

Maritime Administration, DOT

§ 296.41

(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)

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, 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.

§ 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; and \$3,100,000 for FY 2012, FY 2013, FY 2014, FY 2015. 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 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.

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., Washington, 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.

Subpart G—Maintenance and Repair Reimbursement Pilot Program

§ 296.60 Applications.

Section 3517, Subtitle A of Title XXXV establishes a five-year pilot program for MSP vessels to perform maintenance and repair (M&R) work in United States shipyards.

(a) The M&R pilot program is authorized at \$19.5 million per year for FYs 2006-2011.

(b) The M&R pilot program is a voluntary program and MSP operators are not required to participate.