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one MSP Operating Agreement, the contractor may submit a single monthly voucher applicable to all its agreements. Each voucher submission shall include a certification that the vessel(s) for which payment is requested were operated in accordance with § 295.21(d) and applicable MSP Operating Agreements with MARAD, and consideration shall be given to reductions in amounts payable as set forth in § 295.30. All submissions shall be forwarded to the Director, Office of Accounting, MAR-330 Room 7325, Maritime Administration, 400 Seventh Street, SW., Washington, DC 20590. Payments shall be paid and processed under the terms and conditions of the Prompt Payment Act, 31 U.S.C. 3901.

(1) Payments shall be made per vessel, in equal monthly installments, of \$175,000.

(2) To the extent that reductions under § 295.30(b) are known, such reductions shall be applied at the time of the current billing. The daily reduction amounts shall be based on the annual amounts in 295.30(a) of this part divided by 365 days (366 days in leap years) and rounded to the nearest cent. Daily reduction amounts shall be applied as follows:

- FY 1997—\$5,753.42
- FY 1998—\$5,753.42
- FY 1999—\$5,753.42
- FY 2000—\$5,737.70
- FY 2001—\$5,753.42
- FY 2002—\$5,753.42
- FY 2003—\$5,753.42
- FY 2004—\$5,737.70
- FY 2005—\$5,753.42

(3) In the event a monthly payment is for a period less than a complete month, that month's payment shall be calculated by multiplying the appropriate daily rate in § 295.31(a)(2) by the actual number of days the Eligible Vessel operated in accordance with § 295.21.

(4) MARAD may require, for good cause, that a portion of the funds payable under this section be withheld if the provisions of § 295.21(d) have not been met.

(5) Amounts owed to MARAD for reductions applicable to a prior billing period shall be electronically transferred using MARAD's prescribed format, or a check may be forwarded to the Maritime Administration, P.O. Box

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845133, Dallas, Texas 75284-5133, or the amount owed can be credited to MARAD by offsetting amounts payable in future billing periods.

(b) [Reserved]

Subpart E—Appeals Procedures

§ 295.40 Administrative determinations.

(a) *Policy.* A Contractor who disagrees with the findings, interpretations or decisions of the Contracting Officer with respect to the administration of this part may submit an appeal to the Maritime Administrator. Such appeals shall be made in writing to the Maritime Administrator, within 60 days following the date of the document notifying the Contractor of the administrative determination of the Contracting Officer. Such an appeal should be addressed to the Maritime Administrator, Att.: MSP Contract Appeals, Maritime Administration, 400 Seventh St., S.W. Washington, D.C. 20590.

(b) *Process.* The Maritime Administrator may require the person making the request to furnish additional information, or proof of factual allegations, and may order any proceeding appropriate in the circumstances. The decision of the Maritime Administrator shall be final.

PART 296—MARITIME SECURITY PROGRAM (MSP)

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AUTHORITY: Pub. L. 108-136, Pub. L. 109-163, Pub. L. 112-239; 49 U.S.C. 322(a), 46 U.S.C. chapter 531, 49 CFR 1.93.

SOURCE: 70 FR 55588, Sept. 22, 2005, unless otherwise noted.

Subpart A—Introduction

§ 296.1 Purpose.

This part prescribes regulations implementing the provisions of Subtitle C, Maritime Security Fleet Program, Title XXXV of the National Defense Authorization Act for Fiscal Year 2004, the Maritime Security Act of 2003 (MSA 2003), governing Maritime Security Program (MSP) payments for vessels operating in the foreign trade or mixed foreign and domestic commerce of the United States allowed under a registry endorsement issued under 46 U.S.C. 12105. The MSA 2003 provides for joint responsibility between the Department of Defense (DOD) and the Department of Transportation (DOT) for administering the law. These regulations provide the framework for the coordination between DOD and DOT in implementing the MSA 2003. Implementation of the MSA 2003 has been delegated by the Secretary of Transportation to the Maritime Administrator, U.S. Maritime Administration and by the Secretary of Defense to the Commander, U.S. Transportation Command, respectively.

§ 296.2 Definitions.

For the purposes of this part:

Act means the Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1101 *et seq.*).

Administrator means the Maritime Administrator, U.S. Maritime Administration (MARAD), U.S. DOT, who is au-

thorized by the Secretary of Transportation to administer the MSA 2003, in consultation with the Commander, U.S. Transportation Command (USTRANSCOM).

Agreement Vessel means a vessel covered by an MSP Operating Agreement.

Applicant means an applicant for an MSP Operating Agreement. The term, “applicant” excludes a trust.

Bulk Cargo means cargo that is loaded and carried in bulk without mark or count.

Chapter 121 means the vessel documentation provisions of chapter 121 of title 46, United States Code.

Coastwise Trade means trade between points in the United States.

Commander means Commander, USTRANSCOM, who is authorized by the Secretary of Defense to administer the MSA 2003, in consultation with the Administrator.

Contracting Officer means the Associate Administrator for National Security, MARAD.

Contractor means the owner or operator of a vessel that enters into an MSP Operating Agreement for the vessel with the Secretary of Transportation (acting through MARAD) pursuant to §53103 of the MSA 2003. The term, “Contractor” excludes a trust.

Defense Contractor means a person that operates or manages United States documented vessels for the Secretary of Defense or charters vessels to the Secretary of Defense and has entered into a special security agreement with the Secretary of Defense.

Documentation Citizen means an entity able to document a vessel under 46 U.S.C. chapter 121. This definition includes a trust.

DOD means the U.S. Department of Defense.

Domestic Trade means trade between points in the United States.

Eligible Vessel means a vessel that meets the requirements of §53102(b) of the MSA 2003.

Emergency Preparedness Agreement means an agreement, required by §53107 of the MSA 2003, 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 or whenever determined by the Secretary of Defense to be necessary for national security or contingency operation.

Enrollment means the entry into an MSP Operating Agreement with MARAD to operate a vessel(s) in the MSP Fleet in accordance with § 296.30.

Fiscal Year means any annual period beginning on October 1 and ending on September 30.

Foreign Commerce means a cargo freight service, including direct and relay service, operated exclusively in the foreign trade or in mixed foreign and domestic trade allowed under a registry endorsement under 46 U.S.C. 12111 where the origination point or the destination point of any cargo carried is the United States, regardless of whether the vessel provides direct service between the United States and a foreign country, or commerce or trade between foreign countries.

Militarily Useful is defined, in terms of minimum military capabilities, according to DOD Joint Strategic Planning Capabilities Plan (JSCAP) guidance.

MSA 2003 means the Maritime Security Act of 2003, as amended.

MSP Fleet means the fleet of vessels established under section 53102(a) of the MSA 2003 and operated under MSP Operating Agreements.

MSP Operating Agreement means the assistance agreement between a Contractor and MARAD that provides for MSP payments, but is not a “procurement contract.”

MSP Payments means the payments made for the operation of U.S.-flag vessels in the foreign commerce.

Noncontiguous Domestic Trade means 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.

Operating Day means any calendar day during which a vessel is operated in accordance with the terms and conditions of the MSP Operating Agreement.

Operator is a person that either owns a vessel and operates that vessel directly or charters in a vessel at a financial risk through a demise charter that transfers virtually all the rights

and obligations of the vessel owner to the vessel operator, such as that of crewing, supplying, maintaining, insuring and navigating the vessel.

Owner means an entity that has title and/or beneficial ownership of a vessel. Only an owner that is a person is eligible to enter into an MSP Operating Agreement.

Participating Fleet Vessel means a vessel that—

(1) On October 1, 2015—

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

(ii) Is less than 20 years of age if the vessel is a tank vessel, or is less than 25 years of age for all other vessel types; and

(2) on December 31, 2014, is covered by an MSP Operating Agreement under 46 U.S.C. chapter 531.

Person includes corporations, limited liability companies, 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. For purposes of holding an MSP Operating Agreement, the term “person” excludes a trust.

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.

SecDef means Secretary of Defense acting through the Commander USTRANSCOM.

Section 2 Citizen means a United States citizen within the meaning of 46 U.S.C. 50501, without regard to any statute that “deems” a vessel to be owned and operated by a United States citizen within the meaning of 46 U.S.C. 50501.

Secretary means the Secretary of Transportation acting through the Maritime Administrator.

Tank Vessel means, as stated in 46 U.S.C. 2101(38), a self-propelled tank vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue. In addition, the vessel must be double hulled and capable of carrying simultaneously more than two separated grades of refined petroleum products.

Transfer of an MSP Operating Agreement includes any sale, assignment or transfer of the MSP Operating Agreement, either directly or indirectly, or through any sale, reorganization, merger, or consolidation of the MSP Contractor.

United States includes the 50 U.S. States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, and the Virgin Islands.

United States Citizen Trust means:

(1) Subject to paragraph (3) of this definition, a trust that is qualified under this definition.

(2) A trust is qualified only if:

(i) Each of the trustees is a Section 2 Citizen; and

(ii) The application for documentation of the vessel under 46 U.S.C. chapter 121, 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 Section 2 Citizen, or involving any other person that is not a Section 2 Citizen, 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.

(3) If any person that is not a Section 2 Citizen 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 instrument provides that persons who are not Section 2 Citizens may not hold more than 25 percent of the aggregate authority to so direct or remove a trustee.

(4) This definition shall not be considered to prohibit a person who is not a Section 2 Citizen from holding more than 25 percent of the beneficial interest in a trust.

United States Documented Vessel means a vessel documented under 46 U.S.C. chapter 121.

[70 FR 55588, Sept. 22, 2005, as amended at 82 FR 56897, Dec. 1, 2017]

§ 296.3 Applications.

(a) *Action by MARAD—Time Deadlines.* Applications for enrollment of vessels in the MSP were due by October 15, 2004 to the Secretary, Maritime Administration, Room 7218, Maritime Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Any applications received before October 15, 2004 were deemed to have been submitted on October 15, 2004. Within 90 days after receipt of a completed application, the Secretary was obligated to approve the application, in conjunction with the SecDef, or provide in writing the reason for denial of that application. Execution of a standard MSP Operating Agreement took place reasonably soon after approval of the application. Contractors of MSP Operating Agreements were required to submit ownership information and signed charters to MARAD for approval by July 1, 2005.

(b) *Action by the Applicant.* Each applicant for an MSP Operating Agreement was required to submit an application under OMB control number 2133-0525 to the Secretary, Maritime Administration in the manner prescribed on that form. Application forms were made available from MARAD's Office of Sealift Support, or the application form could be downloaded from the MARAD Web site, <http://www.marad.dot.gov>, Information required included:

(1) An *Affidavit of Section 2 Citizenship* that comports with the requirements of 46 CFR part 355, if applying as a Section 2 Citizen. Otherwise, an affidavit which demonstrates that the applicant is qualified to document a vessel under 46 U.S.C. chapter 121 is required. If the applicant is a vessel operator and proposes to employ a vessel manager, then the applicant must supply an affidavit for the vessel manager that meets the same citizenship requirements applicable to the applicant;

(2) *Certificate of Incorporation;*

(3) *Copies of by-laws or other governing instruments;*

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(4) *Maritime related affiliations;*

(5) *Financial data:*

(i) Provide an audited financial statement or a completed MARAD Form MA-172 dated within 120 days after the close of the most recent fiscal period; and

(ii) Provide estimated annual forecast of maritime operations for the next five years showing revenue and expense, including explanations of any significant increase or decrease of these items;

(6) *Intermodal network:*

(i) If applicable, a statement describing the applicant's operating and transportation assets, including vessels, container stocks, trucks, railcars, terminal facilities, and systems used to link such assets together;

(ii) The number of containers and their twenty-foot equivalent units (TEUs) by size and type owned and/or long-term leased by the applicant distinguishing those that are owned from those that are leased; and

(iii) The number of chassis by size and type owned and/or long-term leased by the applicant distinguishing those that are owned from those that are leased;

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

(8) *Applicant's record of owning and/or operating vessels:* Provide number of ships owned and/or operated, specifying flag, in the last ten years, trades involved, number of employees in your ship operations department, vessel or ship managers utilized in the operation of your vessels, and any other information relevant to your record of owning or operating vessels;

(9) *Bareboat charter arrangements,* if applicable;

(10) *Vessel data including vessel type, size, and construction date;*

(11) *Military Utility:* Provide an assessment of the value of the vessel to DOD sealift requirements. Provide characteristics which indicate the value of the vessels to DOD including items of specific value, *e.g.*, ramp strengths, national defense sealift features;

(12) *Special Security Agreements:* If applicable, provide a copy of any Special Security Agreement;

(13) If applicable, *Certification from documentation citizen who is the demise charterer of the MSP vessel:* In a letter submitted at the time of the application addressed to the Administrator and the Commander from the Chief Executive Officer, or equivalent, of a documentation citizen that is the proposed Contractor of an MSP Operating Agreement, provide a statement that there are no treaties, statutes, regulations, or other laws of the foreign country(ies) of the parent, that would prohibit the proposed Contractor from performing its obligations under an MSP Operating Agreement. The statement should be substantially in the following format:

"I, _____, Chief Executive Officer of _____, certify to you that there are no treaties, statutes, regulations, or other laws of the foreign country(ies) of _____'s ultimate foreign parent or intermediate parents that would prohibit _____ from performing its obligations under an Operating Agreement with the Maritime Administration pursuant to the Maritime Security Act of 2003.";

(14) *Agreement from the ultimate foreign parent of the documentation citizen:* An agreement to be signed and submitted at the time of application from the equivalent of the Chief Executive Officer of the ultimate foreign parent of a documentation citizen not to influence the operation of the MSP vessel in a manner that will adversely affect the interests of the United States. The Agreement should be substantially in the following format:

"I, _____, am the Chief Executive Officer [or equivalent] of _____, the ultimate foreign parent of _____, a documentation citizen of the United States that is applying for an MSP Operating Agreement. I agree on behalf of the "foreign parent" that neither _____ (the ultimate foreign parent) nor any representative of _____ (the ultimate foreign parent) will in any way influence the operation of the MSP vessel in a manner that will adversely affect the interests of the United States.";

(15) *Replacement Vessel Plan and Age Waiver:* If applicable, an applicant must submit a replacement vessel plan along with an age waiver request if the applicant seeks an age waiver for an existing vessel(s). The vessel replacement

plan shall include the vessel's characteristics, a letter of intent or other document indicating agreement for purchase of vessel, and a forecast of operations for five years for the replacement vessel. The age restriction for over-age vessels shall not apply to a Participating Fleet Vessel during the 30-month period beginning on the date the vessel begins operating under an MSP Operating Agreement under the MSA 2003 provided that the Secretary has determined that the Contractor has entered into an arrangement for a replacement vessel that will be eligible to be included in an MSP Operating Agreement, and;

(16) *Anti-Lobbying Certificate*: A certificate as required by 49 CFR part 20 stating that no funds provided under MSP have been used for lobbying to obtain an Operating Agreement.

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

§ 296.4 Waivers.

In General—In special circumstances, and for good cause shown, the procedures prescribed in this part may be waived in writing by the Secretary, by mutual agreement of the Secretary in consultation with the SecDef, and the Contractor, so long as the procedures adopted are consistent with the MSA 2003 and with the objectives of these regulations.

Subpart B—Eligibility

§ 296.10 Citizenship requirements of owners, charterers and operators.

Citizenship requirements are deemed to have been met if during the entire period of an MSP Operating Agreement under this chapter that applies to the vessel, all of the conditions of any of the paragraphs (a), (b), (c), or (d) of this section are met, and subject to conditions in paragraph (e):

(a) A vessel to be included in an MSP Operating Agreement is owned and operated by one or more persons that are Section 2 Citizens.

(b) A vessel to be included in an MSP Operating Agreement is owned by either a person that is a Section 2 Citizen or a United States Citizen Trust, and the vessel is demise chartered to a non-Section 2 Citizen—

(1) That is eligible to document the vessel under 46 U.S.C. chapter 121;

(2) Whose chairman of the board of directors, chief executive officer, and a majority of the members of the board of directors are Section 2 Citizens, and are appointed and subject to removal only upon approval by the Secretary as follows:

(i) Proposed changes to the chairman of the board, chief executive officer, and membership of the board of directors must be submitted to the Administrator 60 days before scheduled to take effect; and

(ii) MARAD must approve or disapprove changes within 30 days of receiving the proposed changes;

(3) That certifies to the Secretary in a format substantially similar to the format at § 296.3(b)(13) that there are no treaties, statutes, regulations, or other laws that would prohibit the Contractor from performing its obligations under an MSP Operating Agreement at the time of application for an MSP Operating Agreement; and

(4) The ultimate foreign parent of that person proffers, at the time of application for an MSP Operating Agreement, an agreement in a format substantially similar to the format at § 296.3(b)(14) not to influence the vessel's operation in a way that is detrimental to the United States.

(c) A vessel to be included in an MSP Operating Agreement is owned and operated by a defense contractor or a related person to include affiliated or related companies within the same corporate group that:

(1) Is eligible to document the vessel under 46 U.S.C. chapter 121;

(2) Operates or manages other United States-documented vessels for the SecDef, or charters other vessels to the SecDef;

(3) Has entered into a special security agreement with the SecDef;

(4) Certifies to the Secretary, at the time of application, in a format substantially similar to the format of § 296.3(b)(13), that there are no treaties, statutes, regulations, or other laws that would prohibit the Contractor from performing its obligations under an MSP Operating Agreement; and

(5) Has its ultimate foreign parent proffer, at the time of application for

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an MSP Operating Agreement, an agreement in a format substantially similar to the format of § 296.3(b)(14) not to influence the vessel's operation in a way that is detrimental to the United States.

(d) The vessel is owned by a documentation citizen and demise chartered to a Section 2 Citizen.

(e) Where applicable, the Secretary and the SecDef shall notify the Senate Committees on Armed Services, and Commerce, Science, and Transportation and the House of Representatives Committee on Armed Services that they concur with the certifications by the documentation citizens under § 296.3(b)(13) and that they have reviewed the agreements proffered by the ultimate foreign parent under § 296.3(b)(14), and agree that there are no other legal, operational, or other impediments that would prohibit the contractors for the vessels from performing their obligations under MSP Operating Agreements.

§ 296.11 Vessel requirements.

(a) *Eligible vessel.* A vessel is eligible to be included in an MSP Operating Agreement if:

(1) The vessel is:

(i) Determined by the SecDef to be suitable for use by the United States for national defense or military purposes in time of war or national emergency; and

(ii) Determined by the Secretary to be commercially viable;

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

(3) The vessel is self-propelled and—

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

(ii) Is 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:

(i) A United States documented vessel under 46 U.S.C. chapter 121; or

(ii) Not a United States-documented vessel under 46 U.S.C. chapter 121, but the owner of the vessel has demonstrated an intent to have the vessel documented under 46 U.S.C. chapter 121

at the time the vessel is to be included in the MSP fleet; and

(A) The vessel is eligible for a certificate of inspection if the Secretary of the Department in which the United States Coast Guard is operating determines that:

(1) The vessel is classed and designed in accordance with the rules of the American Bureau of Shipping (ABS) or another classification society accepted by such Secretary;

(2) 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 U.S.-flag vessel; and

(3) The flag country has not been identified by such Secretary as inadequately enforcing international vessel regulations.

(B) [Reserved]

(b) *Waiver of age restriction of vessels.* The SecDef, in conjunction with the Secretary, may waive the age restriction in paragraph (a) of this section 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 the MSA 2003.

(c) *Telecommunications and other electronic 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 MSP Operating Agreement 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 (*see* 47 CFR Chapter I).

[70 FR 55588, Sept. 22, 2005; 70 FR 59400, Oct. 12, 2005; 82 FR 56897, Dec. 1, 2017]

§ 296.12 Applicants.

Applicant. Owners or operators of an eligible vessel may apply to MARAD for inclusion of that vessel in the MSP Fleet pursuant to the provisions of the MSA 2003. Applications shall be addressed to the Secretary, Maritime Administration, Room 7218, Maritime Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

Subpart C—Priority for Granting Applications

§ 296.20 Tank vessels.

(a) First priority for the award of MSP Operating Agreements under MSA 2003 shall be granted to a tank vessel that is constructed in the United States after October 1, 2004.

(b) First priority for the award of MSP Operating Agreements under the MSA 2003 may be granted to a tank vessel that is less than ten years of age on the date it enters an MSP Operating Agreement:

(1) *Provided:* (i) That the Contractor agrees to execute a binding agreement approved by the Secretary for a replacement vessel to be operated under the MSP Operating Agreement and to be built in the United States not later than nine months after the first date appropriated funds are available for construction and operating assistance for a minimum of three tank vessels;

(ii) A tank vessel under this section is eligible to be included in the MSP under § 296.11(a); and

(iii) A tank vessel under this section is owned and operated during the period of the MSP Operating Agreement by one or more persons that are Section 2 Citizens;

(2) No payment can be made for an existing tank vessel granted priority one status after the earlier of:

(i) Four years following the date this MSP Operating Agreement is effective, except if amounts are available for construction of a minimum of three tank vessels under the National Defense Tank Vessel Construction Assistance Program (NDTVCP) by October 1, 2007, then no payments shall be made for the existing “tank vessel” after four years following the date such amounts are available; or

(ii) The date of delivery of the replacement tank vessel constructed in the United States after October 1, 2004.

(3) The Secretary will not enter into more than five MSP Operating Agreements for tank vessels under this priority. If the five tank vessel MSP Operating Agreement slots are not fully subscribed, the Secretary, in consultation with the SecDef, may award the non-subscribed slots to lower priority vessels, if deemed appropriate. If the Secretary determines that no funds are, or are likely to be, allocated for any tank vessel construction in the United States, the five slots may nevertheless be awarded to existing tank vessels or the slots may be awarded permanently to any eligible vessels. The Secretary may temporarily award a slot reserved for a tank vessel under construction to a lower priority vessel during the construction period of that vessel if an existing tank vessel offered by the tank vessel Contractor is not eligible for priority for that slot. If no existing tank vessel is offered by the tank vessel Contractor, the Secretary may temporarily award an MSP Operating Agreement to any eligible vessel of another Contractor until a new tank vessel’s construction is completed in the United States. Such temporary MSP Operating Agreements may be terminated under terms set forth in the temporary MSP Operating Agreement.

§§ 296.21–296.23 [Reserved]

§ 296.24 Subsequent awards of MSP Operating Agreements.

(a) MARAD intends to ensure that all available MSP Operating Agreements are fully utilized at all times in order to maximize the benefit of the MSP. Accordingly, when an MSP Operating Agreement becomes available through

termination by the Secretary or early termination by the MSP contractor, and no transfer under 46 U.S.C. 53105(e) is involved, MARAD will reissue the MSP Operating Agreement pursuant to the following criteria:

(1) The proposed vessel shall meet the requirements for vessel eligibility in 46 U.S.C. 53102(b);

(2) The applicant shall meet the vessel ownership and operating requirements for priority in 46 U.S.C. 53102(c); and

(3) Priority will be assigned on the basis of vessel type established by military requirements specified by the Secretary of Defense. After consideration of military requirements, priority shall be given to an applicant that is a United States citizen under section 50501 of this title.

(b) MARAD shall allow an applicant at least 30 days to submit an application for a new MSP Operating Agreement.

(c) MARAD and USTRANSCOM will determine if the applications received form an adequate pool for award of a reissued MSP Operating Agreement. If so, MARAD will award a reissued MSP Operating Agreement from that pool of qualified applicants in its discretion according to the procedures of paragraph (a) of this section, subject to approval of the Secretary of Defense. MARAD and USTRANSCOM may decide to open a new round of applications. MARAD shall provide written reasons for denying applications. In as much as MSP furthers a public purpose and MARAD does not acquire goods or services through MSP, the selection process for award of MSP Operating Agreements does not constitute an acquisition process subject to any procurement law or the Federal Acquisition Regulations.

[82 FR 56897, Dec. 1, 2017]

Subpart D—Maritime Security Program Operating Agreements

§ 296.30 General conditions.

(a) *Approval.* The Secretary, in conjunction with the Secretary of Defense, may approve applications to enter into a MSP Operating Agreement and make MSP Payments with respect to vessels

that are determined by the Secretary to be commercially viable and deemed by the Secretary of Defense to be militarily useful for meeting the sealift needs of the United States in time of war or national emergencies. The Secretary announced an initial award of 60 MSP Operating Agreements on January 12, 2005. In June 2014, the Secretary extended the term of all 60 MSP Operating Agreements through FY 2025.

(b) *Effective date*—(1) *General rule.* Unless otherwise provided, the effective date of an MSP Operating Agreement is October 1, 2005.

(2) *Exceptions.* In the case of an Eligible Vessel to be included in an MSP Operating Agreement that is on charter to the U.S. Government, other than a charter under the provisions of an Emergency Preparedness Agreement (EPA) provided by 46 U.S.C. 53107, as amended, unless an earlier date is requested by the applicant, the effective date for an MSP Operating Agreement shall be:

(i) The expiration or termination date of the Government charter covering the vessel; or

(ii) Any earlier date on which the vessel is withdrawn from that charter, but not before October 1, 2005.

(c) *Replacement vessels.* A Contractor may replace an MSP vessel under an MSP Operating Agreement with another vessel that is eligible to be included in the MSP under section 296.11(a), if the Secretary, in conjunction with the Secretary of Defense, approves the replacement vessel.

(d) *Termination by the Secretary.* If the Contractor materially fails to comply with the terms of the MSP Operating Agreement:

(1) The Secretary shall notify the Contractor and provide a reasonable opportunity for the Contractor to comply with the MSP Operating Agreement;

(2) The Secretary shall terminate the MSP Operating Agreement if the Contractor fails to achieve such compliance; and

(3) Upon such termination, any funds obligated by the relevant MSP Operating Agreement shall be available to the Secretary to carry out the MSP.

(e) *Early termination by Contractor, generally.* An MSP Operating Agreement shall terminate on a date specified by the Contractor if the Contractor notifies the Secretary not later than 60 days before the effective date of the proposed termination that the Contractor intends to terminate the MSP Operating Agreement. The Contractor shall be bound by the provisions relating to vessel documentation and national security commitments, and by its EPA for the full term, from October 1, 2005, through September 30, 2025, of the MSP Operating Agreement.

(f) [Reserved]

(g) *Non-renewal for lack of funds.* If, by the first day of a fiscal year, sufficient funds have not been appropriated under the authority of MSA 2003, as amended, for that fiscal year, the Secretary will notify the Senate Committees on Armed Services and Commerce, Science, and Transportation, and the House of Representatives Committee on Armed Services, that MSP Operating Agreements 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. If only partial funding is appropriated by the 60th day of such fiscal year, then the Secretary, in consultation with the Secretary of Defense, shall select the vessels to retain under MSP Operating Agreements, based on the Secretaries' determinations of the most militarily useful and commercially viable vessels. 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 MSP Operating Agreement. Final payments under the terminated MSP Operating Agreements shall be made in accordance with § 296.41. To the extent that funds are appropriated in a subsequent fiscal year, former MSP Operating Agreements may be reinstated if mutually acceptable to the Administrator and the Contractor, provided the MSP vessel remains eligible.

(h) *Release of vessels from obligations.* If sufficient funds are not appropriated for payments under an MSP Operating Agreement for any fiscal year by the 60th day of that fiscal year, then—

(1) Each vessel covered by a terminated MSP Operating Agreement is released from any further obligation under the MSP Operating Agreement;

(2) The owner and operator of a non-tank vessel may transfer and register the applicable vessel under foreign registry deemed acceptable by the Secretary and the SecDef, notwithstanding 46 U.S.C. chapter 561 and 46 CFR part 221;

(3) If section 902 of the Act is applicable to a vessel that has been transferred to a foreign registry due to a terminated MSP Operating Agreement, then that vessel is available to be requisitioned by the Secretary pursuant to section 902 of the Act; and

(4) Paragraph (h) of this section is not applicable to vessels under MSP Operating Agreements that have been terminated for any other reason.

(i) *Foreign transfer of vessel.* A Contractor may transfer a non-tank vessel to a foreign registry, without approval of the Secretary, if the Secretary, in conjunction with the Secretary of Defense, determines that the contractor will provide a replacement vessel:

(1) Of equal or greater military capability and of a capacity that is equivalent or greater as measured in deadweight tons, gross tons, or container equivalent units, as appropriate;

(2) That is a documented vessel under 46 U.S.C. chapter 121 by the owner of the vessel to be placed under a foreign registry; and

(3) That is not more than 10 years of age on the date of that documentation.

(j) *Transfer of MSP Operating Agreements.* A contractor under an MSP Operating Agreement may transfer the agreement (including all rights and obligations under the MSP Operating Agreement) to any person that is eligible to enter into the MSP Operating Agreement under this chapter if the Secretary and the Secretary of Defense determine that the transfer is in the best interests of the United States. A transaction shall not be considered a transfer of an MSP Operating Agreement if the same legal entity with the same vessels remains the contracting party under the MSP Operating Agreement.

[82 FR 56897, Dec. 1, 2017]

§ 296.31

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§ 296.31 MSP assistance conditions.

(a) *Term of MSP Operating Agreement.* MSP Operating Agreements are authorized for 20 years, starting on October 1, 2005, and ending on September 30, 2025, but payments to Contractors are subject to annual appropriations each fiscal year. MARAD may enter into MSP Operating Agreements for a period less than the full term authorized under the MSA 2003, as amended.

(b) *Terms under a Continuing Resolution (CR).* In the event funds are available under a CR, the terms and conditions of the MSP Operating Agreements shall be in force provided sufficient funds are available to fully meet obligations under MSP Operating Agreements, and only for the period stipulated in the applicable CR. If funds are not appropriated under a CR at sufficient levels for any portion of a fiscal year, the Secretary will select the vessels to retain within the funding level of the previous fiscal year, in consultation with the SecDef, based on the Secretaries' determination of the most militarily useful and commercially viable vessels. With regard to an MSP Operating Agreement that does not receive funds, the terms and conditions of any applicable MSP Operating Agreement may be voided and the Contractor may request termination of the MSP Operating Agreement.

(c) *National security requirements.* Each MSP Operating Agreement shall require the owner or operator of an Eligible Vessel included in that MSP Operating Agreement to enter into an EPA pursuant to section 53107 of the MSA 2003. The EPA shall be a document incorporating the terms of the Voluntary Intermodal Sealift Agreement (VISA), as approved by the Secretary and the SecDef, or other agreement approved by the Secretaries.

(d) *Vessel operating agreements.* The MSP Operating Agreement shall require that during the period an Eligible Vessel is included in that MSP Operating Agreement, the Eligible Vessel shall:

(1) *Documentation:* Be documented as a U.S.-flag vessel under 46 U.S.C. chapter 121;

(2) *Operation:* Be operated exclusively in the foreign commerce or in mixed foreign commerce and domestic trade

allowed under a registry endorsement issued under 46 U.S.C. 12111, and shall not otherwise be operated in the coastwise trade of the United States; and

(3) *Noncontiguous Domestic Trade:* Not receive MSP payments during a period in which the Contractor participates, *i.e.*, directly or indirectly owns, charters, or operates, a vessel engaged in noncontiguous domestic trade unless the Contractor is a Section 2 Citizen.

(e) *Obligation of the U.S. Government.* The amounts payable as MSP payments under an MSP Operating Agreement shall constitute a contractual obligation of the United States Government to the extent of available appropriations.

(f) *U.S. Merchant Marine Academy cadets.* The MSP Operator shall agree to carry on the MSP vessel two U.S. Merchant Marine Academy cadets, if available, on each voyage.

[70 FR 55588, Sept. 22, 2005, as amended at 82 FR 56898, Dec. 1, 2017]

§ 296.32 Reporting requirements.

The Contractor shall submit to the Director, Office of Financial Approvals, Maritime Administration, 2nd Floor, West Building, 1200 New Jersey Ave. SE., Washington, DC 20590, one of the following reports, including management footnotes where necessary to make a fair financial presentation:

(a) *Form MA-172:* Not later than 120 days after the close of the Contractor's semiannual accounting period, a Form MA-172 on a semiannual basis, in accordance with 46 CFR 232.6; or

(b) *Financial Statement:* Not later than 120 days after the close of the Contractor's annual accounting period, an audited financial statement in accordance with 46 CFR 232.6 and the most recent vessel operating cost data submitted as part of its EPA, or if not current year data, a Schedule 310 of the MA-172.

(Approved by the Office of Management and Budget under Control Number 2133-0005)

[70 FR 55588, Sept. 22, 2005, as amended at 82 FR 56898, Dec. 1, 2017]

Subpart E—Billing and Payment Procedures

§ 296.40 Billing procedures.

Submission of voucher. For contractors operating under more than one MSP Operating Agreement, the contractor may submit a single monthly voucher applicable to all its MSP Operating Agreements. Each voucher submission shall include a certification that the vessel(s) for which payment is requested were operated in accordance with § 296.31(d) and applicable MSP Operating Agreements with MARAD, and consideration shall be given to reductions in amounts payable as set forth in § 296.41(b) and (c). All submissions shall be forwarded to the Director, Office of Accounting, MAR-330, Maritime Administration, 2nd Floor, West Building, 1200 New Jersey Ave. SE., Washington, DC 20590. Payments shall be paid and processed under the terms and conditions of the Prompt Payment Act, 31 U.S.C. 3901.

[82 FR 56898, Dec. 1, 2017]

§ 296.41 Payment procedures.

(a) *Amount payable.* An MSP Operating Agreement shall provide, subject to the availability of appropriations and to the extent the MSP Operating Agreement is in effect, for each Agreement Vessel, an annual payment equal to \$2,600,000 for FY 2006, FY 2007, FY 2008; \$2,900,000 for FY 2009, FY 2010, FY 2011; \$3,100,000 for FY 2012, FY 2013, FY 2014, and FY 2015; \$3,500,000 for FY 2016; \$4,999,950 for FY 2017; \$5,000,000 for FY 2018, FY 2019, and FY 2020; \$5,233,463 for FY 2021; and \$3,700,000 for FY 2022, FY 2023, FY 2024, and FY 2025. This amount shall be paid in equal monthly installments at the end of each month. The annual amount payable shall not be reduced except as provided in paragraphs (b) and (c) of this section.

(b) *Reductions in amount payable.* (1) The annual amount otherwise payable under an MSP Operating Agreement shall be reduced on a pro rata basis for each day less than 320 in a fiscal year that an Agreement Vessel:

(i) Is not operated exclusively in the foreign commerce, except for tank vessels, which may be operated in foreign-to-foreign commerce;

(ii) Is operated in the coastwise trade; or

(iii) Is not documented under 46 U.S.C. chapter 121.

(2) To the extent that a Contractor operates MSP vessels less than 320 days under the provisions of § 296.31(d), payments will be reduced for each day less than 320 days.

(c) *No payment.* (1) Regardless of whether the Contractor has or will operate for 320 days in a fiscal year, a Contractor shall not be paid:

(i) For any day that an Agreement Vessel is engaged in transporting more than 7,500 tons (using the U.S. English standard of short tons, which converts to 6,696.75 long tons, or 6,803.85 metric tons) of civilian bulk preference cargoes pursuant to section 901(a), 901(b), or 901b of the Act, provided that it is bulk cargo;

(ii) During a period in which the Contractor participates in noncontiguous domestic trade, unless that Contractor is a Section 2 Citizen;

(iii) While under charter to the United States Government other than a charter pursuant to an EPA under § 53107 of the MSA 2003. A voyage charter that is essentially a contract of affreightment will not be considered to be a charter;

(iv) For a vessel in excess of 25 years of age, except for a LASH vessel in excess of 30 years of age or a tank vessel which is limited to 20 years of age, unless the vessel is a Participating Fleet Vessel meeting the requirements of § 296.21(e);

(v) For days in excess of 30 days in a fiscal year in which a vessel is drydocked or undergoing survey, inspection, or repair unless prior to the expiration of the vessel's 30-day period, approval is obtained from MARAD for an extension beyond 30 days. Drydocking, survey, inspection, or repair periods of 30 days or less are considered operating days; and

(vi) If the contracted vessel is not operated or maintained in accordance with the terms of the MSP Operating Agreement.

(2) To the extent that non-payment days under paragraph (c) of this section are known, Contractor payments shall be reduced at the time of the current billing. The daily reduction amounts

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shall be based on the annual amounts in paragraph (a) of this section divided by 365 days (366 days in leap years) and rounded to the nearest cent. Daily reduction amounts shall be applied.

(3) MARAD may require, for good cause, that a portion of the funds payable under this section be withheld if the provisions of §296.31(d) have not been met.

(4) Amounts owed to MARAD for reductions applicable to a prior billing period shall be electronically transferred using MARAD's prescribed format, or a check may be forwarded to the Maritime Administration, P.O. Box 845133, Dallas, Texas 75284-5133, or the amount owed can be credited to MARAD by offsetting amounts payable in future billing periods.

[70 FR 55588, Sept. 22, 2005, as amended at 82 FR 56898, Dec. 1, 2017]

Subpart F—Appeals Procedures

§ 296.50 Administrative determinations.

(a) *Policy.* A Contractor who disagrees with the findings, interpretations or decisions of the Maritime Administration or the Contracting Officer with respect to the administration of this part or any other dispute or complaint concerning MSP Operating Agreements may submit an appeal to the Administrator. Such appeals shall be made in writing to the Secretary, within 60 days following the date of the document notifying the Contractor of the administrative determination of the Contracting Officer. Such an appeal should be addressed to the Maritime Administrator, Attn.: MSP Operating Agreement Appeals, Maritime Administration, 400 Seventh St., SW., Wash-

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ington, DC 20590. Such an appeal is a prerequisite to exhausting administrative remedies.

(b) *DOD determinations.* The MSA 2003 assigns joint and separate roles and responsibilities to the Secretary and to the SecDef. The Administrator and the Commander will make joint and separate findings, interpretations, and decisions necessary to implement the MSA 2003. A Contractor who disagrees with the initial findings, interpretations or decisions regarding the implementation of the MSA 2003—whether joint or separate in nature—shall communicate such disagreement to the Contracting Officer. Any disagreement or dispute of a Contractor may, where appropriate, be transferred to the Director, Policy and Plans, U.S. Transportation Command (Director), for resolution. A Contractor who disagrees with the findings, interpretations, or decisions of the Director, with respect to the administration of this part, may submit an appeal to the Commander. Such an appeal shall be made in writing to the Commander within 60 days following the date of the document notifying the Contractor of the administrative determination of the Director. Such an appeal should be addressed to the Commander, U.S. Transportation Command, 508 Scott Drive, Scott Air Force Base, IL 62225-5357.

(c) *Process.* The Administrator, or the Commander in the case of a DOD determination, may require the person making the request to furnish additional information, or proof of factual allegations, and may order any proceeding appropriate in the circumstances. The decision of the Administrator, or the Commander in the case of a DOD determination, shall be final.