



DEPARTMENT OF TRANSPORTATION

Maritime Administration

Voluntary Intermodal Sealift Agreement; Extension and Modification

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: The Maritime Administration (MARAD) announces the extension of the Voluntary Intermodal Sealift Agreement (VISA) until October 1, 2029, pursuant to Section 708 of the Defense Production Act of 1950, as amended. VISA is intended to make intermodal shipping services/systems, including ships, ships' space, intermodal facilities and equipment, and related management services, available to the Department of Defense (DoD) as required to support the emergency deployment and sustainment of U.S. Armed Forces through cooperation among the maritime industry, the Department of Transportation (DOT), and DoD. In addition to extending VISA for an additional 5 years for existing participants, MARAD is modifying VISA for new applicants by making certain modifications to the Agreement, including clarification of what is meant by shipping services/systems, and the required vessel certifications for program entry. MARAD has also updated references to authorities and statutory and regulatory citations.

DATES: This agreement will be effective on October 1, 2024, superseding the existing VISA agreement, as published in the *Federal Register* on October 29, 2014 (79 FR 64462–70) and renewed on September 30, 2019 (84 FR 51710–11).

FOR FURTHER INFORMATION CONTACT: David J. Hatcher, Office of Sealift Support, Room W25-310, Maritime Administration, 1200 New Jersey Avenue SE, Washington, DC 20590, (202) 366-0688, Fax (202) 366-5904.

SUPPLEMENTARY INFORMATION: Section 708 of the Defense Production Act of 1950, as amended (50 U.S.C. 4558) (DPA Sec. 708), authorizes the President to consult with

representatives of industry, business, finance, agriculture, labor, and other interests to establish voluntary emergency preparedness agreements, following a finding that conditions exist which may pose a direct threat to the national defense or its preparedness programs. 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 (FTC). Section 401 of Executive Order (EO) 13603 (Mar. 16, 2012) delegated this authority of the President to the Secretary of Transportation (SecTrans), among others. In accordance with 49 CFR 1.93(l), SecTrans delegated VISA's sponsorship authority to the Maritime Administrator, in consultation and coordination with the DOT's Office of Intelligence, Security and Emergency Response. Through advance arrangements in joint planning, VISA participants will provide capacity to support a significant portion of surge and sustainment requirements in the deployment of U.S. military forces during a time of war or national emergency, or whenever the Secretary of Defense (or delegate) determines that it is necessary for national security or contingency operations.

The text of VISA was first published in the *Federal Register* on February 13, 1997, effective for an initial two-year term expiring on February 13, 1999 (62 FR 6838–46). The VISA document had been extended and subsequently published in the *Federal Register* every two years. Effective September 30, 2009, Congress amended DPA Sec. 708 to note that each voluntary agreement expires five (5) years after the date it becomes effective. MARAD updated the VISA agreement language most recently in 2014, as published in the *Federal Register* on October 29, 2014 (79 FR 64462–70), and extended the effective period of that language by five years until October 1, 2024, by notice in the *Federal Register* on September 30, 2019 (84 FR 51710–11). The agreement published in this notice incorporates, among other changes: (1) updates to vessel eligibility requirements, as first published in the *Federal Register* on January 31, 2018 (83 FR 4552–54); (2) changes to the requirements for coastwise trading waivers under

46 U.S.C. 501, pursuant to statutory amendments enacted in 2021 and 2022; (3) clarifications of certain definitions and obligations on VISA stakeholders; and (4) certain non-substantive clerical updates.

In accordance with DPA Sec. 708(f)(2), the Maritime Administrator continues to find that VISA is necessary to respond to direct threats to the national defense or its preparedness programs, and sought a concurrent finding from the Assistant Attorney General for the Antitrust Division, Department of Justice (whose authority has been delegated from the Attorney General in accordance with 28 CFR 0.40(l)), in consultation with the Chair of the Federal Trade Commission, that the objectives of VISA may not be reasonably achieved through either a voluntary plan having fewer anticompetitive effects or the absence of such a voluntary agreement or plan of action. By notice in the *Federal Register* on October 2, 2024 (89 FR 80264–65), the Assistant Attorney General for the Antitrust Division, Department of Justice, in consultation with the Chair of the Federal Trade Commission, made such a concurrent finding on September 26, 2024. Therefore, in accordance with DPA Sec. 708(f)(2), VISA may be extended for another five-year term. The text published herein supersedes the 2014 language, as renewed in 2019, for an effective period of five years, ending October 1, 2029. Copies of this agreement will be made available to the public upon request.

Voluntary Intermodal Sealift Agreement (VISA)

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Abbreviations

CCA—Carrier Coordination Agreement

CFR—Code of Federal Regulations

CONOPS—Concept of Operations

DoD—United States Department of Defense

DOJ—United States Department of Justice

DOT—United States Department of Transportation

DPA—Defense Production Act of 1950, as amended (50 U.S.C. Chapter 55)

E.O.—Executive Order

FEMA—Federal Emergency Management Agency

FMC—Federal Maritime Commission

FOIA—Freedom of Information Act (5 U.S.C. 552)

FTC—Federal Trade Commission

JCS—Joint Chiefs of Staff

JPAG—Joint Planning Advisory Group

MARAD—Maritime Administration

MSP—Maritime Security Program (46 U.S.C. 53101–11)

SecDef—United States Secretary of Defense

SecTrans—United States Secretary of Transportation

U.S.C.—United States Code

USCG—United States Coast Guard

USTRANSCOM—United States Transportation Command, inclusive of its military service component commands Air Mobility Command, Military Sealift Command, and Military Surface

Deployment and Distribution Command, and its subordinate command Joint Enabling

Capabilities Command

VISA—Voluntary Intermodal Sealift Agreement

VSA—Vessel Sharing Agreement

Definitions

For purposes of this Agreement, the following definitions apply:

Administrator—Maritime Administrator, unless otherwise stipulated.

Agreement—Agreement (proper noun) refers to VISA.

Attorney General—Attorney General of the United States.

Broker—A person who arranges for transportation of cargo for a fee.

Carrier Coordination Agreement (CCA)--An agreement between two or more Participants or between Participant and non-Participant carriers to coordinate their services in a Contingency, including agreements to: (1) charter vessels or portions of the cargo-carrying capacity of vessels; (2) share cargo handling equipment, chassis, containers and ancillary transportation equipment; (3) share wharves, warehouse, marshaling yards and other marine terminal facilities; and (4) coordinate the movement of vessels.

Charter—Any agreement or commitment by which the possession or services of a vessel are secured for a period, or for one or more voyages, whether or not by a demise of the vessel.

Combatant Commander—Any of the military officers defined under 10 U.S.C. 164.

Commander—Combatant Commander, USTRANSCOM, unless otherwise stipulated.

Commercial--Transportation service provided for profit by privately owned (not government owned) vessels to a private or government shipper. The type of service may be either common carrier or contract carriage.

Contingency— A military operation that is either designated by the Secretary of Defense as a contingency operation or becomes a contingency operation as a matter of law, in accordance with 10 U.S.C. 101(a)(13).

Contract carrier—A for-hire carrier who does not hold out regular service to the general public, but instead contracts, for agreed compensation, with a particular shipper for the carriage of cargo in all or a particular part of a ship for a specified period of time or on a specified voyage or voyages.

Controlling interest—More than a 50-percent interest by stock ownership.

Dry cargo—Includes (1) any non-liquid good or commodity and (2) liquids shipped in pre-packaged containers (such as bottled drinking water). It does not include any bulk liquid cargo shipped directly in the holds of vessels.

Foreign-flag vessel—A vessel registered or documented under the laws of a country other than the United States of America.

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

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

Military Services—Includes the armed services identified in 10 U.S.C. 101(a)(4): United States Army, United States Navy, United States Air Force, United States Marine Corps, United States Space Force, and United States Coast Guard.

Ocean common carrier—In accordance with 46 U.S.C. 40102, an entity holding itself out to the general public to provide transportation by water of passengers or cargo for compensation that (1) assumes responsibility for transportation from port or point of receipt to port or point of destination, and (2) operates and utilizes a vessel operating on the high seas for all or part of that transportation.

Operator—An ocean common carrier or contract carrier that owns or controls or manages vessels by which ocean transportation is provided.

Organic sealift—For the purposes of this Agreement, ships considered to be under government control or long-term charter, including Fast Sealift Ships, Ready Reserve Force vessels and

commercial ships under long-term charter to DoD.

Participant—A vessel operator that (1) successfully applies to join VISA, in accordance with Section VII of this document, and (2) enters into a USTRANSCOM VISA Contingency Contract. This may be augmented under the terms of Section VI(A) of this document.

Person—Includes individuals and corporations, partnerships, and associations existing under or authorized by the laws of the United States or any state, territory, district, or possession thereof, or of a foreign country.

Service contract—As defined in 46 U.S.C. 40102(21), a contract between a shipper (or a shipper's association) and an ocean common carrier (or conference) in which the shipper makes a commitment to provide a certain minimum quantity of cargo or freight revenue over a fixed time period, and the ocean common carrier or conference commits to a certain rate or rate schedule, as well as a defined service level (such as assured space, transit time, port rotation, or similar service features). The contract may also specify provisions in the event of nonperformance on the part of either party.

Standby—The interval between the effective date of a Participant's acceptance into VISA and the activation of any stage, and the periods between deactivation of all stages and any later activation of any stage.

U.S.-flag Vessel—A commercial vessel registered or documented under the laws of the United States of America in accordance with 46 U.S.C. Chapter 121 and any associated regulations and instructions promulgated by USCG.

USTRANSCOM VISA Contingency Contract—The contract between a signatory party to VISA and USTRANSCOM establishing the minimum terms and conditions for VISA capacity activation. Attachment I of the contract is executed and signed by MSC, MARAD, USTRANSCOM and the individual carrier to enroll that carrier's vessel capacity into VISA Stages I, II and III.

Vessel Sharing Agreement (VSA) Capacity—Space chartered to a Participant for carriage of

cargo, under its commercial contracts, service contracts or in common carriage, aboard vessels shared with another carrier or carriers pursuant to a commercial vessel sharing agreement under which the carriers may compete with each other for the carriage of cargo. In U.S. foreign trades the agreement is filed with the Federal Maritime Commission (FMC) in conformity with the Shipping Act of 1984 and implementing regulations.

Volunteer—Any vessel owner or operator who is an ocean carrier and who offers to make capacity, resources, or systems available to support contingency requirements.

Preface

The Administrator, pursuant to the authority contained in Section 708 of the Defense Production Act of 1950, as amended (50 U.S.C. 4558), in cooperation with DoD, developed the Voluntary Intermodal Sealift Agreement (VISA) to provide DoD with assured access to the commercial sealift and intermodal shipping services/systems necessary to meet wartime, national emergency, national security, or contingency operation requirements.

United States Transportation Command (USTRANSCOM) procures commercial shipping capacity to meet requirements for ships and intermodal shipping services/systems through arrangements with common carriers, with contract carriers and by charter. DoD (through USTRANSCOM) and DOT (through MARAD) maintain and operate a fleet of ships owned by or under charter to the Federal Government to meet the logistics needs of the Military Services and Combatant Commanders that cannot be met by existing commercial service. Government-controlled ships are selectively activated for peacetime military tests and exercises, and to satisfy military operational requirements that cannot be met by commercial shipping in time of war, national emergency, or military contingency. Foreign-flag shipping is used in accordance with applicable laws, regulations, and policies.

VISA has been established to provide DoD with a coordinated, seamless transition from peacetime to armed conflict for the acquisition of commercial sealift and intermodal capability to augment DoD's organic sealift capabilities. This Agreement establishes the terms, conditions,

and general procedures by which persons or parties may become VISA Participants. Through advance joint planning among USTRANSCOM, MARAD and the Participants, Participants may provide predetermined capacity in designated stages to support DoD Contingency requirements. During contingencies, Participants are afforded maximum flexibility to adjust commercial operations by Carrier Coordination Agreements (CCAs), in accordance with applicable law.

Participants will be afforded the first opportunity to meet DoD peacetime and Contingency sealift requirements within applicable law and regulations, to the extent that the Government's operational requirements are met. In the event VISA Participants are unable to fully meet Contingency requirements, the shipping capacity made available under VISA may be supplemented by ships/capacity from non-Participants in accordance with applicable law and by ships requisitioned under 46 U.S.C. 56301. In addition, containers and chassis made available under VISA may be supplemented by services and equipment acquired by USTRANSCOM or accessed by the Administrator.

I. Purpose

A. The Administrator has determined, in accordance with DPA Section 708(c)(1), that conditions exist that 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 an emergency preparedness agreement for utilization of U.S.-flag commercial vessels and intermodal shipping services/systems is necessary for the national defense. The Attorney General, in consultation with the FTC Chair, has issued a finding that dry cargo shipping 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. VISA provides a responsive transition from peace to contingency operations through pre-coordinated agreements for sealift capacity to support DoD contingency requirements and establishes procedures for the commitment of intermodal shipping services/systems to satisfy

such requirements.

VISA will change from standby to active status upon activation by appropriate authority of any of the stages described in Section V.

C. VISA promotes and facilitates DoD's use of existing commercial transportation resources and integrated intermodal transportation systems, in a manner which minimizes disruption to commercial operations, whenever possible.

D. Participants' capacity which may be committed pursuant to this Agreement may include all intermodal shipping services/systems/facilities and all ship types, including container, geared container, partial container, container/bulk, container/roll-on/roll-off, roll-on/roll-off (of all varieties), multi-purpose/heavy lift, breakbulk ships, and tug and barge combinations.

E. 46 U.S.C. 53107 directs SecTrans to establish an Emergency Preparedness Agreement in conjunction with SecDef, as part of the Maritime Security Program (MSP), that requires MSP participants to make their commercial transportation resources (including services) available to SecDef during times of armed conflict, national emergency, or whenever SecDef determines that such resources are necessary for national security or Contingency operations. VISA is the designated Emergency Preparedness Agreement for MSP, and participation in VISA fulfills the requirements of 46 U.S.C. 53107 on MSP participants.

II. Authorities

A. Department of Transportation and MARAD

1. DPA Section 708, as amended (50 U.S.C. 4558); E.O. 13603; E.O. 12656; 49 CFR 1.93(l); 49 CFR 1.81(a)(10).

2. Section 401 of E.O. 13603 delegated the authority of the President under Section 708 to SecTrans, among others. By 49 CFR 1.93(l), in consultation and coordination with DOT's Office of Intelligence, Security and Emergency Response, SecTrans delegated to the Administrator the authority under which VISA is sponsored.

3. 46 U.S.C. 53107.

4. 46 U.S.C. 501(b).

B. Department of Defense and USTRANSCOM

1. 10 U.S.C. 113, 161–69.

2. Unified Command Plan, designating the Commander as the DoD Single Manager for Transportation, including “[p]roviding common-user and commercial transportation, terminal management, and aerial refueling.”

3. DoD Directive (DoDD) 4500.09, Transportation and Traffic Management, designating the Commander as the DoD single manager for transportation for other than Service-unique or theater-assigned assets and provide common-user and commercial air, land, and sea transportation and delegating functions to serve as the DoD representative for Maritime Security Fleet actions that SecDef is authorized to take under 46 U.S.C. Ch. 531.

4. DoD Instruction 4500.57, which further designates the Commander as the DoD authority to request MARAD activation of Ready Reserve Force (RRF) vessels pursuant to 46 U.S.C. 57100, which may be used for contingency operations, exercises, training and testing, and other defense purposes for which scheduled or chartered commercial sealift assets are not available or suitable.

III. General

A. Concept

1. VISA provides for the staged, time-phased availability of Participants’ shipping services/systems to meet SecDef-directed DoD Contingency requirements in the most demanding defense-oriented sealift emergencies and for less demanding defense-oriented situations through pre-negotiated Contingency contracts between the government and Participants. Such arrangements will be jointly planned among MARAD, USTRANSCOM, and Participants in peacetime to allow for effective, efficient, and best valued use of commercial sealift capacity, provide DoD assured access, and minimize commercial disruption, whenever possible.

a. Stages I and II provide for pre-negotiated contingency contracts between USTRANSCOM and Participants to provide sealift capacity against all projected DoD Contingency requirements. These agreements will be executed in accordance with approved DoD contracting methodologies.

b. Stage III will provide for additional capacity to DoD when Stages I and II commitments or volunteered capacity are insufficient to meet Contingency requirements, and adequate shipping services from non-participants are not available through established DoD contracting practices or U.S. Government treaty agreements.

2. Activation will be in accordance with procedures outlined in Section V of this Agreement.

3. Following is the prioritized order for utilization of commercial sealift capacity to meet DoD peacetime and Contingency requirements:

a. U.S.-flag vessel capacity operated by a Participant and U.S.-flag VSA capacity of a Participant.

b. U.S.-flag vessel capacity operated by a non-Participant.

c. Combination U.S./foreign-flag vessel capacity operated by a Participant and combination U.S./foreign-flag VSA capacity of a Participant.

d. Combination U.S./foreign-flag vessel capacity operated by a non-Participant.

e. U.S. owned or operated foreign-flag vessel capacity and VSA capacity of a Participant.

f. U.S. owned or operated foreign-flag vessel capacity and VSA capacity of a non-Participant.

g. Foreign-owned or operated foreign-flag vessel capacity of a non-Participant.

4. Under Section VI.F. of this Agreement, Participants may implement CCAs to fulfill their contractual commitments to meet VISA requirements.

B. Responsibilities

1. SecDef, through USTRANSCOM, will:

- a. Define time-phased requirements for Contingency sealift capacity and resources required in Stages I, II, and III to augment DoD sealift resources.
- b. Keep MARAD and Participants apprised of Contingency sealift capacity required and resources committed to Stages I and II.
- c. Obtain Contingency sealift capacity through the implementation of specific pre-negotiated USTRANSCOM Contingency contracts with Participants.
- d. Notify the Administrator upon activation of any stage of VISA.
- e. Co-chair (with MARAD) the Joint Planning Advisory Group (JPAG) (see section IV).
- f. Establish procedures, in accordance with applicable law and regulation, providing Participants with necessary determinations for use of foreign-flag vessels to replace an equivalent U.S.-flag capacity to transport a Participant's normal peacetime DoD cargo, when Participant's U.S.-flag assets are removed from regular service to meet VISA Contingency requirements.
- g. Provide a reasonable time to permit an orderly return of a Participant's vessel(s) to its regular schedule and termination of its foreign-flag capacity arrangements as determined through coordination between USTRANSCOM and the Participants.
- h. Review and endorse Participants' requests to MARAD for use of foreign-flag replacement capacity for non-DoD government cargo, when U.S.-flag capacity is required to meet Contingency requirements.

2. SecTrans, through MARAD, will:

- a. Review the amount of sealift resources committed under USTRANSCOM contracts to Stages I and II and notify USTRANSCOM if a particular level of VISA commitment will have serious adverse impact on the U.S.-flag Merchant Marine's ability to provide essential maritime transportation and intermodal shipping services. MARAD's analysis will be based on the consideration that all VISA Stage I and II capacity committed will be activated. This notification

will occur on an as required basis upon the Commander's acceptance of VISA commitments from the Participants. If advised by MARAD, USTRANSCOM will adjust the size of the stages or provide MARAD with justification for maintaining the size of those stages. USTRANSCOM and MARAD will coordinate to ensure that the volume of sealift assets committed to Stages I and II will not have an adverse national economic impact.

b. Coordinate with DOJ for the expedited approval of CCAs.

c. Upon request by the Commander and approval by SecDef to activate Stage III, allocate sealift capacity and intermodal assets to meet DoD Contingency requirements. DoD will have priority consideration in any allocation situation.

d. Establish procedures, pursuant to 46 U.S.C. 53107(f), for determinations regarding the selection, equivalency, and duration of the use of foreign-flag vessels to replace U.S.-flag vessel capacity to transport the cargo of a Participant which has entered into an operating agreement under 46 U.S.C. 53103 whose U.S.-flag vessel capacity has been removed from regular service to meet VISA contingency requirements. Such foreign-flag vessels shall be eligible to transport cargo that is subject to U.S.-flag preference cargo requirements of 10 U.S.C. 2631 (with respect to military cargo or cargo otherwise transported by DoD) and 46 U.S.C. 55302–05 (with respect to all other cargoes shipped by, or on account of, an agency of the United States Government). However, any procedures regarding the use of such foreign-flag vessels to transport cargo subject to 10 U.S.C. 2631 must have an approved waiver in accordance with 10 U.S.C. 2631 and its implementing delegations and regulations.

e. Co-chair (with USTRANSCOM) the JPAG.

f. Review requests by Participants to the Secretary of Homeland Security under 46 U.S.C. 501(b) to waive compliance with the coastwise transportation requirements under 46 U.S.C. 55102 if U.S. coastwise-qualified vessels are activated under VISA and make determinations of U.S. coastwise-qualified vessel non-availability during a VISA activation. To the extent feasible, participants with U.S. coastwise-qualified vessels or vessel capacity will use

CCAs or other arrangements to fulfill their VISA commitments to protect their ability to maintain domestic services for their commercial customers and to fulfill their commercial peacetime commitments with U.S.-flag vessels. In situations where the activation of VISA deprives a Participant of all or a portion of its U.S. coastwise-qualified vessels or vessel capacity and, at the same time, creates a general shortage of U.S. coastwise-qualified vessel(s) or vessel capacity on the domestic market, based on market surveys, Participants with coastwise-qualified tonnage may apply for vessel-specific waivers under 46 U.S.C. 501(b). The vessel(s) or vessel capacity for which such waivers are requested will be approximately equal to the U.S. coastwise-qualified vessel(s) or vessel capacity chartered or under contract to DoD.

C. Termination of Charters, Leases and Other Contractual Arrangements

1. USTRANSCOM will notify the Administrator as soon as possible of the prospective termination of charters, leases, management service contracts or other contractual arrangements made by DoD under this Agreement.

2. In the event of general requisitioning of ships under 46 U.S.C. 56301, the Administrator will consider commitments made with DoD under this Agreement when selecting those vessels designated for requisition by, purchase by, or charter for the use of, the Government.

D. Modification of this Agreement

1. The Attorney General may modify this Agreement, in writing, after consultation with the FTC Chair, SecTrans, through their representative MARAD, and SecDef, through their representative the Commander. Although Participants may withdraw from this Agreement pursuant to Section VI.D, they remain subject to VISA as modified until such withdrawal.

2. The Administrator, Commander, and Participants may modify this Agreement at any time by mutual agreement, but only in writing with the approval of the Attorney General and the FTC Chair.

3. Participants may propose modifications to this Agreement at any time.

E. Administrative Expenses

Administrative and out-of-pocket expenses incurred by a participant must be borne solely by the Participant.

F. Record Keeping

1. MARAD will maintain carrier VISA application records in accordance with applicable DOT directives. Once a carrier is selected as a VISA Participant, MARAD will forward a copy of the VISA application form to USTRANSCOM.

2. In accordance with 44 CFR 332.2(c), MARAD will record JPAG meetings and make a full and verbatim transcript available for public inspection upon request, subject to FOIA exemptions under 5 U.S.C. 552(b). MARAD will send this transcript, and any voluntary agreement resulting from the meeting, to the Attorney General, the FTC Chair, the FEMA Administrator, any other party or repository required by law, and to Participants upon their request.

3. USTRANSCOM will be the official custodian of records related to the Contingency contracts to be used under this Agreement, including specific information on enrollment of a Participant's capacity in VISA.

4. In accordance with 44 CFR 332.3(d), a Participant must 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 of VISA, including planning related to and implementation of Stage activations of this Agreement. Each Participant agrees to make such records available to the Administrator, the Commander, the Attorney General, and the FTC Chair for inspection and copying at reasonable times and upon reasonable notice. Any record maintained by MARAD or USTRANSCOM pursuant to paragraphs 1, 2, or 3 of this subsection must be available for public inspection and copying unless exempted under FOIA on the grounds specified in 5 U.S.C 552(b)(1), (b)(3), or (b)(4), in accordance with DPA Section 708 and

implementing regulations at 44 CFR part 332.5.

G. MARAD Reporting Requirements--MARAD will report to the FEMA Administrator, as required, on the status and use of this Agreement.

IV. Joint Planning Advisory Group (JPAG)

A. The Joint Planning Advisory Group (JPAG) provides USTRANSCOM, MARAD and VISA Participants a planning forum to:

1. Analyze DoD Contingency sealift/intermodal service and resource requirements.
2. Identify commercial sealift capacity that may be used to meet DoD requirements, related to Contingencies and, as requested by USTRANSCOM, exercises and special movements.
3. Develop and recommend CONOPS to meet DoD-approved Contingency requirements and, as requested by USTRANSCOM, exercises and special movements.

B. JPAG will be co-chaired by MARAD and USTRANSCOM and will convene as jointly determined by the co-chairs.

C. JPAG will consist of designated representatives from MARAD, USTRANSCOM, each Participant, and maritime labor. Other attendees may be invited at the discretion of the co-chairs as necessary to meet JPAG requirements. Representatives will provide technical advice and support to ensure maximum coordination, efficiency, and effectiveness in the use of Participants' resources. All Participants will be invited to all open JPAG meetings. For selected JPAG meetings, attendance may be limited to designated Participants to meet specific operational requirements.

1. The co-chairs may establish working groups within JPAG. Participants may be assigned to working groups as necessary to develop specific CONOPS.

2. Each working group will be co-chaired by representatives designated by MARAD and USTRANSCOM.

D. JPAG will not be used for contract negotiations and/or contract discussions between carriers

and DoD; such negotiations and/or discussions will be in accordance with applicable DoD contracting policies and procedures.

E. The JPAG co-chairs will:

1. Notify the Attorney General, the FTC Chair, Participants, and the maritime labor representative of the time, place, and nature of each JPAG meeting.

2. Provide for publication in the *Federal Register* of a notice of the time, place, and nature of each 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 FTC Chair, and to Participants, upon request.

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 commitments.

V. Activation of VISA Contingency Provisions

A. General

VISA may be activated at the request of SecDef as needed to support Contingency operations. Activating voluntary commitments of capacity to support such operations will be in accordance with pre-negotiated Contingency contracts between USTRANSCOM and Participants.

B. Notification of Activation

1. The Commander will notify the Administrator of the activation of Stages I, II, and III.
2. The Administrator will notify the Attorney General and the FTC Chair when it has

been determined by DoD that activation of any Stage of VISA is necessary to meet DoD Contingency requirements.

C. Voluntary Capacity

1. Throughout the activation of any Stages of this Agreement, DoD may utilize voluntary commitment of sealift capacity or systems.

2. Requests for volunteer capacity will be extended simultaneously to both Participants and other carriers. First priority for utilization will be given to Participants who have signed Stage I and/or II USTRANSCOM Contingency contracts and are capable of meeting the operational requirements. Participants providing voluntary capacity may request USTRANSCOM to activate their pre-negotiated Contingency contracts; to the maximum extent possible, USTRANSCOM, where appropriate, will support such requests. Volunteered capacity will be credited against Participants' staged commitments, in the event such stages are subsequently activated.

3. In the event Participants are unable to fully meet Contingency requirements, or do not voluntarily offer to provide the required capacity, the shipping capacity made available under VISA may be supplemented by ships/capacity from non-Participants.

4. When voluntary capacity does not meet DoD Contingency requirements, DoD will activate the VISA stages as necessary.

D. Stage I

1. Stage I will be activated in whole or in part by the Commander, with approval of SecDef, when voluntary capacity commitments are insufficient to meet DoD Contingency requirements. The Commander will notify the Administrator upon activation.

2. USTRANSCOM will implement Stage I Contingency contracts as needed to meet operational requirements.

E. Stage II

1. Stage II will be activated, in whole or in part, when Contingency requirements exceed

the capability of Stage I and/or voluntarily committed resources.

2. Stage II will be activated by the Commander, with approval of SecDef, following the same procedures discussed in paragraph D above.

F. Stage III

1. Stage III will be activated, in whole or in part, when Contingency requirements exceed the capability of Stages I and II, and other shipping services are not available. This stage involves DoD use of capacity and vessels operated by Participants which will be furnished to DoD when required in accordance with this Agreement. The capacity and vessels are allocated by MARAD on behalf of SecTrans to the Commander.

2. Stage III will be activated by the Commander upon approval by SecDef. Upon activation, SecDef will request SecTrans to allocate sealift capacity based on DoD requirements, in accordance with Title 1 of DPA (50 U.S.C. 4511–18), to meet the Contingency requirement. All Participants' capacity committed to VISA is subject to use during Stage III.

3. Upon allocation of sealift assets by SecTrans, through its designated representative MARAD, the Commander will execute Contingency contracts with Participants, using standard negotiating procedures. Until execution of such contract, the Participant agrees that the assets remain subject to the provisions 46 U.S.C. 56301.

G. Partial Activation

As used in this Section V, the term *activation in part* of any Stage under this Agreement means one of the following:

1. Activation of only a portion of the committed capacity of some, but not all, of the Participants in any Stage that is activated; or

2. Activation of the entire committed capacity of some, but not all, of the Participants in any Stage that is activated; or

3. Activation of only a portion of the entire committed capacity of all the Participants in any Stage that is activated.

VI. Participant Terms and Conditions

A. Participation

1. Any U.S.-flag vessel operator organized under the laws of a State or Territory of the United States, or the District of Columbia, may become a Participant in this Agreement by submitting an executed copy of the form referenced in Section VII, and by entering into a VISA Contingency Contract with USTRANSCOM, which establishes a legal obligation to perform and the compensation methodology for all services rendered.

2. Consideration of a Participant's overall vessel capacity, intermodal resources, facilities and equipment includes (1) assets owned or operated by the applicant vessel operator described in VI.A.1 above, and (2) all United States subsidiaries and affiliates of the vessel operator that own, operate, control, or bareboat charter vessels and intermodal equipment in the regular course of their business and in which the vessel operator holds a controlling interest.

3. Upon request of the applicant executing the form referenced in Section VII, Participants may include their controlled non-domestic subsidiaries and affiliates as part of their capacity commitment, provided that the Administrator, in coordination with the Commander, grants specific approval for their inclusion.

4. Any vessel owner or operator receiving payments under a Maritime Security Program (MSP) Operating Agreement, in accordance with 46 U.S.C. 53106, must become a Participant with respect to all vessels enrolled in MSP at all times until the date the MSP Operating Agreement would have terminated according to its original terms. The MSP operator must be enrolled in VISA as a Stage III Participant, at a minimum. Such participation will satisfy the requirement for an MSP participant to be enrolled in an emergency preparedness program approved by SecDef as provided in 46 U.S.C. 53107.

5. A Participant is subject only to the provisions of this Agreement.

6. MARAD shall publish a list of Participants periodically in the *Federal Register*.

B. Agreement of Participant

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

USTRANSCOM will review and approve each Participant's commitment to ensure it meets DoD Contingency requirements. A Participant's capacity commitment to Stages I and II will be one of the considerations in determining the level of DoD peacetime contracts awarded, except for U.S. coastwise-qualified vessel capacity as discussed in paragraph 4, below.

2. USTRANSCOM may also enter into Contingency contracts, not linked to peacetime contract commitments, with Participants, as required to meet Stage I and II requirements.

3. Commitment of Participants' resources to VISA is as follows:

a. Stage III: A carrier desiring to participate in DoD peacetime contracts/traffic must commit no less than 50% of its total U.S.-flag capacity into Stage III. Carriers receiving payments under MSP Operating Agreements will have vessels receiving such assistance enrolled in Stage III. Participants' capacity under long-term charter to DoD will be considered organic to DoD and does not count towards the Participant's Contingency commitment during the period of the charter. Participants whose capacity is utilized under Stage III activation will be compensated based upon the negotiated rates by the Participant and USTRANSCOM within the USTRANSCOM Contingency Contract.

b. Stages I and II: DoD will annually develop and publish minimum commitment requirements for Stages I and II. Normally, the awarding of a long-term DoD contract (i.e., one year or longer), exclusive of charters, will include the annual predesignated minimum commitment to Stages I and/or II. Participants desiring to bid on DoD peacetime contracts will be required to provide commitment levels to meet DoD-established Stage I and/or II minimums on an annual basis. Participants may gain additional consideration for peacetime contract cargo allocation awards by committing capacity to Stages I and II beyond the specified minimums. If the Participant is awarded a contract reflecting such a commitment, that commitment must become the actual amount of a Participant's U.S.-flag capacity commitment to Stages I and II. A

Participant's Stage III U.S.-flag capacity commitment must represent its total minimum VISA commitment. That Participant's Stage I and II capacity commitments, as well as any volunteer capacity contribution by Participant, are portions of Participant's total VISA commitment. Participants activated during Stages I and II will be compensated in accordance with pre-negotiated USTRANSCOM VISA Contingency contracts.

4. Participants exclusively operating vessels engaged in domestic trades will be required to commit 50% of that capacity to Stage III. Such Participants will not be required to commit capacity to Stages I and II as a consideration of domestic peacetime traffic and/or contract award. However, such Participants may voluntarily agree to commit capacity to Stages I and/or II.

5. The Participant owning, operating, or controlling an activated ship or ship capacity will provide intermodal equipment and management services needed to utilize the ship and equipment at not less than the Participant's normal efficiency, in accordance with the pre-negotiated USTRANSCOM VISA Contingency contracts implementing this Agreement.

6. Each Participant acknowledges and agrees to abide by all provisions of DPA Section 708, as amended, and regulations related thereto which are promulgated by SecTrans, the Attorney General, and the FTC Chair. 49 CFR part 33 establishes procedures for assigning the priority for use and the allocation of shipping services, containers, and chassis to meet emergency requirements. JPAG will inform Participants of new and amended rules and regulations as they are issued in accordance with law and administrative due process. Although Participants may withdraw from VISA, they remain subject to all of the terms of this Agreement.

C. Effective Date and Duration of the Agreement

1. Participation in this Agreement is effective upon execution by MARAD of the submitted form referenced in Section VII, and approval by USTRANSCOM by execution of an USTRANSCOM VISA Contingency Contract, for Stage III, at a minimum.

2. VISA participation remains in effect until the Participant terminates the Agreement in accordance with paragraph D below, or termination of the Agreement in accordance with 44

CFR Sec. 332.4. Notwithstanding termination of VISA or participation in VISA, obligations pursuant to executed DoD peacetime contracts must remain in effect for the term of such contracts and are subject to all terms and conditions thereof.

D. Participant Termination of VISA

1. Except as provided in paragraph 2 below, a Participant may terminate its participation in VISA upon written notice to the Administrator. Such termination will become effective 30 days after written notice is received, unless obligations incurred under VISA by virtue of activation of any Contingency contract cannot be fulfilled prior to the termination date, in which case the Participant must complete the performance of such obligations. Voluntary termination by a carrier of its VISA participation shall not act to terminate or otherwise mitigate any separate contractual commitment entered into with DoD.

2. A Participant having an MSP Operating Agreement with MARAD must not withdraw from this Agreement at any time during the original term of the MSP Operating Agreement.

3. A Participant's withdrawal, or termination of this Agreement, will not deprive a Participant of an antitrust defense otherwise available to it in accordance with DPA Section 708 for the fulfillment of obligations incurred prior to withdrawal or termination.

E. Carrier Coordination Agreements (CCA)

1. When any Stage of VISA is activated or when DoD has requested volunteer capacity pursuant to Section V.B. of VISA, Participants may implement approved CCAs to meet the needs of DoD and to minimize the disruption of their services to the civil economy.

2. A CCA for which the parties seek the benefit of DPA Section 708(j) must be identified as such and be submitted to the Administrator for approval and certification in accordance with DPA Section 708(f)(1)(A). Upon approval and certification, the Administrator will transmit the Agreement to the Attorney General for a finding in accordance with DPA Section 708(f)(1)(B). Parties to approved CCAs may avail themselves of the antitrust defenses set forth in DPA Section 708(j). Nothing in VISA precludes Participants from engaging in

lawful conduct (including carrier coordination activities) that lies outside the scope of an approved CCA; but antitrust defenses will not be available pursuant to DPA Section 708(j) for such conduct.

3. Participants may seek approval for CCAs at any time.

F. Vessel Qualifications

1. All vessels enrolled in VISA must be capable of operating in worldwide/intercontinental trades for dry cargoes (i.e., not tankers) and must be capable of carrying military cargoes, including hazardous cargoes, on transoceanic voyages. Participants must provide evidence of this capability for all vessels they seek to enroll by submitting USCG certificates of inspection, international load line certificates, classification society survey reports, and/or documents of compliance for the carriage of certain goods or operation in certain worldwide geographic regions, as appropriate.

2. Participants may apply to enroll either self-propelled vessels, tugs-and-barges, or both. If applying with tugs-and-barges, Participants or applicants must provide MARAD satisfactory evidence that tug service of sufficient horsepower will be available for all barges proposed for enrollment in VISA, and of the barges' capacity to carry military cargoes intercontinentally.

3. If Participants offer vessels that they operate under bareboat charter, such charters must state that the vessel's owner will not interfere with the charterer's obligation to commit the chartered vessels to VISA for the duration of the charter. If a Participant offering tug-and-barge capacity does not own or bareboat charter sufficient tug service for the barges it owns, then it must submit time charters for the additional tugs needed to cover its barge capacity, valid through the period of its VISA enrollment.

G. Enrollment of Intermodal Capacity Vessels, Facilities, and Equipment

1. Participant will prepare a list identifying the ships/capacity and intermodal facilities, connections, and equipment committed by a Participant to each Stage of VISA and submit such list to USTRANSCOM within seven calendar days after a carrier has become a Participant.

USTRANSCOM will maintain a record of all such commitments. Participants will notify USTRANSCOM of any changes not later than seven days prior to the change.

2. USTRANSCOM will provide a copy of each Participant's VISA commitment data and all changes to MARAD.

3. In accordance with DPA Section 708, as amended, and implementing regulations at 44 CFR part 332.5, any information made available to administer this agreement or plan of action must be made available for public inspection and copying subject to FOIA exemptions under 5 U.S.C. 552(b)(1), (b)(3), or (b)(4). Information which a Participant identifies as privileged or business confidential/proprietary data shall be withheld from public disclosure in accordance with DPA Sections 708(h)(3) and 705(e), or which qualifies for exemption from public disclosure under 5 U.S.C. 552(b).

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

H. War Risk Insurance

1. Where commercial war risk insurance is not available on reasonable terms and conditions, DOT will provide non-premium government war risk insurance, subject to the provisions of 46 U.S.C. 53905.

2. Pursuant to 46 CFR 308.1(c), the Administrator will find each ship enrolled or utilized under this Agreement eligible for U.S. Government war risk insurance.

I. Antitrust Defense

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

2. This defense will not be available to the Participant for any action occurring after termination of this Agreement. This defense will not 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 will be accomplished in a way that will deprive the Participant of antitrust defense for the fulfillment of obligations incurred.

3. This defense will be available only if and to the extent that the Participant asserting it demonstrates that the action, which includes a discussion or agreement, was within the scope of this Agreement.

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

5. The defense will 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, on behalf of SecTrans, and DoD will support agreements filed by Participants with FMC that are related to the standby or Contingency implementation of VISA.

J. Breach of Contract Defense

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

K. Vessel Sharing Agreements (VSA)

1. VISA allows Participants the use of a VSA to utilize non-Participant U.S.-flag or foreign-owned and operated foreign-flag vessel capacity as a substitute for VISA Contingency capability provided that:

a. The foreign-flag capacity is utilized in accordance with 10 U.S.C. 2631, 46 U.S.C.

55302–05, and associated delegations and/or regulations.

b. The use of a VSA, either currently in use or a new proposal, as a substitution to meet DoD Contingency requirements is agreed upon by USTRANSCOM and MARAD.

c. The Participant carrier demonstrates adequate control over the offered VSA capacity during the period of utilization.

d. Participant's service requirements are satisfied.

e. Participant is responsible to DoD for the carriage or services contracted for. Though VSA capacity may be utilized to fulfill a Contingency commitment, a Participant's U.S.-flag VSA capacity in another Participant's vessel will not act in a manner to increase a Participant's capacity commitment to VISA.

2. Participants will apprise MARAD and USTRANSCOM in advance of any change in a VSA of which it is a member, if such changes reduce the availability of Participant capacity provided for in any approved and accepted Contingency Concept of Operations.

3. Participants will not act as a broker for DoD cargo unless requested by USTRANSCOM.

VII. Application and Agreement

The Administrator, in coordination with the Commander, has adopted the following form, titled *Application to Participate in the Voluntary Intermodal Sealift Agreement*, by which intermodal ship operators may apply to become a Participant in this 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* _____, _____, 20_____. This Agreement is authorized under Section 708 of the Defense Production Act of 1950, as amended (50 U.S.C. 4558). Regulations governing this Agreement appear at 44 CFR Part 332. 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* _____, _____, 20_____, 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 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 or capacity, 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 USTRANSCOM Voluntary Intermodal Sealift Agreement Contingency Contract for the purpose of meeting national defense requirements.

Attest:

(Corporate Secretary)

Effective Date: _____

(Secretary)

(Applicant-Corporate Name)

(Signature)

(Position Title)

United States of America, Department of Transportation, Maritime Administration

By: _____

Maritime Administrator

(Authority: Section 708 of the Defense Production Act, as amended (50 U.S.C. 4558), 49 CFR 1.93(l), E.O. 13603, 49 CFR 1.81(a)(10), E.O. 12656)

By Order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

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