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DEPARTMENT OF TRANSPORTATION**Maritime Administration****46 CFR Part 381**

[Docket No. R-153]

RIN 2133-AB17

Cargo Preference—U.S.-Flag Vessels; Available U.S.-Flag Commercial Vessels**AGENCY:** Maritime Administration, Department of Transportation.**ACTION:** Proposed rule.

SUMMARY: This amendment to the cargo preference regulations of the Maritime Administration (MARAD) would provide that during the 1995 shipping season when the St. Lawrence Seaway is in use, MARAD will consider the legal requirement for the carriage of bulk agricultural commodity preference cargoes on privately-owned "available" U.S.-flag commercial vessels to have been satisfied where the cargo is initially loaded at a Great Lakes port on one or more U.S.-flag or foreign-flag vessels, transferred to a U.S.-flag commercial vessel at a Canadian transshipment point outside the St. Lawrence Seaway, and carried on that U.S.-flag vessel to a foreign destination. This amendment would allow Great Lakes ports to compete for agricultural commodity preference cargoes during an entire season trial period. MARAD issued a prior final rule on August 8, 1994, that adopted this policy for the 1994 Great Lakes shipping season that had been in progress since April 1994. This did not allow for a true trial period that MARAD could evaluate in determining whether to make this a permanent policy.

DATES: Comments must be received on or before March 3, 1995.

ADDRESSES: Send original and two copies of comments to the Secretary, Maritime Administration, Room 7210, Department of Transportation, 400 7th Street S.W., Washington, D.C. 20590. To expedite review of comments, the Agency requests, but does not require, submission of an additional ten (10) copies. All comments will be made available for inspection during normal business hours at the above address. Commenters wishing MARAD to acknowledge receipt of comments should enclose a self-addressed envelope or postcard.

FOR FURTHER INFORMATION CONTACT: John E. Graykowski, Deputy Maritime Administrator for Inland Waterways and Great Lakes, Maritime Administration, Washington, DC 20590, Telephone (202) 366-1718.

SUPPLEMENTARY INFORMATION: United States law at sections 901(b) (the "Cargo Preference Act") and 901b, Merchant Marine Act, 1936, as amended (the "Act"), 46 App. U.S.C. 1241(b) and 1241f, requires that at least 75 percent of certain agricultural product cargoes "impelled" by Federal programs (preference cargoes), and transported by sea, be carried on privately-owned United States-flag commercial vessels, to the extent that such vessels "are available at fair and reasonable rates." The Secretary of Transportation wishes to administer that program so that all ports and port ranges may participate.

Prior Rulemaking

On August 8, 1994, MARAD published a final rule on this subject in the **Federal Register** (59 FR 40261). That rule stated that it was intended to allow U.S. Great Lakes ports to participate with ports in other U.S. port ranges in the carriage of bulk agricultural commodity preference cargoes. Dramatic changes in shipping conditions have occurred since 1960, including the disappearance of any all-U.S.-flag commercial ocean-going service to foreign countries from U.S. Great Lakes ports. The static configuration of the St. Lawrence Seaway system and the evolving greater size of commercial vessels contributed to the disappearance of any all-U.S.-flag service.

No preference cargo has moved on U.S.-flag vessels out of the Great Lakes since 1989, with the exception of one trial shipment in 1993. Under the Food Security Act of 1985, Public Law 99-198, codified at 46 App. U.S.C. 1241f(c)(2), a certain minimum amount of Government-impelled cargo was required to be allocated to Great Lakes ports during calendar years 1986, 1987, 1988, and 1989. That "set-aside" expired in 1989, and was not renewed by the Congress. The disappearance of Government-impelled cargo flowing from the Great Lakes coincided with the expiration of the Great Lakes "set aside."

At the time of the opening of the 1994 Great Lakes shipping season on April 5, 1994, the Great Lakes did not have any all-U.S.-flag ocean freight capability for carriage of bulk preference cargo. In contrast, the total export nationwide by non-liner vessels of USDA and USAID agricultural assistance program cargoes subject to cargo preference in the 1992-

1993 cargo preference year (the latest program year for which figures are available) amounted to 6,297,015 metric tons, of which 4,923,244, or 78.2 percent, was transported on U.S.-flag vessels. (Source: Maritime Administration database.)

MARAD issued the previous rule to provide Great Lakes ports with the opportunity to compete for agricultural commodity preference cargoes for only the 1994 Great Lakes shipping season cargoes, and to assess the results.

Extension of Trial Period

As predicted by numerous commenters, the timing of the final rule, which was not published until August 18, 1994, did not allow for a true trial period since it actually extended for less than one-half of the 1994 Great Lakes Shipping season. Because of the long lead time required for arranging shipments of bulk agriculture commodity preference cargoes, there apparently was no real opportunity for U.S.-flag vessel operators to make the necessary arrangements and bid on preference cargoes. Accordingly, MARAD proposes to extend the trial period for applying its modified policy with respect to shipment of preference cargoes on U.S.-flag vessels through the 1995 Great Lakes shipping season.

Rulemaking Analyses and Notices*Executive Order 12866 (Regulatory Planning and Review)*

This rulemaking has been reviewed under Executive Order 12866 and Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). It is not considered to be an economically significant regulatory action under section 3(f) of E.O. 12866, since it has been determined that it is not likely to result in a rule that may have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. However, since this rule would affect other Federal agencies, is of great interest to the maritime industry, and has been determined to be a significant rule under the Department's Regulatory Policies and Procedures, it is considered to be a significant regulatory action under E.O. 12866.

MARAD projects that this rule would allow the movement of up to 300,000 metric tons of agricultural commodities from Great Lakes ports, with a reduction in the shipping cost to sponsoring