

(e.g., liquid seeps on the waste pile slopes or emanating from its base); and (6) cracks in the Posi-Shell®.

5. Ensure Appropriate Posi-Shell® application. Adhering to inclement weather application prohibitions as recommended by the manufacturer. If a waste pile is unable to be immediately covered with a Posi-Shell® (e.g., moderate to heavy rainfall occurs unexpectedly or is imminent), the waste pile must be temporarily covered with polyethylene sheeting of at least 20-mil thickness and anchored with sandbags around its edges until the adverse weather conditions abate and the Posi-Shell® coating can then be applied. Posi-Shell® should not be applied when temperatures at or below 32 °F are expected for more than one day or for any length of time when temperatures are below 30 °F.

6. Verify that 100% coverage of Posi-Shell® is achieved over the entire put pile (no bare or thin spots).

7. Confirm that the minimum 3/8-in thickness of Posi-Shell® is achieved.

8. Confirm that the Posi-Shell® cover is sufficiently set (hardened) before a moderate to heavy rainfall event.

9. Promptly re-apply Posi-Shell® cover if any deficiencies are identified during application, including but not limited to lack of coverage, thickness, or hardening.

10. Check for loss of 100% coverage of Posi-Shell® or other signs of cover degradation (imminent potential for loss of barrier effectiveness or thickness).

Landfill Cell 8-specific remediation requirements:

11. Remove ponded water on the landfill surface that could affect the put piles.

12. Modify, as needed, run-on controls to continue to divert surface water around each put pile staging area.

13. Maintain or alter, as appropriate, landfill grading to prevent put pile run-on.

14. Isolate the four waste categories/groups of put piles from each other to prevent potential commingling.

15. Maintain landfill equipment.

16. Submit a duplicate copy of the RCRA annual report required by 40 CFR 268.6(c)(3). This will include all LDR verification sampling, resampling, and retreatment to EPA Region 8 at: Jesse Newland; Land, Chemicals and Redevelopment Division; EPA Region 8; 1595 Wynkoop Street, Denver, Colorado 80202-1129, Mail Code: 8LCR-RC-P; telephone number: (303) 312-6353.

IV. Future Amendments to This NMV

If Clean Harbors anticipates needing to exceed 250 put piles at any one time, it must request approval from EPA

Region 8 Administrator prior to creating new put piles. Clean Harbors also requested that this variance proactively apply to future put piles of identical waste characteristics that would be staged in future proposed and permitted Subtitle C landfill cells.

While this Final Approval applies only to those put piles placed within existing Landfill Cell 8, upon permit approval of new cells, Clean Harbors may submit to EPA Region 8 an addendum to this petition to expand this NMV and all of its conditions and requirements, for the put piles located within the new landfill cell if:

1. Clean Harbors is in compliance with the approved NMV;

2. The new landfill cell uses the same disposal unit engineered controls (e.g., landfill cell interior berms for run-on and run-off control) as approved in this variance;

3. The duration of temporary placement remains at six (6) months or less and complies with the conditions established herein;

4. The waste categories remain the same; and

5. The monitoring program (e.g., groundwater monitoring) is expanded to include the new landfill cell.

Additionally, 40 CFR 268.6(e) acknowledges the potential for post-approval changes in conditions at the no migration unit(s) and/or the environment around the no migration unit(s). For the purpose of this NMV, all changes that significantly depart from the conditions described in the petition and proposed approval found in Docket ID No. EPA-R08-RCRA-2025-0420 must be reported to the Region 8 Administrator if the changes have the potential to affect migration of hazardous constituents from the put piles:

1. If Clean Harbors plans to make changes to the unit(s)' design, construction, or operation, such a change must be proposed, in writing, and include a demonstration to the Region 8 Administrator at least 30 days prior to making the change. The Region 8 Administrator will determine whether the proposed change invalidates the terms of the approved variance and will determine the appropriate response. A proposed change must first be approved by the Region 8 Administrator before taking any action.

2. If Clean Harbors discovers a site condition that does not occur as modeled or predicted in the petition, this change must be reported, in writing, to the Region 8 Administrator within 10 days of discovery. The Region 8 Administrator will determine whether the reported change from expected

conditions alters the terms of the approved variance and thus requires further action.

V. Public Comment Period

EPA announced its proposal to approve the Clean Harbors NMV petition and provided 30-day public comment period on December 1, 2025. The comment period closed on January 30, 2026 (90 FR 61356, December 31, 2025). EPA received three comments in response to the proposed NMV approval. The public comments and EPA's responses are available in the docket for this action (EPA-R08-RCRA-2025-0420). Portions of the three comments were outside the scope of this action; EPA addresses the relevant issues in the Response to Comments document provided in the docket.

VI. Conclusion

The agency concludes that Clean Harbors has demonstrated, to a reasonable degree of certainty, that there will be no migration of hazardous constituents beyond the unit boundary for treated hazardous wastes temporarily stored in put piles within permitted Subtitle C hazardous waste Landfill Cell 8 while awaiting verification of compliance with the LDR standards. Accordingly, EPA hereby approves the NMV for Clean Harbors' Grassy Mountain facility, subject to the terms and conditions stated herein and as presented in the petition found in the docket.

List of Subjects in 40 CFR Part 268

Environmental protection, Hazardous waste, Variances.

Dated: June 8, 2026.

Cyrus Western,

Regional Administrator, Region 8.

[FR Doc. 2026-12544 Filed 6-22-26; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 294

[Docket Number MARAD-2022-0247]

RIN 2133-AB95

Tanker Security Program

AGENCY: Maritime Administration (MARAD), U.S. Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule implements the Tanker Security Program (TSP) and makes certain changes to the TSP

interim final rule (IFR) published in the **Federal Register** on December 7, 2022, in response to public comments received on the IFR, feedback from stakeholders, and MARAD's own experience during initial program administration. The Secretary of Transportation is authorized to establish TSP, comprised of a fleet of active, commercially viable, militarily useful, privately owned product tank vessels of the United States. The TSP Fleet is intended to meet national defense and other security requirements and maintain a United States presence in international commercial shipping. TSP supports the United States maritime industries and workforce to promote national security and economic resilience.

DATES: This final rule is effective July 23, 2026.

FOR FURTHER INFORMATION CONTACT: David Hatcher, Deputy Associate Administrator for Commercial Sealift, at (202) 366-0688, or via email at david.hatcher1@dot.gov. You may send mail to Mr. Hatcher at U.S. Department of Transportation, Maritime Administration, Office of Sealift Support, 1200 New Jersey Avenue SE, Room W25-310, Mail Stop 1, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

This final rule and all comments may be viewed online through the Federal eRulemaking portal at www.regulations.gov. An electronic copy of this document may also be downloaded by accessing the Office of the Federal Register's home page at: www.federalregister.gov.

Background

Per 46 U.S.C. 53402, as enacted by Section 3511(a) of NDAA FY21, the Secretary of Transportation, in consultation with the Secretary of War, is required to establish a fleet of active, commercially viable, militarily useful, privately owned product tank vessels to meet national defense and other security requirements. NDAA FY22 section 3515(b) amended the eligibility requirements of vessels in TSP to disqualify any vessel under charter to the United States Government for any period that, together with options, exceeds 180 continuous days. TSP provides a stipend to tanker operators of U.S.-flagged vessels that meet certain qualifications and operate in accordance with operating agreements issued by MARAD in accordance with 46 U.S.C. 53401-12. TSP supports the United States maritime industries and

workforce to promote national security and economic competitiveness as articulated in Executive Order (E.O.) 14269 (90 FR 15635-41; Apr. 15, 2025).

TSP currently authorizes payments to participating operators of \$8.16 million per ship, per fiscal year, subject to annual appropriations. Participating operators are required to make their commercial transportation resources available upon request by the Secretary of War for military purposes during times of war or national emergency.

National Defense Requirement

A fuel tanker study required by Section 3519 of the NDAA for Fiscal Year 2020 (Pub. L. 116-92, Dec. 20, 2019) (NDAA FY20) examined the sufficiency of the U.S.-flagged tanker fleet to meet National Defense Strategy (NDS) requirements. A summary of the report was provided on the docket for the IFR. The report's summary found a substantial risk to the Nation's defense associated with a heavy reliance on foreign-flagged tankers, particularly within a contested environment. The location, timing, and specific missions associated with some tanker requirements dictate the need for U.S.-flagged assets, for which there are currently insufficient numbers available. The report's gap analysis found a clear and critical need for a tanker security program to increase U.S.-flagged tanker capacity, to reduce the risk of reliance on foreign-flagged tankers for the most important fuel missions, and to ensure the Department of War (DOW) ¹ has sufficient tanker capabilities to meet NDS objectives.

In response to the NDAA FY20 Fuel Tanker Study, in the NDAA FY21, Congress directed the Secretary of Transportation, in consultation with the Secretary of War, to establish a fleet of active, commercially viable, militarily useful, privately-owned product tanker vessels to meet national defense and other security requirements and maintain a United States presence in international commercial shipping.² The Maritime Administration worked with the DOW's United States Transportation Command to identify and shape TSP requirements and timelines.

Statutory Implementation

Consistent with NDAA FY21, the rule establishes requirements that support typical DOT and MARAD commercial economic objectives such as the tanker

¹ Reference to the Department of War is made pursuant to E.O. 14347, *Restoring the United States Department of War* (90 FR 43893 (Sept. 10, 2025)).

² The tanker security program authority is codified at 46 U.S.C. 53402-53412.

vessel eligibility requirements in MARAD's regulations at 46 CFR 294.9. Specifically, tanker vessels must be commercially viable, be not more than 10 years in age, and operate in U.S. foreign commerce. In addition, § 294.9 requires tanker vessels to be suitable for use by the United States for national defense or military purposes in time of war or national emergency, as determined by the Secretary of War. Section 294.11 also requires vessel owners, charterers, and operators to meet certain requirements of NDAA FY21 to establish their corporate citizenship to ensure security through proper operational control. Section 294.25 requires a TSP participant to agree to install onboard its vessel militarily useful features as approved by the U.S. Coast Guard and the vessel's classification society. Section 294.23(d) requires TSP participants to enter into the Voluntary Tanker Agreement, which is an emergency preparedness agreement by which TSP participants commit to making commercial transportation resources (including services) available for military use, upon request by the Secretary of War during a time of war or national emergency, or whenever the Secretary of War determines that it is necessary for national security or contingency operation. Section 294.31 also provides for annual payments to program participants and specifies payment conditions set forth in the statute. Taken together, the TSP supports both the Nation's economy and its national security by strengthening and ensuring the continued availability of U.S.-flag tanker capacity.

Since the publication of the IFR in 2022, MARAD, in conjunction with United States Transportation Command, has awarded TSP Operating Agreements covering the operation of product tank vessels in TSP, and those vessels have begun operation in the Tanker Security Fleet.

Summary of Changes From IFR

MARAD has made several changes to this Final Rule from the IFR, one pursuant to a comment and others following additional analysis by MARAD. The first change clarifies that a vessel operating in TSP placed under a long-term charter to the Government (defined as any charter that, together with options, occurs for more than 180 continuous calendar days) only becomes ineligible to participate in TSP on the date and time on which the vessel is actually delivered to, and accepted by, the Government for operation under the charter. One commenter proposed this modification (see Comments on the

Interim Final Rule, below), and MARAD incorporates this change into § 294.21(e).

MARAD has also updated the duration of the operating agreements to reflect statutory updates to the program since its initial enactment. The IFR defined operating agreements as annual agreements that automatically renewed each year until the end of FY 2035 in accordance with the original authorizing statute. Congress extended TSP's authorization to 2040 under section 3531(b) of the NDAA for Fiscal Year 2025 (Pub. L. 118–159 (Dec. 23, 2024)) (NDAA FY25), and MARAD accordingly has extended the authorization period of the operating agreements to the end of FY 2040. MARAD also clarified that obligations under the operating agreements are subject to actual appropriations for any given fiscal year and that MARAD may enter into new operating agreements after the start of the initial ten operating agreements. Any such agreements are also authorized through the end of FY 2040.

MARAD has modified §§ 294.21 and 294.31 to make clear that, in the event that appropriations for TSP payments are lower than the authorized amount, all current participants would receive stipend payments pro rata based on the appropriated amount. MARAD would not renew operating agreements for lack of funding only if Congress does not appropriate any money toward TSP, *e.g.*, an extended Government shutdown. The ability to maintain payments to program participants at appropriated levels, even if lower than authorized levels, ensures that TSP remains as close to maximum readiness as possible, which is critical should there be a sudden crisis, armed conflict, or national emergency requiring the use of these vessels by the Government to meet urgent needs.

MARAD is clarifying § 294.23(d) to promote the sustainability of the Tanker Security Fleet in the event of a national security event. Under 46 U.S.C. 53407 and 46 CFR 294.23(d), all vessels operating in TSP must enter into a Voluntary Tanker Agreement (VTA), in which they commit to make their TSP vessel available to fulfill DOW requirements in times of war or national emergency. MARAD has clarified that a vessel activated under the VTA³ is not considered to be operating under a long-term charter to the United States for purposes of the statute and this rule. In the absence of a VTA activation, a Government charter lasting more than

180 days would make the vessel ineligible to remain in the TSP. As charters of vessels pursuant to a VTA activation are not made under normal commercial conditions but to fulfill contingency operation requirements, disqualification of any vessel due to its national security obligations would fundamentally frustrate the program's purpose.

MARAD has also clarified that it will not terminate a TSP Operating Agreement if the TSP vessel has been activated under VTA, suffers a marine casualty while operating pursuant to the activation, and the Agreement Holder makes all reasonable and timely efforts to either repair or replace the vessel, as determined by MARAD. As VTA participation is a statutory requirement, an Operating Agreement termination for failure to operate a qualified vessel when the failure results from a VTA-related marine casualty could undermine the goals of the TSP Program. However, carriers also have a responsibility to operate and maintain qualified vessels under TSP Operating Agreements, and MARAD will ensure that, in the event of a marine casualty during a VTA activation, the Agreement Holder makes all reasonable and timely efforts to resume TSP operations. Further, this new subparagraph does not obligate MARAD to continue TSP payments to the Agreement Holder following the marine casualty. Accordingly, MARAD is adding § 294.23(d)(3) to ensure the stability of the Tanker Security Fleet during a VTA activation while also relying on MARAD's technical expertise to ensure proper oversight and enforcement of this provision.

MARAD has also updated the schedule of payments in TSP to reflect statutory updates to the program. Section 294.31(a) of the IFR reflected TSP's original statutory authorization. Section 3531(a) of the NDAA FY 2025 both extended the authorization of TSP out to the end of FY 2040 and updated the payment schedule, and MARAD makes those same updates here, including the caveat that all such payments are subject to actual appropriations.

MARAD is incorporating into the final rule Article I–8(c) of the Operating Agreement that all Agreement Holders must report any period of maintenance, survey, inspection, or repair to MARAD in advance if the work being done on the vessel will render it unable to move under its own power or makes it unable to meet its national security obligations under VTA on an immediate basis. Existing requirements at § 294.31(c)(1)(v) provide that MARAD

will not make payments to Agreement Holders for any day that a TSP Fleet Vessel is in maintenance, survey, inspection, or repair that exceeds 30 days per fiscal year unless the Agreement Holder obtains MARAD's prior authorization to exceed the 30-day limit. However, this does not provide MARAD with full visibility of the readiness of the Tanker Security Program Fleet at any given time, which could compromise the TSP Fleet's national security mission if called to respond. The Operating Agreement permits MARAD to request that Agreement Holders notify MARAD in advance of any period of maintenance, survey, inspection, and repair, regardless of expected duration. Accordingly, MARAD is adding paragraph (f) to § 294.23 to require reporting of any period when the TSP Fleet Vessel would not be able to respond immediately to an emergency activation due to maintenance, survey, inspection, and repair. This new paragraph does not supersede the existing requirement at § 294.31(c)(1)(v) to request extensions of maintenance, survey, inspection, and repair periods for TSP Fleet Vessels if the Agreement Holder believes they will exceed 30 days.

MARAD updated § 294.17(a) to reflect the expansion of the TSP Fleet since the initial enactment of 46 U.S.C. ch. 534. Section 3511(a) of NDAA FY 21 set the maximum TSP Fleet size at ten vessels. Section 3501(b)(2) of the NDAA FY 2023 (Pub. L. 117–263 (Dec. 23, 2022)) expanded the maximum TSP Fleet size to twenty vessels starting in FY 2024, and section 3531(c) of NDAA FY 2025 (Pub. L. 118–159 (Dec. 23, 2024)) phased in the increase in the TSP Fleet size over a three-year period through a funding schedule, with funding for fifteen vessels authorized for FY 2025–26 and twenty vessels for FY 2027–28. MARAD added a clause in § 294.17(a) to reflect the changes in statute and allow for any future TSP Fleet expansions.

MARAD also made two clerical changes to reflect updates to the titles of applicable offices and officials. First, MARAD updated § 294.33(b) to reflect the change in the title of the USTRANSCOM official to whom carriers or applicants may direct communications when relevant. The prior title was the Director of Strategic Plans, Policy, and Logistics, but is now the Director of Strategic Plans, Policy, Logistics, and War-Fighting Development. Second, MARAD updated references from the IFR regarding the Department of Defense and Secretary of Defense consistent with E.O. 14347 (Sept. 5, 2025).

³ The VTA program was renewed and the VTA form was revised in 2022 (87 FR 67119–26, Nov. 7, 2022).

Comments on the Interim Final Rule

In response to the publication of the IFR in the **Federal Register** on December 7, 2022 (87 FR 74977–87), which sought public comment concurrent with the promulgation of the IFR, MARAD received two separate comment submissions. MARAD responds to the comments below.

One commenter requested that MARAD modify the language of 46 CFR 294.21(e) to further clarify at what point vessels under long-term charter to the Government become ineligible to operate in TSP. We agree, and have updated § 294.21(e) accordingly, as explained in Summary of Changes from IFR, above.

The commenter expressed concern that MARAD might accept a vessel into TSP that was found commercially viable but would not benefit national security. In response, MARAD emphasizes that all vessels accepted for TSP must be found both commercially viable, as determined by MARAD, and militarily useful, as determined by U.S. Transportation Command. The dual requirement is specifically designed to ensure that TSP is comprised of the vessels that best suit the program's dual mandate of economic competitiveness and national security, and to minimize the risks to the Federal Government.

The commenter also requested that any vessel enrolled in TSP be required to meet all standards of the International Maritime Organization, United States Coast Guard (USCG), and standards set by recognized classification societies. This comment is beyond the scope of this rulemaking because USCG is responsible for U.S. vessel registration and inspection, and vessels in TSP must be registered and inspected under United States law to qualify for participation in the program.

The commenter requested that U.S.-built vessels be given selection priority for TSP Operating Agreements. Under 46 U.S.C. 53403(b)(2), the highest priority in vessel selection is its military utility, followed by the applicant's record of owning and operating vessels, followed by any other priorities MARAD considers appropriate. In the IFR at § 294.15(b), MARAD established a third priority that focuses on the citizenship of the applicant. Following promulgation of the IFR, the President issued E.O. 14269 (90 FR 15635–41 (Apr. 9, 2025)) directing agencies involved in United States maritime policy, including MARAD, to develop and implement policies that would, among other objectives, invest in United States shipbuilding. In support of that E.O. and MARAD general authority at

46 U.S.C. 50101(a), MARAD has added a fourth selection priority under § 294.15(b) for vessels built in the United States. MARAD believes that this revised prioritization will balance the applicable equities, ensuring that the program (1) has a sufficient U.S.-based nexus while also giving both applicants and the Federal Government the greatest latitude to select the most capable vessels for the program and (2) supporting E.O. 14269's focus on United States shipbuilding activities.

One commenter asked MARAD to clarify if TSP vessels are considered public vessels of the United States. The comment raises an issue that is dependent on facts and circumstances in an analysis under the Public Vessels Act rather than the Tanker Security Act and thus is beyond the scope of this rulemaking.

Regulatory Analyses and Notices

Executive Order 12866

This rule has been determined to be not significant pursuant to E.O. 12866 and was not reviewed by the Office of Management and Budget (OMB). TSP statutory authorities currently authorize the establishment of a fleet of product tank vessels, engaged in U.S. foreign commerce and available for use by DOW during times of war or national emergency. Statutory language defines, among other elements: the maximum size of the TSP Fleet at 20 vessels; the general vessel selection criteria; the obligations and rights of program participants; the maximum annual payments per vessel under each agreement and the conditions of such payments; and each participant's national security obligations under the program.

Benefits

The major benefits of TSP are that it will: (1) provide DOW with assured access to U.S.-flagged product tank vessels that may be used to supply the armed forces of the United States with fuel during times of war or national emergency, and (2) help to ensure that a core fleet of U.S.-based product tankers can operate competitively in international trade and enhance U.S. supply chain resiliency for liquid fuel products. The DOW's Fuel Tanker Study found an insufficient supply of U.S.-flagged tankers to meet National Defense Strategy requirements. In addition, TSP will help maintain a U.S.-flag presence in international commerce. The TSP vessels will be a critical component of U.S.-flag capability that contributes to the U.S. mariner base for utilization on both the

commercial, Ready Reserve Force, and DOW fleets.

Costs

Congress set statutory limits on the maximum number of participant vessels and the annual payment per vessel. TSP statutory authorities allow the participation of up to 20 vessels in TSP through the end of FY 2040. MARAD is authorized to pay each operator of a TSP vessel an annual stipend per vessel ranging from \$8,160,000 for fiscal years 2025 and 2026 to \$9,833,000 for fiscal years 2039 and 2040, subject to the availability of appropriations and specific operating requirements. Program funding is authorized at \$122,400,000 per year for fiscal years 2025 and 2026, with gradual increases in funding authorization to \$196,660,000 per year for fiscal years 2039 and 2040. Application costs for vessels that apply for the TSP are discussed in the section below, describing MARAD's compliance with the Paperwork Reduction Act for this rule.

Analysis of Alternatives

Section 3511 of the FY21 NDAA provides for the TSP with new funding authorization and establishes a dedicated product tanker fleet program distinct from the existing Maritime Security Program (MSP) fleet. Congress also prescribed the minimum requirements of the TSP, including ship ownership, vessel eligibility, vessel documentation, program duration, the number of participating vessels, the amount of funding, and national security obligations. The Act provides detailed requirements for establishing and operating the TSP, and MARAD does not have discretion to deviate from those requirements in the regulations that establish the TSP's operation.

Since publishing the IFR, this final rule now includes a prioritization for commercial tankers built in the United States. In support of this new addition, MARAD points to its longstanding objectives and policies that ensure the U.S. Merchant Marine is composed of the best equipped, safest, and most suitable types of vessels constructed in the United States and manned with a trained and efficient citizen personnel.⁴ At this time, there are no US-built tanker vessels, but this new priority could prompt the building of tanker vessels in the United States without foreclosing foreign built tanker program participation. In addition, MARAD has made updates to the duration of its operating agreements and the payment

⁴ 46 U.S.C. 50101(a)(4).

schedules that were set by Congress in section 3531 of NDAA FY25, clarifications on when TSP vessels are on charter to the Government, and improvements to the marine casualty provision designed to benefit operating agreement holders by providing them with greater clarity and flexibility of business operations in the event their vessels are activated under VTA, which can be highly disruptive to standard commercial activities.

Executive Order 14192

E.O. 14192 requires that for “each new [E.O. 14192 regulatory action] issued, at least ten prior regulations be identified for elimination.” Implementation guidance for E.O. 14192, issued by OMB (Memorandum M–25–20, March 26, 2025), defines an E.O. 14192 deregulatory action as “an action that has been finalized and has total costs less than zero.” This rule is required by law and is excepted from E.O. 14192 as not meeting the definition of a regulation or rule because it is being issued “with respect to a military, national security, . . . related function of the United States.” (Section 5(a) of E.O. 14192).

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, rules that are exempt from notice and comment under the Administrative Procedure Act (APA) or any other law are also exempt from the RFA analytical requirements, including conducting a regulatory flexibility analysis. See 5 U.S.C. 603(a) and 604(a).

On December 7, 2022, MARAD published its Tanker Security Program regulations (87 FR 74977) as an IFR without notice and the opportunity for public comment and delayed the effective date ordinarily prescribed by the APA. As discussed in the IFR, MARAD concluded that the rule involved a military function of the United States under 5 U.S.C. 553(a)(1) and was therefore exempt from the requirements of 5 U.S.C. 553. Nonetheless, MARAD also analyzed the rule under 5 U.S.C. 553(b)(B) and determined that it had good cause to waive prior opportunity for notice and comment. For similar reasons, MARAD determined that it had good cause to waive the 30-day delay in effective date under 5 U.S.C. 553. Following publication of the IFR, MARAD received comments and has addressed those comments above under the heading Comments on the Interim Final Rule. Because this rule is exempt from the APA notice and comment requirements,

MARAD is not required to conduct a regulatory flexibility analysis.

Executive Order 13132

MARAD analyzed this rulemaking in accordance with the principles and criteria contained in E.O. 13132, *Federalism*, and has determined that it does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. This rulemaking has no substantial effect on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials. Nothing in this document preempts any State law or regulation. Therefore, MARAD did not consult with State and local officials.

The Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires Agencies to evaluate whether an Agency action would result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$212 million or more (as adjusted for inflation in 2026) in any one year, and if so, to take steps to minimize these unfunded mandates. This rulemaking will not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It will not result in costs of \$212 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objectives of the rule.

National Environmental Policy Act

Pursuant to 49 CFR 1.81, the Secretary has delegated the “functions” under NEPA to the Administrators “as they relate to the matters within the primary responsibility of each Operating Administration.” MARAD has determined that this final rule is categorically excluded pursuant to DOT Order 5610.1D, subpart C, section (e)(3). A categorical exclusion (CE) is an action identified in an agency’s NEPA procedures that does not normally have a significant impact on the environment and therefore does not require either an environmental assessment (EA) or environmental impact statement (EIS). See DOT Order 5610.1D, section 9. In analyzing the applicability of a CE, the agency must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS. *Id.* at section 9(b). MARAD may utilize its own CEs, in addition to CEs listed in DOT Order 5610.1D Appendix A or another Operating Administration’s CEs, using the procedures described in DOT Order

5610.1D, section 9, and subpart C, section (e). This promulgation of a final rule to establish the TSP is categorically excluded pursuant to DOT Order 5610.1D, subpart C, section (e)(3): “Internal orders and procedures not required to be published in the **Federal Register**, promulgation of rules, regulations, directives, and amendments thereto which do not require a regulatory impact analysis under section 3 or do not have a potential to cause a significant impact on the environment . . .” MARAD does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

Privacy Impact Assessment

Section 522(a)(5) of the Transportation, Treasury, Independent Agencies, and General Government Appropriations Act, 2005 (Pub. L. 108–447, div. H, 118 Stat. 2809 at 3268) requires DOT and certain other Federal agencies to conduct a privacy impact assessment of each proposed rule that will affect the privacy of individuals. This rulemaking does not result in personally identifiable information (PII) being collected or maintained in a Government-run website or IT system. Therefore, MARAD did not conduct a Privacy Impact Assessment.

Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda twice each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid Office of OMB control number. This OMB approved collection of information is identified under OMB Control Number 2133–0554. The collection is necessary to accept applications, undertake the review of applicant qualifications to ensure applications are complete, monitor participation and vessel availability, and administer and maintain all aspects of the TSP program. The annual burden estimate is \$2,438.50.

Privacy Act

Anyone can 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.). For information on DOT's compliance with the Privacy Act, please visit <https://www.transportation.gov/privacy>.

List of Subjects 46 CFR Part 294

Maritime carriers, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Maritime Administration adopts the interim rule adding 46 CFR part 294, which was published at 87 FR 74977 on December 7, 2022, as final with the following changes:

- 1. Part 294 is revised to read as follows:

PART 294—TANKER SECURITY PROGRAM (TSP)

Subpart A—Introduction

Sec.

- 294.1 Purpose.
- 294.3 Definitions.
- 294.5 Applications.
- 294.7 Procedural waivers.

Subpart B—Establishment of a Tanker Security Fleet

- 294.9 Product tanker vessel eligibility.
- 294.11 Owner, charterer, and operator citizenship eligibility requirements.
- 294.13 Special rule for TSP Fleet Vessel entry age.

Subpart C—Award of TSP Operating Agreements

- 294.15 Initial award of TSP Operating Agreements.
- 294.17 Subsequent award of TSP Operating Agreements.
- 294.19 Nature of award procedure.

Subpart D—TSP Operating Agreements

- 294.21 General conditions.
- 294.23 Special terms.
- 294.25 National security modifications.
- 294.27 Financial reporting.

Subpart E—Billing and Payment

- 294.29 Billing procedures.
- 294.31 Payments.

Subpart F—Appeals Procedures

- 294.33 Administrative determinations.

Authority: 46 U.S.C. ch. 534, 49 CFR 1.93.

Subpart A—Introduction

§ 294.1 Purpose.

This part prescribes regulations implementing subtitle B of Title XXXV of the National Defense Authorization Act for Fiscal Year 2021 (Pub. L. 116–283), section 3511, and the National Defense Authorization Act for Fiscal Year 2022 (Pub. L. 117–81), section 3515, codified at ch. 534 of title 46, United States Code, governing the establishment of a Tanker Security Fleet

of product tank vessels operating in the foreign trade or mixed foreign and domestic commerce of the United States permitted under a registry endorsement issued by the United States Coast Guard. The Department of War (DOW) and the U.S. Department of Transportation (DOT) have joint responsibility for the Tanker Security Fleet, with responsibility delegated to the Commander, United States Transportation Command through the Secretary of War, and the Maritime Administrator through the Secretary of Transportation.

§ 294.3 Definitions.

For the purposes of this part:

- (a) *Administrator* means the Administrator, Maritime Administration, United States Department of Transportation.
- (b) *Agreement Holder* means the owner or operator of a TSP Fleet Vessel, excluding a trust, that:
 - (1) Meets the eligibility requirements of 46 U.S.C. 53402(c)(1), (2), (3), or (4); and
 - (2) Enters into a Tanker Security Program Operating Agreement for the TSP Fleet Vessel with the Secretary of Transportation pursuant to 46 U.S.C. 53403.
- (c) *Applicant* means a person applying for a Tanker Security Program Operating Agreement, excluding trusts.
- (d) *Classification society* means the American Bureau of Shipping, or another classification society accepted by the Commandant of the United States Coast Guard.
- (e) *CAP* means Conditional Assessment Program, a voluntary program offered by classification societies intended to measure and document the actual technical and functional condition of tankers 15 years of age or more.
- (f) *Coastwise trade* means waterborne trade between points in the United States as defined in 46 U.S.C. ch. 551.
- (g) *Commandant* means the Commandant of the United States Coast Guard.
- (h) *Commander* means Commander, USTRANSCOM.
- (i) *CR* means continuing resolution.
- (j) *Defense Contractor* means a person that operates or manages United States-documented vessels for the Secretary of War, or charters vessels to the Secretary of War, and has entered into a special security agreement with the Secretary of War.
- (k) *Documentation Citizen* means a person able to document a vessel under 46 U.S.C. ch. 121. This paragraph (k) includes a United States Citizen Trust.
- (l) *DOW* means the United States Department of War.

(m) *Emergency Preparedness Agreement* means a voluntary agreement established by the Maritime Administration (MARAD) under section 708 of the Defense Production Act of 1950, as amended (50 U.S.C. 4558).

(n) *Fiscal Year* means an annual period beginning on October 1 and ending on September 30.

(o) *Fleet* means all Tanker Security Program (TSP) Fleet Vessels at any given time.

(p) *Foreign commerce* means commerce or trade between the United States, its territories or possessions, or the District of Columbia, and a foreign country; and commerce or trade between foreign countries.

(q) *Noncontiguous domestic trade* means the waterborne transportation of cargo between a point in the contiguous 48 States and a point in Alaska, Hawaii, or Puerto Rico, other than a point in Alaska north of the Arctic Circle.

(r) *Person* includes corporations, partnerships, and associations existing under, or authorized by, laws of the United States, or any State, territory, district, or possession thereof, or any foreign country.

(s) *Product tank vessel* means a double-hulled tank vessel capable of carrying simultaneously more than 2 separated grades of refined petroleum products.

(t) *Secretary* means the Secretary of Transportation unless the context indicates otherwise.

(u) *Section 50501 citizen* means a person meeting the statutory qualifications for United States citizenship designation under 46 U.S.C. 50501.

(v) *TSP Fleet Vessel* means any product tank vessel operating under a Tanker Security Program Operating Agreement on or after January 1, 2022, that—

(1) Meets the requirements of 46 U.S.C. 53402(b); and

(2) Is no more than 20 years of age.

(w) *Tanker Security Program Operating Agreement* or *TSP Operating Agreement* means the assistance agreement between an Agreement Holder and MARAD that provides for payments under this part but is not a procurement contract.

(x) *United States Citizen Trust* means:

- (1) Subject to paragraph (x)(3) of this section, a trust that is qualified under this paragraph (x).

(2) A trust is qualified only if:

- (i) Each of the trustees is a section 50501 citizen; and
- (ii) The application for documentation of the vessel under 46 U.S.C. ch. 121, includes the affidavit of each trustee stating that the trustee is not aware of

any reason involving a beneficiary of the trust that is not a section 50501 citizen, or involving any other person that is not a section 50501 citizen, as a result of which the beneficiary or other person would hold more than 25 percent of the aggregate power to influence or limit the exercise of the authority of the trustee with respect to matters involving any ownership or operation of the vessel that may adversely affect the interests of the United States.

(3) If any person that is not a section 50501 citizen has authority to direct or participate in directing a trustee for a trust in matters involving any ownership or operation of the vessel that may adversely affect the interests of the United States or in removing a trustee for a trust without cause, either directly or indirectly through the control of another person, the trust instrument provides that persons who are not section 50501 citizens may not hold more than 25 percent of the aggregate authority to so direct or remove a trustee.

(4) This paragraph (x) will not be considered to prohibit a person who is not a section 50501 citizen from holding more than 25 percent of the beneficial interest in a trust.

(y) *USTRANSCOM* means United States Transportation Command.

(z) *Vessel of the United States* means a merchant vessel that has been documented under 46 U.S.C. ch. 121.

§ 294.5 Applications.

(a) *Applicants*. Each applicant for a TSP Operating Agreement is required to apply to the Tanker Security Program, Maritime Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590. Electronic submissions must be submitted to sealiftsupport@dot.gov. Application forms are available upon request or may be downloaded from MARAD's website. Required information includes:

(1) An Affidavit of section 50501 citizenship that comports with the requirements of 46 CFR part 355, if applying as a section 50501 citizen. Otherwise, an affidavit which demonstrates that the Applicant is qualified to document a vessel under 46 U.S.C. ch. 121 is required. If the Applicant is a vessel operator and proposes to employ a vessel manager, then the Applicant must supply an affidavit for the vessel manager that meets the same citizenship requirements as the Applicant.

(2) Corporate documents, to include the following:

(i) Certificate of Incorporation or other organization papers, including amendments presently in effect;

(ii) Corporate by-laws or other governing instruments, including amendments presently in effect;

(iii) Form or type of organization, *i.e.*, individual, partnership, corporation, or other organization;

(iv) Federal, State, or other laws under which the Applicant is organized or incorporated, and the date of organization or incorporation;

(v) Address of principal offices, and of important branch offices, if any;

(vi) Description of domestic and international and corporate affiliations, including (but not limited to) parent companies, subsidiary companies, and other related companies within its corporate structure, along with a description of the nature of the business transacted with each affiliated corporation;

(vii) Concerning each officer and director of the Applicant, provide name, address, nationality, number of shares owned and specify type of shares whether voting or non-voting;

(viii) For each individual or entity that owns five percent or more of the outstanding capital shares of any class of stock of the Applicant, include the name, address, nationality, and number of capital shares owned and specify type of shares whether voting or non-voting; and

(ix) A brief statement of the general effect of each voting agreement, voting trust, or other arrangement whereby the voting rights of five percent or more of the outstanding shares of the Applicant are owned, controlled, or exercised by any person not the holder of legal title to such shares. Give the name, address, nationality, and business of any such person, and if not an individual, the form of organization.

(3) Financial data, to include the following:

(i) An audited financial statement or a completed MARAD Form MA-172 dated within 120 days after the close of the most recent fiscal period; and

(ii) Estimated annual forecast of maritime operations for the next five years showing revenue and expense, including explanations of any significant increase or decrease of these items.

(4) Maritime related affiliations including carriers or alliances with which the Applicant maintains an ongoing relationship.

(5) Ongoing business relationships with any refineries, terminals, distributors, or other entities engaged in refined petroleum production and distribution, whether in the United

States or in a foreign state, both at the time of application and, if applicable, projected to be established within the five years following the date of application.

(6) Diversity of trading patterns. List of countries and trade routes serviced or trades in which the product tank vessel is to be operated, whether the vessel is to be operated on a voyage charter, or time charter, and any specific tanker pools the vessel is associated with.

(7) Applicant's record of owning or operating product tank vessels, include the following:

(i) Provide the number, type, and size of product tank vessels owned or operated in the last ten years, specifying whether owned or operated, flag(s) of the individual vessels, trades involved, number of employees in your ship operations department, including the number of employees directly employed in U.S.-flag operations;

(ii) Operating experience with product tank vessels in international trade;

(iii) Demonstration of reliability and breadth of services and experience;

(iv) Experience in delivering services in accordance with government contracts or in relation to the carriage of DOW or other government sponsored cargoes;

(v) Vessels owned by the applicant and chartered by other persons;

(vi) Vessels chartered by the applicant from other persons—provide vessel name, flag of registry, period of charter, name of charterer or owner (as applicable) and area of operation;

(vii) Vessel or ship managers utilized in the operation of your vessels; and

(viii) Any other information you believe to be relevant to your record of owning or operating vessels.

(8) Product tank vessel details and operational standards:

(i) Vessel must be a party to the Oil Companies International Marine Forum's Ship Inspection Report (SIRE) System and applicant must provide date of last SIRE report.

(ii) Applicant must confirm acceptances received and/or retained by the vessel since the last SIRE report.

(iii) Applicant must confirm that the vessel has not been rejected or refused by any Charterer since the inspections leading to the said SIRE report.

(iv) Applicant must provide a current Intertanko Standard Tanker Chartering Questionnaire 88 (Q-88) (no more than 60 days old).

(v) Applicant must confirm vessel has vetting approval from at least two oil majors providing date of vetting and name of oil major, at least one vetting approval must be less than six months old at time of application.

(vi) Applicant must provide a copy of vessel's current Class Society issued Safety Management Certificate.

(vii) Applicant must provide a copy of vessel's current Flag State issued International Ship Security Certificate.

(viii) Applicant must confirm vessel's ability to carry one complete undecanted tank washing in dedicated slop tanks.

(ix) Applicant must submit a General Arrangement Plan, trim and stability booklet, and a set of the ship's capacity and stowage plans. This is to include cargo piping. Applicants are to provide narrative descriptions to accompany the drawings indicating proposed locations of all required spaces and compartments listed in the military requirements.

(x) Applicant must provide evidence of the vessel's most recent U.S. Coast Guard (USCG) and American Bureau of Shipping (ABS) (or other classification society accepted by the Commandant of the Coast Guard), inspections conducted within 12 months of the application.

(xi) Applicant must warrant vessel meets, or will meet, before the start of a TSP Operating Agreement, the requirements of a Quality Management System (QMS). If an applicant does not currently have the required systems in place it will provide a narrative describing how it will have these required systems in place.

(9) Provide an assessment of the utility of the product tank vessel(s) to DOW fuel transportation requirements including any specific national defense sealift features. Provide characteristics that indicate the utility of the product tank vessel(s) to DOW including items of specific value.

(i) Applicant must provide an assessment of the vessel's ability to install CONSOL and the proposed locations for installation. CONSOL details may be found on MARAD's Tanker Security Program website at: <https://www.maritime.dot.gov/national-security/strategic-sealift/tanker-security-program>.

(ii) Owner must confirm vessel's ability to sustain warranted speed of 14 knots, fully laden, in moderate weather (Force 4 on the Beaufort Scale).

(iii) Provide the number and location of available berths for additional personnel beyond the ship crew.

(10) Provide an assessment of the commercial viability of your proposed product tank vessel(s).

(11) Provide any charters or management agreements that would govern the operation of the vessel if selected (pro forma copies are acceptable), including but not limited to the following:

(i) Demise or bareboat charter;

(ii) Vessel management agreement; and

(iii) Crewing agreement.

(12) Special security agreements. If applicable, provide a copy of any special security agreement.

(13) Documentation Citizen. If applicable, the Documentation Citizen must submit a signed certification as the demise charterer of the proposed TSP Fleet Vessel. The certification must provide a statement that there are no treaties, statutes, regulations, or other laws of the foreign country of the parent that would prohibit the proposed Agreement Holder from performing its obligations under a TSP Operating Agreement.

(14) If operating under a foreign parent, the ultimate foreign parent of the Documentation Citizen demise charterer must submit a signed certification. The certification must provide a statement that the foreign parent will not influence the operation of the TSP Fleet Vessel in a manner that will adversely affect the interests of the United States.

(15) For a United States Citizen Trust agreement, if the Applicant intends to place the vessel in a United States Citizen Trust during its operation in the fleet, provide a copy of any such trust agreement (pro forma copies are acceptable).

(16) If applicable, provide a replacement product tank vessel plan if your product tank vessel is a TSP Fleet Vessel over 10 years of age. The replacement product tank vessel plan must include:

(i) The vessel's characteristics as applicable in paragraphs (a)(8) and (9) of this section;

(ii) A letter of intent or other document indicating agreement for purchase of product tank vessel; and

(iii) A forecast of operations for five years for the replacement product tank vessel.

(17) Special rule regarding age of participating TSP Fleet Vessel. Age restrictions will not apply during the first 30-month period beginning on the date the vessel begins operating under the TSP Operating Agreement if the Secretary determines that the participant has entered an arrangement to obtain a replacement vessel that will be eligible to be included in a TSP Operating Agreement.

(18) Provide an anti-lobbying certificate as required by 49 CFR part 20 stating that no funds provided under the TSP have been used for lobbying to obtain a TSP Operating Agreement.

(b) *Procedures for applications*—(1) *Address*. Owners or operators of an eligible vessel may apply to MARAD for inclusion of that vessel in the fleet.

Applications may be submitted electronically to sealiftsupport@dot.gov or in hard copy to the Tanker Security Program, Maritime Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590.

(2) *Time deadlines*. Within 90 days after the close of the application period, the Secretary will approve an application, in conjunction with the Secretary of War, or provide in writing the reason for denial of that application.

(3) *Existing MSP Fleet Vessels*. The Secretary may approve a completed application from an Applicant that, on the date of its application, is operating a product tank vessel in the MSP Fleet in accordance with 46 U.S.C. ch. 531 and 46 CFR part 296.

§ 294.7 Procedural waivers.

In consultation with DOW, MARAD may, at MARAD's own initiation or in response to a request by an interested party, after a finding of good cause, suspend, revoke, amend, or waive any requirement of the regulations in this part, subject to the provisions of the Administrative Procedure Act and any statutory limitations.

Subpart B—Establishment of a Tanker Security Fleet

§ 294.9 Product tanker vessel eligibility requirements.

(a) *Eligibility*. To be eligible to be included in the fleet, the vessel must:

(1) Meet the requirements of § 294.11;

(2) Operate (or in the case of a vessel to be constructed, will be operated) in providing transportation in United States foreign commerce;

(3) Be self-propelled;

(4) Be not more than 10 years of age on the date the vessel is first included in the TSP Fleet;

(5) Be suitable for use by the United States for national defense or military purposes in time of war or national emergency, as determined by the Secretary of War;

(6) Be commercially viable, as determined by the Secretary of Transportation; and

(7) Be—

(i) A vessel of the United States; or

(ii) Not a vessel of the United States, but the owner of the vessel has demonstrated that—

(A) The vessel is eligible for a USCG certificate of inspection; and

(B) The vessel owner intends to have the vessel documented under 46 U.S.C. ch. 121 at the time the vessel is to be included in the TSP Fleet.

(b) *Telecommunications and other electronic equipment*. The

telecommunications and other electronic equipment on an existing vessel that is redocumented under the laws of the United States for operation under a TSP Operating Agreement will satisfy all Federal Communications Commission equipment certification requirements if:

(1) The equipment complies with all applicable international agreements and associated guidelines as determined by the country in which the vessel was documented immediately before becoming documented under the laws of the United States;

(2) The country has not been identified by the Secretary as inadequately enforcing international regulations as to that vessel; and

(3) The equipment, at the end of its useful life, will be replaced with equipment that meets Federal Communications Commission equipment certification standards.

§ 294.11 Owner, charterer, and operator citizenship eligibility requirements.

For a vessel to be eligible to be included in the TSP Fleet, vessel owners, charterers, and operators must evidence that, during the period of a TSP Operating Agreement, one of the following must be true:

(a) The vessel is owned and operated by one or more persons that are citizens of the United States in accordance with 46 U.S.C. 50501.

(b) The vessel is owned by a citizen of the United States in accordance with 46 U.S.C. 50501, or United States Citizen Trust, and the following conditions are met:

(1) The vessel is demise chartered to a person or entity that:

(i) Is eligible to document the vessel under 46 U.S.C. ch. 121;

(ii) Is organized such that the chairman of the board of directors, chief executive officer, and most of the members of the board of directors are citizens of the United States, and are appointed and subjected to removal only upon approval by the Secretary;

(iii) Certifies to the Secretary that there are no treaties, statutes, regulations, or other laws that would prohibit the program participant for the vessel from performing its obligations under a TSP Operating Agreement; and

(iv) In the case of a vessel that is demise chartered to an entity that is owned or controlled by another person or entity that is not a citizen of the United States under 46 U.S.C. 50501, that other person or entity certifies to the Secretary that there are no treaties, statutes, regulations, or other laws that would prohibit the person or entity from performing its obligations under a TSP

Operating Agreement and enters into an agreement with the Secretary not to influence the vessel's operation in any way that would be detrimental to the United States.

(2) The Secretary and the Secretary of War notify the Committee on Armed Services and the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Armed Services and the Committee on Transportation and Infrastructure of the House of Representatives that the Secretaries concur with the certifications by the documentation citizen required under § 294.5(a)(13), and any ultimate foreign parent corporation under § 294.5(a)(14), and after a review, agree that there are no legal, operational, or other impediments that would prohibit the owner or operator of the vessel from performing its obligations under a TSP Operating Agreement.

(c) The vessel is owned and operated by a defense contractor, including affiliated or related companies within the same corporate group, that meets the following requirements:

(1) Eligible to document the vessel under 46 U.S.C. ch. 121;

(2) Operates or manages other United States-documented vessels for the Secretary of War, or charters other vessels to the Secretary of War;

(3) Enters into a special security agreement with the Secretary of War;

(4) Certifies to the Secretary, at the time of application and consistent with § 294.5(a)(13), that there are no treaties, statutes, regulations, or other laws that would prohibit the Agreement Holder from performing its obligations under a TSP Operating Agreement; and

(5) Any foreign corporate parent company of the Defense Contractor proffers, at the time of application for a TSP Operating Agreement, an agreement consistent with § 294.5(a)(14), not to influence the vessel's operation in a way that is detrimental to the United States.

(d) The vessel is owned by a Documentation Citizen in accordance with 46 U.S.C. ch. 121 and demise chartered to a Citizen of the United States in accordance with 46 U.S.C. 50501.

§ 294.13 Special rule for TSP Fleet Vessel entry age.

An Applicant may apply for a TSP Operating Agreement with a vessel that exceeds the maximum entry age requirement of § 294.9(a)(4), if it satisfies the following conditions:

(a) The Applicant demonstrates their intent to replace the non-compliant vessel within 30 months after the

commencement of operations under a TSP Operating Agreement;

(b) Nominated vessels 15 years or older must be enrolled in a classification society's CAP and be rated equivalent to ABS CAP 2 or better; and

(c) The Secretary determines that the Applicant has entered into an agreement to obtain and operate a replacement product tank vessel which, upon commencing operation under the same TSP Operating Agreement for the non-compliant vessel, will be eligible to be included in the fleet under § 294.9.

Subpart C—Award of TSP Operating Agreements

§ 294.15 Initial award of TSP Operating Agreements.

(a) *Number of agreements.* The Secretary, in concurrence with the Secretary of War, may award up to ten TSP Operating Agreements for the operation of product tank vessels from among those applications submitted by qualified Applicants. If the Secretary and the Secretary of War are unable to select ten vessels for inclusion in the TSP Fleet from their initial review of applications, they may accept additional applications for review to ensure that the Secretary can award ten TSP Operating Agreements.

(b) *Vessel selection priority.* In consideration of the applications, the Secretary and the Secretary of War will consider each Applicant's vessel(s)'s qualifications as they relate to subpart B of this part and will give priority to applications based on the criteria in paragraphs (b)(1) through (4) of this section, in order of priority:

(1) Vessel capabilities, as established by the Secretary of War;

(2) Applicant's record of vessel ownership and operation of tanker vessels;

(3) Applicant's citizenship, with preference for section 50501 citizens; and

(4) Location of vessel construction, with preference for vessels built in the United States.

(c) *Consideration of applications requesting an age waiver.* If an Applicant applies for a TSP Operating Agreement under the provisions of this section, the Secretary and the Secretary of War will consider:

(1) Whether the vessel is enrolled in its class society's CAP and has maintained a rating equivalent to ABS CAP 2 or better;

(2) The vessel priority factors in paragraph (b) of this section for both the proposed non-compliant vessel and the vessel proposed to replace the non-compliant vessel within the initial 30

months of the TSP Operating Agreement; and

(3) The feasibility of the Applicant's plan to obtain and operate the compliant replacement vessel within the initial 30 months of the TSP Operating Agreement.

(d) *Notification to Applicants.* After the Secretary, in concurrence with the Secretary of War, has selected those vessels to be included in the TSP Fleet, the Secretary will notify all Applicants as to whether their applications were successful or unsuccessful.

(1) For each successful application, the Secretary will extend an offer to the Applicant to enter into one or more TSP Operating Agreements, based on the number of vessels selected from the Applicant's application for inclusion into the TSP Fleet.

(2) For each unsuccessful application, the Secretary will inform the Applicant of the reason(s) why the application was unsuccessful.

§ 294.17 Subsequent award of TSP Operating Agreements.

(a) *Availability.* When a TSP Operating Agreement becomes available through termination by the Secretary or early termination by an Agreement Holder, or if Congress expands the maximum authorized fleet size by statute, and no transfer under 46 U.S.C. 53405(e) is involved, MARAD will accept applications for a new TSP Operating Agreement pursuant to paragraphs (a)(1) through (3) of this section:

(1) The proposed vessel must meet the requirements of § 294.9;

(2) The Applicant must meet the requirements of § 294.11; and

(3) The Applicant must apply in accordance with the requirements of § 294.5.

(b) *Consideration of applications.* The Secretary and the Secretary of War will consider all applications within the priority structure of § 294.15(b).

(c) *Notification and award of a new TSP Operating Agreement.* Upon selection of the best-qualified vessel(s) from among the applications received, MARAD will enter into a new TSP Operating Agreement with the successful Applicant as soon as is practicable. Successful Applicants must notify the Secretary of their acceptance of an offer to enter into a TSP Operating Agreement within 90 days.

§ 294.19 Nature of award procedure.

TSP furthers a public purpose and MARAD does not acquire goods or services through TSP. Therefore, the selection process for awarding TSP Operating Agreements does not

constitute an acquisition subject to procurement law or the Federal Acquisition Regulation in title 48 of the Code of Federal Regulations.

Subpart D—TSP Operating Agreements

§ 294.21 General conditions.

(a) *Number of agreements.* The Secretary may enter into up to ten TSP Operating Agreements for vessels that were either selected in accordance with § 294.15 or which, on the effective date of a TSP Operating Agreement, were operating under an MSP Operating Agreement in accordance with 46 U.S.C. ch. 531 and 46 CFR part 296, for fiscal year 2022 and any prior fiscal year. The Secretary may enter into as many additional agreements as is authorized under 46 U.S.C. 53403(c) under the same terms as the initial ten agreements.

(b) *Term of agreements.* TSP Operating Agreements are authorized for 19 years, starting on October 1, 2021, and ending on September 30, 2040, but payments to Agreement Holders are subject to annual appropriations each fiscal year. MARAD may enter into TSP Operating Agreements for a period less than the full term authorized under 46 U.S.C. ch. 534.

(c) *Replacement vessels.* An Agreement Holder may replace a vessel under a TSP Operating Agreement with another vessel that is eligible to be included in the fleet under § 294.9, if the Secretary, in conjunction with the Secretary of War, approves the replacement vessel.

(d) *Termination by the Secretary.* Except as provided in § 294.23(d)(3), if an Agreement Holder fails to comply with the terms of a TSP Operating Agreement:

(1) The Secretary will notify the Agreement Holder and provide a reasonable opportunity for the Agreement Holder to comply with the terms and conditions of the TSP Operating Agreement; and

(2) The Secretary will terminate the TSP Operating Agreement if the Agreement Holder fails to achieve such compliance.

(e) *Eligibility of Vessel on long-term charter to the Government.* Except as provided in § 294.23(d)(2), a TSP Fleet Vessel that is time chartered to the United States Government for a period that, together with options for extension, occurs for more than 180 continuous calendar days is ineligible to participate in the TSP Fleet as of the date and time the vessel is delivered to, and accepted by, the Government under the terms of the time charter. The Secretary may terminate the relevant

Operating Agreement at that time unless the Operating Agreement holder has offered a qualified replacement vessel in accordance with paragraph (c) of this section.

(f) *Early termination by an Agreement Holder.* The Agreement Holder must notify the Secretary no later than 60 days before the proposed effective termination date that the Agreement Holder intends to terminate the TSP Operating Agreement. Even after early termination of the Operating Agreement, the Agreement Holder will remain bound by the provisions related to vessel documentation and national security requirements, including any commitments under an Emergency Preparedness Agreement, for the full term of the TSP Operating Agreement.

(g) *Nonrenewal for lack of funds.* If, by the first day of a fiscal year, sufficient funds have not been appropriated under the authority of 46 U.S.C. ch. 534 for that fiscal year, the Secretary will notify the Senate Committees on Armed Services, Commerce, Science, and Transportation, and Appropriations, and the House of Representatives Committees on Armed Services and Appropriations, that TSP Operating Agreements for which sufficient funds are not available will not be renewed for that fiscal year if sufficient funds are not appropriated by the 60th day of that fiscal year. (If Congress does not appropriate funds at the authorized level by the 60th day of the fiscal year, MARAD will pay each vessel its *pro rata* share of the funds that have been appropriated.) If no funds are appropriated by the 60th day of the fiscal year, and notwithstanding any other provision, then all TSP Operating Agreements will be terminated, and each Agreement Holder will be released from its obligations under the TSP Operating Agreement. Final payments under the terminated TSP Operating Agreements will be made in accordance with § 294.31. To the extent that funds are appropriated in a subsequent fiscal year, former TSP Operating Agreements may be reinstated if mutually acceptable to the Administrator and the Agreement Holder, provided the TSP vessel remains eligible to operate under the Operating Agreement.

(h) *Release of vessels from obligations.* For Agreement Holders who have been released from their obligations under a TSP Operating Agreement due to lack of funds in any fiscal year by the 60th day of that fiscal year:

(1) The Agreement Holder may transfer and register each vessel covered by a terminated TSP Operating Agreement to a foreign registry that is

acceptable to the Secretary and the Secretary of War, notwithstanding 46 U.S.C. ch. 561 and 46 CFR part 221;

(2) If 46 U.S.C. ch. 563 is applicable to a vessel that has been transferred to foreign registry due to the termination of a TSP Operating Agreement, then that vessel remains available to be requisitioned by the Secretary pursuant to 46 U.S.C. ch. 563; and

(3) The provisions of this section do not apply to vessels under TSP Operating Agreements that have been terminated for any other reason.

(i) *Transfers of TSP Operating Agreements.* An Agreement Holder may transfer a TSP Operating Agreement, including all rights and obligations under the TSP Operating Agreement, to any person that is eligible under § 294.11 to enter into a TSP Operating Agreement, if the Secretary and the Secretary of War jointly determine that the transfer is in the best interests of the United States. A transaction is not considered a transfer of a TSP Operating Agreement if the same legal entity with the same vessels remains the Agreement Holder under the TSP Operating Agreement.

§ 294.23 Special terms.

(a) *TSP Operating Agreement.* Each TSP Operating Agreement will require that, during the period a TSP Fleet Vessel is operating under that TSP Operating Agreement, the TSP Fleet Vessel must:

(1) Be documented as a vessel of the United States under 46 U.S.C. ch. 121;

(2) Operate exclusively in:

(i) Foreign commerce;

(ii) Mixed foreign commerce and domestic trade permitted under a registry endorsement issued under 46 U.S.C. 12111, and to those points identified in 46 U.S.C. 55101(b);

(iii) Foreign-to-foreign commerce; or

(iv) Under charter to the United States, except as provided in 46 U.S.C. 53404(b); and

(3) Not otherwise operate in the coastwise trade of the United States;

(4) Not receive payments during a period in which the Agreement Holder owns, operates, or charters a vessel engaged in noncontiguous domestic trade, unless the Agreement Holder is a section 50501 citizen, applying the 75 percent ownership requirements of 46 U.S.C. 50501; and

(5) Enroll, for vessels 15 years or older, in their classification society's CAP and maintain a CAP rating of two or better.

(b) *Operating agreement as an obligation of the United States Government.* The amounts payable to an Agreement Holder under a TSP

Operating Agreement constitute a contractual obligation of the United States Government to the extent of actual appropriations.

(c) *Operating under a Continuing Resolution.* In the event funds are available under a Continuing Resolution (CR), the terms and conditions of the TSP Operating Agreements will be in force and only for the period stipulated in the applicable CR. MARAD will continue to pay under each Operating Agreement to the extent of actual appropriations. For any Agreement Holder with a TSP Operating Agreement that does not receive funds, the terms and conditions of any applicable TSP Operating Agreement may be voided, and the Agreement Holder may request termination of the TSP Operating Agreement.

(d) *National security.* (1) Each TSP Operating Agreement will require the Agreement Holder to enter into a Voluntary Tanker Agreement (VTA), as approved by the Secretary and the Secretary of War, or other agreement approved by the Secretaries.

(2) No vessel that is operating under a charter from DOW pursuant to an activation under VTA or a similar agreement will be subject to the requirements of § 294.21(e), as determined by the Maritime Administrator.

(3) The Secretary will not terminate an Operating Agreement with an Agreement Holder if the TSP Fleet Vessel covered by the relevant Operating Agreement suffers a marine casualty while operating under a VTA activation, provided that the Agreement Holder makes all reasonable efforts to repair or replace the affected vessel in a timely manner, as determined by the Maritime Administrator.

(e) *United States Merchant Marine Academy cadet training.* The Agreement Holder must agree:

(1) To carry on the TSP Fleet Vessel two United States Merchant Marine Academy cadets, if available, on each voyage; and

(2) To implement prior to accepting an Operating Agreement appropriate policies, programs, and criteria necessary to comply with all MARAD cadet safety guidelines that address sexual harassment, sexual assault, and other inappropriate conduct.

(3) Upon a finding of non-compliance, the Administrator may require the Agreement Holder to take corrective actions or find such failure to constitute a violation of the TSP Operating Agreement.

(f) *Notice of vessel maintenance and repair.* The Agreement Holder must notify MARAD any time the TSP Fleet

Vessel will enter a period of maintenance, survey, inspection, or repair such that the TSP Fleet Vessel is unable to move under its own power or is unable to meet its national security obligations under paragraph (d) of this section if immediately called to do so under the terms of VTA.

§ 294.25 National security modifications.

A participant agrees to the installation onboard its TSP Fleet Vessel of militarily useful features for national defense purposes as approved by U.S. Coast Guard and the vessel's classification society.

§ 294.27 Financial reporting.

The Agreement Holder must submit the following reports to MARAD, including management footnotes where necessary to make a fair financial presentation:

(a) *Vessel operating cost information.* Not later than 120 days after the close of the Agreement Holder's semiannual accounting period, a Form MA-172 on a semiannual basis, in accordance with 46 CFR 232.6; and

(b) *Financial statement.* Not later than 120 days after the close of the Agreement Holder's annual accounting period, an audited financial statement in accordance with 46 CFR 232.6 and the most recent vessel operating cost data submitted as part of its Emergency Preparedness Agreement, or if not current year data, a Schedule 310 of the MA-172.

Subpart E—Billing and Payment

§ 294.29 Billing procedures.

All Agreement Holders must submit a voucher to MARAD for payment. For Agreement Holders operating under more than one TSP Operating Agreement, the Agreement Holder may submit a single monthly voucher applicable to all its TSP Operating Agreements. Each voucher submission must include a certification that the vessel(s) for which payment is requested were operated in accordance with § 294.23(a) and applicable TSP Operating Agreements. All submissions must be forwarded to the Tanker Security Program, MARAD, via email to sealiftsupport@dot.gov. Payments will be paid and processed under the terms and conditions of the Prompt Payment Act, 31 U.S.C. 3901, *et seq.*

§ 294.31 Payments.

(a) *Amount payable.* A TSP Operating Agreement will provide for each TSP Fleet Vessel, an annual payment, subject to the availability of appropriations, equal to: \$6,000,000 for fiscal years (FY) 2022 to 2024; \$8,160,000 for FY 2025

and 2026; \$8,380,000 for FY 2027 and 2028; \$8,606,000 for FY 2029 and 2030; \$8,839,000 for FY 2031 and 2032; \$9,078,000 for FY 2033 and 2034; \$9,323,000 for FY 2035 and 2036; \$9,574,000 for FY 2037 and 2038; and \$9,833,000 for FY 2039 and 2040. This amount will be paid in equal monthly installments at the end of each month. The annual amount payable, to the extent of actual appropriations, will not be reduced except as provided in paragraphs (b) and (c) of this section.

(b) *Reductions in amount payable.* The annual amount otherwise payable under a TSP Operating Agreement will be reduced on a pro rata basis:

(1) For each day less than 320 days in a fiscal year that a TSP Fleet Vessel is not operated in accordance with § 294.23(a)(1) through (3); or

(2) If Congress does not appropriate funds at the authorized level by the 60th day of the fiscal year.

(c) *No payment.* (1) Regardless of whether the Agreement Holder has or will operate the TSP Fleet Vessel for 320 days a year, the Agreement Holder will not be paid:

(i) For any day in which the TSP Vessel is engaged in transporting more than 7,500 tons of civilian bulk preference cargoes pursuant to 46 U.S.C. 55302(a), 55305, or 55314 (using the United States standard of short tons, which is equivalent to 6,803.85 metric tons or 6,696.75 long tons);

(ii) During a period in which the Agreement Holder participates in noncontiguous domestic trade, unless that Agreement Holder is a section 50501 citizen, applying the 75 percent ownership requirement of section 50501;

(iii) For any days in which the Agreement Holder operates a TSP Vessel that is 15 years or older which is not enrolled in their classification society's CAP or is not maintaining a CAP rating of two or better;

(iv) For any day in which the Agreement Holder operates a TSP Vessel that is more than 20 years of age;

(v) For days in excess of 30 days in a fiscal year in which a vessel is drydocked or undergoing survey, inspection, or repair, unless, prior to the expiration of the vessel's 30-day drydock and repair period, the Agreement Holder obtains approval from MARAD for an extension beyond 30 days;

(vi) For any day in which the Agreement Holder does not, at the request of the Administrator, carry up to two United States Merchant Marine Academy cadets onboard; and

(vii) If the Agreement Holder does not operate or maintain the TSP Fleet Vessel

in accordance with the terms of the TSP Operating Agreement.

(2) To the extent that non-payment days under this paragraph (c) are known, Agreement Holder payments will be reduced at the time of the current billing. The daily reduction amounts will be based on the annual amounts in paragraph (a) of this section divided by 365 days (366 days in leap years) and rounded to the nearest cent.

(3) MARAD may require, for good cause, that a portion of the funds payable under this section be withheld if the provisions of § 294.23(a) have not been met.

(4) Amounts owed to MARAD for reductions applicable to a prior billing period must be electronically transferred using MARAD's prescribed format, or the amount owed can be credited to MARAD by offsetting amounts payable in future billing periods.

Subpart F—Appeals Procedures

§ 294.33 Administrative determinations.

(a) *Policy.* An Agreement Holder who disagrees with the findings, interpretations, or decisions of MARAD with respect to the administration of this part or any other dispute or complaint concerning the Agreement Holder's TSP Operating Agreement(s) may submit an appeal to the Administrator. The appeals must be made in writing to the Maritime Administrator, within 60 days following the date of the document notifying the Agreement Holder of the administrative determination of MARAD. Such an appeal should be addressed to the Maritime Administrator, Attn.: TSP Operating Agreement Appeals, Maritime Administration, 1200 New Jersey Avenue SE, Washington, DC 20590 or via email to sealiftsupport@dot.gov. An appeal is a prerequisite to exhausting administrative remedies.

(b) *DOW determinations.* Chapter 534 of title 46, United States Code, assigns joint and separate roles and responsibilities to the Secretary and the Secretary of War. The Administrator and the Commander will make joint and separate findings, interpretations, and decisions necessary to implement 46 U.S.C. ch. 534. An Agreement Holder who disagrees with the initial findings, interpretations, or decisions regarding the implementation of 46 U.S.C. ch. 534—whether joint or separate in nature—must communicate such disagreement to MARAD. Any disagreement or dispute of an Agreement Holder may, where determined appropriate by MARAD, be transferred to the Director of Strategic

Plans, Policy, Logistics, and War-Fighting Development, U.S. Transportation Command (Director) for resolution. An Agreement Holder who disagrees with the findings, interpretations, or decisions of the Director with respect to the administration of this part, may submit an appeal to the Commander. Such an appeal must be made in writing to the Commander within 60 days following the date of the document notifying the Agreement Holder of the administrative determination of the Director. Such an appeal should be addressed to the Commander, United States Transportation Command, 508 Scott Drive, Scott Air Force Base, IL 62225–5357. or via email to transcom.scott.tccc.mbx.commander@mail.mil.

(c) *Process.* The Administrator, or the Commander in the case of a DOW determination, may require the person making the request to furnish additional information, or proof of factual allegations, and may order a proceeding. The decision of the Administrator, or the Commander in the case of a DOW determination, will be administratively final.

(Authority: 46 U.S.C. ch. 534, 49 CFR 1.93)

By order of the Maritime Administrator.
T. Mitchell Hudson, Jr.,
Secretary, Maritime Administration.

[FR Doc. 2026–12547 Filed 6–22–26; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 10

[Docket No. FWS–HQ–LE–2026–0628;
FXLE12200900000–267–FF09L00000]

RIN 1018–BJ16

Definition of Shellfish; Inclusion of Cephalopods

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are amending the definition of “shellfish” in the Code of Federal Regulations (CFR) by removing the phrase “having a shell” and adding specific taxa. This amendment will clarify that squid, cuttlefish, octopus, and other cephalopods are included within the regulatory definition of shellfish. This action is deregulatory in nature, as it reduces regulatory ambiguity, aligns the