

SW., Suite 315, Renton, WA 98055-4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Pocatello Regional Airport.

Issued in Renton, Washington on September 23, 2003.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

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DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket MARAD-2003-16248]

Notice of Request To Transfer Maritime Security Program Operating Agreements MA/MSP-29 Through MA/MSP-43 to Maersk Line, Limited

By letter dated September 18, 2003 (which incorporates earlier correspondence of July 10, 2003), Maersk Line, Limited (Maersk) has requested approval from the Maritime Administration (MARAD) to transfer Maritime Security Program (MSP) Operating Agreements Nos. MA/MSP-29 through 43 (Agreements) from U.S. Ship Management, Inc. (USSM) to itself. The MSP was established by the Maritime Security Act of 1996, Pub. L. 104-239, and is contained in sections 651 through 656 of the Merchant Marine Act, 1936, as amended, 46 App. U.S.C. 1187-1187e. The MSP serves to maintain an active, privately owned, U.S.-flag and U.S. citizen crewed liner fleet in international trade. At present, MSP provides operating payments to 47 vessels, under single-vessel MSP Operating Agreements.

The vessels at issue here, or their predecessors, were originally operated by Sea-Land Service, Inc. (Sea-Land) as the international liner division of Sea-Land. The transportation assets of the international liner division, other than the MSP Agreements or title to the vessels, were sold to Maersk in 1999. Maersk is a company organized in the United States, but is owned by the A.P. Moller Group, a Danish consortium.

At the time of the sale to Maersk, Sea-Land proposed to transfer the MSP Agreements to USSM, a newly-created U.S. citizen company. On December 8, 1999, the Maritime Administrator authorized transfer of the MSP Agreements from Sea-Land to USSM. In order to maintain the U.S. citizen status of the vessels for MSP purposes, titles

to the vessels covered by the Agreements were either transferred to trusts qualified under section 1136(c) of the Coast Guard Authorization Act of 1996, or required to remain in existing U.S. citizen trusts, as applicable. A vessel owned by a qualified section 1136(c) trust and bareboat chartered to a U.S. citizen is deemed to be owned and operated by a U.S. citizen for MSP purposes, notwithstanding foreign beneficial ownership of the trust. Sea-Land assigned the bareboat charters of all 15 vessels to USSM, the MSP contract holder, which, in turn, time chartered the 15 vessels to Maersk, through September 30, 2005, when the current MSP expires.

Maersk claims a right of election under Article 2(b)(vi) of the time charters to become the MSP contractor for the 15 vessels, at any time during the term of the time charters, subject to the qualification that the arrangement is "permitted under applicable laws and regulations and the terms of the Operating Agreement." On November 7, 2002, Maersk requested that MARAD confirm Maersk's eligibility to become the contractor for the vessels as provided in the time charters.

An opinion by MARAD's Chief Counsel, Robert B. Ostrom, issued on April 29, 2003, concluded that, "Maersk qualifies as an eligible transferee of the MSP Agreements from USSM." That opinion stated that it was limited solely to the question of Maersk's eligibility as a transferee under applicable statutes and regulations, "and in no way addresses whether MARAD would grant approval for such a transfer if an application were filed." In addition, that opinion did not address whether the proposed vessel operation and ownership arrangements would be acceptable.

On April 30, 2003, Maersk delivered to USSM a Notice of Election. In accordance with the Notice of Election, USSM was required to respond within five business days or be declared in default of the time charters. On May 9, 2003 Maersk delivered to USSM a Notice of Default, which then triggered a 60 day period for USSM to remedy said default. By letter dated July 3, 2003 USSM rejected Maersk's Notice of Default. By letter dated July 9, 2003, Maersk advised USSM that it had declared USSM in default of the time charters on that date and is unilaterally seeking to act for USSM with regard to transfer of the Agreements. Maersk asserts that it has the right to submit the subject transfer application on behalf of, or in place of, USSM.

USSM filed a complaint in U.S. District Court for the District of

Columbia, styled *U.S. Ship Management, Inc. v. U.S. Maritime Administration*, No. 1:03-cv-00951-RJL (filed April 29, 2003), contesting the legality of MARAD's legal opinion. That case is ongoing at this time. USSM also vigorously opposes Maersk's application. USSM further asserts that Maersk cannot act as attorney-in-fact, because the time charters giving rise to the attorney-in-fact powers contain several conditions which have not been satisfied. One of those conditions, USSM avers, is that the MSP Agreement transfer be approved by MARAD, which has not occurred.

A copy of Maersk's request, and other documents pertinent to this request, will be available for inspection at the Department of Transportation (DOT) Dockets Facility and on the DOT Web site (address information follows). Any person, firm or corporation having an interest in this matter, and who desires to submit comments concerning it, may file such comments as follows. You should mention the docket number that appears at the top of this notice. Written comments should be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL-401, Nassif Building, Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590. Comments may also be filed electronically via the Internet at <http://dmses.dot.gov/submit/>. You may call Docket Management at (202) 366-9324. You may visit the docket room to inspect and copy comments at the above address between 10 a.m. and 5 p.m. ET, Monday through Friday, except holidays. An electronic version of this document is available on the World Wide Web at <http://dms.dot.gov>. Comments must be received by the close of business October 24, 2003.

This notice is published as a matter of discretion. Section 652(j) of the Act, as implemented by MARAD's regulations at 46 CFR 295.20(i), permits the transfer of an MSP Operating Agreement by the MSP contractor to a qualified transferee unless MARAD disapproves the transfer within 90 days of receiving a completed application. Due to the unusual nature of this application, wherein the MSP contractor has not itself submitted an application and in fact opposes the submission of an application, no decision has been made on whether MARAD accepts the submission as an application properly submitted under § 295.20(i). Accordingly, no transfer of the MSP Operating Agreements may be consummated unless and until expressly approved by MARAD. Further, MARAD will not permit a transfer of the Agreements unless and until satisfied that the vessels associated