

**List of Subjects in 40 CFR Part 300**

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: January 26, 2005.

**Laura Yoshii,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 05–2179 Filed 2–11–05; 8:45 am]

**BILLING CODE 6560–50–P**

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

[Docket No. MARAD–99–5038]

**RIN 2133–AB37**

**Regulations To Be Followed by All Departments and Agencies Having Responsibility To Provide a Preference for U.S.-Flag Vessels in the Shipment of Cargoes on Ocean Vessels**

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

**ACTION:** Withdrawal of advance notice of proposed rulemaking.

**SUMMARY:** The Maritime Administration (MARAD, we, our) is withdrawing an advance notice of proposed rulemaking (ANPRM) published in the **Federal Register** on January 28, 1999, which requested comments on proposed amendments to MARAD's cargo preference regulations. Based on comments received and on continuing discussions with other Federal agencies, there are several issues on which MARAD and other Federal agencies have yet to reach agreement. MARAD is involved in a negotiation process with other agencies in order to resolve these issues. Once discussions and negotiations with other agencies are complete, MARAD will initiate a new rulemaking action.

**DATES:** The ANPRM is withdrawn February 14, 2005.

**ADDRESSES:** For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh St., SW., Washington, DC, between 9 a.m. and 5

p.m., Monday through Friday, except Federal holidays.

**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 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:****I. Background**

The Cargo Preference Act of 1954, Pub. L. 83–664, 68 Stat. 832 (1954), amended the Merchant Marine Act, 1936, by adding Section 901(b), codified at 46 App. U.S.C. 1241(b) ('54 Act). The '54 Act applies: “[w]henver the United States shall procure, contract for, or otherwise obtain for its own account, or shall furnish to or for the account of any foreign nation without provision for reimbursement, any equipment, materials, or commodities, within or without the United States, or shall advance funds or credits or guarantee the convertibility of foreign currencies in connection with the furnishing of such equipment, materials, or commodities. \* \* \*”

Government agencies are required to take such steps as may be necessary and practicable to assure that at least 50 percent of the gross tonnage of certain government-sponsored cargoes—

“\* \* \* (computed separately for dry bulk carriers, dry cargo liners, and tankers), which may be transported on ocean vessels shall be transported on privately-owned United States-flag commercial vessels, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels, in such manner as will insure a fair and reasonable participation of United States-flag commercial vessels in such cargoes by geographic areas. \* \* \*”

The Food Security Act of 1985, Pub. L. 99–198, exempted certain agricultural export enhancement programs from cargo preference, but increased the U.S.-flag share of humanitarian food aid programs from 50 to 75 percent.

MARAD's oversight role in administration of cargo preference is founded on section 27 of the Merchant Marine Act of 1970, Pub. L. 91–469, which added the following subsection to section 901(b) of the Merchant Marine Act, 1936:

“Every department or agency having responsibility under this subsection shall administer its programs with

respect to this subsection under regulations issued by the Secretary of Transportation. The Secretary of Transportation shall review such administration and shall annually report to the Congress with respect thereto.” 46 App. U.S.C. 1241(b).

The Secretary of Transportation has delegated the authority under this provision to the Maritime Administrator. (49 CFR 1.66(e)). MARAD's regulations governing administration of cargo preference are located at 46 CFR part 381. Parts 381.4, 381.5 and 381.7 of 46 CFR implement the substantive requirements of U.S.-flag carriage authorized by the '54 Act. The Secretary of Transportation does not intend to allow any diminution of adherence to these regulatory requirements. Guidance as to the priority of a completely U.S.-flag service over a mixed U.S./foreign-flag service is contained in a policy letter issued on June 16, 1986.

**II. Summary of the ANPRM**

On January 28, 1999, MARAD published an ANPRM (64 FR 4382) requesting comments on several proposed changes to the regulations governing the '54 Act. MARAD received 15 comments on the ANPRM. Respondents included U.S. shipper agencies, vessel operators, unions, industry associations, a freight forwarder, and a non-vessel operating common carrier. A discussion of the comments follows.

**III. Discussion of Comments**

The ANPRM requested comments on six specific questions and on one general question inviting suggestions for other potential amendments to the cargo preference regulations. The questions included: (1) Whether MARAD should clarify 46 CFR sections 381.4 and 381.5 to best insure that the legislatively required percentage of cargo is actually shipped on U.S.-flag vessels; (2) whether the Vessel Priority Rule should be changed; (3) whether MARAD should change the basis for compliance measurement; (4) whether MARAD should formally define “liner vessel,” “transshipment,” or “relay”; (5) whether MARAD should require the use of commercial terms for cargo preference transactions; (6) whether MARAD should require the use of commercial practices in the transportation of preference cargoes; and (7) whether MARAD should implement other amendments to its regulations.

In response to question one, all commenters agreed that clarifications and revisions to sections 381.4 and 381.5 would be beneficial. Thus,

MARAD will seek to revise and update the sections, keeping the commenters' suggestions in mind, in a future rulemaking.

Turning to question two, nine of the ten respondents strongly opposed changing the current Vessel Priority Rule. One respondent, the USDA, favored changing the rule. MARAD is working with the USDA and other agencies to reach a consensus regarding this and other issues and will revisit this issue in a future rulemaking.

The third question posed in the ANPRM regarding possible changes to the basis for compliance measurement is closely linked to the first question. In turn, the views expressed in the comments submitted in response to question three were essentially identical to those submitted in response to question one. MARAD will address this issue and seek further public comments in a future rulemaking.

In response to question four, in which MARAD asked if we should formally define "liner vessel," "transshipment," or "relay," there was no general consensus from the commenting parties. Thus, MARAD may solicit further comments regarding this issue in a future rulemaking.

In response to question five, the majority of commenters favored the use of standardized commercial terms. Thus, MARAD will revisit this issue in a future rulemaking.

In response to question six, the commenters generally supported the idea that MARAD require the use of commercial practices. Thus, MARAD will also revisit this issue in a future rulemaking.

Finally, in response to question seven, the commenters offered several suggestions to assure compliance by shipper agencies. MARAD will revisit these topics and seek further public input in a future rulemaking.

#### IV. Reason for Withdrawal

Since cargo preference requirements apply to government shipper agencies as well as to the private shipping industry, issues arise from the differing goals and activities of government agencies versus private industry. Because MARAD and other government agencies have yet to agree on several important issues, we are in the process of discussing and negotiating our differences with other agencies in an effort to accommodate other agencies' needs while still applying cargo preference in the manner intended by Congress. Once discussions and negotiations with other agencies are complete, MARAD will initiate a new rulemaking action.

(Authority: 49 CFR 1.66)

Dated: February 8, 2005.

By Order of the Maritime Administrator

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. 05-2753 Filed 2-11-05; 8:45 am]

**BILLING CODE 4910-81-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

**RIN 1018-AT42**

#### **Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Arroyo Toad (*Bufo californicus*)**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; revisions to proposed critical habitat, reopening of public comment period, and notice of availability of draft economic analysis.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft economic analysis for the proposed designation of critical habitat for the arroyo toad (*Bufo californicus*) under the Endangered Species Act of 1973, as amended (Act). We also announce that we have revised the methods for determining proposed essential and critical habitat areas for the arroyo toad. Additionally, we propose to exclude areas from the proposed designation from Units 1, 6, and 22 in Monterey, Los Angeles, and San Bernardino counties, under authority of section 4(b)(2) of the Act. Comments previously submitted on the proposed rule need not be resubmitted as they have been incorporated into the public record as a part of this reopening of the comment period, and will be fully considered in preparation of the final rule. Copies of the draft economic analysis and the proposed rule for critical habitat designation are available on the Internet at <http://ventura.fws.gov> or from the Ventura Fish and Wildlife Office at the address and contact numbers below.

**DATES:** We will accept comments and information until 5 p.m. on March 16, 2005. Any comments that we receive after the closing date may not be considered in the final decision on this proposal.

**ADDRESSES:** If you wish to comment, you may submit your comments and materials concerning this proposed rule by any one of several methods:

(1) You may submit written comments and information to Diane Noda, Field

Supervisor, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, California 93003.

(2) You may hand-deliver written comments to our office, at the address given above.

(3) You may fax your comments to 805/644-3958.

(4) You may send comments by electronic mail (e-mail) to [fw1artoch@r1.fws.gov](mailto:fw1artoch@r1.fws.gov). Please see the Public Comments Solicited section below for file format and other information about electronic filing. In the event that our internet connection is not functional, please submit your comments by the alternate methods described above.

#### **FOR FURTHER INFORMATION CONTACT:**

Creed Clayton or Michael McCrary, Ventura Fish and Wildlife Office, at the address listed above (telephone 805/644-1766; facsimile 805/644-3958).

#### **SUPPLEMENTARY INFORMATION:**

##### **Public Comments Solicited**

We intend any final action resulting from this proposal to be as accurate and as effective as possible. Therefore, we solicit comments and information from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning the proposed rule (69 FR 23254, April 28, 2004) and amendments, proposed exclusions, or the draft economic analysis for the arroyo toad. We particularly seek comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of exclusion outweigh the benefits of specifying such area as part of critical habitat;

(2) Specific information on the amount and distribution of arroyo toad habitat, and what habitat is essential to the conservation of this species and why;

(3) Land use designations and current or planned activities in the subject area and their possible impacts on proposed habitat;

(4) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families;

(5) We request information on how many of the State and local environmental protection measures referenced in the draft economic analysis were adopted largely as a result of the listing of the arroyo toad, and how many were either already in place or enacted for other reasons;