

General Agents of the Authority, and the ship repair contractors is set forth in the "General Provisions for Small Repairs" and, therefore, no further reference is made to said procedure herein.

Sec. 2 Description of NSA-WORKSMALREP Contract.

This is an individual fixed price contract which may be awarded to any firm not holding an NSA-LUMPSUMREP Contract, as a result of formal competitive bids, spot bids, or by negotiation for the performance of ship repair work. NSA Order No. 46 (SRM-5, Revised) sets forth the conditions when work may be awarded on the basis of formal competitive bids, spot bids or negotiation, therefore, further reference thereto will not be made herein.

Sec. 3 When the NSA-WORKSMALREP Contract may be used.

This contract may be used for awards to firms performing specialized work such as repairs to and adjustment of compasses, direction finders, radios, refrigerators, etc., as well as minor voyage repairs of a general nature and fees of the American Bureau of Shipping. The use of this contract is limited to awards not to exceed a total aggregate cost of \$2,000.

Sec. 4 Persons authorized to make awards under the NSA-WORKSMALREP Contract.

Authority is hereby delegated to the Atlantic, Gulf and Pacific Coast Directors, Chiefs of Local and District Ship Repair and Maintenance Offices and the General Agents to make awards under this form of contract, provided the aggregate cost of the work does not exceed \$2,000, and is within their expenditure limitations.

Sec. 5 Responsibility for duplicating copies of NSA-WORKSMALREP Contract.

It will be the responsibility of the several Coast Directors, Local and District Ship Repair and Maintenance Offices and the General Agents to duplicate copies of the work order form and general provisions to suit their respective needs.

PART 340—PRIORITY USE AND ALLOCATION OF SHIPPING SERVICES, CONTAINERS AND CHASSIS, AND PORT FACILITIES AND SERVICES FOR NATIONAL SECURITY AND NATIONAL DEFENSE RELATED OPERATIONS

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AUTHORITY: 50 U.S.C. 4501 *et seq.* ("The Defense Production Act"); Executive Order 13603 (77 FR 16651); Executive Order 12656 (53 FR 47491); Pub. L. 114-74; 49 CFR 1.45; 49 CFR 1.93(l).

SOURCE: 58 FR 29352, May 20, 1993, unless otherwise noted.

§ 340.1 Scope.

This part establishes procedures for assigning priority for use by defense agencies, on commercial terms, of commercial shipping services, containers and chassis, and port facilities and services and for allocating vessels employed in commercial shipping services, containers and chassis, and port facilities and services for exclusive use by defense agencies (as defined in 340.2), at any time where appropriate under provision of title I of the Defense Production Act of 1950 (50 U.S.C. App. 2061 *et seq.*) as determined by the Secretary of Transportation. The procedures will provide the means to require vessel and port operators to provide defense agencies with existing commercial services and facilities not obtainable through established transportation procurement procedures. Thus the procedures will minimize interference with commercial operations and ensure rapid response to defense needs in times of crisis or war.

§ 340.2 Definitions.

As used in this regulation:

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(a) *Administrator* means the Maritime Administrator, Department of Transportation, who is, ex officio, the Director, National Shipping Authority, within the Maritime Administration (MARAD). Pursuant to 49 CFR 1.45(a)(5), the Maritime Administrator is authorized to carry out emergency preparedness functions assigned to the Secretary by Executive Order 12656 (53 FR 47490, November 18, 1988).

(b) *Container* means any type of container for intermodal surface movement that is 20 feet in length or longer, 8 feet wide, and of any height, including specialized containers, with International Standards Organization standard fittings.

(c) *Container service* means the intermodal movement, which includes an ocean movement leg, of goods in containers.

(d) *Container service operator* means a vessel operator (defined in §340.2(v)) that provides containerized ocean shipping service.

(e) *Container supplier* means a U.S.-citizen controlled (pursuant to 46 App. U.S.C. 802) company which manufactures containers, is a container service operator, or is in the business of leasing containers.

(f) *Chassis* means a vehicle built specifically for the purpose of transporting a container so that when the chassis and container are assembled the unit produced serves the same function as a road trailer.

(g) *Chassis supplier* means a U.S.-citizen controlled (pursuant to 46 App. U.S.C. 802) company which is a container service operator or is in the business of leasing chassis.

(h) *Defense agency* means the Department of Defense, or any other department or agency of the Federal Government as determined by the Secretary of Transportation, for the purposes of this regulation.

(i) *FEMA* means the Federal Emergency Management Agency.

(j) *NAO* means the NSA Allocation Order, which is an order allocating the exclusive use of a vessel employed in commercial shipping service, a container, a chassis, or a port facility for the purposes of providing its services to a defense agency for a specified period.

(k) *NSA* means the National Shipping Authority, which is the emergency shipping operations activity of the Department of Transportation (MARAD).

(l) *NSPO* means an NSA Service Priority Order, which is an order directing that priority of service be given to the movement of cargoes of a defense agency.

(m) *Planning order* means a notification of tentative arrangements to meet anticipated defense agency requirements, issued by NAO or NSPO format, for planning purposes only.

(n) *Port authority* means any state, municipal, or private agency, or firm that (1) owns port facilities (2) manages such facilities for common-user commercial shipping services under lease from an owner; (3) owns or operates a proprietary port facility or terminal; and (4) otherwise leases or licenses and manages a port facility.

(o) *Port facilities and services* means (1) all port facilities, for coastwise, inter-coastal, inland waterways, and Great Lakes shipping and overseas shipping, including, but not limited to wharves, piers, sheds, warehouses, terminals, yards, docks, control towers, container equipment, maintenance buildings, container freight stations and port equipment, including harbor craft, cranes and straddle carriers; and (2) port services normally used in accomplishing the transfer or interchange of cargo and passengers between vessels and other modes of transportation, or in connection therewith.

(p) *Secretary* means the Secretary of Transportation or his or her designees to whom emergency authorities under the Defense Production Act of 1950 have been delegated, i.e., the Director of Office of Emergency Transportation or the Departmental Crisis Coordinator.

(q) *Secretarial Review* means the process by which the Secretary or his or her designee(s) exercises review, coordination, and control over departmental emergency preparedness programs and/or matters.

(r) *Shipper* means a civilian or Government agency that owns (or is responsible to the owner for) goods transported in waterborne service.

(s) *Shipping service* means a commercial service which provides for the

movement of passengers or cargo by one or more modes of transportation and includes a waterborne movement leg in the overseas, coastwise, intercoastal, inland waterways, or Great Lakes shipping trades.

(t) *Vessel* means a vessel employed in commercial service for waterborne movement of passengers or cargo in the overseas, coastwise, intercoastal, inland waterways or Great Lakes shipping trades, or any portion of the cargo-carrying capacity of such vessel.

(u) *Vessel operator* means a company owning and/or operating, to and from any U.S. port, an ocean-going overseas, coastwise, intercoastal, inland waterways or Great Lakes vessel that is U.S.-flag, or foreign-flag and U.S.-citizen controlled (pursuant to 46 App. U.S.C. 802), or foreign-flag and non-citizen controlled that is made available to the United States (as described in §340.3(j)).

§ 340.3 General provisions.

(a) The provisions of this rule apply pursuant to authority granted to the President by title I, Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*) that authority having been delegated to the Secretary of Transportation, with respect to civil transportation services, by §322.3(b) of title 44, Code of Federal Regulations. In order to give priority to performance under contracts deemed necessary or appropriate to promote the national defense and to allocate materials and facilities in such manner, upon such conditions and to such extent as necessary or appropriate to promote the national defense, the following procedures shall be applicable:

(1) In connection with deployment of the Armed Forces of the United States, or other requirements of the nation's defense, a defense agency (as defined in §340.2(h) of this part) may request priority use or allocation of vessels employed in commercial shipping services, containers, chassis, or port facilities and services.

(2) The Secretary may authorize initiation of priority and allocation authority in accordance with administrative and statutory authorities.

(3) The Administrator, on approval by the Secretary to initiate the use of

priority and allocation authority under this regulation and in conformance with national program priorities, may direct owners and/or operators of vessels, containers, chassis, or port facilities to give priority usage to the defense agency or may allocate vessels, containers, chassis, or facilities for the defense agency's use during specified periods.

(b) A defense agency may transmit requests for assignment of priority for use or for allocation of vessels, containers, chassis, and port facilities and services to the Secretary by letter, memorandum, or electrical message.

(c) Justification for requested priorities or allocations may include references to military operations plans. When classified, justifications may be provided separately by correspondence or staff coordination. NSPOs and NAOs will not include classified information.

(d) The Administrator shall determine, before issuing an NSPO or NAO, that the action is necessary to meet the requirements of the national defense (as determined by the defense agency) and conforms to Secretarial guidance for coordinating the Department's crisis response, and that the proposed approach is the most effective way to do so. The Administrator, in conjunction with the defense agency, shall coordinate with vessel operators, container suppliers, chassis suppliers, port authorities and the Coast Guard to identify vessels, equipment and facilities to meet requirements covered by NSPOs and NAOs. The Administrator shall ensure that arrangements to provide defense support under NSPOs and NAOs satisfy the defense agency's requirements with minimum disruption to commercial activities.

(e) When resources are required for movement of hazardous or other special cargo, the Administrator shall ensure that the Commandant of the Coast Guard and the Captain of the Port and other concerned hazardous materials officials of the U.S. Department of Transportation, as required, are notified and that the views of all concerned agencies and interests are obtained and reflected in actions taken pursuant to this regulation. Any action taken pursuant to this regulation shall conform with existing regulations for the safe

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transportation of hazardous materials and or cargoes, subject to Department of Transportation exemptions.

(f) The Secretary shall notify FEMA of the intention to issue any directive granting priority for use or allocation of vessels, containers, chassis, or port facilities and services, and shall provide information copies of NSPOs and NAOs as required to the defense agency concerned, FEMA, the Interstate Commerce Commission and the Coast Guard.

(g) Defense agencies which foresee difficulty in meeting their needs for vessels employed in commercial shipping services, containers, chassis, or port facilities and services shall coordinate with MARAD, the Coast Guard, vessel operators, container suppliers, chassis suppliers, and port authorities concerned before the need arises. The Administrator, after Secretarial review, may issue planning orders for information and guidance of affected agencies confirming tentative arrangements to meet the defense agencies' needs. No action will be taken to give effect to those arrangements until NSPOs and NAOs are issued at the time the services, equipment, or facilities are required.

(h) Defense agencies shall pay for services covered by NSPOs and NAOs on the basis of commercial tariffs, or on the basis of contracts concluded between the operator interests and the defense agencies concerned, or on the basis of existing contracts where both parties so agree.

(i) Defense agencies shall be responsible for payment of costs arising from:

(1) Shifting ships to unoccupied berths for defense use;

(2) Discharging commercial cargo to free ships for defense use; and

(3) Such other costs as may be agreed between the defense agency and the provider of service.

(j) The provisions of this regulation shall apply to foreign vessels, containers, and chassis only when and to the extent that such vessels, containers, and chassis are available to the United States because of control by U.S. citizens (46 App. U.S.C. 802) or by provision of international agreements for use of shipping services and related resources for the common defense.

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(k) Recipients of NSPOs and NAOs shall notify the Administrator, without undue delay, when they cannot comply or are experiencing difficulty in complying with the provisions of the Orders.

§ 340.4 Shipping services.

(a) When a defense agency requires shipping services not obtainable through established transportation procurement practices, the following procedures shall apply:

(1) Except during periods of Presidentially-declared national defense emergencies, when requests shall be transmitted to the Administrator, the agency shall transmit a request to the Secretary specifying:

(i) The type of service required;

(ii) The route over which priority of service is required;

(iii) The period during which priority of service is required; and

(iv) Justification for priority use of the requested service.

(2) The Administrator, pursuant to the circumstances specified in § 340.4(a)(1), shall identify vessel operators that can provide the necessary service and issue NSPOs in coordination with the Secretary to those operators directing that priority be given to the movement and delivery of the defense agency's cargo and/or passengers by the type of service specified in the NSPO during the specified period.

(3) Each vessel operator in receipt of an NSPO shall:

(i) Give precedence to the cargoes of the defense agency in provision of equipment, loading, ocean transport and delivery; and

(ii) Coordinate with other operators in receipt of NSPOs applicable to the same priority movement program to ensure movement of the defense agency's cargoes on first available sailings.

(b) When a defense agency has need for vessels employed in commercial service on a continuing basis for national defense operations for a specified period or for the duration of a defense emergency which they cannot obtain through established transportation procurement practices, the following procedures shall apply:

(1) The agency shall transmit to the Secretary, with a copy to the Administrator, a request specifying the kinds of services required, the arrangements under which the agency proposes that the services be acquired, managed and compensated, and justification for allocation of the required vessels.

(2) The Administrator, upon receiving guidance from the Secretary, shall identify vessel operators that can supply the requested services and issue NAOs to operators directing that specified vessels be made available for use of the defense agency for specified periods. As far as practicable, the economic impact will be balanced among operators.

(3) Each vessel operator in receipt of an NAO shall provide vessels in coordination with the defense agency as specified in the NAO.

§ 340.5 Containers and chassis.

(a) When a defense agency requires priority use of containers and/or chassis not obtainable through established transportation procurement practices, the following procedures shall apply:

(1) Except during periods of Presidentially-declared national defense emergencies, when requests shall be transmitted to the Administrator, the agency shall transmit a request to the Secretary specifying:

(i) The route over which or the area in which priority use of containers and/or chassis is required;

(ii) The period during which priority use is required;

(iii) the approximate time-phased movement requirement in containers and/or chassis of specified sizes and types or in 20-foot equivalent units (TEU); and

(iv) Justification for priority use of containers and/or chassis.

(2) The Administrator pursuant to the circumstances in §340.5(a)(1) shall:

(i) Identify container service operators capable of meeting the requirement; and

(ii) Issue NSPOs or NAOs in coordination with the Secretary to those container service operators, directing that priority be given to supply of containers and/or chassis against the defense requirement.

(3) Each container service operator in receipt of an NSPO shall:

(i) Coordinate with the defense agency on schedules for spotting empty containers and/or chassis and for movement of containerized cargoes; and

(ii) Supply containers and/or chassis to the defense agency in accordance with the defense agency's scheduling needs or supply the first available containers and/or chassis if those needs cannot be met.

(b) When a defense agency requires the allocation of containers and/or chassis on a continuing basis for national defense operations, the following procedures shall apply:

(1) They agency shall transmit to the Secretary, with a copy to the Administrator, request specifying:

(i) The number of containers and/or chassis required by type;

(ii) The general terms and conditions under which the agency proposes to acquire the needed containers and/or chassis and compensate the owners or operators;

(iii) The expected duration of the lease, if the containers and/or chassis are to be leased;

(iv) The locations at which the agency will take possession of the containers and/or chassis and the required delivery schedule; and

(v) Justification for allocation of containers and/or chassis.

(2) The Administrator in coordination with the Secretary shall identify container and chassis suppliers that can supply the required containers and/or chassis, and shall provide, so far as practicable, for balancing the defense agency's requirement against other requirements for containers and/or chassis so as to minimize disruption of inventory distribution, and shall issue NAOs to suppliers, directing the allocation of specified numbers of containers and/or chassis by type for exclusive use of the defense agency for a specified period.

(3) Each container and chassis supplier in receipt of an NAO shall deliver the containers and/or chassis specified in the NAO to the defense agency at the places and times specified in the NAO or separately agreed upon with the defense agency, under terms and

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conditions agreed upon with the defense agency.

§ 340.6 Port facilities and services.

(a) When a defense agency requires priority use of port facilities and services not obtainable through established transportation procurement practices, the following procedures shall apply:

(1) Except during periods of Presidentially-declared national defense emergencies, when requests shall be transmitted to the Administrator, the agency shall transmit a request to the Secretary specifying:

(i) The ports at which priority use of port facilities and services are required and the kinds of facilities and services required at each port;

(ii) The approximate scale and duration of the operation for which priority support is required; and

(iii) Justification for priority use of port facilities and services.

(2) The Administrator in coordination with the Secretary shall issue NSPOs to the port authorities concerned, directing that priority be given to the receipt, in transit handling, and outloading of the defense agency's cargo during a specified period and specifying the facilities and services required.

(3) Each port authority in receipt of an NSPO shall:

(i) Make such dispositions of commercial cargoes and ships loading or discharging commercial cargoes as may be necessary to accommodate priority movement of the defense agency's cargoes; and

(ii) Ensure receipt, in transit handling and outloading of the defense agency's cargoes as rapidly as possible.

(b) When a defense agency requires the allocation of port facilities for exclusive use of the agency on a continuing basis, the following procedures shall apply:

(1) The agency shall transmit a request to the Secretary, with a copy to the Administrator specifying:

(i) The ports at which the allocation of facilities is required and the kinds of facilities needed at each port;

(ii) The general terms and conditions under which the agency proposes to acquire the needed facilities and compensate the owners or leaseholders;

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(iii) The periods during which the facilities will be required; and

(iv) Justification for allocation of facilities.

(2) The Administrator in coordination with the Secretary shall identify facilities that meet the defense agency's needs, and shall issue to each concerned port authority and NAO directing the allocation of specified facilities for exclusive use of the defense agency during a specified period.

(3) Each port authority in receipt of an NAO shall make the specified facilities available to the defense agency for the specified period under terms and conditions agreed upon with the defense agency.

§ 340.7 Application to contractors and subcontractors.

(a) Vessel operators, port authorities and container and chassis suppliers requiring priorities for production services in order to comply with NSPOs and NAOs must submit their priority requirements for such services to the Maritime Administrator for action in accordance with Departmental policies governing supporting resource support.

(b) Vessel operators, port authorities and container and chassis suppliers requiring priorities for fuel in order to comply with NSPOs and NAOs must submit their priority requirements for fuel in accordance with Departmental policies governing supporting resources.

§ 340.8 Priorities for materials and production.

(a) Vessel operators, port authorities and container and chassis suppliers may request priority ratings to obtain production materials and services necessary to comply with orders issued under this regulation. Requests for priority rating authority must be made through and sponsored by the Maritime Administrator, in accordance with the Defense Priorities and Allocation System (15 CFR part 330 *et seq.* (49 FR 30412, July 30, 1984)) and Departmental policies governing supporting resources support.

(b) Vessel operators, port authorities and container and chassis suppliers may request priority ratings to obtain fuels necessary to comply with orders

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issued under this regulation. Requests for priority ratings will be made in accordance with regulations issued by the Department.

§ 340.9 Compliance.

Pursuant 50 U.S.C. 4513 any person who willfully performs any act prohib-

ited, or willfully fails to perform any act required, by the provisions of this regulation shall, upon conviction, be fined not more than \$25,409 or imprisoned for not more than one year, or both.

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