DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 296

[Docket No. MARAD–2006–23804]

RIN 2133–AB68

Maintenance and Repair Reimbursement Pilot Program

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: This final rule amends the Maritime Administration's (MARAD's) regulations governing its pilot program for the reimbursement of costs of qualified maintenance and repair (M&R) of Maritime Security Program (MSP) vessels performed in United States shipyards. Under Public Law 109–163, the Secretary of Transportation, acting through the Maritime Administrator, is directed to implement regulations that, among other things, replace MARAD's voluntary M&R reimbursement program with a mandatory program.

DATES: This rule is effective March 8, 2007.

FOR FURTHER INFORMATION CONTACT: Jean E. McKeever, Associate Administrator for Marine Asset Development, Maritime Administration, 400 Seventh Street, SW., Washington, DC 20590; phone: (202) 366–5737; fax: (202) 366–3511; or e-mail *Jean.McKeever@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Maritime Security Program (MSP) was established to maintain a modern U.S.-flag fleet of commercially viable, militarily useful, privately-owned vessels for national defense needs and to maintain a strong U.S. presence in international maritime trade. Under the MSP, the U.S. Government contracts with certain operators of U.S.-flag commercial vessels to be on call for service when needed in times of national emergency or war. In return, the U.S. Government provides a yearly operating payment, subject to availability of appropriations.

The original MSP was established by the Maritime Security Act of 1996 (Pub. L. 104–239, Oct. 8, 1996) for fiscal years 1996 through 2005. On November 24, 2003, President Bush signed the Maritime Security Act of 2003 (MSA 2003) (part of the National Defense Authorization Act for Fiscal Year 2004) which reauthorized the MSP for fiscal years 2006 through 2015. Sixty MSP operating agreements authorized under MSA 2003 were awarded on January 12, 2005. The operating agreements, one for each vessel, require the vessel owner or operator to operate the vessel in commercial service in foreign trade under U.S. registry and to make that vessel available to the United States when needed. The operating agreements under MSA 2003, became effective October 1, 2005, and, subject to available appropriations, are renewable for each subsequent fiscal year through the end of fiscal year 2015.

In addition to reauthorizing the MSP, section 3517 of the MSA 2003 established a voluntary pilot program under which the Secretary of Transportation could enter into agreements to reimburse MSP vessel operators for the costs of qualified M&R performed in U.S. shipyards. Reimbursement levels under the voluntary program were established at 80% of the difference between the fair and reasonable cost of obtaining qualified M&R work in U.S. shipyards and the cost of qualified M&R work in foreign shipyards. MARAD promulgated implementing regulations for this program at 46 CFR section 296.60 (70 FR 55581, Sept. 22, 2005).

Under Public Law 109–163, enacted on January 6, 2006, the Secretary of Transportation was directed to implement regulations to replace the voluntary M&R reimbursement program with a mandatory program. Under the mandatory program, MARAD must enter into an agreement with one or more MSP Contractors, subject to appropriations, for the M&R of one or more vessels that are subject to an MSP operating agreement to be performed in a U.S. shipyard, ''as a condition of awarding an operating agreement to the person.'' Under Public Law 109–163, reimbursement levels are established at 100% of the difference between the fair and reasonable cost of obtaining qualified M&R work in U.S. shipyards and the cost of qualified M&R work in foreign shipyards.

MARAD published a notice of proposed rulemaking (NPRM) on February 8, 2006 (71 FR 6438), inviting public comments. The NPRM proposed, among other things, to make performance of qualified M&R in the United States mandatory as a condition of participation in MSP. The NPRM also invited suggestions regarding what documentation Contractors could provide to assist MARAD in determining the fair and reasonable cost of obtaining qualified M&R work in U.S. shipyards as well as in the foreign shipyards where Contractors would otherwise undertake such work.

Several of the MSP contractors objected to the mandatory nature of the proposed M&R regulation. They argued that the terms of the statute could only be read as applying to subsequent awards of MSP operating agreements and not to MSP operating agreements that had previously been awarded. They also argued, moreover, that even Congress is barred from unilaterally amending the terms of a binding government contract. Other MSP contractors requested that M&R reimbursements cover certain indirect costs of performing M&R in U.S. shipyards.

In order to have a full airing of MARAD's authority to require existing MSP contractors to participate in the M&R Pilot Program, MARAD opened a reply comment period that closed September 22, 2006. 71 FR 46399 (Aug. 23, 2006). The Shipbuilders Council of America submitted comments arguing that MARAD does have the authority to change existing MSP agreements. They maintain that: (1) The terms of the MSP operating agreement allow for changes to the agreements by mutual consent; (2) the MSP operating agreements must be renewed annually, and upon renewal MARAD could make such renewal conditional on acceptance of an M&R Pilot Program agreement; and (3) the M&R Pilot Program agreement would not cause any hardship among MSP operators.

After review of the comments on both sides of the authority issue, the relevant statutory text and the available legislative history, MARAD finds that Congress intended that the M&R provisions be a condition only on future awards of MSP operating agreements. The plain language of section 3517 requires MARAD to require at least one contractor to enter into an M&R agreement as a condition of award of an MSP agreement. However, all 60 existing MSP agreements had been awarded prior to enactment of the mandatory provisions in section 3517. Further, there is no indication that Congress intended for MARAD to abrogate existing MSP operating agreements. On the other hand, there is strong evidence that Congress considered the M&R obligation to be voluntary on existing MSP contractors because Congress provided an incentive for existing MSP operators to take on the M&R obligation. See section 3502(c) of the John Warner National Defense Authorization Act for Fiscal Year 2007, Pub. L. 109–364, which grants a priority, during times of insufficient appropriations, in allocation of MSP payments to MSP contractors that have entered into M&R agreements. There would be no reason for Congress to provide an incentive for doing that

which is mandatory. Therefore, we must conclude that Congress viewed the M&R obligations to not be mandatory, but to be voluntary, for existing MSP contractors.

Accordingly, existing MSP contractors may enter into an M&R agreement, but entering into an M&R agreement will not be a condition of retaining an MSP operating agreement. However, entering into an M&R agreement will be a condition of future awards of MSP operating agreements, such as awards for replacements or transfers of existing MSP agreements, or award of new agreements in the event that MARAD is authorized to award more than 60 agreements.

As to other issues raised concerning administration of the M&R Pilot Program, we have reviewed the comments submitted and make the following determinations. The M&R reimbursement payment will be structured to cover all direct and reasonable indirect costs of repairing vessels in the United States. We do this to help ensure that the M&R Pilot Program, if funded by Congress, will truly equalize the cost of domestic and foreign repairs. It is our intention to make the program work in a way that benefits both the U.S. shipyards and the MSP operators. However, all costs will have to be estimated with relative certainty prior to MARAD's commitment to pay costs. MARAD will undertake to cover the cost of additional required repairs, which were not reasonably identifiable prior to entry into a shipyard—but not more than 20 percent of the originally estimated cost of repairs. The burden of computing the foreign cost of repairs primarily will be upon the vessel operator. However, the vessel operator must submit sufficient documentation to allow us to verify the cost of foreign repairs. Each participant in the M&R Pilot Program will be required to keep MARAD informed of its scheduled maintenance and repair work. Pursuant to a statutory requirement, the M&R participant must notify MARAD of its intent to obtain the M&R not later than 90 days before the date of the performance of the M&R. MARAD will determine which M&R projects MARAD finds suitable for accomplishment in United States shipyards. MARAD will base such determinations on the amount of funds available, the number of vessels operated by the vessel operator and the proximity of the vessels' itineraries to suitable U.S. shipyard locations. The M&R Pilot Program participants may suggest an alternative M&R project, but MARAD will not excuse the M&R obligations absent a compelling reason. Disregard of the M&R obligations will constitute a default of the MSP operating agreement. MARAD will prepare a standard addendum to the MSP operating agreement for those MSP contractors who decide to enter into an M&R Pilot Program agreement.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review), and Department of Transportation (DOT) Regulatory Policies; Pub. L. 104–121

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This final rule is not likely to result in an annual effect on the economy of $100 million or more. This final rule is also not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034, February 26, 1979). The costs and economic impact associated with this rulemaking are considered to be sufficiently small that no further analysis is necessary.

Executive Order 13132

We have analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism'') and have determined that it does not have sufficient Federalism implications to warrant the preparation of a Federalism summary impact statement. The regulations have no substantial effects on the States, the current Federal-State relationship, or on the current distribution of power and responsibilities among local officials. Therefore, consultation with State and local officials was not necessary.

Executive Order 13175

MARAD does not believe that this final rule will significantly or uniquely affect the communities of Indian tribal governments when analyzed under the principles and criteria contained in Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments). Therefore, the funding and consultation requirements of this Executive Order do not apply.

Regulatory Flexibility

The Maritime Administrator certifies that this final rule will not have a significant economic impact on a substantial number of small entities. We anticipate that no small entities will participate in this program.

Unfunded Mandates Reform Act of 1995

This final rule will not impose an unfunded mandate under the Unfunded Mandates Reform Act of 1995. It will not result in costs of $100 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector. This final rule is the least burdensome alternative that achieves this objective of U.S. policy.

Environmental Assessment

We have analyzed this final rule for purposes of compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.) and have concluded that, under the categorical exclusions provision in section 4.05 of Maritime Administrative Order (MAO) 600–1, ''Procedures for Considering Environmental Impacts,'' 50 FR 11606 (March 22, 1985), neither the preparation of an Environmental Assessment, an Environmental Impact Statement, nor a Finding of No Significant Impact for this rulemaking is required. This final rule does not change the environmental effects of the current M&R Pilot Program and thus no further analysis under NEPA is required.

Paperwork Reduction

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507 et seq.), this rulemaking contains no new information collection and record keeping requirements that require OMB approval.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

List of Subjects in 46 CFR Part 296

Assistance payments, Maritime carriers, Reporting and recordkeeping requirements.

■ Accordingly, 46 CFR Chapter II, Subchapter C, Part 296 is amended as follows:

PART 296—MARITIME SECURITY PROGRAM (MSP)

■ 1. The authority citation for part 296 is revised to read as follows:

Authority: Pub. L. 108–136, Pub. L. 109–163; 49 U.S.C. 322(a), 49 CFR 1.66.

■ 2. Revise § 296.60 to read as follows:

§ 296.60 Applications.

(a) *Introduction.* This section sets forth MARAD's regulations governing its Maintenance and Repair (M&R) Reimbursement Pilot Program. The M&R program is presently a 5-year program, authorized at $19.5 million per year for FY 2006–2011.

(b) *M&R participants.* Every existing Contractor in MSP may enter into an agreement under 46 U.S.C. 3517, to perform qualified M&R of one or more MSP vessels in United States shipyards, subject to the terms of this section. Every MSP Contractor entering into an MSP operating agreement, including those agreements transferred from an existing MSP Contractor, or newly issued or reissued from MARAD, after March 8, 2007, must agree to enter into an agreement under 46 U.S.C. 3517, to perform qualified M&R of one or more MSP vessels in United States shipyards, subject to the terms of this section. Each vessel that is subject to an M&R agreement will receive a priority in the allocation of MSP payments if the amount available for a fiscal year for making payments under MSP operating agreements is not sufficient to pay the full amount authorized under each agreement for such fiscal year.

(c) *Terms of Agreement.* An agreement under this section:

(1) Will require that except as provided in paragraph (d) of this section, all qualified M&R on the vessel will be performed in the United States;

(2) Will require the Administrator to reimburse the Contractor in accordance with paragraph (j) of this section for the costs of qualified M&R performed in the United States; and

(3) Will apply to qualified M&R performed during the 5-year period beginning on the date the vessel begins operating under the operating agreement under chapter 531 of title 46, United States Code.

(d) *Exception to Requirement to Perform Work in the United States.* A Contractor will not be required to have qualified M&R work performed in the United States under this section if:

(1) The Administrator determines that there is no facility capable of meeting all technical requirements of the qualified M&R in the United States located in the geographic area in which the vessel normally operates available to perform the work in the time required by the Contractor to maintain its regularly scheduled service;

(2) The Administrator determines that there are insufficient funds to pay reimbursement under paragraph (j) of this section with respect to the work; or

(3) The Administrator fails to make the certification described in paragraph (h)(2) of this section.

(e) *Qualified M&R.* In this section the term ''qualified M&R'' means:

(1) Except as provided in paragraph (e)(2) of this section:

(i) Any inspection of a vessel that is—

(A) Required under chapter 33 of title 46, United States Code; and

(B) Performed in the period in which the vessel is subject to an agreement under this section;

(ii) Any M&R of a vessel that is determined, in the course of an inspection referred to in paragraph (e)(1)(i) of this section, to be necessary; and

(iii) Any additional M&R the Contractor intends to undertake at the same time as the work described in paragraph (e)(1)(ii) of this section; but

(2) does not include:

(i) M&R not agreed to by the Contractor to be undertaken at the same time as the work described in paragraph (e)(1) of this section;

(ii) Work carried out as part of continuous machinery surveys and other similar requirements not associated with a drydocking of the vessel; or

(iii) Any emergency work that is necessary to enable a vessel to return to a port in the United States.

(f) *Qualification of Shipyard.* MARAD will assess the following factors in determining whether a proposed shipyard is capable of undertaking the proposed M&R:

(1) The dimension of the facility relative to the size of the vessel;

(2) The capacity and the reach of the lifting cranes necessary for performing the specified work; and

(3) The skills and experience of sufficient numbers of workers to complete the job in time to maintain the vessel's schedule.

(g) *Required information.* Under each M&R agreement, the participant must provide within 30 days of enrollment a schedule for regular and special surveys for each vessel in the agreement. At the same time, and on an annual basis by January 1 of each calendar year, each M&R participant must submit a schedule of anticipated M&R for each vessel under an M&R agreement for the coming year. In addition, the M&R participant must provide for each such vessel the anticipated itinerary for the coming year.

(h) *Notification Requirements.*—

(1) NOTIFICATION BY CONTRACTOR.—The Administrator is not required to pay reimbursement to a Contractor under this section for qualified M&R, unless the Contractor—

(i) Notifies the Administrator of the intent of the Contractor to obtain the qualified M&R, by not later than 90 days before the date of the performance of the qualified M&R; and

(ii) Includes in such notification:

(A) A description of all qualified M&R that the Contractor should reasonably expect may be performed;

(B) A description of the vessel's normal route and port calls in the United States;

(C) An estimate of the cost, with supporting documentation, of obtaining the qualified M&R described under paragraph (h)(1)(ii)(A) of this section in the United States; and

(D) An estimate of the cost, with supporting documentation, of obtaining the qualified M&R described under paragraph (h)(1)(ii)(A) of this section outside the United States, in the country in which the Contractor otherwise would undertake the qualified M&R.

(2) CERTIFICATION BY ADMINISTRATOR.—

(i) Not later than 30 days after the date of receipt of notification under paragraph (h)(1) of this section, the Administrator will certify to the Contractor—

(A) Whether the cost estimates provided by the Contractor are fair and reasonable;

(B) If the Administrator determines that such cost estimates are not fair and reasonable, the Administrator's estimate of fair and reasonable costs for such work;

(C) Whether there are available to the Administrator sufficient funds to pay reimbursement under paragraph (j) of this section with respect to such work; and

(D) That the Administrator commits such funds to the Contractor for such reimbursement, if such funds are available for that purpose.

(ii) If the Contractor notification described in paragraph (h)(1) of this section does not include an estimate of the cost of obtaining qualified M&R in the United States, then not later than 30 days after the date of receipt of such notification, the Administrator will:

(A) Certify to the Contractor whether there is a facility capable of meeting all technical requirements of the qualified M&R in the United States located in the geographic area in which the vessel normally operates available to perform the qualified M&R described in the notification by the Contractor under paragraph (h)(1) of this section in the time period required by the Contractor to maintain its regularly scheduled service; and

(B) If there is such a facility, require the Contractor to resubmit such

notification with the required cost estimate for such facility.

(i) *Allocation of available funds.* If the funds available to MARAD are insufficient to accommodate every M&R project required to be performed in U.S. shipyards, MARAD will select those work projects suitable for accomplishment in United States shipyards, for which MARAD will reimburse the differential costs of the M&R. MARAD will base such determinations on the amount of funds available, the projected cost of each repair, the number of vessels operated by the vessel operator and the proximity of the vessels' itineraries to suitable U.S. shipyard locations.

(j) *Reimbursement.*—

(1) IN GENERAL.—The Administrator will, subject to the availability of appropriations, reimburse a Contractor for costs incurred by the Contractor for qualified M&R performed in the United States under this section.

(2) AMOUNT.—The amount of reimbursement will be equal to the difference between—

(i) The fair and reasonable cost of obtaining the qualified M&R in the United States; and

(ii) The fair and reasonable cost of obtaining the qualified M&R outside the United States, in the country in which the Contractor would otherwise undertake the qualified M&R.

(3) DETERMINATION OF FAIR AND REASONABLE COSTS.—

(i) The Administrator will determine fair and reasonable costs for purposes of paragraph (j)(2) of this section after considering the supporting documentation submitted by the Contractor. If it is too difficult to accurately ascertain the foreign costs of anticipated M&R, the Maritime Administrator may decide to compute the foreign cost of M&R by reference to a percentage of the domestic cost of the M&R, based on available general information.

(ii) MARAD will also pay for other costs borne by the M&R participant reasonably associated with the qualified M&R performed in a U.S. shipyard that would not be incurred if the vessel was repaired in a foreign shipyard. Such costs include:

(A) Any additional vessel maintenance and repair preparation costs, including costs for additional engineering, design and contract bid proposal costs;

(B) Costs (including capital and operating costs) for ''lost time'' for transit to a U.S. shipyard in excess of the transit period to a foreign shipyard on the same trade route to which the vessel is assigned and for the time spent in a U.S. shipyard which exceeds the estimated time required by a foreign shipyard for the same work.

(C) Costs for additional labor, supervision, overhead and other work involving shore-side personnel.

(iii) Upon approval of each specific M&R project, the Administrator will establish with the Contractor a set level of funding to be provided by MARAD. If, during the course of performing M&R in a U.S. shipyard, it is discovered that the repairs will entail additional unanticipated costs, the Administrator shall provide MARAD's share of funding corresponding to the percentage of the domestic M&R costs originally agreed to by MARAD, but not in excess of 20 percent of the original funding level agreed to by MARAD. Cost overruns will be the obligation of the M&R participant unless MARAD determines that it is fair to reimburse the M&R participant and sufficient funds are available to do so.

(iv) Payment of MARAD's share of the shipyard contract price may be made as work progresses or upon completion of the M&R and finalization of costs, as MARAD may determine. Vouchers for payment may be submitted to the Associate Administer for Marine Asset Development. Payments shall be paid and processed under the terms and conditions of the Prompt Payment Act, 31 U.S.C. 3901. However, pursuant to 31 U.S.C. 3902(f), interest on late payments will be paid only if appropriated funds for paying reimbursement under the M&R Pilot Program are available.

Dated: February 1, 2007.

By Order of the Maritime Administrator.

Daron T. Threet,

Secretary, Maritime Administration.

[FR Doc. E7–1880 Filed 2–5–07; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 001005281–0369–02; I.D. 013107B]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Trip Limit Reduction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; inseason trip limit reduction.

SUMMARY: NMFS reduces the commercial trip limit of Atlantic group Spanish mackerel in or from the exclusive economic zone (EEZ) in the southern zone to 1,500 lb (680 kg) per day. This trip limit reduction is necessary to maximize the socioeconomic benefits of the quota.

DATES: Effective 6 a.m., local time, February 5, 2007, through February 28, 2007, unless changed by further notification in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Steve Branstetter, telephone: 727–824–5305, fax: 727–570–5308, e-mail: *Steve.Branstetter@noaa.gov*.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP (65 FR 41015, July 3, 2000) NMFS implemented a commercial quota of 3.87 million lb (1.76 million kg) for the Atlantic migratory group of Spanish mackerel. Atlantic migratory group Spanish mackerel are divided into a northern and southern zone for management purposes. The southern zone for Atlantic migratory group Spanish mackerel extends from 30°42′45.6″ N. lat., which is a line directly east from the Georgia/Florida boundary, to 25°20.4′ N. lat., which is a line directly east from the Miami-Dade/Monroe County, Florida, boundary.

For the southern zone, seasonally variable trip limits are based off an adjusted quota of 3.62 million lb (1.64 million kg). The adjusted quota is calculated to allow continued harvest in the southern zone at a set rate for the remainder of the fishing year in accordance with 50 CFR 622.44(b)(2). Beginning December 1, trip limits are unlimited on weekdays and 1,500 lb (680 kg) per day on weekends. When 75 percent of the adjusted quota of Atlantic group Spanish mackerel is taken until 100 percent of the adjusted quota is taken, Spanish mackerel in or from the EEZ in the southern zone may not be