

<http://www.regulations.gov> at any time or to the Docket Management Facility in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Maria G. Delgado, ANM-113, (425) 227-2775, FAA, Transport Airplane Directorate, 1601 Lind Ave., SW., Renton, Washington 98057-3356; or Ralen Gao, ARM-200, (202) 267-3168, FAA, Office of Rulemaking, 800 Independence Ave., SW., Washington, DC 20591. This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC on September 9, 2009.

**Pamela Hamilton-Powell,**  
Director, Office of Rulemaking.

### Petition for Exemption

Docket No.: FAA-2009-0809.

Petitioner: Airbus.

Sections of 14 CFR Affected:

§§ 25.305(b) and 25.307.

**Description of Relief Sought:** The petitioner requests an exemption from the requirements of §§ 25.305(b) and 25.307 for certain Airbus Model A330-233 and -323 airplanes. If granted, this exemption would be time-limited to permit installation of Pratt & Whitney PW4168A-1D engines without a fan cowl hinge upgrade, until Airbus can substantiate that the current fan cowl hinge design does not require the upgrade.

[FR Doc. E9-22117 Filed 9-14-09; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

#### Procedures for Determining Vessel Service Categories for Purposes of the Cargo Preference Act

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

**ACTION:** Notice.

**SUMMARY:** Pursuant to a Memorandum of Understanding Among the United States Department of Agriculture, the United States Department of Transportation, and the United States Agency for International Development Regarding Procedures for Determining Vessel Service Categories for Purposes of the Cargo Preference Act, dated September 4, 2009 (the MOU, a copy of which is attached hereto and posted at the Web site of the Maritime Administration (MARAD), [http://](http://www.marad.dot.gov)

[www.marad.dot.gov](http://www.marad.dot.gov)), notice is hereby given by MARAD that procedures as set forth herein are established for vessel owners or operators to designate the service category of individual vessels for purposes of compliance with the Cargo Preference Act (CPA). Where the owner or operator designates the category of its vessel, such self-designations will be docketed in the public record, published, and an opportunity will be provided for comment by interested parties. Each self-designation and the record supporting it is subject to review by MARAD. If MARAD disagrees with a self-designation, the process for determination, appeal and further administrative review is set forth below. These procedures are intended to be interim procedures implementing the MOU entered into by MARAD, the United States Department of Agriculture (USDA), and the United States Agency for International Development (USAID) and a 2002 Department of Justice interpretation of the CPA, pending the formal promulgation of regulations by MARAD.

### Background

The CPA requires that Federal agencies take “necessary and practicable” steps to ensure that privately-owned U.S.-flag vessels transport at least 50 percent of the gross tonnage of cargo sponsored under the food assistance programs specified below “(computed separately for dry bulk carriers, dry cargo liners, and tankers) \* \* \* to the extent such vessels are available at fair and reasonable rates for commercial vessels of the United States, in a manner that will ensure a fair and reasonable participation of commercial vessels of the United States in those cargoes by geographic areas.” 46 U.S.C. 55305(b). An additional 25 percent of gross tonnage is to be transported in accordance with the requirements of 46 U.S.C. 55314.

USAID and USDA provide food aid commodities to meet humanitarian food needs in the developing world. They either contract directly with, or provide guidance to, other entities for purposes of reimbursement regarding the transportation of such food aid through a competitive bidding system among private ocean carriers. The award of transportation contracts to ocean carriers is subject to the requirements of the CPA.

This **Federal Register** notice and the procedures set forth herein are intended to cover the following food assistance programs: Titles I, II, and III programs of the Food for Peace Act, the Food for Progress program of the Food Security Act of 1985, the McGovern-Dole

International Food for Education and Child Nutrition program of the Farm Security and Rural Investment Act of 2002, the Section 416(b) program of the Agricultural Act of 1949, and the Bill Emerson Humanitarian Trust of the Bill Emerson Humanitarian Trust Act.

MARAD, an operating administration of the Department of Transportation, is responsible for prescribing regulations and guidance governing the implementation of the CPA by other Government agencies, such as USAID and USDA. 46 U.S.C. 55305(d); 49 CFR 1.66(e). MARAD maintains a list on its Web site at [http://www.marad.dot.gov/documents/MAR730\\_MasterVesselList\\_forCargoPreference.pdf](http://www.marad.dot.gov/documents/MAR730_MasterVesselList_forCargoPreference.pdf) that sets forth vessel designations for CPA purposes through and including September 30, 2009. The procedures contained in this Notice apply to both U.S. flag and foreign flag vessels and must be used by vessel owners or operators to request any designation or re-designation of such vessels by service type, for purposes of participation in CPA programs. MARAD will publish an initial list of vessel designations on October 7, 2009. After a comment period and administrative review process (as described below), MARAD will publish a new vessel list on its Web site, <http://www.marad.dot.gov>.

USAID, USDA and the MARAD have been involved in litigation that challenges the proper interpretation and implementation of the Cargo Preference Act by these agencies for the Title II program under the Food for Peace Act (Title II), including *Maersk Line Ltd v. Vilsack*, U.S.D.C. (E.D. Va) 1:09cv747. As the parties acknowledged in a July 10, 2009 settlement of the *Maersk* litigation, the Government agencies involved in that litigation were unable to provide a unified Government position with respect to the proper implementation of the 2002 Department of Justice interpretation of the CPA. The attached MOU serves to clarify the position of the United States with respect to certain requirements of the CPA, and represents the unified Government position on the proper method for implementing the Department of Justice’s 2002 CPA determination.

For purposes of determining compliance with the statutory 75 percent requirement for shipments on U.S. flag vessels, each of the affected agencies (that is, MARAD, USAID, and USDA) will record contracts awarded under the food assistance programs specified above based solely upon the vessel service category for the vessel upon which the cargo is carried, for both foreign flag and U.S.-flag vessels,

as shown on the MARAD list of CPA vessels without regard to the nature of the cargo carried. The list is available in the Cargo Preference section of MARAD's Web site at [http://www.marad.dot.gov/documents/MAR730\\_MasterVesselListforCargoPreference.pdf](http://www.marad.dot.gov/documents/MAR730_MasterVesselListforCargoPreference.pdf). Pursuant to the MOU and the procedures outlined herein, the list shall be revised periodically to reflect appropriate vessel designations. The contract award date for contracts awarded under these food assistance programs will be the basis of measurement for compliance purposes. Bills of lading quantities will be used to validate the compliance percentages.

#### Initial Self-Designation Process

Prior to October 1, 2009, all vessel owners or operators, including owners or operators of foreign flag vessels, may self-designate the service type of vessels they own or operate as either a dry bulk carrier or dry cargo liner, and report this designation to MARAD in writing. The current treatment of tankers is not affected by these procedures, and no self-designation is required or expected for tankers.

The owner or operator should include a justification of the designation it seeks based upon the CPA evaluation criteria listed below, and the general character of the vessel's service—that is, irregular service or regularly scheduled service. If no self-designation is made by a vessel's owner or operator, the vessel's categorization will remain as it is currently designated in the MARAD list, unless and until MARAD makes a different determination as to the proper category for the vessel, or a vessel owner or operator requests a re-designation as outlined in the procedures below.

#### Self-Designation Applications and Their Contents

A separate written application is required for each vessel. Each application must refer to docket MARAD-2007-0001. Each application must address the CPA evaluation criteria listed in points a. through e. below. At a minimum, each application must also contain the following information:

- Name of vessel with IMO number;
- Name and complete business address of owner or operator, including e-mail address, if available;
- Business phone number (including any extension number) of owner or operator, if available;
- Desired designation of vessel; and
- Justification for desired designation

The justification submitted should include all documentation that the

owner or operator relies upon in support of the desired designation. This may include:

- a. The advertisement of service;
- b. Regularity of service;
- c. Offering of service to specific routes, and planned schedules;
- d. Characteristics of service other than vessel design and
- e. Historical performance in recent months.

The application may also include any other information that demonstrates the general character of the vessel's service, that is, irregular service or regularly scheduled service. Each application must be signed, and each applicant must certify that the information contained in the application is true and correct to the best of the knowledge and belief of the applicant.

Please see the Addresses section below concerning where to transmit this information. Electronic submission of the application and related documents is strongly encouraged to facilitate timely processing. Alternatively, such materials may be submitted by express delivery service. All such information shall become a matter of public record and will be placed in the public docket at the Department of Transportation.

#### Public Comments, MARAD's Initial Determination, and Appeals

On or before October 7, 2009, MARAD will publish in the **Federal Register** for public comment a list of the initial self-designations received from vessel owners or operators. Interested parties may comment on these proposed self-designations within 10 calendar days of publication. If MARAD publishes the self-designation list on October 7, 2009, then the tenth day will be a Saturday (October 17), and thus comments should be received no later than the close of business on October 19, 2009. The close of business is 5 p.m. local Washington, DC time.

If MARAD disagrees with an owner's or operator's initial self-designation, it will notify the owner or operator within 15 calendar days of the close of the public comment period. That notification will include MARAD's initial determination of vessel type category. Unless MARAD disagrees with an owner's or operator's initial self-designation in writing within 15 calendar days of the close of the public comment period, these self-designations will remain in effect until vessel owners or operators submit a request for re-designation. If the owner or operator changes the characteristics of its service such that the factual basis for its self-designation is no longer in effect, then

the owner or operator shall seek re-designation at its earliest opportunity.

Vessel owners or operators may appeal to the Maritime Administrator within 10 calendar days of receiving the initial determination. Such appeals should be express delivered or electronically transmitted to the docket address as set forth below.

The Maritime Administrator will issue a final determination of vessel designation within 30 calendar days of receiving the appeal, after consultation with the United States Department of State, USAID, and USDA.

#### Vessel Designation Pending Appeal

If MARAD disagrees with an owner's or operator's initial self-designation, vessels will be treated in accordance with MARAD's initial determination through the appeal period starting from the time of MARAD's determination. However, if a solicitation and/or bid award occurs between the time in which self-designations are received by MARAD but prior to MARAD's written notification of initial determination, such solicitation and/or bid award will be based on the self-designation.

#### Standards for Determining Vessel Service

In accordance with the Department of Justice's 2002 interpretation of the CPA, in determining whether a vessel may be appropriately categorized as a "dry bulk carrier" or "dry cargo liner," MARAD will evaluate the vessel's service, that is, whether the vessel is engaged in irregular or regularly scheduled service. A dry cargo liner vessel is a vessel in regularly scheduled service. A dry bulk carrier vessel is vessel that is in irregular service.

In evaluating the service of a particular vessel, MARAD will consider the following criteria:

- a. The advertisement of service;
- b. Regularity of service;
- c. Offering of service to specific routes, and planned schedules;
- d. Characteristics of service other than vessel design;
- e. Historical performance in recent months.

Applicants for self-designation or re-designation should provide information, data, and material related to these five criteria as well as the more general description of the vessel's service as regular or irregular.

#### Vessels for Which No Self-Designation Is Received

For vessels for which MARAD does not receive a written self-designation by October 1, 2009, MARAD will determine a vessel-type designation

based on the criteria listed in points a through e above. All such MARAD designations shall be placed on MARAD's Web site. An owner or operator of a vessel designated by MARAD under this procedure shall receive notice of such designation. Such notice can be sent to such owner or operator's e-mail or regular address. MARAD may also publish a notice of such determination in the **Federal Register**. The owner or operator can appeal that determination within ten calendar days of the date of receipt of such notice of determination or within ten calendar days of publication in the **Federal Register**, whichever date is earlier, under the procedures outlined above.

#### **New Vessels Brought Online After October 1, 2009**

If a new vessel is brought online after October 1, 2009, the vessel owner or operator may voluntarily make an initial self-designation of the vessel's service category for CPA purposes, following the same procedure as vessels which have been self-designated prior to October 1, 2009. The timing and procedures relating to the initial determination will govern these new vessel self-designations.

#### **Re-designations**

Commencing January 1, 2010, vessel owners or operators may request re-designations from MARAD on a quarterly basis. Re-designation of any individual vessel can occur no more than twice per calendar year. However, no re-designations may be filed until the completion of the initial self-designation administrative process.

All requests for re-designation should be made in writing and should include justification of such requests for re-designation based upon the criteria listed in points a. through e. above, and the general character of the vessel's service, that is, irregular service or regularly scheduled service. The vessel owner or operator also should include an explanation as to why the initial designation no longer applies. Each request for re-designation must be signed, and each vessel owner or operator must certify that the information submitted in the request for re-designation is true and correct to the best of the knowledge and belief of the requesting party.

Until MARAD makes a subsequent determination with regard to a vessel owner's or operator's request for vessel re-designation, the prior vessel category will remain in place and be used by the vessel's owner or operator, USAID, USDA, and MARAD for CPA purposes.

All requests for re-designation will be published in the **Federal Register** for public comment. Interested parties may comment on these proposed vessel re-designations within 10 calendar days of publication.

Within 15 calendar days of the close of the comment period for a proposed vessel re-designation, MARAD will provide, in writing, a determination of a vessel's re-designation. Requests for re-designation become effective upon MARAD's written determination of a vessel's re-designation.

Vessel owners or operators may appeal MARAD's determination of a request for re-designation. Such appeals must be addressed in writing to the Maritime Administrator within 10 calendar days of receiving the determination. If there is an appeal, MARAD will issue a final written determination of re-designation within 30 calendar days of receiving the appeal, after consultation with the United States Department of State, USAID, and USDA.

#### **Administrative Changes**

MARAD will, on its own initiative or at the request of a vessel owner or operator, undertake to make administrative changes to the list of vessels published on its Web site. Such administrative changes may include the self-designations and designation determinations as described above, and the following: (1) The change of the name of a current vessel; (2) the change of ownership of a current vessel solely to reflect the new owner of the vessel; (3) a typographical error; and (4) the deletion of a vessel due to change of flag or scrapping.

#### **Calculating Time Periods for Compliance**

If any deadline listed in this section falls on a Saturday, Sunday, or legal holiday, the period in question will run until the end of the next day that is not a Saturday, Sunday or legal holiday.

#### **MARAD List of Designations**

Subject to the procedures described above, MARAD will compile and maintain these self-designations, re-designations, and MARAD determinations into a list of vessels by category type, for the purpose of indicating which vessels are eligible for preference to carry cargo subject to 46 U.S.C. 55305 and 55314.

In accordance with the parameters above, a current list of vessels by type will be published quarterly on MARAD's Web site, and will be amended periodically as administrative changes are made. No changes will be

made to this list, other than by the procedures provided for above.

#### **Prohibition of Dual Service**

Owners or operators of a vessel that engages in service that may be characterized as meeting more than one of the three vessel service categories must choose one category that reflects the predominant character of the vessel's service as measured by tonnage carried, routes served, number of voyages, the criteria above, or some other measurable criteria supporting the designation excluding vessel design.

#### **Certification Requirements**

The procedures set forth in this Notice are intended to result in full and fair consideration of all applications by vessel owners or operators. These procedures are dependent upon vessel owners or operators providing full and accurate information to MARAD in support of their applications and/or requests for re-designation or in any comments we receive. To that end, we reiterate the requirement as set forth above that those submitting materials and/or comments to MARAD in these proceedings must certify that the information contained therein is true and correct to the best of their knowledge and belief.

#### **Paperwork Reduction Act**

This notice involves information collection requirements subject to the Paperwork Reduction Act (PRA), specifically the self-designation documentation that vessel owners must send with respect to any vessel for which they choose to self-designate the type of service for the vessel, and, any subsequent voluntary quarterly requests for re-designation. For the content of these information collection requirements, see the section of this notice entitled "Self-Designation Applications and Their Contents." *Title: Applications for Self-Designation of Vessels, and Vessel Re-Designation.*

*Need for Information:* The information is required to administer the interagency Memorandum of Understanding (MOU). Regarding Procedures for Determining Vessel Service Categories for the Purpose of the Cargo Preference Act.

*Use of Information:* The Maritime Administration would use the data submitted by vessel operators to create a list of Vessel Self-Designations, and to determine whether it agreed or disagreed with a vessel owner's designation of a vessel. It will use data submitted with Re-designation Requests to determine whether or not a vessel

should be re-designated into a different service category.

**Frequency:** For current vessel owners who choose to submit a self-designation, the information collection would occur only once. Under the MOU, if a new vessel comes on line or vessel owner subsequently seeks to change its designation, a new application would have to be submitted. Optional vessel re-designation requests can be submitted quarterly.

**Respondents:** It is estimated the owners or operators of up to 120 U.S.-registered vessels, and an unknown but larger number of foreign-registered vessels, could possibly apply for self-designation and/or re-designation. It is important to note that, under the MOU, vessel owners are not required to do so. Vessel owners who are satisfied with MARAD's existing designation presumably would not submit an application. Consequently, MARAD believes that a significantly smaller number than the maximum potential number of respondents will actually submit applications.

**Burden Estimate:** This estimate assumes a range of between 10 and 100 actual applications, in which case the number of burden hours involved would vary from 60–600 hours assuming six hours per application or 80–800 hours assuming eight hours per application. Assuming an approximate cost of \$50 per hour to perform the information collection tasks, this would result in a range of costs from \$3,000 to \$40,000 for the self-designation application process. While MARAD believes that the actual number of applications received will be nearer the lower end of this range, the range is provided to account for the uncertainty surrounding the decisions of vessel owners.

**Form(s):** There is no specific form used for collecting the information, but, the elements of the data elements of the information collection are listed in the **Federal Register** Notice above.

**Average Burden Hours per Respondent:** Between six and eight hours per application.

The Office of Management and Budget has approved this information collection on an emergency basis, as described under 5 CFR 1320.13, with Control Number 2133–0540.

**DATES:** Vessel status self-designations must be received by the Maritime Administration through the Department of Transportation docket office by 5 p.m. EDT on September 30, 2009. The Maritime Administrator intends to publish all self-designations no later than October 7, 2009. Interested parties

may comment on these proposed self-designations within 10 calendar days of publication.

**ADDRESSES:** Self-designation applications and requests for re-designation should prominently refer to docket number MARAD–2007–0001 and may be submitted electronically via the Internet at <http://www.regulations.gov>. Self-designation applications and requests for re-designation may also be submitted by hand or by express delivery to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

All self-designation applications and requests for re-designation will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., EDT or EST, as applicable, Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at <http://www.regulations.gov>.

#### Additional Docketing

Upon receipt, each application will be assigned a unique docket number. All subsequent filings including public comments and appeal will be made public on that docket.

**FOR FURTHER INFORMATION CONTACT:** Jean E. McKeever, Associate Administrator for Business and Workforce Development, Maritime Administration, 1200 New Jersey Ave., SE., Washington, DC 20590; phone: (202) 366–5737; fax: (202) 366–6988; or e-mail: [jean.mckeever@dot.gov](mailto:jean.mckeever@dot.gov). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individuals during business hours. The FIRS is available twenty-four hours a day, seven days a week, to leave a message or question with the above individuals. You will receive a reply during normal business hours.

Dated: September 10, 2009.

By Order of the Acting Maritime Administrator.

**Christine S. Gurland,**

*Acting Secretary, Maritime Administration.*

For your information, the following is the text of the Memorandum of Understanding, dated September 4, 2009:

### Memorandum of Understanding Among the United States Department of Agriculture, the United States Department of Transportation, and the United States Agency for International Development Regarding Procedures for Determining Vessel Service Categories for Purposes of the Cargo Preference Act

#### A. Background

The Cargo Preference Act of 1954 (CPA), as amended, requires that Federal agencies take “necessary and practicable” steps to ensure that privately-owned U.S.-flag vessels transport at least 50 percent of the gross tonnage of cargo sponsored under the food assistance programs specified below, “(computed separately for dry bulk carriers, dry cargo liners, and tankers) \* \* \* to the extent such vessels are available at fair and reasonable rates for commercial vessels of the United States, in a manner that will ensure a fair and reasonable participation of commercial vessels of the United States in those cargoes by geographic areas.” 46 U.S.C. 55305(b). An additional 25 percent of gross tonnage is to be transported in accordance with the requirements of 46 U.S.C. 55314.

The United States Agency for International Development (USAID) and the United States Department of Agriculture (USDA) provide food aid commodities to meet humanitarian food needs in the developing world under food assistance programs as specified below. USAID and USDA either contract directly with, or provide guidance to other entities for purposes of reimbursement regarding the transportation of such food aid through a competitive bidding system among private ocean carriers. The award of transportation contracts to ocean carriers is subject to the requirements of the Cargo Preference Act. This MOU covers the following food assistance programs: Titles I, II, and III programs of the Food for Peace Act, the Food for Progress program of the Food Security Act of 1985, the McGovern-Dole International Food for Education and Child Nutrition program of the Farm Security and Rural Investment Act of 2002, the Section 416(b) program of the Agricultural Act of 1949, and the Bill Emerson Humanitarian Trust of the Bill Emerson Humanitarian Trust Act.

The Maritime Administration (MARAD), an operating administration of the Department of Transportation, is responsible for prescribing regulations and guidance governing the implementation of the CPA by other Government agencies, such as USAID

and USDA. 46 U.S.C. 55305(d); 49 CFR 1.66(e).

USAID, USDA and the Maritime Administration are currently involved in litigation that challenges the proper interpretation and implementation of the Cargo Preference Act by these agencies for the Title II program under the Food for Peace Act (Title II), including *Maersk Line Ltd v. Vilsack*, U.S.D.C. (E.D. Va) 1:09cv747. As the parties acknowledged in a July 10, 2009 settlement of the *Maersk* litigation, the Government agencies involved in that litigation were unable to provide a unified Government position with respect to the proper implementation of a 2002 Department of Justice interpretation of the CPA.

This document serves to clarify the position of the United States with respect to the requirements of the CPA, and describes the procedures that ensure that food aid commodities continue to be shipped throughout the developing world on United States registered ocean vessels. This document, therefore, represents the unified Government position on the proper method for implementing the Department of Justice's 2002 CPA determination. Accordingly, pursuant to the final paragraph of the July 10, 2009 *Maersk* settlement, the United States now has a unified legal position, and the procedures detailed in the *Maersk* Settlement will be superseded with the procedures discussed herein as of October 1, 2009.

### **B. Department of Justice Interpretation of the Cargo Preference Act**

In 2002, the Department of Justice, in connection with the resolution of earlier cargo preference litigation determined the litigation position of the United States with respect to, among other things, the proper manner for classifying vessels in accordance with the CPA. In the 2002 litigation, a dispute arose as to the proper interpretation of the terms "dry bulk carrier" and "dry cargo liner" as those terms are used in the CPA. The Department of Justice concluded that the CPA's requirement that at least 75 percent of agricultural commodities be shipped by U.S. flag vessels "computed separately for dry bulk carriers, dry cargo liners and tankers" mandates that the U.S. vessels be divided into those three categories and further, that the 75 percent minimum be computed separately for each category of vessel.

Moreover, the Department of Justice concluded that the service offered determined a vessel's classification as a "dry bulk carrier" or "dry cargo liner."

In its conclusion, the Department of Justice stated that:

In defining the terms "dry bulk carrier" and "dry cargo liner," the government believes that at the time of the adoption of this provision of the [CPA] these terms did not refer to the type of vessel but rather to the service of the vessel. "Dry bulk carrier" refers to irregular service while "dry cargo liner" refers to regularly scheduled service.

The Department of Justice's 2002 conclusions continue in effect and provide the background principles governing the terms of the procedures described herein.

### **C. Determining Vessel Service Category**

Prior to October 1, 2009, all vessel owners or operators, including owners or operators of foreign flag vessels, may self-designate their service type as either a dry bulk carrier or dry cargo liner by vessel, and report this designation to MARAD in writing. The current treatment of tankers is not affected by this MOU, and no self-designation is required or expected for tankers.

The owner or operator should include justification of such designation based upon the criteria listed in points a. through e. below, and the general character of the vessel's service—that is, irregular or regularly scheduled. On or before October 7, 2009, MARAD will publish these self-designations in the **Federal Register** for public comment. Interested parties may comment on these proposed self-designations within 10 calendar days of publication.

If MARAD disagrees with an owner's or operator's initial self-designation, it will notify the owner or operator within 15 calendar days of the close of the public comment period. That notification will include MARAD's initial determination of vessel type category. Unless MARAD disagrees with an owner's or operator's initial self-designation in writing within 15 calendar days of the close of the public comment period, these self-designations will stay in effect until vessel owners or operators submit a request for re-designation.

Vessel owners or operators may appeal to the Maritime Administrator within 10 calendar days of receiving the initial determination. MARAD will issue a final determination of designation within 30 calendar days of receiving the appeal, after consultation with the Department of State, USAID, and the Department of Agriculture.

If MARAD disagrees with an owner's or operator's initial self-designation, vessels will be treated in accordance with MARAD's initial determination through the appeal period starting from the time of the determination. However, if a solicitation and/or bid award occurs between the time in which self-

designations are received by MARAD but prior to MARAD's written notification of initial determination, such solicitations will be based on the self-designation.

Subject to the procedures described above, MARAD will compile these self-designations into a list of vessels by category type, for the purpose of indicating which vessels are eligible for preference to carry cargo subject to 46 U.S.C. 55305 and 55314. For vessels which MARAD does not receive a written self-designation by October 1, 2009, MARAD will determine a vessel-type designation based on the criteria listed in points a through e below.

If a new vessel is brought online after October 1, 2009, the vessel owner or operator may voluntarily make an initial self-designation of the vessel's service category, following the same procedure as vessels which have been self-designated prior to October 1, 2009.

Commencing October 1, 2009, vessel owners or operators may request re-designations from MARAD on a quarterly basis. Re-designation of any individual vessel can occur no more than twice per calendar year.

All requests for re-designation should be made in writing. The vessel owner or operator should include justification of such requests for re-designation based upon the criteria listed in points a through e below, and the general character of the vessel's service, that is, irregular or regularly scheduled.

In accordance with the Department of Justice's 2002 interpretation of the CPA, in determining whether a vessel may be appropriately categorized as a "dry bulk carrier" or "dry cargo liner," MARAD will evaluate the vessel's service. In evaluating the service of a particular vessel, MARAD will consider the following criteria:

- a. The advertisement of service;
- b. Regularity of service;
- c. Offering of service to specific routes, and planned schedules;
- d. Characteristics of service other than vessel design;
- e. Historical performance in recent months.

Until MARAD makes a subsequent determination with regard to a vessel owner's or operator's request for vessel re-designation, the prior vessel category will remain in place and be used by the vessel's owner or operator, USAID, USDA, and MARAD for CPA purposes. All requests for re-designation will be published in the **Federal Register** for public comment. Interested parties may comment on these proposed vessel re-designations within 10 calendar days of publication.

Within 15 calendar days of the close of the comment period, MARAD will provide, in writing, a determination of a vessel's re-designation. Requests for re-designation become effective upon MARAD's written determination of a vessel's re-designation.

Vessel owners or operators may appeal MARAD's determination of a request for re-designation in writing within 10 calendar days of receiving the determination. If there is an appeal, MARAD will issue a final written determination of re-designation within 30 calendar days of receiving the appeal, after consultation with the Department of State, USAID, and the Department of Agriculture.

If any deadline listed in this section falls on a Saturday, Sunday, or legal holiday, the period in question will run until the end of the next day that is not a Saturday, Sunday or legal holiday.

#### 1. Prohibition of Dual Service

For purposes of the Maritime Administration list, owners or operators of a vessel that engages in service that may be characterized as meeting more than one of the three vessel service categories must choose one category that reflects the predominant character of the vessel's service as measured by tonnage carried, routes served, number of voyages, the criteria above, or some other measurable criteria supporting the designation excluding vessel design.

#### 2. Vessel List by Type

In accordance with the parameters above, a current list of vessels by type will be published quarterly on MARAD's Web site, and will be amended periodically as administrative changes are made. No changes will be made to this list, other than by the procedures provided under Sections C and D of this Memorandum of Understanding.

#### D. Administrative Changes

The Maritime Administration will, on its own initiative or at the request of a vessel owner or operator, undertake to make administrative changes to the list of vessels published on its Web site. Such administrative changes may include the self-designations and designation determinations as described above, and the following: (1) The change of the name of a current vessel; (2) the change of ownership of a current vessel solely to reflect the new owner of the vessel; (3) a typographical error; and (4) the deletion of a vessel due to change of flag or scrapping.

#### E. Utilization of the Maritime Administration List of Vessels for Cargo Preference Compliance

For purposes of determining compliance with the 75 percent requirement described above, each of the affected agencies (that is, the Maritime Administration, USAID, and USDA) will record contracts awarded under the food assistance programs specified above based solely upon the vessel service category for the vessel upon which the cargo is carried, for both foreign flag and U.S.-flag vessels, as shown on the Maritime Administration list, without regard to the nature of the cargo carried. The contract award date will be the basis of measurement for compliance purposes. Bills of lading quantities will be used to validate the compliance percentages.

#### F. Utilization of the Shipping Agency Statistical Data for Cargo Preference Compliance

For purposes of communicating statistical data for preference cargo tonnage shipped by USAID and USDA, MARAD, USAID, and USDA hereby agree that, at the inception of this agreement, each will post to their respective Web sites data from shipping agency calculations. These calculations will be based solely upon the vessel service category for the vessel upon which the cargo is carried, (for both foreign flag and U.S.-flag vessels) as shown on the Maritime Administration list without regard to the nature of the cargo carried. The contract award date will be the basis of measurement for compliance purposes. Bills of lading quantities will be used to validate the compliance percentages. MARAD will monitor and verify the data and agrees to post on their Web site the same data in the same format as the shipping agencies. Reconciliations and adjustments will be resolved in advance of publication through interagency consultation, which, if necessary, may include the Office of Management and Budget.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.

This MOU may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

David T. Matsuda  
Acting Administrator

Maritime Administration  
U.S. Department of Transportation  
DATE: \_\_\_\_\_

James Michel  
Counselor to the Agency  
U.S. Agency for International  
Development Administration  
DATE: \_\_\_\_\_

Michael V. Michener  
Administrator  
Foreign Agricultural Service  
U.S. Department of Agriculture  
DATE: \_\_\_\_\_

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BILLING CODE 4910-81-P

#### DEPARTMENT OF THE TREASURY

#### Open Meeting of the Financial Literacy and Education Commission

**AGENCY:** Departmental Offices, Treasury.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a public meeting of the Financial Literacy and Education Commission, established by the Financial Literacy and Education Improvement Act (Title V of the Fair and Accurate Credit Transactions Act of 2003).

**DATES:** This meeting of the Financial Literacy and Education Commission will be held on Thursday, September 24, 2009, beginning at 10 a.m.

**ADDRESSES:** The Financial Literacy and Education Commission meeting will be held in the Cash Room at the Department of the Treasury, located at 1500 Pennsylvania Avenue, NW., Washington, DC 20220. To be admitted in the Treasury building, attendees must RSVP with their name as shown on a government-issued ID, organization represented (if any), phone number, date of birth, Social Security number and country of citizenship. To register, visit <http://www.treasury.gov/ofe>, click on the "Financial Literacy and Education Commission" and then click on "Event Summary and Registration." For admittance to the Treasury building on the day of the meeting, attendees must present a government-issued ID, such as a driver's license or passport, which includes a photo and date of birth.

**FOR FURTHER INFORMATION CONTACT:** For additional information, contact Dubis Correal by e-mail at [dubis.correal@do.treas.gov](mailto:dubis.correal@do.treas.gov) or by telephone at (202) 622-5770 (not a toll free number). Additional information regarding the Financial Literacy and Education Commission and the