DEPARTMENT OF TRANSPORTATION

Maritime Administration

Renewal of the Voluntary Tanker Agreement Program; Revised Form of the Voluntary Agreement

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice of publication of the voluntary tanker agreement.

SUMMARY: The Maritime Administration (MARAD) announces the renewal of the Voluntary Tanker Agreement Program and the publication of its revised Voluntary Tanker Agreement (VTA). The revised VTA replaces a prior version that was last published in Volume 73 of the **Federal Register** at page 51692 (September 4, 2008). After publishing the proposed text in the **Federal Register** in 2019 and hosting a public hearing in August 2020, MARAD has incorporated public input into the revised VTA.

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SUPPLEMENTARY INFORMATION:

Background

Section 708 of the Defense Production Act of 1950, as amended (50 U.S.C. 4558) (DPA section 708), entitled ''Voluntary agreements and plans of action 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 401 of Executive Order 13603 delegated this authority of the President to the Secretary of Transportation (Secretary), among others. By 49 CFR 1.93(l), the Secretary delegated to the Maritime Administrator the authority, in consultation and coordination with the Department of Transportation's Office of Intelligence, Security and Emergency Response, to develop and enter into maritime-related voluntary agreements such as the VTA.

Through its Tanker Security Fleet authority at 46 U.S.C. 53407, MARAD is authorized to establish emergency preparedness programs. Section 53407 provides that participants to a Tanker Security Fleet operating agreement must enter into an emergency preparedness agreement to make commercial transportation resources (including services) available, upon request by the Secretary of Defense during a time of war or national emergency, or whenever the Secretary of Defense determines that it is necessary for national security or contingency operation. Accordingly, MARAD is establishing the Voluntary Tanker Agreement Program (VTA Program) as an emergency preparedness program and the VTA as its corresponding emergency preparedness agreement.

Through advance arrangements in joint planning, including the development of VTAs, VTA Program participants will provide product tanker capacity to support a significant portion of surge and sustainment requirements in the deployment of U.S. military forces during armed conflicts or other national emergencies.

Regulations governing voluntary agreements appear at 44 CFR part 332. The revised form of agreement below will replace the VTA that was published in Volume 73 of the **Federal Register** at page 51692 (September 4, 2008). A draft revised agreement was published in Volume 84 of the **Federal Register** on pages 58824–29 (November 1, 2019). A public hearing on the proposed revised agreement was held on August 18, 2020, by teleconference (85 FR 45297 (July 27, 2020)). MARAD received comments proposing changes and clarifications (detailed below) to the draft revised agreement and made changes to the text reflecting the comments and harmonizing the text with the Voluntary Intermodal Sealift Agreement (VISA), an active emergency preparedness agreement for dry cargo contingency sealift capacity also created under 46 U.S.C. subtitle V authority and DPA Section 708 authorities and administered by MARAD.

The Department of Justice, in consultation with the Federal Trade Commission, has issued a finding that the revised VTA, as published below, satisfies the statutory criteria of the DPA section 708 required to implement the voluntary agreement (50 U.S.C. 4558(f)(1)(B)). In 2009, Congress amended the DPA to note that each voluntary agreement expires five years after the date it becomes effective. Accordingly, the terms of the VTA published herein will remain effective for a period of five years from the date of this publication.

Because the revised agreement below contains changes from the VTA published on September 4, 2008, both former and new participants must submit a new application. VTA Program applications are available from MARAD upon request.

Comments on the Proposed Voluntary Tanker Agreement

In response to the agency's **Federal Register** document published on November 1, 2019 (84 FR 58824) seeking public comment on the proposed VTA, MARAD received six separate comment submissions from, or on behalf of, the following individuals or entities: American Waterway Operators; Crowley Maritime Corporation; Jonathan Kaskin, Navy League of the United States; Maersk Line, Limited; Schuyler Line Navigation Company; and Timothy Boemecke, United States Transportation Command. MARAD responds below to all substantive comments.

Four commenters suggested that the VTA include incentives for program participants to carry Government cargoes in peacetime, as with the VISA and Civil Reserve Air Fleet (CRAF) programs, to ensure the viability of the VTA Program fleet. As with VISA and CRAF, a pledge of tanker capacity to the Government for national defense transportation demonstrates a commitment on the part of the U.S.-Flag carrier to the security and welfare of the Nation. Like the VISA and CRAF programs, and in accordance with Department of Defense Instruction 4500.57, secs. 6.3 and 6.4, VTA participants will receive contracting priorities for peacetime cargo.

One commenter suggested that one of the enumerated responsibilities of the Tanker Requirements Committee (TRC) in Sec. IV.A. should be to identify those National Defense Features that should be installed on VTA Program vessels, subject to the availability of funds, to meet the agency's statutory mission of supporting a United States merchant marine capable of serving as a naval and military auxiliary in time of war or national emergency (46 U.S.C. 50101(a)(2)). We agree and have reflected this in the updated VTA at Sec. IV.A.5.

One commenter suggested that the TRC include a designated representative from the United States Navy, in addition to other enumerated Department of

Defense (DoD) components, to represent the requirements of those naval vessels that would be supplied by tankers enrolled in the VTA Program. MARAD notes that the Military Sealift Command (MSC), the Department of the Navy's logistics command with responsibility for supplying fuel to naval vessels, is already a member of the TRC, and concludes that MSC would represent the above interests on the Committee. However, the TRC Co-Chairs may also, at their discretion under the TRC's rules at Sec. IV.C., designate other representatives from the Navy to sit on TRC to represent fleet fueling requirements.

One commenter suggested that the Preface be amended to state that program participants will be afforded the first opportunity to meet DoD peacetime and contingency tanker requirements, and that if they are unable to meet these requirements, the balance of DoD tanker requirements may be fulfilled by non-participant tankers. Such language, which is also found in VISA, offers additional incentive for tanker carriers to commit capacity under the VTA to receive the express contracting priority. This addition also reserves DoD's right to charter tankers, after exhausting the capacities committed under the agreement, to meet its needs in armed conflicts and emergencies. The Preface language has been amended to reflect the suggestion, together with the above comment on contracting incentives for program participants.

One commenter suggested that the VTA Program should be limited to product tankers operating exclusively in international commerce, rather than also including vessels operating in domestic or mixed domestic and international trades, to incentivize the expansion of an internationally-sailing U.S.-Flag tanker fleet and to ensure that DoD would have access to deep- sea tanker capacity with global operations. We disagree. First, the purpose of the VTA Program is to provide DoD with the greatest possible volume of U.S.-Flag product tanker tonnage for use by the armed forces in the event of an armed conflict or national emergency. Any limitation on enrolling qualified tonnage beyond a vessel's registry and technical characteristics would frustrate that purpose and fail to provide DoD with sufficient tanker capacity to meet its emergency requirements. As part of its statutory mission, MARAD supports and promotes the growth of the internationally-trading U.S.-Flag tanker fleet. The intent of the VTA Program, with the aforementioned peacetime contracting priority, and in conjunction with other agency programs, is to incentivize carriers to register more deep-sea tankers in the United States. Second, the VTA's terms and the responsibilities of the TRC in Sec. IV.A. will ensure that program participants would only enroll those vessels whose technical characteristics are best suited to satisfying DoD's tanker sealift needs, allowing the VTA Program to dynamically support evolving mission requirements.

One commenter suggested that the VTA Program should grant additional priority for the carriage of peacetime Government cargoes to coastwise-qualified U.S.-Flag tankers (those tankers holding coastwise endorsements under 46 U.S.C. 12112 and eligible to carry merchandise between points of the United States under 46 U.S.C. 55102) over those vessels only holding registry endorsements (as defined in 46 U.S.C. 12111), to strengthen the coastwise tanker fleet. MARAD disagrees. As stated above, the purpose of the VTA Program is to maximize U.S.-Flag worldwide tonnage availability, and the agency's mission is to support and maintain a United States-based merchant marine capable of supporting the Nation's domestic and international trade in peacetime and supplying the Nation's forces in armed conflicts, regardless of which endorsements the vessel holds. Further, MARAD does not typically contract for the transportation of cargoes by sea but is able to certify that a given vessel is enrolled under a VTA and thus can be granted general contracting priority. Other agencies of the Government contracting for ocean transportation of cargo may elect to grant additional priority on the basis of which endorsements a vessel holds at the time of contracting, but such decisions are beyond the scope of this effort to develop a voluntary agreement.

One commenter suggested that the determination of a prevailing market rate for an enrolled vessel's charter hire under Sec. V.B. of the VTA, if activated, should be determined by either MSC or MARAD, rather than only MSC. We believe such an arrangement would confuse the lines of authority under the agreement, which grants MARAD the responsibility of securing tonnage commitments from participating tanker carriers and United States Transportation Command (USTRANSCOM), the DoD joint command overseeing MSC, the power to charter participants' enrolled vessels if their VTA is activated. As USTRANSCOM holds the chartering authority under the VTA and would likely have access to the same market information as MARAD, the responsibility of determining a prevailing market rate on which to base charter hire rates belongs with USTRANSCOM. If implemented, the suggestion would likely lead to duplicative analyses between USTRANSCOM and MARAD. Should any participating tanker carrier have concerns about the methodology used by USTRANSCOM in any vessel market analysis, it may raise those concerns with USTRANSCOM directly or through the TRC.

One commenter inquired as to whether the agency would require a minimum number of tanker carriers to enroll vessels under their VTAs for the TRC to convene and carry out its defined responsibilities due to the inclusion of participating tanker carriers on the TRC in accordance with Sec. VI.C. of the agreement. The agency contemplates that the TRC will convene as soon as is practicable and will notify all VTA Program participants in advance of its convening.

The Voluntary Tanker Agreement Program

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Abbreviations

''CFR''—Code of Federal Regulations
''Commander''—Commander, United States Transportation Command
''CONOPS''—Concept of Operations
''DLA''—Defense Logistics Agency
''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)
''FAR''—Federal Acquisition Regulations (as codified at Title 48, CFR)
''FTC''—Federal Trade Commission
''JCS''—Joint Chiefs of Staff
''MARAD''—Maritime Administration, DOT
''NCA''—National Command Authorities
''POL''—Petroleum, Oil, and Lubricants
''SecDef''—United States Secretary of Defense
''Secretary''—United States Secretary of Transportation
''TRC''—Tanker Requirements Committee
''TSP''—Tanker Security Program
''U.S.C.''—United States Code
''USTRANSCOM''—United States Transportation Command (including its component units Air Mobility Command, Military Sealift Command, Military Surface Deployment and Distribution Command, Joint Operational Support Airlift Center, and Joint Enabling Capabilities Command)
''VTA''—Voluntary Tanker Agreement

Definitions

For purposes of this agreement, the following definitions apply:

Administrator—Maritime Administrator.

Attorney General—Attorney General of the United States.

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

Chair–FTC—Chairperson of the Federal Trade Commission (FTC).

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

Clean Tankers or Clean Tonnage—Product tankers that are inspected and approved by DLA Energy Quality Assurance Representatives (QAR), capable of meeting DoD quality standards, and able to carry refined petroleum products.

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—Includes, but is not limited to a ''contingency operation'' as defined at 10 U.S.C. section 101(a)(13), and a JCS-directed, NCA-approved action undertaken with military forces in response to: (i) natural disasters; (ii) terrorists or subversive activities; or (iii) required military operations, whether or not there is a declaration of war or national emergency.

Contingency contracts—DoD contracts in which Participants implement advance commitments of capacity and services to be provided in the event of a Contingency.

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

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

Non-participant—An operator, as defined under this section, that is not subject to a VTA.

Operator—A person that either owns and controls an eligible vessel or that charters and operates an eligible vessel through a demise charter that transfers virtually all the rights and obligations of the vessel owner to the demise charterer, such as that of crewing, supplying, maintaining, insuring, and navigating the vessel.

Program participant—An operator, as defined under this section, and signatory party to a current VTA or an operator that voluntarily remains subject to the terms of their expired VTA as provided for in 46 U.S.C. 53407(c), and otherwise as defined within Section VII 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.

Product Tanker—A double-hulled self-propelled tank vessel, within the meaning of 46 U.S.C. sections 2101(32), (48), and (49), that is capable of simultaneously carrying two or more separated grades of refined petroleum products, including POL.

U.S.-Flag Vessel—A vessel registered or documented under the laws of the United States of America.

Voluntary Tanker Agreement (VTA)—The MARAD emergency preparedness agreement establishing the terms and conditions for VTA Program participants.

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

Preface

The Maritime Administrator (Administrator), through delegated authority at 49 CFR 1.93(a), has established the Voluntary Tanker Agreement Program as an emergency preparedness program pursuant to 46 U.S.C. 53407. In accordance with section 53407, MARAD is requiring all contractors for vessels covered by operating agreements to enter into emergency preparedness agreements to make commercial transportation resources (including services) available, upon request by the Secretary of Defense (SecDef) during a time of war or national emergency, or whenever the SecDef determines that it is necessary for national security or contingency operation.

Pursuant to the authority contained in Section 708 of the Defense Production Act of 1950, as amended (DPA) (50 U.S.C. 4558), the Maritime Administrator (Administrator), through delegated authority at 49 CFR 1.93(l) and after consultation and coordination with the Department of Transportation's Office of Intelligence, Security and Emergency Response, consultation with the Department of Defense (DoD) and representatives of the tanker industry, has developed this Voluntary Tanker Agreement (VTA) as the emergency preparedness agreement under the VTA Program to provide DoD with the commercial product tanker capacity necessary to meet national defense contingency requirements. USTRANSCOM procures commercial tanker capacity to meet requirements for DoD operations worldwide through arrangements with common carriers and by charter. DoD, (through USTRANSCOM), and DOT (through MARAD) maintains and operates a fleet of ships owned by, or under charter to, the Federal Government to meet the petroleum, oil, and lubricant (POL) needs of the military services which cannot be met by existing commercial services.

The VTA Program is designed to provide DoD a coordinated, seamless transition from peacetime to wartime for

the acquisition of commercial tanker capacity to augment DoD's organic tanker capacity. The VTA establishes the terms, conditions, and procedures under which persons or entities may become VTA Program participants and agree voluntarily to make tankers available to DoD. The emergency preparedness program is designed to create a close working relationship among MARAD, USTRANSCOM (the DoD-designated representative for purposes of the VTA), and the program participants through which DoD requirements and the needs of the civil economy can be met through cooperative action. The VTA affords program participants flexibility to respond to defense requirements and adjust their commercial operations to minimize disruption whenever possible. The VTA further affords program participants defenses to civil and criminal actions for violations of antitrust laws when carrying out their obligations under the agreement.

Program participants will be afforded the first opportunity to meet DoD peacetime and contingency sealift requirements within applicable law and regulations, to the extent that operational requirements are met. In the event program participants are unable to fully meet the contingency requirements, the shipping capacity made available under VTA may be supplemented by ships and capacity from charter tankers not subject to a VTA in accordance with applicable law and by ships requisitioned in accordance with the emergency vessel acquisition authority under 46 U.S.C. 56301.

The Administrator, by delegation from the Secretary of Transportation (Secretary), has established this emergency preparedness program pursuant to 46 U.S.C. 53407 with the approval of the Secretary of Defense (SecDef). The Administrator, in conjunction with the SecDef, must ensure that all contractors with operating agreements enter into a VTA as an emergency preparedness agreement.

The VTA below replaces the VTA that was published in Volume 73 of the **Federal Register** at page 51692 (Sept. 4, 2008) and expired in 2013 (the ''2008'' VTA''). Previous participants under the 2008 VTA who wish to participate in the VTA Program must submit new applications to participate in the VTA below, which contains different substantive provisions from the 2008 VTA.

The Voluntary Tanker Agreement

I. Purpose and Finding

The purpose of the VTA Program is to provide a responsive transition from peace to contingency operations through procedures agreed upon in advance to provide tanker capacity to support DoD contingency requirements. The VTA establishes terms for the commitment of tanker capacity to satisfy DoD contingency requirements. The VTA Program is intended to promote and facilitate DoD's use of existing commercial tanker resources in a manner which minimizes disruption to commercial operations whenever possible. The VTA will change from standby to active status upon activation by appropriate authority as described in Section VI.

The Administrator has determined, in consultation and coordination with the Department of Transportation's Office of Intelligence, Security and Emergency Response, and pursuant to 50 U.S.C. 4558(c)(1), that conditions exist which may pose a direct threat to the national defense of the United States or its preparedness programs and has certified to the Attorney General that a standby agreement for the utilization of tanker capacity is necessary for the national defense. The Attorney General, in consultation with the FTC Chair, by notice in the **Federal Register** on October 6, 2022 (87 FR 60706)issued its finding that tanker capacity to meet national defense requirements cannot be provided by the industry through a voluntary agreement having fewer anticompetitive effects or without a voluntary agreement.

II. Authorities

A. Maritime Administration

DPA Section 708 (50 U.S.C. 4558), 46 U.S.C. 53407, E.O. 13603, E.O. 12656, 49 CFR 1.93, 49 CFR 1.81(a)(10).

B. U.S. Transportation Command (USTRANSCOM)

1. 10 U.S.C. 113, 161–69.
2. DoD Directive 5158.4 designating Commander to provide air, land, and sea transportation for the DoD.

III. General

A. Scope, Activation, and Prioritization

1. The VTA Program provides for the time-phased availability of Program Participants' tanker capacities to meet NCA-directed DoD Contingency requirements in the most demanding defense-oriented armed conflicts and national emergencies, and for less demanding defense- oriented situations through pre-negotiated contingency contracts between the government and program participants utilizing an emergency planning agreement—the VTA. Such arrangements will be jointly planned with MARAD, USTRANSCOM, and program participants in peacetime to allow effective, and efficient and best valued use of commercial tanker capacity, provide DoD assured Contingency access, and minimize commercial disruption, whenever possible.

2. Activation of the VTA will occur in accordance with the terms in Section VI.

3. The following schedule establishes the prioritized order for utilization of commercial tanker capacity to meet DoD peacetime and contingency requirements:

a. U.S.-Flag vessel capacity operated by a program participant;

b. U.S.-Flag vessel capacity operated by a non-participant;

c. Combination U.S./foreign flag vessel capacity operated by a program participant;

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

e. U.S. owned or operated foreign flag vessel capacity of a non-participant; and

f. Foreign-owned or operated foreign flag vessel capacity of a non-participant.

B. Participation

1. Operators of tanker vessels greater than 20,000 deadweight tons (DWT) may become program participants by submitting an executed copy of the form specified in Section VII and subject to subsequent MARAD approval.

2. Operators of Integrated Tug-Barges (ITBs) and Articulated Tug-Barges (ATBs) greater than 20,000 DWT may become program participants by submitting an executed copy of the form specified in Section VII and subject to subsequent MARAD approval.

3. Operators of tankers or ITB and ATB vessels of less than 20,000 deadweight tons may also submit an application and become program participants if such vessels are deemed to meet U.S. national security requirements or the needs of MARAD and USTRANSCOM, and MARAD accepts the application.

4. For the purposes of the VTA, program participation includes the corporate entity entering this VTA and all United States subsidiaries and affiliates of that entity which own or operate ships in the course of their regular business and in which that entity has more than fifty percent control either by stock ownership or otherwise.

5. A list of program participants will be published annually in the **Federal Register**.

C. Effective Date and Duration of Participation

This VTA is effective upon execution of the application form in Section VII by the Participant and the Administrator or their authorized designees and will remain in effect until terminated in accordance with 44 CFR 332.4 and 50 U.S.C. 4558(h)(9) or expires in accordance with 50 U.S.C. 4558(f)(2).

D. Withdrawal From the Agreement

Program participants may withdraw from this VTA, subject to the fulfillment of obligations incurred under the agreement prior to the date such withdrawal becomes effective, by giving written notice to the Administrator. Withdrawal should be communicated in writing to the Administrator, including a specific date, after which the withdrawing participant must cease all activities under the VTA. Withdrawal from this VTA will not deprive a program participant of an antitrust defense otherwise available to it in accordance with DPA Section 708 for the fulfillment of obligations incurred prior to withdrawal.

E. Rules and Regulations

Program participants acknowledge and agree to abide by all provisions of DPA Section 708 and regulations related thereto which are promulgated by the Secretary, the Attorney General, the FTC, and the Federal Emergency Management Agency. Standards and procedures pertaining to voluntary agreements have been promulgated in 44 CFR part 332. The Administrator will inform program participants of new rules and regulations as they are issued.

F. Responsibilities and Roles

1. The SecDef, through USTRANSCOM, will:

a. Define requirements for contingency tanker capacity to augment DoD tanker capacities.

b. Keep MARAD and program participants apprised of contingency tanker capacity required and capacity committed by program participants.

c. Obtain contingency tanker capacity through the implementation of specific pre- negotiated DoD contingency contracts with program participants.

d. Notify the Administrator upon activation of the VTA.

e. Co-chair (with MARAD) the Tanker Requirements Committee (TRC).

f. Establish procedures, in accordance with applicable law and regulation, providing program 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 the participant's U.S.-Flag assets are removed from regular service to meet VTA Contingency requirements.

g. Provide a reasonable time to permit an orderly return of a program participant's vessel(s) to its regular schedule and termination of its foreign flag capacity arrangements as determined through coordination between DoD and the participants. Review and endorse the program 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. The Secretary, through MARAD, will:

a. Review the volume of product tanker resources committed in DoD contracts and notify USTRANSCOM if the level of VTA commitment will have serious adverse impact on the commercial tanker industry's ability to provide essential services. MARAD's analysis will be based on the consideration that all VTA capacity committed will be activated. This notification will occur on an as required basis upon the Commander's acceptance of VTA commitments from the program participants. USTRANSCOM and MARAD will coordinate to ensure that the volume of product tanker assets committed under the VTA will not have an adverse, national economic impact.

b. Upon request by the Commander and approval by SecDef to activate this VTA, identify product tanker capacity to meet DoD Contingency requirements, in support of DoD priorities.

c. Establish procedures, pursuant to 46 U.S.C. 53407(f), for determinations regarding the equivalency and duration of the use of foreign-flag vessels to replace U.S.-Flag vessel capacity to transport the cargo of a program participant which has entered into an operating agreement under 46 U.S.C. 53403 whose U.S.-Flag vessel capacity has been removed from regular service to meet VTA contingency requirements. Such foreign flag vessels will be eligible to transport cargo that is subject to the Military Transportation Act of 1904 (10 U.S.C. 2631), government-financed exports under Public Resolution 17 (46 U.S.C. 55304), and the Cargo Preference Act of 1954 (46 U.S.C. 55305). However, the use of such foreign-flag vessels to transport cargo subject to 10 U.S.C. 2631 must have the concurrence of USTRANSCOM before it becomes effective.

d. Co-chair (with USTRANSCOM) the Tanker Requirements Committee (TRC).

e. Ensure that all requirements of 44 CFR 332.3 are met, including that the Attorney General, or suitable delegate(s) from DOJ, and the FTC Chair, or suitable delegate(s) from the FTC, have awareness of activities under the VTA, including activation, deactivations, and scheduling of meetings of the TRC or any subcommittee established under this Agreement.

f. Seek necessary waivers of the coastwise trading statutes as required, in accordance with 46 U.S.C. 501. To the extent feasible, program participants with coastwise-qualified vessels or vessel capacity (as defined in 46 U.S.C. 12112) will secure arrangements to protect their ability to maintain services for their domestic commercial customers and to fulfill their commercial peacetime commitments with coastwise-qualified U.S.-Flag vessels. In situations where the activation of this VTA deprives a program participant of all or a portion of its coastwise-qualified vessels or vessel capacity and, at the same time, creates a general shortage of coastwise-qualified vessel(s) or vessel capacity on the market, the Administrator may request that the Secretary of Homeland Security grant a temporary waiver of the coastwise trading statutes, in accordance with 46 U.S.C. 501, to permit a participant to charter or otherwise utilize non-coastwise-qualified vessel(s) or vessel capacity, with priority consideration recommended for U.S.-crewed vessel(s) or vessel capacity. The vessel(s) or vessel capacity for which such waivers are requested will be approximately equal to the coastwise-qualified vessel(s) or vessel capacity chartered or under contract to DoD.

3. The Attorney General and the FTC Chair, or suitable delegate(s) thereof:

a. Will fulfill all roles assigned to them under Section 708 of the DPA, 50 U.S.C. 4558.

b. May attend TRC meetings and request to be apprised on any activities taken in accordance with activities under this Agreement.

c. May request and review any proposed action undertaken pursuant to this Agreement.

d. If any DOJ or FTC Representative believes any actions proposed or taken are not consistent with relevant antitrust protections provided by the DPA, he or she will provide warning and guidance to the Committee as soon as the potential issue is identified.

e. If questions arise about the antitrust protections applicable to any particular action, the TRC Co-Chairs may request

the Attorney General or the Attorney General's designee, in consultation with the FTC, to provide an opinion on the legality of the action under relevant DPA antitrust protections.

G. Amendment of the Agreement

1. The Attorney General may modify this VTA, in writing, after consultation with the FTC Chair, Secretary, through his or her representative MARAD, and SecDef, through his or her representative, Commander. The Administrator, Commander, and program participants may modify this VTA at any time by mutual agreement, but only in writing with the approval of the Attorney General and the FTC Chair.

2. A program participant may propose amendments to the VTA at any time.

H. Administrative Expenses

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

I. Record Keeping

1. MARAD and the DoD have primary responsibility for maintaining records in accordance with 44 CFR part 332.

2. The Director, Office of Sealift Support, MARAD, will be the official custodian of records related to the carrying out of this VTA, except records of direct dealings between the DoD and program participants.

3. For direct dealings between the DoD and program participants, the designee of the SecDef will be the official custodian of records, but the Director, Office of Sealift Support, MARAD will have complete access thereto.

4. In accordance with 44 CFR 332.3(d), each program participant must maintain for five years all minutes of meetings, transcripts, records, documents, and other data, including any communications with other program participants or with any other member of the industry, related to the carrying out of this VTA. Each program participant agrees to make 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 item that this section requires the program participant to maintain. Any record maintained under this section must be available for public inspection and copying, unless exempted on the grounds specified in 5 U.S.C. 552(b)(1), (3) or (4) or identified as privileged and confidential information in accordance with 50 U.S.C. 4555(d), and 44 CFR 332.5.

J. Requisition of Ships of Non-Participants

The Administrator, upon Presidential authorization, may requisition ships of non-participants to supplement capacity made available for defense operations under this VTA and to balance the economic burden of defense support among companies operating in U.S. trade. Non- participant owners of requisitioned tankers may not participate in the TRC and will not enjoy the immunities provided by this VTA.

K. Temporary Replacement Vessel

Notwithstanding 10 U.S.C. 2631, 46 U.S.C. 55304, 55305, 55312, or any other statute governing the oceanic shipments of cargo and supplies procured for or financed by the United States Government—

1. A program participant that is also a contractor under the Tanker Security Program (TSP) (46 U.S.C. 53401–11) may operate or employ in foreign commerce a foreign-flag vessel or foreign-flag vessel capacity as a temporary replacement for a United States-documented vessel or United States-documented vessel capacity that is activated by the SecDef under this VTA.

2. Such replacement vessel or vessel capacity will be eligible during the replacement period to transport preference cargoes subject to 10 U.S.C. 2631, and 46 U.S.C. 55304, 55305, or 55312, to the same extent as the eligibility of the vessel or vessel capacity replaced.

IV. Tanker Requirements Committee

A. Establishment and Scope of Authority

There is established a Tanker Requirements Committee (TRC) to provide USTRANSCOM, MARAD, and program participants a forum to:

1. Analyze DoD contingency tanker requirements;

2. Identify commercial tanker 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 Concepts of Operations (CONOPS) to meet DoD-approved contingency requirements and, as requested by USTRANSCOM, exercises and special movements;

4. Advise the Administrator on the tanker capacity that each program participant controls which is capable of meeting contingency requirements; and

5. Identify National Defense Features appropriate for installation on commercial tankers to enhance their service capabilities for operation upon activation under this Agreement.

B. TRC Leadership

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

C. TRC Membership and Meetings

1. TRC regular membership will consist of designated representatives from MARAD, USTRANSCOM, Military Sealift Command, Defense Logistics Agency-Energy, each program participant, and maritime labor. Other attendees may be invited at the discretion of the co-chairs. Representatives will provide technical advice and support to ensure maximum coordination, efficiency, and effectiveness in the use of program participants' resources.

2. All program participants will be invited to open committee meetings. For selected committee meetings, attendance may be limited to designated program participants to meet specific operational requirements.

3. The co-chairs may establish working groups within TRC. Program participants may be assigned to working groups as necessary to develop specific CONOPS. Each working group will be co-chaired by representatives designated by MARAD and USTRANSCOM.

4. In general, program participants will not be asked to share competitively sensitive information directly with other program participants. Direct sharing of information among program participants will be requested only when necessary and will be closely supervised by the TRC Co-Chairs, including requiring appropriate safeguards regarding program participant use and dissemination of other program participants' data.

D. Prohibition on Contract Negotiations

TRC participation 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. TRC Co-Chairs' Responsibilities

TRC co-chairs will:

1. Notify the Attorney General, the FTC Chair, and the program participants of the time, place, and nature of each meeting and of the proposed agenda of each meeting to be held to carry out this VTA;

2. Provide for publication in the **Federal Register** of a notice of the time, place, and nature of each meeting. If a

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 days of the meeting and will include the reasons why the meeting is closed;

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

4. Provide for a written summary or other record of each meeting and provide copies of transcripts or other records to the Attorney General, the FTC Chair, and all program participants; and

5. Take necessary actions to protect from public disclosure any data discussed with or obtained from program participants which a participant has identified as privileged and confidential in accordance with DPA Sections 708(h)(3) and 705(e) (50 U.S.C. 4558(h)(3) and 4555(d)), or which qualifies for withholding under 44 CFR 332.5.

V. Activation of the VTA

A. Determination of Necessity

This VTA may be activated in whole or in part at the request of the Commander, with the approval of SecDef, to support contingency operations when there is a tanker capacity emergency. A tanker capacity emergency will be deemed to exist when the Commander finds that tanker capacity required to support operations of U.S. forces outside the continental United States cannot be supplied through the commercial tanker charter market in accordance with applicable laws and regulations or other voluntary arrangements. The Commander will immediately notify the Administrator when such a finding has been made and upon activation of this VTA. The Administrator will then notify the Attorney General and the FTC Chair when such a finding is made.

B. Tanker Charters

USTRANSCOM will work directly with tanker operators in the making of charter parties and other arrangements to meet the defense requirement, keeping the Administrator informed. To reduce risk to owners and to control cost to the government, all government charters will be time charters, unless specifically designated as voyage charters by the contracting officer. If vessels are chartered between program participants, participants will keep the Administrator informed.

The Administrator will keep the Attorney General and the FTC Chair informed of the actions taken under this VTA.

C. Termination of Charters

USTRANSCOM, as the contracting officer, will notify the Administrator as far as possible in advance of the prospective termination of the need for tanker capacity under this VTA.

D. Determination of Tanker Capacity Need

Upon activation of this VTA, USTRANSCOM will consult with the TRC to determine which enrolled tankers best meet the requirements of the declared tanker capacity emergency, based on the tankers' characteristics. This may result in activation of only a portion of the committed tanker fleet.

VI. Terms and Conditions

A. Program Participants

1. Each program participant agrees to contribute tanker capacity as requested by the Administrator in accordance with Section VI. B. below at such times and in such amounts as the Administrator, as requested by DoD, will determine to be necessary to meet the essential needs of the DoD for the transportation of DoD petroleum and petroleum products in bulk by sea.

2. Each program participant further agrees to make tankers and tanker capacity available to other program participants when requested by the Administrator, on the advice of TRC, in order to ensure that contributions to meet DoD requirements are made on a proportionate basis whenever possible or to ensure that no participating tanker operator is disproportionately hampered in meeting the needs of the civil economy.

B. Proportionate Contribution of Capacity

1. Any entity receiving payments under TSP must become a program participant with respect to all tankers enrolled in TSP at all times until the date the TSP operating agreement would have terminated according to 46 U.S.C. 53404(a). Such participation will satisfy the requirement for a TSP participant to be enrolled in an emergency preparedness program approved by SecDef as provided in 46 U.S.C. 53407.

2. Program participants hereto not receiving TSP payments under TSP, agree to contribute tanker capacity under this VTA in the proportion that its controlled tonnage bears to the total controlled tonnage of all program participants. Because exact proportions may not be feasible, each program participant agrees that variances are permissible at the discretion of the Administrator.

3. Controlled tonnage will include tankers, ITBs, and ATBs of over 20,000 DWT capacity, which are:

a. Militarily useful in the transportation of refined DoD cargoes pursuant to the requirements of associated war plans;

b. Vessels in which, as of the effective date of the activation of this VTA, the program participant or any of its U.S. subsidiaries or affiliates has a controlling interest and which are registered in the United States or any non-U.S. registry approved by TRC, and will include:

i. Vessels on charter or under contract to such program participant for a period of six months or more from the effective date of activation of this VTA, regardless of flag of registry, exclusive of tonnage available to the program participant under contracts of affreightment and consecutive voyage charter; provided that, in the event an owner of a vessel terminates a time charter in accordance with a war clause, the affected tonnage will be excluded from the chartering participant's controlled tonnage; and

ii. Any other non-U.S.-Flag tonnage which a program participant may offer to designate as controlled tonnage and which TRC accepts;

c. And may not include:

i. Tankers described in subparagraph b. which are chartered out or under contract to others for a remaining period of six months or more from the effective date of activation of this VTA; or

ii. Certain vessels which are fitted with special gear and are on permanent station for the storage of crude oil from a production platform and vessels which may have a dual role of production storage and transportation use to a limited location.

4. Chemical tankers and tankers in dirty trade may contribute Clean Tanker capacity only after being certified as being able to meet DoD quality standards to carry refined petroleum products to meet DoD requirements.

5. This VTA will not be deemed to commit any vessel with respect to which the law of the country of registration requires the approval of the government before entering into this VTA or furnishing such vessel under the terms of this VTA until such time as the required approval has been obtained.

6. The obligations of program participants to contribute clean tanker capacity under this VTA will be calculated on a proportionate basis wherever possible among the program participants by TRC.

7. A vessel on charter to a program participant will not be subject to a relet to the DoD in the case where the period

of the relet would be longer than the term of the program participant's charter or in the case where the relet would otherwise breach the terms of the charter, but such tonnage will be included in the calculation of the program participant's controlled tonnage.

8. The Administrator retains the right under law to requisition ships of program participants. A program participant's ships which are directly requisitioned by the U.S. Government or which are called up pursuant to other U.S. Government voluntary arrangements will be credited against the participant's proportionate contribution under this VTA. Ships on charter to the DoD when this VTA is activated will not be so credited.

C. Reports of Controlled Tonnage

Twice annually, or upon request of the Administrator and in such form as may be requested, each program participant must submit information as to controlled tonnage necessary for the carrying out of this VTA. Information which a program participant identifies as privileged and confidential will be withheld from public disclosure in accordance with DPA Sections 708(h)(3) and 705(e) (50 U.S.C. 4558(h)(3) and 4555(d)), and 44 CFR 332.5.

D. Freight Rates Under the VTA

1. The rate of charter hire applicable to each charter under this VTA will be the prevailing market rate effective at the time of the proposed loading of the vessel. The USTRANSCOM Contracting Officer will determine the prevailing market rate utilizing the price analysis techniques set forth in FAR Subpart 15.4 to determine that the negotiated rates are fair and reasonable, utilizing market or previous contract prices. Time charter hire rates, for either U.S. or foreign-flag tankers, will be expressed in terms of a per diem rate(s).

2. The rate of charter hire fixed with respect to each charter will apply for the entire period of the charter, except that:

a. For a consecutive voyage charter, the rate of charter will be increased or decreased to reflect increases or decreases in the price of bunker fuel applicable in the area of the vessel's trade; and

b. Reimbursement for increased war risk insurance premiums will be made in accordance with Section VI.E.

E. War Risk Insurance

1. Increased war risk insurance premiums for time-chartered vessels will be paid by DoD, or MARAD war risk insurance policies will be implemented.

2. For voyage and consecutive voyage charters, the program participant will be reimbursed for increases in war risk insurance premiums that are applicable to the actual voyage but are announced after the charter rate is established by the broker panel.

3. For any ship chartered under this VTA, the SecDef may procure from the Secretary war risk insurance on hull and machinery, war risk protection and indemnity insurance, and Second Seaman's War Risk Insurance, subject to 46 U.S.C. 53905.

F. Antitrust Defense

Under the provisions of DPA Subsection 708(j) (50 U.S.C. 4558(j)), each program participant in the VTA will have available as a defense to any civil or criminal action brought for violation of the antitrust laws with respect to any act or omission to act to develop or carry out the VTA, that such act or omission to act was taken by the program participant in the course of developing or carrying out this VTA, that the program participant fully complied with the provisions of the DPA and the rules promulgated thereunder, and that the program participant acted in accordance with the terms of this VTA. This defense will not be available to the program participant for any act or omission occurring after the termination of the VTA, nor will it be available, upon the modification of the VTA, with respect to any subsequent act or omission that is beyond the scope of the modified VTA, except that no such termination or modification will be accomplished in a way that will deprive program participants of this antitrust defense for the fulfillment of obligations incurred. This defense will be available only if and to the extent that the program participants asserting it demonstrate that the action, which includes a discussion or agreement, was within the scope of this VTA, and taken at the direction of the USTRANSCOM and/or MARAD, and with appropriate oversight and approval of USTRANSCOM and/or MARAD. The person asserting the defense bears the burden of proof. 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 of the United States.

VII. Application and Agreement

The Administrator has adopted and makes available a form on which tanker operators may apply for and become program participants in this VTA (''Application and Agreement to Participate in the Voluntary Tanker Agreement''). The form will incorporate by reference the terms of this VTA.

Application and Agreement To Participate in the Voluntary Tanker Agreement

The applicant identified below hereby applies to participate in the Maritime Administration's agreement entitled ''Voluntary Tanker Agreement'' (VTA). The text of this VTA was published in__**Federal Register**__,__, 2022 (*citation placeholder*).

This VTA is authorized pursuant to 46 U.S.C. 53407 and under Section 708 of the Defense Production Act of 1950, as amended (50 U.S.C. 4558). Regulations governing this VTA appear at 44 CFR part 332.

The applicant, if approved, hereby acknowledges and agrees to the incorporation by reference into this application and agreement of the entire text of the Voluntary Tanker Agreement published in__**Federal Register**_,_, 2022 (*citation placeholder*), as though said text were physically recited herein.

The applicant, as program participant, agrees to comply with the provisions of Section 708 of the Defense Production Act of 1950, as amended (50 U.S.C. 4558), the regulations of 44 CFR part 332 and 46 U.S.C. 53407, and the terms of the Voluntary Tanker Agreement.

Further, the applicant, if approved as a program participant, hereby agrees to contractually commit to make vessels or capacity available for use by the Department of Defense and to other program participants for the purpose of meeting national defense requirements.

_____
(Corporate Secretary)

_____
(Applicant-Corporate Name)

_____
(Name of authorized official)
(CORPORATE SEAL or Notary)

_____
(Position Title)

_____
(Signature of authorized official)
UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
MARITIME ADMINISTRATION
Effective Date: _____
By order of the Maritime Administrator.

_____
Secretary, Maritime Administration.

(Authority: 50 U.S.C. 4558, 46 U.S.C. 53407, E.O. 13603, E.O. 12656, 49 CFR 1.93, 49 CFR 1.81(a)(10), 44 CFR part 332)

By order of the Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

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