

**§§ 296.21–296.23**

**46 CFR Ch. II (10–1–22 Edition)**

(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,