

STATEMENT OF POLICY ON PUBLIC RESOLUTION 17 - 73RD CONGRESS

The Maritime Administrator has authorized the following statement describing the policies and procedures in administration of Public Resolution 17, 73rd Congress, 48 Stat. 500, 46 App. U.S.C. 1241-1, as it applies to credits of the Export-Import Bank of the United States or similar government instrumentalities.

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 (MARAD, 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, government instrumentality) or other Government instrumentalities for the purpose of financing the acquisition and shipment of United States products or services. The government instrumentality must include in such credit agreements 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 government instrumentality receives a request for a waiver, it will refer the request to us.

2. TYPES OF WAIVERS

The process to be followed 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. If our web site is not available, we will transmit the information to the U.S.-flag carriers and the shipper/applicant. Security access to waiver information will be limited to bona fide U.S.-flag ocean carriers and to the shipper who requests or receives the waiver. MARAD will treat all information submitted by shippers that is not essential for U.S.-flag cargo bookings as "business confidential" and exempt from public disclosure under the Freedom of Information Act (FOIA), section 552 (b)4. MARAD may consult with or request further information from any carrier or shipper or Government Agency to clarify any questions we may have on any topic. MARAD may consider waiver requests prior to finalization of the credit agreement between the government instrumentality and the borrower.

(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 may request additional information. We will approve or deny the waiver request in writing. Copies of approved waivers or denials will be sent to the appropriate government instrumentality.

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, FAS 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 government instrumentality's Credit Number must be provided to the ocean carrier by the shipper and must be shown clearly on the rated bill of lading issued by the ocean carrier. The Maritime Administration and the government instrumentality will

accept only the ocean bill of lading issued by the carrier operating the vessel as proof of export. An NVOCC or freight intermediary bill of lading must be accompanied by a rated ocean carrier 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. Essential waiver information will be posted on our web site for use by bona fide U.S.-flag carriers and the shipper/applicant.

(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 government instrumentality 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 its foreign trade. 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 the government 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 the 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 is met.

(2) General Waivers will normally apply throughout the life of the credit, but we or the government instrumentality 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/or (b) ocean freight revenue; and/or (c) such other units as appropriate which provide the greatest revenue to U.S.-flag carriers.

(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 lading must be attached. The government instrumentality Credit Number must be provided by the shipper 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 government instrumentality will accept only the ocean bill of lading issued by the carrier operating the vessel as proof of export. An NVOCC or freight intermediary 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 bona fide US-flag carriers and the shipper/applicant.

(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 a government instrumentality credit agreement, in honest error or through extenuating circumstances as approved by us, move cargo for which a waiver is necessary to meet subsequent government instrumentality 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 whatever amount of revenue tons of cargo are required to generate an equivalent or greater amount of 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 primary error and the shipper reasonably could not be expected to have detected the error and achieved compliance, we may issue a retroactive Statutory Waiver.

Waiver recipients or their representatives in the United States must provide reports of such compensatory 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 lading must be attached. The Maritime Administration and the government instrumentality will accept only the ocean bill of lading issued by the carrier operating the vessel as proof of export. An NVOCC or freight intermediary 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 bona fide U.S.-flag carriers and the shipper/applicant.

(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 for specific overdimensional cargoes if they find that no U.S.-flag liner vessel service capable of accommodating the multiple shipments of their overdimensional cargoes will be available during their proposed project time period. 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 a project, U.S.-flag liner vessel service ceases to be available to carry the multiple shipments of their overdimensional cargoes, the borrower or their shippers also may apply for such a Conditional Waiver. Conversely, if a U.S.-flag liner vessel service capable of accommodating the cargoes commences operations, the Conditional Waiver will be withdrawn.

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 liner service capable of accommodating the oversized cargo is currently available. A Conditional Waiver will only cover previously identified and pre-approved specific oversized cargoes and integral components. If a non-liner U.S.-flag carrier that is willing to provide the shipper at least thirty (30) days notice of their vessel's availability and is willing to carry the cargo at a guideline rate that we calculate (see Appendix D), becomes available after a Conditional Waiver is granted then that U.S.-flag carrier will be entitled to carry the cargo, provided the carrier meets our conditions of carriage. In such case we will not issue the corresponding non-availability waiver letter (see below) for that specific cargo voyage.

Once we grant a Conditional Waiver, in order to meet the needs of the government instrumentality for each voyage made under the terms of the Conditional Waiver, the shipper must provide us with the government instrumentality 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 signed statement certifying these specific cargoes were pre-approved by MARAD for shipment under the Conditional Waiver. We will then issue a standard non-availability waiver letter, for presentation to the government instrumentality 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 Statutory non-availability waiver procedure, detailed in Appendix A paragraph A, with appropriate notice to the U.S. carriers.

Within 30 days of vessel sailing, the shipper must submit a completed Appendix F form and attach a rated copy of the ocean carrier's bill of lading. The government instrumentality's Credit Number must be provided to the ocean carrier by the shipper and must be shown clearly on the rated bill of lading issued by the ocean carrier. We will post essential waiver information on our web site for use by bona fide U.S.-flag carriers and the shipper/applicant.

3. CONSIDERATIONS INFLUENCING APPROVAL OF APPLICATIONS FOR WAIVERS

(A) In evaluating applications for Statutory (Non-Availability) Waivers under Paragraph 2(A) 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 for cargo that is loose or non-containerizable involves a risk of damage or delay sufficient to constitute non-availability. However, the shipper must provide sufficient documentation acceptable to us such as contracts, certifications, engineering data, etc., to prove the cargoes meet the definition of Long Lead Time or Critical Items (Appendix E). The shipper must certify the foreign-flag carriers will not transship the cargo. MARAD may track vessel voyages.

(3) the national policy of the United States, including the Merchant Marine Act of 1936, as amended, as well as the purpose of the government instrumentality 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 or other fees, port charges, and facilities; also parity of exchange treatment including the privilege of converting freight collections to dollars as needed, etc. 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 of 1936, as amended, as well as the purpose of the government instrumentality 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 government instrumentality in authorizing the credit;

(D) In evaluating applications for 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 for cargo that is loose or non-containerizable involves a risk of damage or delay sufficient to constitute non-availability. However, the shipper must provide sufficient documentation acceptable to us such as contracts, certifications, engineering data, etc., to prove the cargoes meet the definition of Long Lead Time or Critical Items (Appendix E). The shipper must certify the foreign-flag carriers will not transship the cargo. MARAD may track vessel voyages.

(3) whether a non-liner carrier's refusal to offer service at or below our guideline rate may constitute non-availability. Upon application by the shipper and only for Conditional Waivers, we will calculate a guideline rate for non-liner service. The rate will be expressed as dollars per revenue ton of cargo, as set forth in Appendix D.

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

(E) Providing false information, or concealing facts, or 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 loans, guaranties, or contracts. Civil or criminal fraud will be penalized under the appropriate United States Code section. MARAD reserves the right to audit any waiver.

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