



**BILLING CODE 4910-81-P**

## **DEPARTMENT OF TRANSPORTATION**

### **Maritime Administration**

#### **Voluntary Intermodal Sealift Agreement (VISA)**

**AGENCY:** Maritime Administration, DOT

**ACTION:** Notice of open season for enrollment in the VISA program

#### **Introduction**

The VISA program was established pursuant to section 708 of the Defense Production Act of 1950, as amended (DPA), which provides for voluntary agreements for emergency preparedness programs. VISA was approved for a two year term on January 30, 1997, and published in the Federal Register on February 13, 1997, (62 FR 6837). Effective September 30, 2009, the DPA for voluntary agreements and plans of action for preparedness programs was amended to note that each voluntary agreement expires five (5) years after the date it becomes effective. Therefore, approval of the VISA as published in the Federal Register on March 24, 2010 (75 FR 14245) is currently extended until October 1, 2014.

As implemented, the VISA program is open to U.S.-flag vessel operators of oceangoing militarily useful vessels, to include tugs and barges. An operator is defined as an owner or bareboat charterer of a vessel. Tug enrollment alone does not satisfy VISA eligibility. Operators include vessel owners and bareboat charter operators if satisfactory signed agreements are in place committing the assets of the owner to the bareboat charterer for purposes of VISA. Voyage and space charterers are not considered U.S.-flag vessel operators for purposes of VISA eligibility.

#### **VISA Concept**

The mission of VISA is to provide commercial sealift and intermodal shipping services and systems, including vessels, vessel space, intermodal systems and equipment, terminal facilities, and

related management services, to the Department of Defense (DOD), as necessary, to meet national defense contingency requirements or national emergencies.

VISA provides for the staged, time-phased availability of participants' shipping services/systems to meet contingency requirements through prenegotiated contracts between the Government and participants. Such arrangements are jointly planned with the Maritime Administration, U.S. Transportation Command (USTRANSCOM), and participants in peacetime to allow effective and best valued use of commercial sealift capacity, to provide DOD assured contingency access, and to minimize commercial disruption, whenever possible.

There are three time-phased stages in the event of VISA activation. VISA Stages I and II provide for prenegotiated contracts between DOD and participants to provide sealift capacity to meet all projected DOD contingency requirements. These contracts are executed in accordance with approved DOD contracting methodologies. VISA 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.

### **VISA Annual Enrollment Open Season**

The purpose of this notice is to invite interested, qualified U.S.-flag vessel operators that are not currently enrolled in the VISA program to participate. The annual enrollment is intended to link the VISA enrollment cycle with DOD's peacetime cargo contracting to ensure eligible participants priority consideration for DOD awards of cargo.

Alignment of VISA enrollment and eligibility for VISA priority will solidify the linkage between commitment of contingency assets by VISA participants and receiving VISA priority consideration

for the award of DOD peacetime cargo. This is the only planned enrollment period for carriers to join the VISA program and derive benefits for DOD peacetime contracts during the time frame of October 1, 2012 through September 30, 2013. The only exception to this open season period for VISA enrollment will be for a non-VISA carrier that reflags a vessel into U.S. registry. That carrier may submit an application to participate in the VISA program at any time upon completion of reflagging.

### **Advantages of Peacetime Participation**

Carriers enrolled in the VISA program provides DOD with assured access to sealift services during contingencies based on a level of commitment, as well as a mechanism for joint planning. In return for their VISA commitment, DOD awards peacetime cargo contracts to VISA participants on a priority basis. Award of DOD cargoes to meet DOD peacetime and contingency requirements is made on the basis of the following priorities:

- U.S.-flag vessel capacity operated by VISA participants and U.S.-flag Vessel Sharing Agreement (VSA) capacity held by VISA participants.
- U.S.-flag vessel capacity operated by non-participants.
- Combination U.S.-flag/foreign-flag vessel capacity operated by VISA participants, and combination U.S.-flag/foreign-flag VSA capacity held by VISA participants.
- Combination U.S.-flag/foreign-flag vessel capacity operated by non-participants.
- U.S.-owned or operated foreign-flag vessel capacity and VSA capacity held by VISA participants.

- U.S.-owned or operated foreign-flag vessel capacity and VSA capacity held by non-participants.
- Foreign-owned or operated foreign-flag vessel capacity of non-participants.

### **Participation**

Any U.S.-flag vessel operator organized under the laws of a state of the United States, or the District of Columbia, who is able and willing to commit militarily useful sealift assets and assume the related consequential risks of commercial disruption, may be eligible to participate in the VISA program. The term “operator” is defined in the VISA document as “an ocean common carrier or contract carrier that owns, controls or manages vessels by which ocean transportation is provided.” Applicants wishing to become participants must provide satisfactory evidence that the vessels being committed to the VISA program are operational and that vessels are intended to be operated by the applicant in the carriage of commercial or government preference cargoes. While vessel brokers, freight forwarders and agents play an important role as a conduit to locate and secure appropriate vessels for the carriage of DOD cargo, they may not become participants in the VISA program due to lack of requisite vessel ownership or operation. However, brokers, freight forwarders and agents should encourage the carriers they represent to join the program.

### **Commitment**

Any U.S.-flag vessel operator desiring to receive priority consideration in the award of DOD peacetime contracts must commit no less than 50 percent of its total U.S.-flag militarily useful capacity in Stage III of the VISA program. Participants operating vessels in international trade may receive top tier consideration in the award of DOD peacetime contracts by committing the minimum percentages of capacity to all three stages of VISA or bottom tier consideration by committing the minimum percentage of capacity to only Stage III of VISA. USTRANSCOM and

the Maritime Administration will coordinate to ensure that the amount of sealift assets committed to Stages I and II will not have an adverse national economic impact. To minimize domestic commercial disruption, participants operating vessels exclusively in the domestic Jones Act trades are not required to commit the capacity of those U.S. domestic trading vessels to VISA Stages I and II. Overall VISA commitment requirements are based on annual enrollment.

In order to protect a U.S.-flag vessel operator's market share during contingency activation, VISA allows participants to join with other vessel operators in Carrier Coordination Agreements (CCAs) to satisfy commercial or DOD requirements. VISA provides a defense against antitrust laws in accordance with the DPA. CCAs must be submitted to the Maritime Administration for coordination with the Department of Justice for approval, before they can be utilized.

### **Vessel Position Reporting**

If VISA applicants have the capability to track their vessels, they must state which system is used in their VISA application and will be required to provide the Maritime Administration with access to their vessel tracking systems upon approval of their VISA application. If VISA applicants do not have a tracking system, they must indicate this in their VISA application. The VISA program requires enrolled ships to comply with 46 CFR Part 307, Establishment of Mandatory Position Reporting System for Vessels.

### **Compensation**

In addition to receiving priority in the award of DOD peacetime cargo, a participant will receive compensation during contingency activation for that capacity activated under Stage I, II and III. The amount of compensation will depend on the Stage at which capacity is activated. During enrollment, each participant must select one of several compensation methodologies. The

compensation methodology selection will be completed with the appropriate DOD agency, resulting in prices in contingency contracts between DOD and the participant.

### **Application for VISA Participation**

New applicants may apply to participate by obtaining a VISA application package (Form MA-1020 (OMB Approval No. 2133-0532)) from the Director, Office of Sealift Support, at the address indicated below. Form MA-1020 includes instructions for completing and submitting the application, blank VISA Application forms and a request for information regarding the operations and U.S. citizenship of the applicant company. A copy of the VISA document as published in the Federal Register on March 24, 2010, will also be provided with the package. This information is needed in order to assist the Maritime Administration in making a determination of the applicant's eligibility. An applicant company must provide an affidavit that demonstrates that the company is qualified to document a vessel under 46 U.S.C. § 12103, and that it owns, or bareboat charters and controls, oceangoing, militarily useful vessel(s) for purposes of committing assets to the VISA program.

New VISA applicants are required to submit their applications for the VISA program as described in this Notice no later than 30 days after the date of publication of this Federal Register notice.

Applicants must provide the following:

- U.S. citizenship documentation;
- Copy of their Articles of Incorporation and/or By Laws;
- Copies of loadline documents from a recognized classification society to validate oceangoing vessel capability;

- U.S. Coast Guard Certificates of Documentation for all vessels in their fleet;
- Copy of Bareboat Charters, if applicable, valid through the period of enrollment, which state that the owner will not interfere with the charterer's obligation to commit chartered vessel(s) to the VISA program for the duration of the charter; and
- Copy of Time Charters, valid through the period of enrollment, for tug services to barge operators, if sufficient tug service is not owned or bareboat chartered by the VISA applicant. Barge operators must provide evidence to MARAD that tug service of sufficient horsepower will be available for all barges enrolled in the VISA program.

Approved VISA participants will be responsible for ensuring that information submitted with their application remains up to date beyond the approval process. Any changes to VISA commitments must be reported to the Maritime Administration and USTRANSCOM not later than seven days after the change. If charter agreements are due to expire, participants must provide the Maritime Administration with charters that extend the charter duration for another 12 months or longer.

Once the Maritime Administration has reviewed the application and determined VISA eligibility, the Maritime Administration will sign the VISA application document which completes the eligibility phase of the VISA enrollment process.

After VISA eligibility is approved by the Maritime Administration, approved applicants are required to execute a VISA Enrollment Contract (VEC) with DOD [USTRANSCOM].

USTRANSCOM will specify the participant's Stage III commitment, and appropriate Stage I and/or II commitments for the period October 1, 2012 through September 30, 2013. Once the VEC is completed, the applicant completes the DOD contracting process with USTRANSCOM by executing a Drytime Contingency Contract (DCC), if applicable, and for Liner Operators, a VISA

Contingency Contract (VCC). The Maritime Administration reserves the right to revalidate all eligibility requirements without notice.

**FOR ADDITIONAL INFORMATION AND APPLICATIONS CONTACT:**

**Jerome D. Davis**, Director, Office of Sealift Support, U.S. Maritime Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590. Telephone (202) 366-0688; Fax (202) 366-5904.

Other information about the VISA can be found on the Maritime Administration's Internet Web Page at <http://www.marad.dot.gov>.

(Authority: 49 CFR 1.66)

**By Order of the Maritime Administrator**

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Christine Gurland  
Acting Secretary  
Maritime Administration

Dated: August 27, 2012