the MSP Operating Agreement thereafter and provide the basis on which they rely for such certification, such as a copy of a vessel title of ownership or a demise charter that remains in effect until September 30, 2015.

(2) The full term of the MSP Operating Agreement is the period from October 1, 2005 through September 30, 2015. If a vessel proposed to be included in the MSP will become ineligible for the program prior to September 30, 2015, due to vessel age restrictions, then the full term of the MSP Operating Agreement for that vessel for purposes of paragraph (d)(1) of this section is the period the vessel meets the applicable age restrictions. MARAD may still award an MSP Operating Agreement through September 30, 2015, to an applicant having authority to enter into an MSP Operating Agreement for a vessel whose age eligibility expires before that date. For companies requesting an age waiver, the Applicant must submit an appropriate replacement vessel at least 120 days prior to the date of expiration of age eligibility.

(3) For the purposes of paragraph (d)(1) of this section, in the case of a vessel that is subject to a demise charter that terminates by its terms on September 30, 2005 (without giving effect to any extension provided therein for completion of a voyage or to effect the actual redelivery of the vessel), or that is terminable at will by the owner of the vessel after such date, only the owner of the vessel (provided the owner of the vessel is a ''person'' as defined in § 296.2) shall be treated as having the authority referred to in paragraph (d)(1) of this section.

(4) If two or more applicants claim authority for the same vessel, the Secretary may request additional information bearing on the issue of which party has authority to enter into an MSP Operating Agreement, and the Secretary shall, in his/her sole discretion, decide the matter as he/she deems appropriate.

(e) During the 30-month period commencing October 1, 2005, the age restrictions set forth under § 296.11(a) and § 296.41(c) do not apply to a Participating Fleet Vessel operating under an MSP Operating Agreement, provided:

(1) The Contractor has entered into an arrangement to obtain and operate under that MSP Operating Agreement a replacement vessel for that Participating Fleet Vessel; and

(2) The Secretary determines that the replacement vessel will be eligible to be included in the MSP Fleet under § 296.11(a).

(f) In the event that a Participating Fleet Vessel will be unavailable to participate in the MSP on October 1, 2005, due to an unforeseen casualty to the vessel, a Contractor may offer an eligible replacement vessel. The replacement vessel must subsequently be approved by MARAD and DOD. The replacement vessel must operate under an MSP Operating Agreement in sufficient time to meet the 180 minimum operation days required during the fiscal year to avoid being in default of the MSP Operating Agreement.

§ 296.22 Other vessels.

(a) *Third Priority.* To the extent that appropriated funds are available after applying the first priority, tank vessels, in § 296.20, and the second priority, Participating Fleet Vessels, in § 296.21, the third priority is for any other vessel that is eligible to be included in an MSP Operating Agreement under § 296.11(a), and that, during the period of that MSP Operating Agreement, will be:

(1) Owned and operated by one or more persons that are Section 2 Citizens; or

(2) Owned by a person that is eligible to document the vessel under 46 U.S.C. chapter 121 and operated by a person that is a Section 2 Citizen.

(b) *Fourth Priority.* To the extent that appropriations are available after applying the first priority in § 296.20, the second priority in § 296.21, and the third priority in paragraph (a) of this section, the fourth priority is for any other vessel that is eligible to be included in an MSP Operating Agreement under § 296.11(a).

§ 296.23 Discretion within priority.

The Secretary—

(a) Subject to paragraph (b) of this section, may award MSP Operating Agreements within each priority as the Secretary considers appropriate; and