

population, and expansion of activities and facilities in the western half of the TAMU campus.

As directed by TEA-21, the Major Investment Study (MIS) process will be integrated with the EIS. The primary purpose of this study, known as the "Local Rail Economic Feasibility and Location Study" is to perform an alternative corridor analysis to determine the feasibility of upgrading the existing rail corridor or constructing a new corridor which will allow through-freight trains, local motorists, and pedestrians to travel uncongested through all or part of the Bryan/College Station corridor between Hearne and Navasota, Texas. Previous feasibility studies have examined a range of alternatives and alignments.

This study will examine viable alternatives and potential alternatives including the No-Build and vertical realignment and/or horizontal realignment options for the railroad. In addition, the study will evaluate the proposed track improvements required to allow commuter rail operations in conjunction with continuous freight operations. Grade separations of the railroad with Villa Maria Road, George Bush Drive, and FM 2818 are included in the 2000-2025 Metropolitan Transportation Plan (MTP) for the Bryan/College Station region and Transportation Improvement Program (TIP) and will be included in the No-Build Alternative. The study will also include extensive and continuous public involvement to address the long-term mobility need and safety issues of both the region and local community. The study will include the identification of the configuration and operational characteristics of alternatives. It will also include a discussion of the effects on social, economic, and environmental resources, and of other known and reasonably foreseeable agency actions proposed within the study corridor.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations, citizens, and residents who have previously expressed or are known to have interest in this proposal. Public scoping meetings are planned for:

- September 19, 2000 from 6:30 p.m. to 8:30 p.m. at the Bryan First Church of God Fellowship Hall located at 2002 Highway 21 East, Bryan, Texas 77803;
- September 20, 2000 from 6:30 pm to 8:30 pm at Mary Branch Elementary School Cafeteria located at 2040 West Villa Maria, Bryan, Texas 77801; and
- September 21, 2000 from 11:30 am to 1:30 pm at the College Station

Conference Center located at 1300 George Bush Drive, College Station, Texas 77840.

Persons with disabilities planning to attend this meeting who require auxiliary aids or services such as interpreters for the hearing impaired, readers, or Braille, school contact Ms. Sandy Wesch-Schulze at 1-877-394-9321 (toll free number), at least two (2) working days prior to the meeting so that appropriate arrangements can be made. Because the public meeting will be conducted in English, any request for language interpreters or other special communication needs should also be made at least two working days prior to the public meeting. Reasonable accommodations will be made to meet these needs.

These meetings will be to solicit public comments on the proposed action during the National Environmental Policy Act (NEPA) process. In addition, public meetings will be held throughout the process. Public notice will be given of the time and place of the other public meetings and hearing. The Draft EIS will be available for public and agency review and comment before the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action should be directed to the FHWA at the address provided above.

(Catalogue of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: August 15, 2000.

Brett Jackson,

Urban Program Engineer.

[FR Doc. 00-21214 Filed 8-18-00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD-2000-7798]

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

AGENCY: Maritime Administration, Transportation.

ACTION: Notice of proposed policy revision.

SUMMARY: The Maritime Administration (MARAD, we, us, our) is soliciting public comment on whether and/or how MARAD should amend its existing criteria for granting waivers of the requirement that cargo covered by Public Resolution 17 (PR-17) 73rd Congress, be carried on U.S.-flag vessels. Our goals for any policy amendments are: (1) the preservation of a cargo base financed by PR-17 for carriage on U.S.-flag vessels; (2) maximum export of U.S. manufactured goods; and (3) maintenance of a viable U.S.-flag merchant fleet for economic growth and national security. The intended effect is to set forth standard procedures for shippers and carriers to follow regarding PR-17 cargo in order to help support the U.S.-flag merchant fleet.

DATES: You should submit your comments early enough to ensure that Docket Management receives them not later than October 20, 2000.

ADDRESSES: Your comments should refer to docket number [MARAD-2000-7798]. You may submit your comments in writing to: Docket Clerk, U.S. DOT Dockets, Room PL-401, 400 7th St., SW., Washington, DC 20590. You may also submit them electronically via the internet at <http://dmses.dot.gov/submit/>. You may call Docket Management at (202) 366-9324 and visit the docket Room from 10 a.m. to 5 p.m., EST., Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: For non-legal issues you may call Thomas W. Harrelson, Director, Office of Cargo Preference at (202) 366-5515. For legal issues you may call Murray Bloom, Chief, Division of Maritime Assistance Programs of the Office of the Chief Counsel at (202) 366-5320. You may send mail to both of these officials at Maritime Administration, 400 Seventh St., SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the docket, please include the docket number of this document in your comments.

We encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments. Please submit

two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

Please address whether the information collection in this proposal is necessary for proper performance of the function of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden and ways to enhance quality, utility, and clarity of the information to be collected.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, Maritime Administration, at the address given above under **FOR FURTHER INFORMATION CONTACT**. You should mark "CONFIDENTIAL" on each page of the original document that you would like to keep confidential. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send comments containing information claimed to be confidential business information, you should include a cover letter setting forth with specificity the basis for any such claim.

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider in developing a final policy (assuming that one is issued), we will consider that comment as an informal suggestion for future policy revisions.

How Can I Read the Comments Submitted By Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket Room are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps: Go to the Docket Management System (DMS) Web page of the Department of transportation (<http://dms.dot.gov/>). On that page, click on "search." On the next page (<http://dms.dot.gov/search/>), type in the four-digit docket number shown at the beginning of this document. The docket number for this document is [7798]. After typing the docket number, click on "search." On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

Background

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 an 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 schedules or at reasonable rates. 46 App. U.S.C. 1241-1.

The reservation of PR-17 cargoes on U.S.-flag vessels helps support the U.S.-flag merchant marine, which is a vital national asset and is necessary in times of war or national emergency. In peacetime, the U.S.-flag merchant marine provides essential service to ensure the continued flow of foreign water-borne commerce. The Export-Import Bank of the United States (Eximbank) is the principal agency generating export cargo subject to PR-17.

In 1934 and 1965, the Attorney General concluded that granting waivers does not violate PR-17. (see 37 Op. A.G. 546 (1934) and 42 Op. A.G. 301 (1965))

MARAD's current policy on granting waivers was first published in *Pike & Fischer's Shipping Regulation Report* (at ¶ 501) in 1959).

On June 30, 1997, we published an amendment to our long established policy. The amendment essentially incorporated the compensatory waiver and a six-month long extended waiver into the policy. It also set forth standard procedures and processes for both shippers and carriers to follow. At that time, we advised that we would review the amended policy after two years to determine if it needed any additional changes.

Thus, under our existing policy, we grant four types of waivers: a general waiver, statutory or non-availability waiver, extended waiver, and compensatory waiver. First, a "general waiver" allows the national flag vessels of the recipient country to carry up to fifty percent (50%) of the cargo. Our primary conditions for granting a general waiver is that the recipient country not maintain any discriminatory policies detrimental to U.S.-flag vessels.

The second waiver is a "statutory" or "non-availability" waiver. MARAD's policy provides that Eximbank, or other government instrumentalities, loan or credit guaranty recipients may apply for a non-availability waiver when it appears that U.S. vessels will not be available within a reasonable time or at reasonable rates. Although U.S.-flag vessels are usually available to carry containerized cargo to most destinations, oversized pieces of equipment require breakbulk vessels. A limited number of U.S.-flag breakbulk vessels serve regular routes. Much of the Eximbank financed cargo is project cargo, comprising oversized pieces of equipment requiring breakbulk vessels. In the past, MARAD has granted non-availability waivers sparingly and only for specific voyages and specific cargoes.

The third type of waiver is called an "extended" waiver. If a shipper determines there is no projected U.S.-flag service to the cargo's destination after meetings with the U.S.-flag carriers and us, the shipper can apply for a waiver which is good for up to six months and which covers multiple shipments involving specifically identified pieces of cargo.

The fourth type of waiver is called a "compensatory" waiver. When a shipper, in honest error or under what we determine to be extenuating circumstances, moves preference cargo on a foreign-flag vessel, he may apply to MARAD for a compensatory waiver. After investigation, MARAD may issue

such a compensatory waiver whereby the shipper contracts with MARAD to move an equivalent amount of non-government impelled cargo, *i.e.* commercial cargo, on U.S.-flag vessels within a specified time period.

We have reviewed the results of the 1997 policy changes. Overall, the results have been very positive. The number of waiver requests has decreased and dialogue between individual shippers and carriers has increased. More cargoes are being booked directly with the U.S.-flag carriers without any waiver requests. The policy amendments have not increased the number of waiver requests that we have denied. On the contrary, the number of waiver denials has remained constant for pre and post policy amendments. We have received only three requests for the six-month extended waiver, all covering small amounts of short interval cargoes, and we granted all three.

During the past two years, we have held extensive discussions with shippers and carriers. The shippers are particularly concerned that when they bid a project, a reasonable projection of transportation availability and costs is required. Project cargoes typically consist of shipments over an extended prior of time. Frequently, the shipments must be planned so the delivery is made in proper sequence and in critical time frames consistent with the construction schedule. Some cargoes require a long lead time to manufacture and if damaged during shipment there would be serious adverse effects on the project.

The shippers have requested that MARAD consider making changes in the following four areas of our policy:

First, the shippers request that MARAD formalize its current practice of not requiring transshipment for breakbulk cargoes that are either long lead time procurement or are critical items (LLIT&C). For the purposes of the proposed policy change, transshipment is defined as the off-loading of breakbulk cargo (cargo that is loose or non-containerized) from one vessel at an intermediate port and reloading the breakbulk cargo on a different vessel for delivery to final destination. It does not include cargo in containers, trailers, or barges where the entire conveyance is transferred from one vessel to another vessel. The shipper must provide us with sufficient acceptable documentation for us to make a determination that an item is long lead time procurement or critical items. Incorporating this practice into the formal policy will provide both shippers and carriers with clear guidance on the requirements.

Second, the shippers expressed a desire for a clear and predictable definition of "reasonable rates", as stated in PR-17, that will allow them to make a more accurate bid on their projects. Shippers state that PR-17 Guideline Rates should only apply to trade lanes where U.S.-flag liner breakbulk service is not available. Shippers requested that we establish a system for calculating guideline rates subject to PR-17 in much the same fashion as we provide for agricultural cargoes under the Cargo Preference Act of 1954, although the guideline rate would be expressed in dollars per revenue ton of cargo. MARAD has analyzed twenty actual voyages and several potential rate models. We believe a workable guideline rate system for PR-17 cargoes can be constructed within the basic framework of our current guideline rate regulations (46 CFR part 382). The modifications would tailor rates to more closely reflect the timing of the request, the requirements of the cargo, and vessels in, or potentially in, the trade.

Third, the shippers requested that we change the "extend waiver to become a "condition waiver. This waiver would only apply to specifically identified breakbulk over-dimensional (oversize and/or heavy lift) cargoes and integral components that could not be handled by the existing U.S.-flag liner services and which are part of multiple shipments to the same project. We would consider granting such waivers only in those trade lanes in which U.S.-flag breakbulk service was not available on a liner basis. We would grant the proposed conditional waiver in advance for a period of up to two years unless a U.S.-flag breakbulk carrier subsequently offers service at or below the guideline rates that we establish. If a U.S.-flag vessel offers service at or below the guideline rates during the period of the conditional waiver, the U.S.-flag vessel would get the cargo if the carrier meets our conditions of carriage.

Fourth, the shippers recommend that any shipper wishing to obtain a waiver must provide us with all available cargo details including cargo value and rates, projected shipping time frame, and service requirements. Of this information, only essential cargo information will be posted on our web page. Carriers could then evaluate (1) The potential for combining various shippers' cargoes and (2) the economic feasibility of new U.S.-flag tonnage in that trade lane.

MARAD is seeking comments on whether we should incorporate these suggestions into our existing PR-17 waiver policy. Our goals for any new

proposals are (1) The preservation of a cargo base financed by PR-17 for U.S.-flag vessels; (2) maximum export of U.S. manufactured goods; and (3) maintenance of a viable U.S.-flag merchant fleet for economic growth and national security.

We ask the public to comment on the above proposed shipper suggestions and the below proposed language which would incorporate the above shipper suggestions. This proposed revision to the policy language would not be expected to significantly change the current requirement for the collection of information approved under OMB Numbers 2133-0013 or 2133-0514.

Proposed Revised Policy Language

The Maritime Administration proposes to amend our policy governing the Criteria for Granting Waivers of the Requirement for Exclusive U.S.-flag Vessel Carriage of Certain Cargo Covered by Public Resolution 17 (PR-17), 73rd Congress, to read as follows:

1. Scope of Applicability

Public Resolution No. 17 provides that where an instrumentality of the Government makes loans or credit guarantees to foster the export of agricultural or other products, such products must be carried exclusively in vessels of the United States unless the Maritime Administration (we, us, or our) certifies to the lending agency that such vessels are not available as to numbers, tonnage capacity, sailing schedule or at reasonable rates. The Resolution is applicable to credits of the Export-Import Bank (Eximbank) or other Government instrumentalities for the purpose of financing the acquisition and shipment of United States products or services. The Eximbank must include in such credit agreement a requirement that shipments be made in United States flag vessels, except to the extent that we grant a waiver of the requirement as outlined in this policy statement. If the Eximbank receives a request for a waiver, it will refer the request to us.

2. Types of Waivers

The general process for all waiver requests is set forth in Appendix A. Guidelines for the information to be included in the waiver request are set forth in Appendix B. We will post the essential terms of applications for, and status of, all waiver requests and waivers on our web site. Security access to waiver information will be limited to bonafide U.S.-flag carriers.

(A) Statutory (Non-Availability) Waiver

When it appears that U.S. vessels will not be available within a reasonable

time or at reasonable rates, public or private foreign borrowers, or their representatives or their shippers in the United States may apply directly to our Office of Cargo Preference, for waiver of the U.S.-flag requirement. Requests for waivers must follow the format in Appendix B and must have a legal signature. We will make any necessary investigation to determine whether U.S.-flag vessels are available and will approve or deny the waiver request in writing. We may request additional information. Copies of approved waivers or denials will be sent to the Eximbank.

Such waivers will apply to the specifically approved cargo movements. Within thirty (30) calendar days of vessel loading, applicants or their designated representatives in the United States must report the name of the vessel, registry, date of sailing, load and discharge ports, ocean freight amount, value of cargo, gross weight of cargo in kilos, gross volume of cargo in cubic meters, and total revenue tons, in the general form of Appendix F. A copy of the rated bills-of-lading must be attached to the report. The Eximbank Credit Number must be provided to the ocean carrier and must be shown clearly on the rated bill of lading issued by the ocean carrier. The Maritime Administration and the Eximbank will accept only the ocean bill of lading issued by the carrier operating the vessel as proof of export. An NVOCC bill of lading must be accompanied by a rated ocean bill of lading.

We strongly encourage those public or private foreign borrowers, and/or their United States representatives or their shippers to meet with U.S. flag carriers and then to meet separately with our Office of Cargo Preference staff. During the meeting, we must receive full and complete information regarding the project, specifically identifying those cargoes for which a waiver might be sought. Appendix C lists the information that must be presented to us and the carriers. Waiver information will be posted on our web site for use by bonafide U.S.-flag carriers.

(B) General Waivers

In certain circumstances, although U.S.-flag vessels may be available, recipient nation vessels may be authorized to share in the ocean carriage of Eximbank financed movements, but not in excess of fifty percent (50%) of the total movement under the credit. Although allowing a recipient nation to share in this type of ocean carriage may reduce the U.S.-flag share, we may allow such participation if the recipient nation gives similar treatment to U.S.

vessels in the trade of its foreign nation. When public or private foreign borrowers, or their U.S. representatives, or the primary U.S. shipper acting on behalf of the borrower desire a general waiver for partial use of the national flag vessels of the recipient nation, they must apply to our Office of Cargo Preference, for a General Waiver for the particular credit. When private interests apply, we may request sponsorship by a foreign government official of the recipient nation, to assure the recipient nation's responsibility to maintain fair and equitable treatment for U.S.-flag shipping.

(1) If we grant such waivers, they will apply only to vessels of recipient nation registry to the extent of their capacity to carry the cargo, based on normal flow of the traffic from interior through ports of shipment, but not in excess of fifty percent of the total movement under the credit. The U.S.-flag portion should be awarded first to ensure the minimum fifty percent (50%) requirement.

(2) General Waivers will normally apply throughout the life of the credit, but we or the Eximbank may reconsider the duration of the general waiver at any time in light of altered circumstances.

(3) The record of cargo distribution between U.S. and recipient national flag vessels will be based on (a) revenue tons and ocean freight revenue; and/or (b) such other units as appropriate.

(4) Applicants or their representatives in the United States must provide reports of movements to our Office of Cargo Preference, monthly. The reports must include the name of the vessel, registry, date of sailing, load and discharge ports, ocean freight, value of cargo, gross weight of cargo in kilos, gross volume of cargo in cubic meters, and total revenue tons in the general form of Appendix F. From time to time, we may change the data to be included on these reports to meet specific circumstances of the movements. Copies of the rated ocean bills-of-ladings must be attached. The Eximbank Credit Number must be provided to the underlying ocean carrier and must be shown clearly on the rated bill of lading issued by the ocean carrier. The Maritime Administration and the Eximbank will accept only the ocean bill of lading issued by the carrier operating the vessel as proof of export. An NVOCC bill of lading must be accompanied by a rated copy of the underlying ocean bill of lading.

(5) We will not grant a General Waiver until our Office of Cargo Preference has received written confirmation of the applicant's agreement to the foregoing terms and conditions and has been advised of the name and address of the

designee located in the United States who will be responsible for controlling the routing of the cargo and for providing the required monthly reports.

(6) General Waiver information will be posted on our web site for use by bonafide U.S.-flag carriers.

(C) Compensatory Waivers

When public or private foreign borrowers, or their U.S. representatives, or their shippers in the U.S., prior to a decision to seek an Eximbank credit agreement, in honest error or through extenuating circumstances as approved by us, move cargo for which a waiver is necessary to meet Eximbank financing requirements, the exporter may apply to our Office of Cargo Preference for a Compensatory Waiver. After investigation, we may grant a Compensatory Waiver whereby the exporter contracts in writing with us to move an equivalent or greater amount of revenue tons and ocean freight revenue of non-government impelled cargo on U.S.-flag vessels within a specified time period. If our Office of Cargo Preference determines that a U.S.-flag ocean carrier made the error, we may issue a retroactive Statutory Waiver.

Waiver recipients or their representatives in the United States must provide reports of movements to our Office of Cargo Preference, monthly. The reports must include the name of the vessel, registry, date of sailing, load and discharge ports, ocean freight, value of cargo, gross weight of cargo in kilos, gross volume of cargo in cubic meters, total revenue tons, in the general form of Appendix F. From time to time, we may change the data to be included on these reports to meet specific circumstances of the movements. Copies of the rated ocean bills-of-ladings must be attached. The Eximbank Credit Number must be provided to the ocean carrier and must be shown clearly on the rated bill of lading issued by the ocean carrier. The Maritime Administration and the Eximbank will accept only the ocean bill of lading issued by the carrier operating the vessel as proof of export. An NVOCC bill of lading must be accompanied by a rated ocean bill of lading. All outstanding compensatory waiver amounts and shipper contact information will be published on our web site for use by bonafide U.S.-flag carriers.

(D) Conditional Waivers

Public or private foreign borrowers or their U.S. representatives or their shippers in the U.S. may apply to our Office of Cargo Preference for a Conditional Waiver of the U.S.-flag requirement if they find that no U.S.-

flag breakbulk vessel service will be available during their proposed project to carry multiple shipments of overdimensional cargoes. Such Conditional Waiver may be for the length of the project but not greater than two years from the date of any such waiver approval. Also, if during the course of executing the project, U.S.-flag breakbulk liner vessel service becomes unavailable to carry the multiple shipments of their overdimensional cargoes, the borrower or their shippers also may apply for such a Conditional Waiver.

Before we will grant a Conditional Waiver, the exporter must meet with the U.S.-flag carriers and then must meet separately with our Office of Cargo Preference staff, to provide full and complete information regarding the project, specifically identifying those cargoes on which the waiver is sought. Appendix C lists the information that must be presented to us and the carriers.

We will grant a Conditional Waiver only for those trade lanes in which no U.S.-flag breakbulk liner service is currently available. A Conditional Waiver will only cover specifically identified and approved overdimensional cargoes and integral components. If a U.S.-flag carrier that is willing to provide the shipper at least thirty (30) days notice and is willing to carry the cargo at a guideline rate that we calculate (see Appendix D), becomes available later, then that U.S.-flag carrier will be entitled to carry the cargo, provided the carrier meets our conditions of carriage.

Once we grant a Conditional Waiver, in order to meet the needs of the Eximbank, the shipper must provide us with the Export-Import Bank Credit Number and country, vessel name, registry, sailing date, load port, discharge port, cargo weight in kilos, cargo volume in cubic meters, revenue tons, FAS value of cargo, ocean freight, list of cargoes shipped, and a freighted copy of the ocean carrier's bills of lading for each voyage made under the terms of the Conditional Waiver. This information must be provided within fifteen (15) days of the date of loading. We will then issue a standard non-availability waiver letter, for each voyage. This standard non-availability waiver letter will cover only those cargoes specifically identified with projected shipping dates previously agreed to under the Conditional Waiver. A shipper wishing to place any additional cargoes on the same voyage must use the standard non-availability waiver procedure, detailed in Appendix A, paragraph A, with appropriate notice

to the U.S. carriers. We will post waiver information on our web site for use by bonafide U.S.-flag carriers.

3. Considerations Influencing Approval of Applications for Waivers

(A) In evaluating applications for non-availability waivers under Paragraph 2(A) or conditional waivers under paragraph 2(D) we will consider:

(1) Whether the applicant followed the process set forth in Appendix A and provided the waiver information in Appendix B and met with the U.S.-flag carriers and with us at the beginning of the project to provide the information listed in Appendix C;

(2) Whether a carrier's proposed transshipment of Long Lead time or Critical Item cargoes constitute non-availability. However, the shipper must provide sufficient documentation acceptable to us to prove the cargoes meet the definition of Long Lead Time or Critical Items (Appendix E).

(3) Whether a non-liner breakbulk carrier's refusal to offer service at or below a guidelines rate may constitute non-availability. Upon application by the shipper, we will calculate a guideline rate for non-liner breakbulk service. The rate will be expressed as rate per revenue ton of cargo, as set forth in Appendix D. If a non-liner breakbulk carrier does not agree to carry the cargo at or below the guideline rate, we may deem the carrier not available for that specific cargo movement.

(4) The national policy of the United States, including the Merchant Marine Act, of 1936, as amended, as well as the purpose of the Eximbank in authorizing the credit.

(B) In evaluating applications for General Waivers under Paragraph 2(B), we will consider:

(1) The treatment given U.S.-flag vessels in the trade with the recipient nation, particularly whether U.S.-flag vessels have equal opportunity compared to national flag or other foreign flag vessels to solicit and participate in movements controlled in the foreign nation; parity in the application of consular invoice fees, port charges and facilities; also parity of exchange treatment including the privilege of converting freight collections to dollars as needed. We will seek information from U.S. ship owners and other sources as to their experiences in the particular trade.

(2) The national policy of the United States, including the Merchant Marine Act, 1936, as amended, as well as the purpose of the Eximbank in authorizing the credit.

(C) In evaluating applications for compensatory waivers under Paragraph 2(C), we will consider:

(1) The circumstances leading to the movement on a foreign flag vessel;

(2) The prior history of the exporter in shipping its government-impelled and commercial cargoes on U.S.-flag vessels;

(3) Any previous or current compensatory waivers used by the exporter and its efforts to comply with the terms of the previous or existing compensatory waivers; and

(4) The national policy of the United States, including the Merchant Marine Act, 1936, as amended, as well as the purpose of the Eximbank in authorizing the credit;

(D) Non-compliance with the terms of a waiver may result in the cancellation of the current waiver and/or a refusal to grant future waivers and/or other appropriate actions, including debarment from government contracts. Civil or criminal fraud will be penalized under the appropriate United States Code section.

Attachments (these attachments are hereby incorporated into this policy):

Appendix A: Waiver Request Procedures

Appendix B: Waiver Request Required Information

Appendix C: Information and Communication Guide

Appendix D: Guideline Rate Policy

Appendix E: Definitions and Miscellaneous Information

Appendix F: Movement Reports Guide

Appendix A

(OMB No. 2133-0013 applies to this collection of information.)

Waiver Request Procedures

A. Statutory (Non-Availability) Waivers

1. The public or private foreign borrowers of their United States representative, receives or expects to receive Eximbank credit approval. (Note: Shipments could begin before the credit approval. See the section on Compensatory Waivers.) In the early stages of the project, either before or when the credit is approved, the shipper should meet with the U.S.-flag carriers and us and discuss the project cargoes detailing the information suggested in Appendix C. We will confirm the Eximbank Credit Number.

2. The shipper must present its Request for Quotation (RFQ) for ocean service to the carriers at least forty-five (45) calendar days in advance of the intended shipping date. For efficiency, the RFQ also should be sent to the Maritime Administration. The RFQ must be presented at the same time and with the same information to all carriers, both U.S. and foreign. The RFQ must be given to all U.S.-flag carriers who may have service or could initiate service and should contain the most detailed information available regarding the commodities, sizes and weights. The shipper must give carriers at least fourteen (14) calendar days in which to respond.

3. The U.S.-flag carriers must respond to the RFQ within fourteen (14) calendar days either declining the cargo or providing an offer addressing both the rate quotations and the logistical needs expressed in the RFQ.

4. If the shipper cannot obtain service from a U.S.-flag carrier, the shipper may apply for a waiver from us. Such waiver application must be presented at least thirty (30) calendar days in advance of the intended shipping date. The request must contain all the required information as shown in Appendix B.

5. We will review the application, verify the waiver documentation provided by the shipper, investigate or request further information as necessary, and search the market for U.S.-flag carriers to handle the cargo.

6. We will either approve or deny the waiver in writing.

B. General Waivers

1. As set forth in Policy Statement paragraph 2(B), a foreign borrower or primary U.S. exporter who desires to make partial use of registered vessels of the recipient nation for a specific Eximbank credit must send our Office of Cargo Preference a written request.

2. We will make necessary investigations, including consultations with U.S.-flag carriers, to determine that parity of treatment is extended to U.S.-flag vessels in the trade of that foreign nation.

3. If we do not find discrimination, we will advise the applicant that we may grant a General Waiver upon receipt of written confirmation of the applicant's agreement to the terms and conditions set forth in Policy Statement paragraph 2 (B). When we receive the written confirmation, we will grant the General Waiver in writing with a copy to the Eximbank.

C. Compensatory Waivers

1. If a Compensatory Waiver is needed (Policy Statement paragraph 2 (C)), the shipper should apply to us in writing, stating the reasons, identifying the Eximbank Credit Number and country, and attaching freighted copies of the ocean bill of lading covering the applicable cargoes.

2. If, after investigation, we decide to grant a Compensatory Waiver, we will notify the shipper of the requirements. The shipper must then execute a written contract to meet those requirements.

3. Once we receive the written contract from the shippers, we will issue the waiver.

D. Conditional Waivers

1. An applicant for a Conditional Waiver (Policy Statement paragraph 2(D)) must fulfill the conditions and information stated in Appendix C and must identify the specific overdimensional and integral component cargoes with projected shipping dates during the waiver time period. The shipper must search the market for U.S.-flag carriers to transport the identified cargoes. If the shipper cannot find such carriers, the shipper may apply in writing to us and must provide the information required in Appendix B and state the requested beginning and ending dates of the conditional waiver period. We must receive the application at least sixty (60) calendar days before the intended start of the requested Conditional Waiver period.

2. We will review the application in light of the information presented at the earlier meeting, will consult with the U.S. carriers, and will request additional necessary information.

3. We will calculate a Guideline Rate for the specific cargoes, as set forth in Appendix D, and will publish the Guideline Rate on our web site. If no U.S.-flag breakbulk liner carrier can be found, we will grant a Conditional Waiver for the agreed time period, conditions, and specific identified cargoes.

4. If at any time during the period of the Conditional Waiver, a U.S.-flag carrier gives at least a thirty (30) day notice to the shipper and us in which the U.S.-flag carrier offers to carry the cargo at or below the published guideline rate, the U.S.-flag carrier will be entitled to do so provided the carrier meets our appropriate and approved conditions of carriage.

5. Immediately after each shipment departs the load port, the shipper must give us an update of the remaining project cargoes previously approved under the Conditional Waiver and an update of the projected shipping dates.

6. To meet the needs of the Eximbank, once we grant a Conditional Waiver, the shipper must give us the Eximbank Credit Number and country, vessel name, registry, sailing date, load port, discharge port, cargo weight in kilos, cargo volume in cubic meters, revenue tons, FAS value of cargo, ocean freight, list of cargoes shipped, and a freighted copy of the ocean carrier's bill of lading for each voyage made under the terms of the Conditional Waiver. This information must be provided within fifteen (15) days of the date of loading. We will then issue a standard non-availability waiver letter for each voyage for presentation to the Eximbank. This standard non-availability waiver letter will cover only those cargoes specifically identified and previously agreed to under the Conditional Waiver. A shipper who wishes to place any additional cargoes on the same voyage must use the standard non-availability waiver procedure, detailed in Appendix A paragraph A, with appropriate notice to the U.S. carriers.

7. A shipper who needs additional time beyond the original Conditional Waiver period must apply for an extension by following steps 1 through 6 above. After investigation and consultation with the U.S. carriers, we may grant an extension.

Appendix B

(OMB No. 2133-0013 applies to this collection of information.)

PR-17 Statutory Waiver Request—Format

The below information is required to process a statutory waiver request. This information should be mailed or faxed to Office of Cargo Preference, Room 8118, Maritime Administration, 400 Seventh Street, SW, Washington, DC 20590. Fax number is 202-366-5522. Electronic mail address is cargo@marad.dot.gov

Re: ExImBank Credit No. (Enter the number)—Country (Enter Country name)

Applicant: (Name of company seeking the waiver. Should be the cargo shipper or

beneficial owner. If a freight forwarder or other party makes the application, it must clearly state on whose behalf it is seeking the waiver and that it legally represents said party.)

Vessel: (Name of vessel you propose to use. Enter "To Be Named" if unknown. Note that actual vessel must be named before a final waiver is issued. Shippers should be aware that Pub.L. 105-383 prohibits the carriage of preference cargoes on substandard vessels. See the Maritime Administration web site.)

Registry: (Nation of registry of vessel. Enter "To Be Named" if unknown.)

Commodity: (Short one line description similar to Acquisition List line items. Attach detailed description as part of packing list or similar document.)

Weight: (Total weight in kilos. Attach details of individual shipping components with dimensions and weights as part of packing list or similar document.)

Volume: (Total volume in cubic meters. Attach details of individual shipping components with dimensions and weights as part of packing list or similar document.)

Revenue Tons: (Shipper's estimate of cargo revenue tons.)

Value of Shipment: (FAS value in U.S. dollars.)

Ocean Freight: (Actual or estimated ocean freight charges from carrier applicant proposes to use.)

Loading Port: (Desired port to load cargo.)

Loading Date: (Date when cargo will be ready to load.)

Discharge Port: (Desired port of destination of ocean carriers.)

Written Reason(s) for the Waiver Request with Documentation Supporting Each Reason Attached: The following language must be included in any waiver request above the signatory block:

This application is made for the purpose of inducing the United States of America to grant a waiver of Public Resolution 17 and the policy prescribed to carry out the provisions of PR-17. I have carefully examined the application and all documents submitted in connection therewith and, to the best of my knowledge, information and belief, the statements and representations contained in said application and related documents are full, complete, accurate and true.

Signature: _____

Name (typed): _____

Title: _____

Date: _____

The Following Documents Must Be Attached

1. Copy of the "Request for Quotations (RFQ)" package which the shipper sent to the carriers. Note it is preferable that the shipper send a copy of the RFQ to Maritime Administration at the same time it is sent to the carriers, in which case it is not necessary to attach another copy. The RFQ should contain the most detailed information available regarding the commodities, sizes and weights. A packing list is preferable.

2. A list of all carrier, with names of personnel, to whom the RFQ was sent.
3. Copies of any responses received from any U.S.-flag carriers.

4. Documentation supporting each reason justifying the need for a waiver. For example, a contract problem requires a copy of the applicable contract clauses; a letter of credit problem requires a copy of the L/C; U.S.-flag service not available requires copies of written declinations by the U.S. carriers; etc.

Note: The essential terms of the waiver application and cargo shipment information will be posted on the Maritime Administration web site but restricted to bonafide U.S.-flag carriers.

Note: The U.S. Criminal Code makes it a criminal offense for any person knowingly to make a false statement or representation to, or to conceal a material fact from, any department or agency of the United States as to any matter within its jurisdiction (18 U.S.C. 1001), or to file a false, fictitious or fraudulent claim against the United States (18 U.S.C. 287). Civil fraud may incur fines of \$10,000 plus 3 times damages and expenses of government recovery. Criminal fraud provides up to 5 years imprisonment. In addition, corporations may be debarred from further Government contracts.

Appendix C

(OMB No. 2133-0013 applies to this collection of information.)

Information and Communication

At the beginning of a project shippers should (required for Conditional Waivers):

- Meet with the U.S.-flag ocean carriers
- Meet with the Maritime Administration
- Purpose:
 - Layout project in as much detail as possible
 - Discuss contract requirements
 - Discuss any unique or expected problem requirements
 - Provide best estimates, details, pictures of types of cargo
 - Identify any long lead time or critical items
 - Discuss what cargoes should move together and why

- Discuss anticipated shipment dates tied to project schedules
- Discuss items which it is doubtful U.S. carriers can handle & alternatives
- Obtain carrier capabilities & alternatives
- Establish and maintain a dialogue with U.S.-flag carriers

Note: For Conditional Waivers, the shipper must specify the projected overdimensional cargoes and integral components and specify their projected shipping dates.

In addition, for the Maritime Administration meeting:

- Discuss potential waivers, if applicable
- Discuss reporting requirements
- Establish a working relationship with Maritime Administration

The essential information will be posted on the Maritime Administration web site.

As the project progresses, keep the carriers and Maritime Administration informed of progress related to initial projections and unforeseen problems as they arise.

Increased understanding of each party's objectives and capabilities will establish better communications and create a smoother/faster process.

Appendix D

(OMB No. 2133-0013 and 2133-0514 apply to this collection of information.)

Once a shipper requests a Conditional Waiver of the U.S.-flag requirement of PR-17, we will calculate a guideline rate or rates as part of the waiver process. The guideline rate will be for the proposed movement of a specific cargo or cargoes on a specific voyage or voyages on U.S.-flag non-liner breakbulk vessels. For the purpose of this PR-17 policy, the guideline rates will be calculated using the basic framework contained in the Maritime Administration regulations at 46 CFR 382.3, except as follows:

1. We calculate the guideline rate based on a vessel or group of vessels we determine is most suited to the cargo and destination.
2. Costs will be indexed to the year of cargo carriage.
3. The calculation will assume, unless we determine otherwise, that the cargo occupies seventy percent of the cubic capacity of the selected vessel(s).
4. The rate will be specified in U.S. dollars per revenue ton.

Appendix E

(OMB No. 2133-0013 applies to this collection of information.)

Definitions

The following definitions apply to this PR-17 policy.

Critical Item Cargo: A product whose non-availability to support the required installation date would cause the project to shut down or to incur substantial liquidated damages.

Foreign Borrower: A foreign government, corporation, or person who is the recipient of a loan or credit guarantee by an instrumentality of the United States.

Liner Service: A service provided on an advertised schedule giving relatively frequent sailings between specific U.S. ports or ranges and designated foreign ports or ranges.

Long Lead Time Cargo: A product which, if damaged during shipment, would require more than six (6) months to repair or remanufacture and which is not available sooner from the shipper's inventory or from any other manufacturer.

Ocean Carrier: The operator of the ocean vessel which carries the cargo between one or more United States ports and one or more foreign ports.

Overdimensional Cargo: A specific piece of cargo is considered overdimensional or out-of-gauge when one or more of its dimensions exceed the interior dimensions of a standard maritime industry forty-foot container or the cargo weight exceeds 39 metric tons.

Revenue Ton: A metric ton or cubic meter of cargo, whichever yields the greatest revenue to the ocean carrier.

Shipper: A person or company who contracts with a shipping line or shipowner for the carriage of cargo.

Transshipment: The offloading of breakbulk cargo from one vessel at an intermediate port and reloading the breakbulk cargo on a different vessel for delivery to final destination. It does not include cargo in containers, trailers, or barges where the entire conveyance is relayed from one vessel to another vessel under a through bill of lading.

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APPENDIX F
(OMB No. 2133-0013 applies to this collection of information)

[illegible]

By Order of the Maritime Administrator.

Dated: August 14, 2000.

Joel C. Richard,

Secretary, Maritime Administration.

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