider commitments made with DoD under this Agreement.

D. Modification/Amendment of This Agreement

1. The Attorney General may modify this Agreement, in writing, after consultation with the Chairman-FTC, SecTrans, through his representative MARAD, and SecDef, through his representative the Commander. Although Participants may withdraw from this Agreement pursuant to Section VII.D, they remain subject to VISA as amended or modified until such withdrawal.

2. The Administrator, Commander and Participants may modify this Agreement at any time by mutual agreement, but only in writing with the approval of the Attorney General and the Chairman-FTC.

3. Participants may propose amendments to this Agreement at any time.

E. Administrative Expenses—Administrative and Out-of-pocket Expenses Incurred by a Participant

Be Borne Solely by the Participant

F. Record Keeping

1. MARAD has primary responsibility for maintaining carrier VISA application records in connection with this Agreement. Records will be maintained in accordance with MARAD Regulations. Once a carrier is selected as a VISA participant, a copy of the VISA application form will be forwarded to USTRANSCOM.

2. In accordance with 44 CFR 332.2(c), MARAD is responsible for the making and record maintenance of a full and verbatim transcript of each JPAG meeting. MARAD shall send this transcript, and any voluntary agreement resulting from the meeting, to the Attorney General, the Chairman-FTC, the Director-FEMA, any other party or repository required by law and to Participants upon their request.

3. USTRANSCOM shall be the official custodian of records related to the contracts to be used under this Agreement, to include specific information on enrollment of a Participant's capacity in VISA.

4. In accordance with 44 CFR 332.3(d), a Participant shall maintain for five (5) years all minutes of meetings, transcripts, records, documents and other data, including any communications with other Participants or with any other member of the industry or their representatives, related to the administration, including planning related to and implementation of Stage activations of this Agreement. Each Participant agrees to make such records available to the Administrator, the Commander, the Attorney General, and the Chairman-FTC for inspection and copying at reasonable times and upon reasonable notice. Any record maintained by MARAD or USTRANSCOM pursuant to paragraphs 1, 2, or 3 of this subsection shall be available for public inspection and copying unless exempted on the grounds specified in 5 U.S.C 552(b) or identified as privileged and confidential information in accordance with Section 708(e).

G. MARAD Reporting Requirements—MARAD Shall Report to the Director-FEMA, as Required, on the Status and Use of This Agreement

IV. Joint Planning Advisory Group

A. The JPAG provides USTRANSCOM, MARAD and VISA Participants a planning forum to:

1. Analyze DoD Contingency sealift/intermodal service and resource requirements.

2. Identify commercial sealift capacity that may be used to meet DoD requirements, related to Contingencies and, as requested by USTRANSCOM, exercises and special movements.

3. Develop and recommend CONOPS to meet DoD-approved Contingency requirements and, as requested by USTRANSCOM, exercises and special movements.

B. The JPAG will be co-chaired by MARAD and USTRANSCOM, and will convene as jointly determined by the co-chairs.

C. The JPAG will consist of designated representatives from MARAD, USTRANSCOM, each Participant, and maritime labor. Other attendees may be invited at the discretion of the co-chairs as necessary to meet JPAG requirements. Representatives will provide technical advice and support to ensure maximum coordination, efficiency and effectiveness in the use of Participants’ resources. All Participants will be invited to all open JPAG meetings. For selected JPAG meetings, attendance may be limited to designated Participants to meet specific operational requirements.

1. The co-chairs may establish working groups within JPAG.

2. Each working group will be co-chaired by representatives designated by MARAD and USTRANSCOM.
D. The JPAG will not be used for contract negotiations and/or contract discussions between carriers and DoD; such negotiations and/or discussions will be in accordance with applicable DoD contracting policies and procedures.

E. The JPAG co-chairs shall:
1. Notify the Attorney General, the Chairman-FTC, Participants and the maritime labor representative of the time, place and nature of each JPAG meeting.
2. Provide for publication in the Federal Register of a notice of the time, place and nature of each JPAG meeting. If the meeting is open, a Federal Register notice will be published reasonably in advance of the meeting. If a meeting is closed, a Federal Register notice will be published within ten (10) days after the meeting and will include the reasons for closing the meeting.
3. Establish the agenda for each JPAG meeting and be responsible for adherence to the agenda.
4. Provide for a full and complete transcript or other record of each meeting and provide one copy of each transcript or other record to the Attorney General, the Chairman-FTC, and to Participants, upon request.
5. Security Measures—The co-chairs will develop and coordinate appropriate security measures so that Contingency planning information can be shared with Participants to enable them to plan their commitments.

V. Activation of VISA Contingency Provisions

A. General

VISA may be activated at the request of the Commander, with approval of SecDef, as needed to support Contingency operations. Activating voluntary commitments of capacity to support such operations will be in accordance with prenegotiated Contingency contracts between DoD and Participants.

B. Notification of Activation

1. The Commander will notify the Administrator of the activation of Stages I, II, and III.
2. The Administrator shall notify the Attorney General and the Chairman-FTC when it has been determined by DoD that activation of any Stage of VISA is necessary to meet DoD Contingency requirements.

C. Voluntary Capacity

1. Throughout the activation of any Stages of this Agreement, DoD may utilize voluntary commitment of sealift capacity or systems.
2. Requests for volunteer capacity will be extended simultaneously to both Participants and other carriers. First priority for utilization will be given to Participants who have signed Stage I and/or II contracts and are capable of meeting the operational requirements. Participants providing voluntary capacity may request USTRANSCOM to activate their prenegotiated Contingency contracts; to the maximum extent possible, USTRANSCOM, where appropriate, shall support such requests. Volunteered capacity will be credited against Participants’ staged commitments, in the event such stages are subsequently activated.
3. In the event Participants are unable to fully meet Contingency requirements, or do not voluntarily offer to provide the required capacity, the shipping capacity made available under VISA may be supplemented by ships/capacity from non-Participants.
4. When voluntary capacity does not meet DoD Contingency requirements, DoD will activate the VISA stages as necessary.

D. Stage I

1. Stage I will be activated in whole or in part by the Commander, with approval of SecDef, when voluntary capacity commitments are insufficient to meet DoD Contingency requirements. The Commander will notify the Administrator upon activation.
2. USTRANSCOM will implement Stage I Contingency contracts as needed to meet operational requirements.

E. Stage II

1. Stage II will be activated, in whole or in part, when Contingency requirements exceed the capability of Stage I and/or voluntarily committed resources.
2. Stage II will be activated by the Commander, with approval of SecDef, following the same procedures discussed in paragraph D above.

F. Stage III

1. Stage III will be activated, in whole or in part, when Contingency requirements exceed the capability of Stages I and II, and other shipping services are not available. This stage involves DoD use of capacity and vessels operated by Participants which will be furnished to DoD when required in accordance with this Agreement. The capacity and vessels are allocated by MARAD on behalf of SecTrans to the Commander.
2. Stage III will be activated by the Commander upon approval by SecDef. Upon activation, SecDef will request SecTrans to allocate sealift capacity based on DoD requirements, in accordance with Title 1 of DPA, to meet the Contingency requirement. All Participants’ capacity committed to VISA is subject to use during Stage III.
3. Upon allocation of sealift assets by SecTrans, through its designated representative MARAD, the Commander will negotiate and execute Contingency contracts with Participants, using pre-approved rate methodologies as established jointly by SecTrans and SecDef in fulfillment of section 53107 of the MSA 2003. Until execution of such contract, the Participant agrees that the assets remain subject to the provisions of Section 902 of the Merchant Marine Act of 1936, Title 46 App. U.S.C. 1242.
4. Simultaneously with activation of Stage III, the DoD Sealift Readiness Program (SRP) will be activated for those carriers still under obligation to that program.

G. Partial Activation

As used in this Section V, activation “in part” of any Stage under this Agreement shall mean one of the following:

1. Activation of only a portion of the committed capacity of some, but not all, of the Participants in any Stage that is activated; or
2. Activation of the entire committed capacity of some, but not all, of the Participants in any Stage that is activated; or
3. Activation of only a portion of the entire committed capacity of all of the Participants in any Stage that is activated.

VI. Terms and Conditions

A. Participation

1. Any U.S.-flag vessel operator organized under the laws of a State of the United States, or the District of Columbia, may become a “Participant” in this Agreement by submitting an executed copy of the form referenced in Section VII, and by entering into a VISA Enrollment Contract with DoD which establishes a legal obligation to perform and which specifies payment or payment methodology for all services rendered.
2. The term “Participant” includes the entity described in VI.A.1 above, and all United States subsidiaries and affiliates of the entity which own, operate, charter or lease ships and intermodal equipment in the regular course of their business and in which the entity holds a controlling interest.
3. Upon request of the entity executing the form referenced in Section VII, the term “Participant” may include the controlled non-domestic
subsidiaries and affiliates of such entity signing this Agreement, provided that the Administrator, in coordination with the Commander, grants specific approval for their inclusion.

4. Any entity receiving payments under the Maritime Security Program (MSP), pursuant to the MSA 2003 (Pub. L. 108–136, 117 Stat. 1392)), shall become a “Participant” with respect to all vessels enrolled in MSP at all times until the date the MSP operating agreement would have terminated according to its original terms. The MSP operator shall be enrolled in VISA as a Stage III Participant, at a minimum. Such participation will satisfy the requirement for an MSP participant to be enrolled in an emergency preparedness program approved by SecDef as provided in section 53107 of the MSA 2003.

5. A Participant shall be subject only to the provisions of this Agreement and not to the provisions of the SRP.

6. MARAD shall publish periodically in the Federal Register a list of Participants.

B. Agreement of Participant

1. Each Participant agrees to provide commercial sealift and/or intermodal shipping services/systems in accordance with DoD Contingency contracts. USTRANSCOM will review and approve each Participant’s commitment to ensure it meets DoD Contingency requirements. A Participant’s capacity commitment to Stages I and II will be one of the considerations in determining the level of DoD peacetime contracts awarded with the exception of Jones Act capacity (as discussed in paragraph 4 below).

2. DoD may also enter into Contingency contracts, not linked to peacetime contract commitments, with Participants, as required to meet Stage I and II requirements.

3. Commitment of Participants’ resources to VISA is as follows:

a. Stage III: A carrier desiring to participate in DoD peacetime contracts/traffic must commit no less than 50% of its total U.S.-flag capacity into Stage III. Carriers receiving DOT payments under the MSP, or carriers subject to Section 909 of Merchant Marine Act of 1936, as amended, that are not enrolled in the SRP will have vessels receiving such assistance enrolled in Stage III. Participants’ capacity under charter to DoD will be considered “organic” to DoD, and does not count towards the Participant’s Contingency commitment during the period of the charter. Participants utilized under Stage III activation will be compensated based upon a DoD pre-approved rate methodology.

b. Stages I and II: DoD will annually develop and publish minimum commitment requirements for Stages I and II. Normally, the awarding of a long-term (i.e., one year or longer) DoD contract, exclusive of charters, will include the annual predesignated minimum commitment to Stages I and/or II. Participants desiring to bid on DoD peacetime contracts will be required to provide commitment levels to meet DoD-established Stage I and/or II minimums on an annual basis. Participants may gain additional consideration for peacetime contract cargo allocation awards by committing capacity to Stages I and II beyond the specified minimums. If the Participant is awarded a contract reflecting such a commitment, that commitment shall become the actual amount of a Participant’s U.S.-flag capacity commitment to Stages I and II. A Participant’s Stage III U.S.-flag capacity commitment shall represent its total minimum VISA commitment. That Participant’s Stage I and II capacity commitments as well as any volunteer capacity contribution by Participant are portions of Participant’s total VISA commitment. Participants activated during Stages I and II will be compensated in accordance with negotiated Contingency contracts.

4. Participants exclusively operating vessels engaged in domestic trades will be required to commit 50% of that capacity to Stage III. Such Participants will not be required to commit capacity to Stages I and II as a consideration of domestic peacetime traffic and/or contract award. However, such Participants may voluntarily agree to commit capacity to Stages I and/or II.

5. The Participant owning, operating, or controlling an activated ship or ship capacity will provide intermodal equipment and management services needed to utilize the ship and equipment at not less than the Participant’s normal efficiency, in accordance with the negotiated Contingency contracts implementing this Agreement.

C. Effective Date and Duration of Participation

1. Participation in this Agreement is effective upon execution by MARAD of the submitted form referenced in Section VII, and approval by USTRANSCOM by execution of an Enrollment Contract, for Stage III, at a minimum.

2. VISA participation remains in effect until the Participant terminates the Agreement in accordance with paragraph D below, or termination of the Agreement in accordance with 44 CFR Sec. 332.4. Notwithstanding termination of VISA or participation in VISA, obligations pursuant to executed DoD peacetime contracts shall remain in effect for the term of such contracts and are subject to all terms and conditions thereof.

D. Participant Termination of VISA

1. Except as provided in paragraph 2 below, a Participant may terminate its participation in VISA upon written notice to the Administrator. Such termination shall become effective 30 days after written notice is received, unless obligations incurred under VISA by virtue of activation of any Contingency contract cannot be fulfilled prior to the termination date, in which case the Participant shall be required to complete the performance of such obligations. Voluntary termination by a carrier of its VISA participation shall not act to terminate or otherwise mitigate any separate contractual commitment entered into with DoD.

2. A Participant having an MSP operating agreement with SecTrans shall not withdraw from this Agreement at any time during the original term of the MSP operating agreement.

3. A Participant’s withdrawal, or termination of this Agreement, will not deprive a Participant of an antitrust defense otherwise available to it in accordance with DPA Section 708 for the fulfillment of obligations incurred prior to withdrawal or termination.

4. A Participant otherwise subject to the DoD SRP that voluntarily withdraws from this Agreement will become subject again to the DoD SRP.

E. Rules and Regulations

Each Participant acknowledges and agrees to abide by all provisions of DPA Section 708, and regulations related thereto which are promulgated by the Secretary, the Attorney General, and the Chairman-FTC. Standards and procedures pertaining to voluntary agreements have been promulgated in 44 CFR part 332. 46 CFR part 340 establishes procedures for assigning the priority for use and the allocation of shipping services, containers and chassis. The JPAG will inform Participants of new and amended rules and regulations as they are issued in accordance with law and administrative due process. Although Participants may withdraw from VISA, they remain subject to all authorized rules and regulations while in Participant status.
F. Carrier Coordination Agreements (CCA)

1. When any Stage of VISA is activated or when DoD has requested volunteer capacity pursuant to Section V.B. of VISA, Participants may implement approved CCAs to meet the needs of DoD and to minimize the disruption of their services to the civil economy.

2. A CCA for which the parties seek the benefit of Section 708(j) of the DPA shall be identified as such and shall be submitted to the Administrator for approval and certification in accordance with Section 708(f)(1)(A) of the DPA. Upon approval and certification, the Administrator shall transmit the Agreement to the Attorney General for a finding in accordance with Section 708(f)(1)(B) of the DPA. Parties to approved CCAs may avail themselves of the antitrust defenses set forth in Section 708(j) of the DPA. Nothing in VISA precludes Participants from engaging in lawful conduct (including carrier coordination activities) that lies outside the scope of an approved Carrier Coordination Agreement; but antitrust defenses will not be available pursuant to Section 708(j) of the DPA for such conduct.

3. Participants may seek approval for CCAs at any time.

G. Enrollment of Capacity (Ships and Equipment)

1. A list identifying the ships/capacity and intermodal equipment committed by a Participant to each Stage of VISA will be prepared by the Participant and submitted to USTRANSCOM within seven days after a carrier has become a Participant. USTRANSCOM will maintain a record of all such commitments. Participants will notify USTRANSCOM of any changes not later than seven days prior to the change.

2. USTRANSCOM will provide a copy of each Participant’s VISA commitment data and all changes to MARAD.

3. Information which a Participant identifies as privileged or business confidential/proprietary data shall be withheld from public disclosure in accordance with Section 708(h)(3) and Section 705(e) of the DPA, 5 U.S.C. 552(b), and 44 CFR Part 332.

4. Enrolled ships are required to comply with 46 CFR Part 307, Establishment of Mandatory Position Reporting System for Vessels.

H. War Risk Insurance

1. Where commercial war risk insurance is not available on reasonable terms and conditions, DOT shall provide non-premium government war risk insurance, subject to the provisions of Section 1205 of the Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1285(a)).

2. Pursuant to 46 CFR 308.1(c), the Administrator (or DOT) will find each ship enrolled or utilized under this agreement eligible for U.S. Government war risk insurance.

I. Antitrust Defense

1. Under the provisions of DPA Section 708, each carrier shall have available as a defense to any civil or criminal action brought under the antitrust laws (or any similar law of any State) with respect to any action taken to develop or carry out this Agreement, that such act was taken in the course of developing or carrying out this Agreement and that the Participant complied with the provisions of DPA Section 708 and any regulation thereunder, and acted in accordance with the terms of this Agreement.

2. This defense shall not be available to the Participant for any action occurring after termination of this Agreement. This defense shall not be available upon the modification of this Agreement with respect to any subsequent action that is beyond the scope of the modified text of this Agreement, except that no such modification shall be accomplished in a way that will deprive the Participant of antitrust defense for the fulfillment of obligations incurred.

3. This defense shall be available only if and to the extent that the Participant asserting it demonstrates that the action, which includes a discussion or agreement, was within the scope of this Agreement.

4. The person asserting the defense bears the burden of proof.

5. The defense shall not be available if the person against whom it is asserted shows that the action was taken for the purpose of violating the antitrust laws.

6. If appropriate, the Administrator, on behalf of SecTrans, and DoD will support agreements filed by Participants with the Federal Maritime Commission that are related to the standby or Contingency implementation of VISA.

J. Breach of Contract Defense

Under the provisions of DPA Section 708, in any action in any Federal or State court for breach of contract, there shall be available as a defense that the alleged breach of contract was caused predominantly by action taken by a Participant during an emergency (including action taken in imminent anticipation of an emergency) to carry out this Agreement. Such defense shall not release the party asserting it from any obligation under applicable law to mitigate damages to the greatest extent possible.

K. Vessel Sharing Agreements (VSA)

1. VISA allows Participants the use of a VSA to utilize non-Participant U.S.-flag or foreign-owned and operated foreign flag vessel capacity as a substitute for VISA Contingency capability provided:

   a. The foreign flag capacity is utilized in accordance with cargo preference laws and regulations.

   b. The use of a VSA, either currently in use or a new proposal, as a substitution to meet DoD Contingency requirements is agreed upon by USTRANSCOM and MARAD.

   c. The Participant carrier demonstrates adequate control over the offered VSA capacity during the period of utilization.

   d. Service requirements are satisfied.

   e. Participant is responsible to DoD for the carriage or services contracted for. Though VSA capacity may be utilized to fulfill a Contingency commitment, a Participant’s U.S.-flag VSA capacity in another Participant’s vessel shall not act in a manner to increase a Participant’s capacity commitment to VISA.

   2. Participants will apprise MARAD and USTRANSCOM in advance of any change in a VSA of which it is a member, if such changes reduce the availability of Participant capacity provided for in any approved and accepted Contingency Concept of Operations.

   3. Participants will not act as a broker for DoD cargo unless requested by USTRANSCOM.

VII. Application and Agreement

The Administrator, in coordination with the Commander has adopted the following form (“Application to Participate in the Voluntary Intermodal Sealift Agreement”) on which intermodal ship operators may apply to become a Participant in this Agreement. The form incorporates, by reference, the terms of this Agreement.

United States of America, Department of Transportation, Maritime Administration

Application To Participate in the Voluntary Intermodal Sealift Agreement

The applicant identified below hereby applies to participate in the Maritime Administration’s agreement entitled “Voluntary Intermodal Sealift Agreement.” The text of said Agreement is published in Federal Register. This

The applicant, if selected, hereby acknowledges and agrees to the incorporation by reference into this Application and Agreement of the entire text of the Voluntary Intermodal Sealift Agreement published in _______ Federal Register 20 , as though said text were physically recited herein.

The Applicant, as a Participant, agrees to comply with the provisions of section 708 of the Defense Production Act of 1950, as amended, the regulations of 44 CFR part 332 and as reflected at 49 CFR subtitle A, and the terms of the Voluntary Intermodal Sealift Agreement. Further, the applicant, if selected as a Participant, hereby agrees to contractually commit to make specifically enrolled vessels or capacity, intermodal equipment and management of intermodal transportation systems available for use by the Department of Defense and to other Participants as discussed in this Agreement and the subsequent Department of Defense Voluntary Intermodal Sealift Agreement Enrollment Contract for the purpose of meeting national defense requirement.

Attest:

(Corporate Secretary)
(CORPORATE SEAL)
Effective Date: ____________________________
(Secretary)
(SEAL)

(Applicant-Corporate Name)
(Signature)

Position Title
United States of America, Department of Transportation, Maritime Administration
By: ____________________________
Maritime Administrator
By Order of the Maritime Administrator.
Joel C. Richard,
Secretary, Maritime Administration.

[FR Doc. 05–18982 Filed 9–22–05; 8:45 am]
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DEPARTMENT OF TRANSPORTATION
Surface Transportation Board
[STB Finance Docket No. 34749]


Gulf & Ohio Railways Holding Co., Inc. (G&O), and H. Peter Claussen and Linda C. Claussen (the Claussens) (collectively applicants), have filed a verified notice of exemption to continue in control of Morehead & South Fork Railroad Co., Inc. (MHSF), upon MHSF’s becoming a Class III rail carrier.

The transaction was scheduled to be consummated on or after September 1, 2005.

This transaction is related to the concurrently filed verified notice of exemption in STB Finance Docket No. 34748, Morehead & South Fork Railroad Co., Inc.—Acquisition and Operation Exemption—Carolina Rail Service, LLC. In that proceeding, MHSF seeks to acquire from Carolina Rail Service, LLC (CRS), and operate CRS’s exclusive freight easement over all railroad tracks at the Port of Morehead City, NC.1 The tracks are owned by North Carolina State Ports Authority (SPA).2 MHSF will operate over the rail property pursuant to an operating agreement with SPA.

G&O is a noncarrier that currently controls eight Class III rail carriers: Chattahoochee & Gulf Railroad Co., Inc. (CGR); Conecuh Valley Railroad Co., Inc. (CVR); Knoxville & Holston River Railroad Co., Inc. (KHR); Laurinburg & Southern Railroad Co., Inc. (LSR); Piedmont & Atlantic Railroad, Inc. (PAR); which operates under the trade name of Yadkin Valley Railroad, Rocky Mount & Western Railroad Co., Inc. (RMW); Three Notch Railroad Co., Inc. (TNR); and Wiregrass Central Railroad Company, Inc. (WCR). The Claussens, also noncarriers, control G&O and one Class III rail carrier, H&S Railroad, Inc. (H&S).

Applicants state that: (1) The rail lines operated by CGR, CVR KHR, LSR, PAR, RMW, TNR, WCR, and H&S do not connect with the rail line being acquired by MHSF; (2) the continuance in control is not part of a series of anticipated transactions that would connect the rail line being acquired by MHSF with applicants’ rail lines; and (3) the transaction does not involve a Class I rail carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. See 49 CFR 1180.2(d)(2). The purpose of establishing MHSF and acquiring the line in STB Finance Docket No. 34748 is to insulate the other affiliated railroads from the financial, legal, and operational risks associated with the transactions contemplated in that proceeding.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under section 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, to STB Finance Docket No. 34749, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Rose-Michele Nardi, Weiner Brodsky Sidman Kider PC, 1300 19th St., NW., Fifth Floor, Washington, DC 20036–1609.

Board decisions and notices are available on our Web site at http://www.stb.dot.gov.

Decided: September 16, 2005.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,
Secretary.

BILLING CODE 4915–01–P