

§ 296.31

46 CFR Ch. II (10–1–06 Edition)

(1) Of equal or greater military capability or 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 subject to an MSP Operating Agreement may transfer that MSP Operating Agreement (including all rights and obligations under that MSP Operating Agreement) to any person eligible to enter into an MSP Operating Agreement under § 296.10 and of the same or more restrictive U.S. citizen priority, provided that prior approval to transfer the MSP Operating Agreement is granted by the Secretary and the SecDef. The Contractor should allow at least 90 days for processing of a transfer request.

§ 296.31 MSP assistance conditions.

(a) *Term of MSP Operating Agreement.* MSP Operating Agreements are authorized for 10 years, starting on October 1, 2005, and ending on September 30, 2015, 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.

(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, except for tankers, which may be operated in foreign-to-foreign commerce, 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.

§ 296.32 Reporting requirements.

The Contractor shall submit to the Director, Office of Financial and Rate Approvals, Maritime Administration, 400 Seventh St., SW., Washington, DC 20590, one of the following reports, including management footnotes where necessary to make a fair financial presentation: