

**DEPARTMENT OF TRANSPORTATION****Maritime Administration****Voluntary Intermodal Sealift Agreement**

**AGENCY:** Maritime Administration, DOT.  
**ACTION:** Notice of Voluntary Intermodal Sealift Agreement (VISA).

**SUMMARY:** The Maritime Administration (MARAD) announces establishment of the Voluntary Intermodal Sealift Agreement (VISA), pursuant to provision of the Defense Production Act of 1950, as amended. The purpose of the VISA is to make intermodal shipping services/systems, including ships, ships' space, intermodal equipment and related management services, available to the Department of Defense as required to support the emergency deployment and sustainment of U.S. military forces. This is to be accomplished through cooperation among the maritime industry, the Department of Transportation and the Department of Defense.

**FOR FURTHER INFORMATION CONTACT:** Mr. Thomas M.P. Christensen, Director, Office of National Security Plans, Room P1-1303, Maritime Administration, 400 Seventh Street S.W., Washington, DC 20590, (202) 366-5900, Fax (202) 488-0941.

**SUPPLEMENTARY INFORMATION:** Section 708 of the Defense Production Act of 1950 (50 U.S.C. App. 2158), as implemented by regulations of the Federal Emergency Management Agency (44 CFR Part 332), "Voluntary agreements for preparedness programs and expansion of production capacity and supply", authorizes the President, upon a finding that conditions exist which may pose a direct threat to the national defense or its preparedness programs, "\* \* \* to consult with representatives of industry, business, financing, agriculture, labor and other interests \* \* \*" in order to provide the making of such voluntary agreements. It further authorizes the President to delegate that authority to individuals who are appointed by and with the advice and consent of the Senate, upon the condition that such individuals obtain the prior approval of the Attorney General after the Attorney General's consultation with the Federal Trade Commission. Section 501 of Executive Order 12919, as amended, delegated this authority of the President to the Secretary of Transportation, among others. By DOT Order 1900.8, the Secretary delegated to the Maritime Administrator the authority under which the VISA is sponsored. Through

advance arrangements in joint planning, it is intended that the participants that are party to a VISA will provide capacity to support a significant portion of surge and sustainment requirements in the deployment of U.S. military forces.

A proposed draft text of the VISA was published in the Federal Register on August 17, 1994 (59 FR 42466), with a notice of a public meeting. The meeting was held on August 31, 1994, and a transcript of the proceedings was prepared. Another notice, published in the Federal Register on August 31, 1994 (59 FR 45061), invited the public to submit written comments on the draft VISA text. Several comments were received, considered and placed in a public file that also contains the above mentioned published notices and transcript. Further discussions among MARAD, the United States Transportation Command (USTRANSCOM), and representatives of the U.S. intermodal shipping industry have taken place, resulting in publication of this text of the VISA in which USTRANSCOM, the Department of Justice and the Federal Trade Commission have concurred.

The VISA text being published herein facilitates the incremental activation of resources in staged response to an emergency, i.e., Stage I, Stage II, and Stage III. MARAD, USTRANSCOM, and industry representatives have recognized that further development is necessary before implementation of Stages I and II. Therefore, only contractual commitments to Stage III will be implemented at this time.

Copies of the VISA and the associated application form are being sent, unsolicited, to U.S.-owned companies which provide intermodal shipping services/systems, accompanied by an invitation to become a participant. Copies will also be made available to the public upon request.

Text of the Voluntary Intermodal Sealift Agreement:

Voluntary Intermodal Sealift Agreement (VISA)

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## Abbreviations

"USCINTRANS"—Commander in Chief, United States Transportation Command
"DoD"—Department of Defense
"DOT"—Department of Transportation
"FTC"—Federal Trade Commission
"FEMA"—Federal Emergency Management Agency
"JPAG"—Joint Planning Advisory Group
"MARAD"—Maritime Administration, DOT
"MSC"—Military Sealift Command
"NDRF"—National Defense Reserve Fleet maintained by MARAD
"RRF"—Ready Reserve Force component of the NDRF
"SecDef"—Secretary of Defense
"SecTrans"—Secretary of Transportation
"USTRANSCOM"—United States Transportation Command (including its sealift transportation component, Military Sealift Command)

## Definitions

"Administrator"—Maritime Administrator.
"Agreement"—Agreement means an understanding, arrangement or association (written or oral) and any modification or cancellation thereof. For the purpose of this document, Agreement (proper noun) refers to this actual agreement, the Voluntary Intermodal Sealift Agreement.
"Attorney General"—Attorney General of the United States.
"Availability"—An asset or service is available if it is both suitable and capable of meeting cargo or other requirements within the prescribed delivery or performance date.

"Chairman"—Chairman of the FTC.  
 "Charter"—A contract between a shipper and shipping company for the use of the entire vessel that details all aspects of the service, including payment, to be performed by each party. Charter contracts may be for the entire vessel, for a specific voyage, or for a specific time period.

"Commercial"—Transportation service provided by a private ocean carrier to a private or government shipper. The type of service may be either common carrier or contract carriage.

"Common carrier"—A person holding itself out to the general public to provide transportation by water of passengers or cargo for compensation which assumes responsibility for transportation from port or point of receipt to port or point of destination, which utilizes a vessel operating on the high seas.

"Contingency"—An emergency involving military forces caused by natural disasters, terrorists, subversives or by required military operations whether or not there is a declaration of war or national emergency.

"Controlling interest"—More than a 50 percent interest by stock ownership or otherwise.

"Director"—Director of FEMA.

"Foreign flag"—A vessel registered and documented under the law of a country other than the United States of America.

"Intermodal equipment"—Containers (including specialized equipment), chassis, trailers, tractors, cranes and other material handling equipment, as well as other ancillary items.

"Liner"—Type of service offered on a definite advertised schedule (i.e., a scheduled common carrier service), given relatively frequent sailing between specific U.S. ports or ranges and designated foreign ports or ranges. The term includes ocean common carrier services within the meaning of the Shipping Act of 1984.

"Management services"—Management expertise and experience, intermodal terminal management, information resources and control and tracking systems.

"Non-liner"—Type of service offered by vessels that are chartered or otherwise hired for special voyages or period. Sailing schedules are not predetermined or fixed.

"Organic sealift"—Ships considered to be under government control or long-term charter—Fast Sealift Ships, Ready Reserve Force and commercial ships under long-term charter to DoD.

"Participant"—A signatory party to this Agreement, and otherwise as

defined in this Agreement, VI.A., sometimes referred to as "Program Participant."

"Person"—Includes individuals, corporations, partnerships, and associations existing under or authorized by the laws of the United States or of a foreign country.

"Pooling"—An agreement among participants to divide cargo offerings, revenues, losses, assets (e.g., vessels, facilities, material handling equipment, etc.), trade routes, etc., in accordance with an established formula or scheme. Any such agreement shall be between the participants only, and shall NOT be part of a contract with the government. Participants may not discuss their commercial commitments or other commercial information such as their rates, revenues, losses or tonnage with pool participants.

"Prenegotiated Rates"—Rates developed for use during program stages. For rates that are not prenegotiated, a prenegotiated rate methodology will be developed.

"Representative of SecDef"—USCINCTRANS.

"Secretary"—Secretary of Transportation.

"Service contract"—A contract between a shipper and an ocean common carrier or conference in accordance with the provisions of the 1984 Shipping Act.

"Teaming"—A combination of participants to bid and perform under a government contract. Similar to a joint venture, wherein two or more parties form a partnership and bid on a contract under the name of the partnership, vice the name of each individual party. Any teaming arrangement between or among ocean common carriers to concertedly offer rates to DoD may be regarded as an agreement subject to filing and review requirements under the Shipping Act of 1984 or the Shipping Act of 1916.

"U.S. Flag"—A vessel registered and documented under the law of the United States of America.

"Volunteers"—Any ocean carrier (liner or non-liner) or vessel owner/operator who offers to make capacity, resources or systems available under the terms of the Agreement for contract to USTRANSCOM to support military requirements sooner than mandatory under the Agreement.

#### Preface

The Administrator, pursuant to the authority contained in Section 708 of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2158)(Section 708), in collaboration with representatives of the intermodal shipping industry and USTRANSCOM,

has developed this agreement to provide commercial sealift and intermodal shipping services/systems necessary to meet national defense requirements.

USTRANSCOM through its designee(s) procures commercial shipping capacity to meet normal peacetime requirements for ships and intermodal shipping services/systems through arrangements with common carriers, with contract carriers and by charter. DoD (through USTRANSCOM) and MARAD maintain and operate a fleet of ships owned by or under charter to the federal government to meet the logistic needs of the military services which cannot be met by commercial service. Ships of the Ready Reserve Force (RRF) may be selectively activated for peacetime military tests and exercises, and to satisfy military operational requirements which cannot be met by commercial shipping in time of war, national emergency, or military contingency. Foreign-flag shipping is used only in accordance with applicable laws and policies.

This agreement provides DoD a coordinated, seamless transition from peacetime to wartime for the acquisition of commercial sealift and intermodal capability, as necessary, to augment DoD's organic sealift capabilities to meet DoD requirements. It establishes the terms, conditions and general procedures by which sealift carriers or asset managers may become Participants. This Agreement is designed to create close working relationships among MARAD, USTRANSCOM and Participants through which military needs and the needs of the civil economy can be met by cooperative action. Through advance arrangements in joint planning between USTRANSCOM, MARAD and the Participants, it is intended that the Participants will provide predetermined capacity in designated stages to support DoD contingency surge and sustainment requirements.

Participants to this program will be afforded first opportunity to meet DoD peacetime and wartime requirements. In the event program Participants are unable to meet fully the requirements in a contingency, the shipping capacity made available under this Agreement may be supplemented by ships requisitioned, under Section 902 of Merchant Marine Act 1936 (as amended), from non-Participants in this Agreement and from Participants. In addition, containers and chassis made available under this Agreement may be supplemented by services and equipment accessed by the Administrator through the provisions of 46 CFR Part 340.

SecDef will be asked to approve this Agreement as a sealift readiness program for the purpose of Section 909 of the Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1248) (Section 909).

## Voluntary Intermodal Sealift Agreement

### I. Purpose

A. The Administrator has found, in accordance with Section 708(c)(1) of the Defense Production Act of 1950, that conditions exist which may pose a direct threat to the national defense of the United States or its preparedness programs and, under the provisions of Section 708, has certified to the Attorney General that a standby agreement where eligible carriers agree to become program Participants and provide utilization of intermodal shipping services/systems is necessary for the national defense. The Attorney General, in consultation with the Chairman, has issued a finding that dry cargo capacity to meet national defense requirements cannot be provided by the industry through a voluntary agreement having less anticompetitive effects or without a voluntary agreement.

B. The purpose of this Agreement is to provide a seamless, time-phased transition from peace to wartime operations through coordinated, prenegotiated contractually assured access to the type and quantity of sealift capability, when and where necessary, to deploy and sustain U.S. forces. It establishes procedures for the commitment of intermodal shipping services/systems to satisfy military requirements. This Agreement will change from standby to active status upon activation of any of the Stages described in Section V.

C. The objectives of this Agreement are to promote and facilitate DoD's use of existing commercial integrated intermodal transportation systems, and to maximize DoD's use of commercial transportation resources, while at the same time attempting to minimize disruption to commercial operations.

D. Participants' capacity in this Agreement may include all intermodal shipping services/systems and all ship types, including container, partial container, container/bulk, container/roll-on/roll-off, roll-on/roll-off (of all varieties), breakbulk ships, and barge carrier (LASH, SeaBee, etc.).

E. It is intended that Participants in this Agreement will contractually provide time-phased, predetermined capacity to support military requirements.

### II. Authorities

#### A. MARAD

1. Sections 101 and 708 of the Defense Production Act, as amended (50 U.S.C. App. 2158); Executive Order 12919, 59 FR 29525, June 7, 1994; Executive Order 12148, 3 CFR 1979 Comp., p. 412, as amended; 44 CFR Part 332; DOT Order 1900.8; 46 CFR Part 340.

2. Section 501 of Executive Order 12919, as amended, delegated the authority of the President under Section 708 to the Secretary, among others. By DOT Order 1900.8, the Secretary delegated to the Administrator the authority under which this Agreement is sponsored.

#### B. USTRANSCOM

1. Section 113 and Chapter 6 of Title 10 of the United States Code.

2. DoD Directive 5158.4 designating USCINTRANS to provide air, land, and sea transportation for the DoD.

### III. General

#### A. Concept

1. This Agreement provides arrangements jointly planned by MARAD, USTRANSCOM, and Participants and by which MARAD will allocate U.S. Flag and/or controlled vessels and intermodal services to meet DoD determined requirements. These sealift resources may be incrementally activated in staged response. Activation of Stages I and II will be in accordance with prenegotiated contractual commitments entered into between Participants and USTRANSCOM or its designee. Stage III activation will be in accordance with procedures developed by USTRANSCOM, MARAD and Participants using pre-approved rate methodologies. Stages I and II would require early access to Participants' resources, while Stage III would be activated only after Stage I and II resources are totally committed and adequate shipping services are not available through established transportation practices. In addition to vessels and intermodal equipment, USTRANSCOM may contract for management expertise to operate more than one carrier's resources as complete systems.

a. Stages I and II will be activated by USCINTRANS. The Administrator will be notified that USTRANSCOM will implement the pre-approved DoD contracts, as necessary, with the Participant carriers to meet the contingency requirements. MARAD will ensure that the necessary Defense Production Act procedures and authorities are in place for the carriers

to immediately implement any pooling agreements they may have executed to meet the Program's contract requirements. Arrangements comprising Stages I and II will be pre-approved by MARAD. The contracts, with agreed terms, conditions and rates or rate methodology, will provide guaranteed access to specific carrier capability to be provided within specified time frames. The amount of shipping capacity to be committed by a Participant under such a contract between Participants and USTRANSCOM or its designee will be provided to MARAD during peacetime for pre-approval to ensure that the amount of sealift assets committed to Stages I and II will not have an adverse, national economic impact.

b. Stage III will be activated by SecTrans, upon request by USCINTRANS (on approval by SecDef), when defense sealift requirements exceed the capabilities provided by Stages I and II and cannot be obtained through established transportation practices, including voluntary commitments outside this Agreement. MARAD will allocate Participants' intermodal shipping services/systems to meet Stage III requirements. Upon allocation, USTRANSCOM or its designee will execute the necessary contracts, using a pre-approved rate methodology, to meet DoD requirements established during joint planning.

2. USTRANSCOM may obtain sealift capacity on a voluntary basis prior to activating Stages I and III. Participants will be given first opportunity to provide capacity voluntarily to meet DoD requirements. If Participant carriers volunteer capacity prior to Stage I, they may request DoD to execute Stage I contracts in order to activate requisite DPA defense. DoD/USTRANSCOM approval of such requests will not be unreasonably withheld. If voluntary capacity from Participants is insufficient and/or shortfalls persist prior to activating Stage III after exhausting the Participants' Stage I and II contractually committed resources, USTRANSCOM may obtain sealift capacity voluntarily from non-Participants, without restriction. Following is the sequence of actions to obtain sealift capacity:

a. Use existing DoD contracts for liner and chartered vessels.

b. Use DoD/DOT organic lift; plus request for shipping capacity committed via Treaty agreement and coalition.

c. Use volunteers from within the Program.

d. Contract outside the Program without restriction to meet specific requirements not contractually

committed or not voluntarily offered by Participants within the Program.

- e. Activate Stage I.
- f. Activate Stage II.
- g. Use all other established transportation practices.
- h. Activate Stage III.

3. If sufficient sealift assets are not available through established channels, SecTrans, upon declaration of war or Presidential declaration of national emergency, will requisition necessary sealift capability using the authorities of Section 902, Merchant Marine Act of 1936.

#### B. Responsibilities

1. USTRANSCOM shall:

a. Define the time-phased requirement for the numbers and types of sealift capacity and resources needed in Stages I and II to augment DoD sealift resources. Define Stage III requirements.

b. Advise MARAD annually of the numbers and types of sealift capacity and resources needed for all three stages.

c. Obtain sealift capacity through the implementation of specific prenegotiated contracts with Program Participants prior to stage activation and/or activate Stages I and II.

d. Provide notice to the Administrator when USTRANSCOM plans to implement the Stage I and II contracts, either in total or as a partial activation, and when sealift resources are required for the activation of Stage III.

e. Co-chair (with MARAD) the Joint Planning Advisory Group.

f. Develop and execute prenegotiated contracts (including rates and rate methodology) with Participants for guaranteed access to time-phased sealift capabilities in Stages I and II. During Stage III, implement contracts with Participants for capacity allocated by MARAD.

2. MARAD shall:

a. Approve the amount of sealift resources committed to Stages I and II and review the information provided by USTRANSCOM stating the amount of shipping capacity under contract to ensure there will be no adverse national, economic impact. Review, with USTRANSCOM, the Stage III requirements, as developed.

b. Ensure that the necessary Defense Production Act procedures and authorities are in place for the carriers to implement any pooling arrangements they may have executed to immediately commit their predetermined level of assets to meet the Program's contract requirements.

c. After request by USCINCTrans and upon approval by SecTrans to activate Stage III, allocate sealift

capacity and intermodal assets to Stage III based on USTRANSCOM requirements after having considered overall DOT/MARAD administrative and statutory responsibilities. DoD shall have priority consideration in any allocation situation.

d. Co-chair (with USTRANSCOM) the Joint Planning Advisory Group.

#### C. Modification/Amendment of This Agreement

The Attorney General may modify this Agreement, in writing, after consultation with the Chairman, the Administrator and USCINCTrans. The Administrator, USCINCTrans and Program Participants (as specified by the JPAG) may modify this Agreement at anytime by mutual agreement and with the approval of the Attorney General. Participants may propose amendments to this Agreement at any time.

#### D. Administrative Expenses

Administrative and out-of-pocket expenses incurred by a Participant during the standby period shall be borne solely by the Participant. Such expenses may include, among other things, traveling to meetings, making reports of owned, chartered and leased intermodal ships, and equipment.

#### E. Record Keeping

1. MARAD has primary responsibility for maintaining records in accordance with 44 CFR Part 332.

2. MARAD shall be the official custodian of records related to the carrying out of this Agreement.

3. USTRANSCOM or its designee shall be the official custodian of records related to the contracts to be used under this Agreement.

4. In accordance with 44 CFR 332.3(d), a Participant shall maintain for five (5) years all minutes of meetings, transcripts, records, documents and other data, including any communications with other Participants or with any other member of the industry or their representatives, related to the administration, including planning and activation of this Agreement. Each Participant agrees to make records available to the Administrator, USCINCTrans, the Attorney General, and the Chairman for inspection and copying at reasonable times and upon reasonable notice any time that the Participant is required hereby to maintain. Any record maintained by MARAD or USTRANSCOM as discussed in this subsection shall be available for public inspection and copying unless exempted on the grounds specified in 5 U.S.C 552(b)(1), (3) and (4) or identified as privileged and confidential

information in accordance with Section 708(e).

#### F. MARAD

*Reporting Requirements*—Report to the Director, as required, on the status and use of this Agreement.

#### G. Plan of Action

1. The Administrator and USCINCTrans, in coordination with the Participants, shall develop plans of action to implement this Agreement. The contracts used by USTRANSCOM for carrier commitment of intermodal shipping services/systems shall not be plans of action.

2. If any necessary Plan of Action has not been adopted at the time of activation of this Agreement, the Joint Planning Advisory Group (JPAG) may be convened to assure completion of such Plan of Action in order to meet DoD requirements.

#### IV. Joint Planning Advisory Group

A. The JPAG provides USTRANSCOM, MARAD and Program Participants the planning process to:

1. Identify and discuss DoD detailed sealift service and resource requirements.

2. Match peacetime requirements related to exercises and special movements with commercial capacity, as a method for testing wartime arrangements.

3. Recommend concepts of operations to meet peacetime and wartime requirements for use by contracting officials in developing contracts.

4. Provide carriers antitrust defense for pooling and teaming arrangements developed in support of DoD requirements.

B. It will be co-chaired by MARAD and USTRANSCOM, and will convene quarterly in peacetime, and as necessary after activation of any stage of this Agreement as determined by the co-chairs.

C. The JPAG will consist of a designated representative (plus one alternate) from MARAD, USTRANSCOM and each Program Participant (including a representative from maritime labor). These representatives will provide technical advice and support to ensure maximum coordination, efficiency and effectiveness in the use of Participants' resources.

D. The JPAG will not be used for contract negotiations and/or discussions between carriers and the DoD; such negotiations and/or discussions will be in accordance with applicable DoD contracting policies and procedures. However, contracting officials will be guided by the recommendations and

priorities established by the JPAG's concept of operations (CONOPS).

E. The JPAG co-chairs shall:

1. Notify the Attorney General, the Chairman, and all Participants of the time, place and nature of the JPAG meeting.

2. Provide for publication in the Federal Register of a notice of the time, place and nature of the JPAG meeting. If the meeting is open, a Federal Register notice will be published reasonably in advance of the meeting. If a meeting is closed, a Federal Register notice will be published within ten (10) days after the meeting and will include the reasons for closing the meeting.

3. Establish the agenda for each JPAG meeting and be responsible for adherence to the agenda.

4. Provide for a full and complete transcript or other record of each meeting and provide one copy each of transcript or other record to the Attorney General, the Chairman, and all Participants.

F. Security Measures—The co-chairs will develop and coordinate appropriate security measures so that contingency planning information can be shared with Participants to enable them to plan their commitment.

## V. Activation of This Agreement

### A. Determination of Necessity

1. This Agreement shall be activated in up to three time-phased stages to satisfy DoD contingency sealift requirements in accordance and within the scope of the Agreement.

2. The Administrator shall notify the Attorney General and the Chairman when it has been determined that activation of this Agreement is necessary.

### B. Peacetime

1. During peacetime, the Joint Planning Advisory Group (JPAG) will discuss requirements, capabilities, shortfalls and coordinate recommended courses of action.

2. DoD peacetime sealift commercial requirements will be executed via contracts using Participants' ships, intermodal shipping services/systems and sealift resources to the maximum extent feasible or other resources from non-Participants if Participants cannot meet the requirement. Commercial resources owned and operated by U.S. citizens will be given first consideration for peacetime cargo.

3. USTRANSCOM will advise MARAD of agreements and assets under contract so that MARAD can monitor sealift asset status.

4. MARAD will advise USTRANSCOM on industry issues and

pre-approve the allocation of carrier commitments for Stages I and II of this Agreement.

### C. Stage I

1. Stage I may be activated partially, or in total, when DoD organic sealift capability, commercial sealift under peacetime contract, and voluntary commitments (as specified in Sections III.A.2 and V.G) do not meet DoD sealift requirements.

2. Stage I will be activated by USCINCTrans. USCINCTrans will notify the Administrator that it will implement the pre-approved contracts with Participants to meet contingency requirements. MARAD will ensure that the necessary Defense Production Act procedures and authorities are in place for the carriers to implement any pooling arrangements they may have executed to commit their level of assets to meet the Program's contract requirements.

3. USTRANSCOM will implement the prenegotiated contracts with the Participants who have agreed, in accordance with Section VI of this Agreement, to provide assets to meet the approved Stage I requirements.

4. Under Section VI of this Agreement, Participants will be allowed to substitute and pool/team ship capacity and intermodal shipping systems to fulfill their contractual commitments to meet Stage I requirements. Substitutions and pooling/team arrangement for capacity committed to DoD will be approved by USCINCTrans or its designee.

### D. Stage II

1. Stage II will be activated, partially or in total, when the DoD requirement exceeds the capability of the Stage I resources.

2. Activation of Stage II will follow the same procedures as Stage I.

3. Paragraphs 3–4 of Stage I also apply to Stage II.

4. Prior to requesting activation of Stage III, all efforts will be made to meet DoD requirements through commercial means outside this Agreement.

### E. Stage III

1. Stage III will be activated when the DoD requirements exceed the capability of the Stage I and II resources and shipping services are not available through established transportation procurement practices.

2. It will be activated by SecTrans, upon request by USCINCTrans (on approval by SecDef).

3. All Participants' assets committed to this Agreement are subject to use during Stage III. MARAD will allocate

sealift resources of Participants to meet the DoD requirements in Stage III.

4. Upon allocation of sealift assets by MARAD, USTRANSCOM will implement contracts, using a pre-approved rate methodology established in the JPAG, to meet the Stage III requirements.

### F. Termination of Charters, Leases and Other Contractual Arrangements

1. USTRANSCOM will notify the Administrator as far in advance as possible of the prospective termination of charters, leases, management service contracts or other contractual arrangements under this Agreement.

2. If this Agreement is superseded by the general requisitioning of ships, the Administrator, as a matter of discretion, may replace charters made under this Agreement with charters under requisitioning.

### G. Voluntary Capacity

1. Prior to the activation of Stage I of this Agreement, DoD will seek voluntary commitment of capacity or system to meet movement requirements.

2. Requests for volunteer capacity will be extended simultaneously to both Program Participants and other carriers. However, first priority for award of this cargo will be to Program Participants, with compensation as outlined in the USTRANSCOM Implementation Instructions to this Agreement. Program Participants providing voluntary capacity may request the activation of prenegotiated contracts. Volunteered capacity will be credited against Participants' staged commitments, in the event such stages are subsequently activated.

3. In the event USCINCTrans determines Program Participants are unable, or do not desire, to voluntarily provide required capacity, DoD may attempt to contract with non-Program carriers prior to involuntary activation of Stage I contracts.

4. Once Stage I of this Agreement is activated (unless such activation is at the request of the Participant) by USTRANSCOM, non-Program volunteers will not be utilized until all applicable programmed capacity in Stages I and II, and any additional Participant voluntary capacity, is exhausted.

5. Prior to requesting activation of Stage III of this Agreement, DoD will attempt to obtain capacity from all appropriate sources, to include non-Program Participants.

## VI. Terms and Conditions

### A. Participation

1. A liner or non-liner operator which is organized under the laws of a state of the United States, or the District of Columbia, may become a Participant by submitting an executed copy of the form referenced in VIII below and by entering into a contractual agreement with DoD or DOT which establishes a legal obligation to perform and which specifies payment or payment methodology for all services rendered.

2. A company which owns, or has obtained through lease, intermodal equipment, and is not also a vessel operator under paragraph 1 above, may become a Participant by submitting an executed copy of the form referenced in VIII below and entering into a contractual agreement which establishes a legal obligation to perform and which specifies payment or payment methodology for all services rendered. Such a company must be organized under the laws of a State of the United States or the District of Columbia.

3. The term "Participant" includes the entity signing this Agreement and all United States subsidiaries and affiliates of the entity which own, operate or charter ships, or own or lease intermodal equipment in the regular course of their business and in which the entity holds a controlling interest.

4. The term "Participant" also includes specified controlled nondomestic subsidiaries and affiliates of the entity signing this Agreement; provided, that the Administrator, in coordination with USCINTRANS, grants specific approval for their inclusion.

5. An entity having an operating agreement (ODS or MSP) with the Secretary shall become a "Participant" and remain one at all times while receiving payment under such.

6. An ocean carrier participating in the DOT Maritime Security Program will be enrolled in the Program for the duration of its participation.

7. An ocean carrier eligible to participate in this Agreement, but which elects not to do so, is subject to enrollment in the DoD SRP if it: (1) Receives operating-differential subsidy or received construction differential subsidy, or (2) enters into contractual obligation to carry DoD cargo (e.g., World Wide Rate Agreement).

8. A Participant in this Agreement will be subject only to the provisions of this Agreement and not to the provisions of the SRP.

9. Periodically, a list of Participants will be published in the Federal Register.

10. When a specific ship covered by this Agreement is removed from its regular commercial service to meet a DoD requirement, the Participant may replace the ship taken from regular service with a foreign flag ship upon notice to the Administrator, and such approval of the Administrator as required by law.

11. The Administrator retains the right under law to requisition ships of Participants. A Participant's ships which are directly requisitioned by the United States or which are under other U.S. Government voluntary arrangements shall be credited against the Participant's contribution under this Agreement.

### B. Agreement of Participant

1. Each Participant agrees to provide commercial sealift and/or intermodal shipping services/systems in accordance with the prenegotiated contracts with USTRANSCOM.

2. In general, the concept for allocation of a Participant's resources to the Agreement's stages is as follows:

a. *Stages I and II:* As reflected in the USTRANSCOM Implementation Instructions, mobilization commitment is linked to the award of DoD peacetime business. Mobilization commitment will be a consideration in determining the level of contract award and long-term (i.e., one year or longer) contracts will include a requirement for a minimum commitment to Stages I and/or II. In addition, a Participating carrier may voluntarily offer additional capacity to these stages. Such additional commitment will be considered as a factor in determining contract award. The level of carrier commitment for each stage will be based on the DoD capacity requirement set for those stages. Given that Stages II and III requirements are cumulative of Stage I, a carrier's capacity committed to Stage I will also be considered contractually committed to meet Stage II and Stage III requirements. Capacity activated during Stages I and II will be paid at the Program's prenegotiated contract rate.

b. *Stage III:* Carriers receiving DOT subsidies (and not in the SRP program) will have subsidy specified capacity enrolled in Stage III. Additional capacity will be as specified in DoD peacetime contracts and in the USTRANSCOM Implementation Instructions to this Agreement. Carriers utilized during Stage III will be paid based on a pre-approved rate methodology developed by MARAD and USTRANSCOM in the JPAG.

3. Subject to the terms of USTRANSCOM contracts implementing this Agreement, the Participant which

owns, operates, or controls a ship or ship capacity contributed will provide the intermodal equipment and management services needed to utilize the ship at Participant's normal efficiency.

### C. Effective Date and Duration of Participation

Participation in this Agreement is effective upon execution of the Program application form (Sec. VIII) by both the Participant and the Administrator, or their designees. Participation remains in effect until completion of the agreed upon obligation (Sec. VI.A.) to DoD or DOT or both. Termination will be by the Administrator (or USCINTRANS, if appropriate), the Attorney General, the Chairman, or the Director on due notice by letter, telegram, publication in the Federal Register, or until the Participant withdraws.

### D. Withdrawal From this Agreement

A Participant may withdraw from this Agreement, subject to fulfillment of obligations incurred under this Agreement prior to the date such withdrawal becomes effective, by giving 30 days written notice, or as specified with the Administrator. However, a Participant having an MSP operating agreement with SecTrans shall not withdraw from this Agreement during the period the operating agreement is in effect. Withdrawal from this Agreement will not deprive a Participant of an antitrust defense otherwise available to it in accordance with DPA Section 708. A Participant otherwise subject to the DoD SRP that voluntarily withdraws from this Agreement will become subject again to the DoD SRP.

### E. Standby Period

The "standby period" is the interval between the effective date of a Participant's acceptance into the Agreement and the activation of any Stage.

### F. Rules and Regulations

A Participant acknowledges and agrees to abide by all provisions of DPA Section 708, and regulations related thereto which are promulgated by the Secretary, the Attorney General, and the Chairman. Standards and procedures pertaining to voluntary agreements have been promulgated in 44 CFR Part 332. Note is taken that 46 CFR Part 340 establishes procedures for assigning the priority for use and the allocation of shipping services, containers and chassis. The JPAG will inform Participants of new and amended rules and regulations as they are issued.

G. Pooling Resources

When this agreement is activated, Participants may pool their assets to meet the needs of the Department of Defense and to minimize the assets withdrawn from the civil economy to meet those needs.

H. Enrollment of Ships and Equipment

1. The Administrator will maintain a record of ships and intermodal equipment enrolled under this Agreement according to a Plan of Action. A schedule of Participants' ships and intermodal equipment will be enrolled on the date the carrier becomes a Participant. Participants will notify the Administrator of all changes, as required.

2. The Administrator will make the enrollment data and all changes available to USTRANSCOM.

3. Information which a Participant identifies as privileged or business confidential/proprietary data shall be withheld from public disclosure in accordance with Section 708(h)(3) and Section 705(e) of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2155), and 44 CFR Part 332.

4. Enrolled ships are required to comply with 46 CFR Part 307, Establishment of Mandatory Position Reporting System for Vessels.

I. War Risk Insurance

1. SecDef will reimburse carriers for additional commercial war risk insurance. DOT will provide no-premium government war risk insurance, subject to the provisions of Section 1205 of the Merchant Marine Act, 1936, as amended [46 App. U.S.C. 1285(1)].

2. Each ship enrolled under this Agreement shall be eligible for U.S. Government war risk insurance and for an interim insurance binder under the provisions of 46 CFR Part 308, notwithstanding restrictions on eligibility set out in subparts thereof.

J. Antitrust Defense

1. Under the provisions of DPA Section 708, each Participant in this Agreement shall have available as a defense to any civil or criminal action brought under the antitrust laws (or any similar law of any State) with respect to any action taken to develop or carry out this Agreement or a Plan of Action, that such act was taken in the course of developing or carrying out this Agreement or a Plan of Action and that the Participant complied with the provisions of DPA Section 708 and any regulation thereunder, and acted in accordance with the terms of this Agreement or a Plan of Action.

2. This defense shall not be available to the Participant for any action occurring after termination of this Agreement. Nor shall it be available upon the modification of this Agreement with respect to any subsequent action that is beyond the scope of the modified text of this Agreement, except that no such modification shall be accomplished in a way that will deprive the Participant of antitrust defense for the fulfillment of obligations incurred.

3. The defense shall be available only if and to the extent that person asserting it demonstrates that the action, which includes a discussion or agreement, was within the scope of this Agreement or a Plan of Action.

4. The person asserting the defense bears the burden of proof.

5. The defense shall not be available if the person against whom it is asserted shows that the action was taken for the purpose of violating the antitrust laws.

6. As appropriate, the Administrator will support applications by Participants to the Federal Maritime Commission or the Interstate Commerce Commission to exempt this Agreement and any Plan of Action from the operation of statutes administered by either agency.

K. Breach of Contract Defense

Under the provisions of DPA Section 708, in any action in any Federal or State court for breach of contract, there shall be available as defense that the alleged breach of contract was caused predominantly by action taken by a Participant during or in imminent anticipation of an emergency to carry out this Agreement or a Plan of Action. Such defense shall not release the party asserting it from any obligation under applicable law to mitigate damages to the greatest extent possible.

VII. Plan of Action: Development Meeting

The Administrator, in coordination with USCINCTRANS shall convene the JPAG within 90 days of the effective date of the first Participant's application. The purpose shall be to develop Plans of Action to implement this Agreement.

VIII. Application and Agreement

The Administrator, in coordination with USCINCTRANS has adopted a form on which intermodal ship operators and intermodal-equipment leasing companies may apply to become a Participant in this Agreement ("Application and Agreement to Participate in the Voluntary Intermodal Sealift Agreement"). The form

incorporates, by reference, the terms of this Agreement.

United States of America

Department of Transportation

Maritime Administration

Application to Participate in the Voluntary Intermodal Sealift Agreement

The applicant identified below hereby applies to participate in the Maritime Administration's agreement entitled "Voluntary Intermodal Sealift Agreement." The text of said Agreement is published in Federal Register \_\_\_\_\_, \_\_\_\_\_, 19\_\_\_\_. This Agreement is authorized under Section 708 of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2158). Regulations governing this Agreement appear at 44 CFR Part 332 and are reflected at 49 CFR Subtitle A.

The applicant, if selected, hereby acknowledges and agrees to the incorporation by reference into this Application and Agreement of the entire text of the Voluntary Intermodal Sealift Agreement published in Federal Register \_\_\_\_\_, \_\_\_\_\_, 19\_\_\_\_, as though said text were physically recited herein.

The Applicant, as a Participant, agrees to comply with the provisions of Section 708 of the Defense Production Act of 1950, as amended, the regulations of 44 CFR Part 332 and as reflected at 49 CFR Subtitle A, and the terms of the Voluntary Intermodal Sealift Agreement. Further, the applicant, if selected as a Participant, hereby agrees to contractually commit to make specifically enrolled vessels, intermodal equipment and management of intermodal transportation systems available for use by the Department of Defense and to other Participants as discussed in this Agreement and the subsequent contract for the purpose of meeting national defense requirement.

Attest:

(Corporate Secretary)  
(CORPORATE SEAL)

(Applicant-Corporate Name)

By: \_\_\_\_\_  
(Signature)

(Position Title)

Effective Date: \_\_\_\_\_

(Secretary)

(SEAL)

UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
MARITIME ADMINISTRATION

By: \_\_\_\_\_  
Maritime Administrator

By Order of the Maritime Administrator:

Dated: October 13, 1995.

Joel C. Richard,  
Secretary.

[FR Doc. 95-25896 Filed 10-18-95; 8:45 am]

BILLING CODE 4910-81-P