

information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. The revised recordkeeping requirements in this proposed rule have been submitted to OMB for review under the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d). Written comments on these proposed recordkeeping revisions may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Employment Standards, Washington, D.C. 20503."

#### **PART 60-250—[CORRECTED]**

10. On pages 50107 and 50108, § 60-250.61 is corrected by redesignating paragraphs (a) through (e) as paragraphs (b) through (f) respectively, and by adding new paragraph (a) to read as follows:

##### **§ 60-250.61 Complaint procedures.**

(a) *Coordination with other agencies.* Pursuant to section 107(b) of the Americans with Disabilities Act of 1990 (ADA), OFCCP and the Equal Employment Opportunity Commission have promulgated regulations setting forth procedures governing the processing of complaints falling within the overlapping jurisdiction of both Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 793 (Section 503), and title I of the ADA to ensure that such complaints are dealt with in a manner that avoids duplication of effort and prevents the imposition of inconsistent or conflicting standards. Complaints filed under this part that are cognizable under Section 503 and the ADA will be processed in accordance with those regulations, which are found at 41 CFR part 60-742, and with this part.

\* \* \* \* \*

##### **§ 60-250.61 [Corrected]**

11. On page 50107, in the third column, in § 60-250.61, in redesignated

paragraph (c)(2), in the tenth line, "(b)(1)" is corrected to read "(c)(1)".

Signed at Washington, D.C., this 21st day of October, 1996.

Bernard E. Anderson,  
*Assistant Secretary for Employment Standards.*

Shirley J. Wilcher,  
*Deputy Assistant Secretary for Federal Contract Compliance.*

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## **DEPARTMENT OF TRANSPORTATION**

### **Maritime Administration**

#### **46 CFR Part 384**

[Docket No. R-166]

RIN 2133-AB26

#### **Criteria for Granting Waivers of Requirement for Exclusive U.S.-Flag Vessel Carriage of Certain Export Cargoes**

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** The Maritime Administration (MARAD) is soliciting public comment concerning whether MARAD should amend its existing criteria and methodologies for granting waivers of the requirement for U.S.-flag vessel carriage of cargo covered by Public Resolution 17, 33rd Congress, 46 App. U.S.C. 1241-1 (PR 17), and if so, what the new procedures should be.

**DATES:** Comments must be received on or before December 27, 1996.

**ADDRESSES:** Comments should be sent to the Secretary, Maritime Administration, Room 7210, 400 7th St., S.W., Washington, DC 20590. Comments will become part of this docket and will be available for inspection or copying at the above address during normal business hours.

**FOR FURTHER INFORMATION CONTACT:** James J. Zok, Associate Administrator for Ship Financial Assistance and Cargo Preference, Maritime Administration, Washington, DC 20590. Telephone (202) 366-0364.

**SUPPLEMENTARY INFORMATION:** PR 17 reads:

*Resolved by the Senate and the House of Representatives of the United States of America in Congress assembled, That it is the sense of Congress that in any loans made by any instrumentality of the Government to foster the exporting of agricultural or other products, provision shall be made that such*

products shall be carried exclusively in vessels of the United States, unless, as to any or all of such products, the Secretary of Transportation, after investigation, shall certify to the instrumentality of the Government that vessels of the United States are not available in sufficient numbers, or in sufficient tonnage capacity, or on necessary sailing schedule or at reasonable rates.

The reservation of such cargoes for the U.S.-flag merchant marine helps support a vital national asset which is necessary in times of war or national emergency, and in peacetime provides essential service to ensure the continued flow of foreign water-borne commerce.

In 1934 (37 Op. A.G. 546), and again in 1965 (42 Op. A.G. 301), the Attorney General concluded that PR 17 does not impose a mandatory requirement and is therefore not violated by the granting of waivers. MARAD's current policy on granting waivers was first published in *Pike & Fischer's Shipping Regulation Report* (at ¶ 501) in 1959. The Export-Import Bank (Exim Bank) is the principal agency generating export cargo subject to PR 17.

Under MARAD's existing policy, two types of waivers are granted. The first, called a "general" waiver, is granted to allow the national flag vessels of the recipient country to carry 50 percent of the cargo. The condition for receiving a general waiver is that the recipient country not maintain discriminatory policies detrimental to U.S.-flag vessels.

MARAD has long held that the Cargo Preference Act of 1954, 46 App. U.S.C. 1241(b) ('54 Act), is applicable to Exim Bank financed cargoes and must be read together with PR 17. The '54 Act applies "whenever the United States \* \* \* shall advance funds or credits." (See 152 Gen. Counsel Op. 107 (May 15, 1970)). The '54 Act requires that 50 percent of the gross tonnage of all cargoes subject to the Act shall be transported on privately-owned U.S.-flag commercial vessels, to the extent such vessels are available at fair and reasonable rates for U.S.-flag commercial vessels. Thus, general waivers under PR 17 may not be granted in excess of 50 percent.

The second type of waiver is called a "statutory" or "non-availability" waiver. MARAD's policy provides that Exim Bank loan recipients may apply for a non-availability waiver "(w)hen it appears that U.S. vessels will not be available from the port or area of shipment to the foreign destinations within a reasonable time or at reasonable rates." The policy further states that "(s)uch waivers shall apply to the specific movements occurring during the period of U.S.-flag non-

availability as approved (by MARAD)  
\* \* \*

U.S.-flag vessels are usually available to carry containerized cargo to most destinations. In the past, MARAD has granted non-availability waivers sparingly, and only for specific voyages. Much of the Exim Bank financed cargo is project cargo, comprising oversized pieces of equipment. Breakbulk ships are more suitable for this cargo than are container ships.

In the past year or so, MARAD has received an increased number of complaints from shippers of Exim Bank cargo about MARAD's implementation of PR 17. The shippers are particularly concerned that when they bid on an Exim Bank-financed project, a reasonable projection of transportation costs is required. Project cargoes consist of many shipments over an extended period of time. Frequently, the shipments are planned so that delivery must be made in proper sequence and in critical time frames. Consequently, the shippers take issue with MARAD's present policy of granting waivers for only one voyage at a time, because this policy does not facilitate their long-range transportation planning. On the other hand, the assurance of a stream of PR 17 cargo could enhance the availability of U.S.-flag vessels and reduce the necessity for waivers.

MARAD is seeking comments on whether it should adopt a new policy on the granting of PR 17 waivers by promulgating a new regulation. Among the goals sought to be achieved by any new proposal are: (1) The preservation of a cargo base for carriage by U.S.-flag vessels generated by Exim Bank financing; and (2) maximizing the export of U.S. manufactured goods.

MARAD asks the public to comment on the following options and proposals.

Should MARAD grant a non-availability waiver for periods in excess of one voyage? If so, should the waiver be granted for a period not to exceed six months? for a period coextensive with the life of the project?

Should MARAD allow the U.S.-flag carrier to quote on the entire transportation costs related to a specific project (including containerized and bulk cargo) with the option of chartering

foreign-flag vessels to carry oversized cargo if no suitable U.S.-flag vessels are available?

What conditions, if any, should apply to non-availability waivers?

Should any or all of the following criteria be met prior to granting a non-availability waiver?

—There is no present U.S.-flag service available?

—U.S.-flag vessels are not presently serving the proposed destination ports for the project?

—There are draft restrictions on destination ports that may not be able to accommodate U.S.-flag vessels?

—Others?

Should a project-long waiver be granted only when the shipper is required to include an estimate of transportation costs as part of its overall bid to furnish the export project?

Should the shipper be required to provide the carriers with a complete packing list and a proposed transportation schedule of the project for the carriers to evaluate prior to bidding to ship the cargo?

Once MARAD grants a non-availability waiver, what rights do owners and operators of U.S.-flag vessels have to offer U.S.-flag service during the pendency of a specific project should U.S.-flag service later become available?

Under what criteria would U.S.-flag vessels be able to provide service during a specific project once it has commenced?

What incentives, if any, should be provided U.S. companies to encourage the carriage of oversized Exim Bank cargo?

Interested persons, corporations, or any other entities, are invited to submit written comments on the above mentioned options, or to offer alternatives. After consideration of the comments received, MARAD will decide whether to proceed with a specific proposed change to MARAD's existing policy.

## Rulemaking Analysis and Notices

### *Executive Order 12866 (Regulatory Planning and Review)*

If a rule is actually promulgated, it would not be considered an economically significant regulatory action under section 3(f) of E.O. 12866. In the event that MARAD decides to proceed with a rulemaking, a preliminary regulatory evaluation would be prepared that reflects the comments to this advance notice of proposed rulemaking.

### *Federalism*

MARAD has analyzed this advance notice of proposed rulemaking in accordance with the principles and criteria contained in Executive Order 12612 and has determined that any rule that might be subsequently promulgated would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

### *Regulatory Flexibility Act*

The Maritime Administration has evaluated this rule under the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, and certifies that any rule that might be promulgated subsequent to this advance notice of proposed rulemaking would not have a significant economic impact on a substantial number of small entities. Companies providing the carriage of preference cargoes are not small entities.

Any rule that might be subsequently promulgated would not be expected to significantly affect the environment. Accordingly, an Environmental Impact Statement would not be required under the National Environmental Policy Act of 1969.

### *Paperwork Reduction Act*

Any rule that might be promulgated would not be expected to significantly change the current requirement for the collection of information.

Dated: October 23, 1996.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary.

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