

*Comment:* MARAD suggested that § 1599.6 is not clear and could appear to set up a conflict when (a) refers to domestic points and states FAS will choose the point of delivery based on lowest cost to FAS. However, the objective is lowest landed cost at ultimate foreign destination.

*Response:* The proposed regulation states FAS will choose the point of delivery basis lowest cost to FAS. This language is necessary to allow for the situation where FAS may not choose to finance any portion of the ocean freight, *i.e.*, lowest cost for commodities. At the same time, it is broad enough to include lowest landed cost, *i.e.*, lowest cost for both commodities and freight.

*Comment:* MARAD commented that § 1599.7 (b)(2) and (6) refer to Transportation News Ticker (TNT), which no longer exists, and suggested FAS establish a Web site to publish all tenders as the primary source, and utilize Reuters or Dow-Jones as a secondary source.

*Response:* The fact that the TNT no longer exists is reflected in the final rule. FAS has established a Web site that publicizes all freight tenders for the programs under FAS oversight as well as the notice of awards. FAS prefers that shipping agents use a commercially available news wire service. The FAS Web site is only done as a convenience and should not be the primary source of information because these are not government invitations for bids.

*Comment:* MARAD requested that in § 1599.7, FAS state that shipments must comply with all laws and international conventions to which USA is a signator, not just the Merchant Marine Act of 1936. For example, Pub. L. 105-383 prohibits the shipment of these cargoes on any vessel found to be "substandard" as defined in that law.

*Response:* The purpose of the regulation is only to inform food aid grantees of their affirmative obligation to comply with cargo preference requirements. Questions of vessel eligibility, *e.g.* Pub. L. 105-383, will be addressed in the vessel approval process. Additionally, a general reference to "all" laws and conventions would not be informative. It is understood that shipments must comply with all laws and international conventions.

*Comment:* MARAD commented that § 1599.7(b)(4) only requires public bid openings for shipments of bulk and non-liner packaged commodities, and questions why liner shipments are excluded. MARAD stated that there should be public bid openings for all shipments regardless of type of commodity or vessel.

*Response:* FAS does not preclude negotiations in contracting for liner shipments due to the complexity of the freight bids and the liner trade in general. Open tenders do not allow the flexibility needed for arranging liner shipments.

*Comment:* MARAD stated that in § 1599.7(b)(8) the Cooperating Sponsor is required to furnish to the Director, Operations Division, a copy of the signed laytime statement and statement of facts at the discharge port. MARAD requested that copies of those documents also be sent to the Office of Cargo Preference. The rationale is to provide that office with the necessary information to address any questions or complaints regarding the cargo delivery, and to be able to furnish vessel-owners who may make future call at those ports with historical data that may be helpful in future deliveries to those destinations to avoid recurring problems.

*Response:* This would add an unnecessary burden. It is FAS' responsibility to address any questions and complaints regarding food aid programs under their oversight. FAS keeps close contact with all parties involved in the food aid shipments to resolve problems that may arise. Furthermore, each U.S. flag vessel is required to send a post voyage report to the Office of Financial and Rate Approvals in MARAD. This report creates historical data that is kept on file in that office.

*Comment:* MARAD commented that § 1599.7(e)(5) states ocean freight is earned when vessel and cargo arrives at first port of discharge. MARAD requested that FAS use standard commercial terms and state that ocean freight is earned when cargo is loaded on the vessel. MARAD further stated that the regulation's force majeure clause takes care of any non-arrival.

*Response:* FAS desires to retain the policy, applicable to all USDA's foreign food aid programs, that freight is not payable under charter parties until the vessel arrives at the discharge port or, if additional services are to be performed, only a portion of the freight be paid until the services are performed. This assures, to the maximum extent possible, that carriers will perform their obligations. Upon reviewing this regulation, FAS believes that the use of the phrase "freight is earned" is confusing and may conflict with the remainder of the paragraph. Therefore, the final rule has been revised to make it clear that not more than 85% of the freight will be deemed "earned" if the charter party provides that the carrier must complete additional requirements after discharge.

*Comment:* MARAD requested a language change in § 1599.15(b), which requires evidence of export by onboard bill of lading authenticated by Customs. It requires the bill of lading to state destination country. MARAD suggested that FAS insert the word "final" before "destination country" as current practice has been the bills only show the destination country of discharge port when the cargo is actually destined to another inland nation. Bills have a field which allows the showing of both discharge port and final destination and both these fields should be utilized.

*Response:* Bills of lading show destination country where vessel carrier's responsibility ends. If inland transportation is required and the cargo is to be shipped on a through bill of lading, the bill of lading will show the ultimate destination country. However, if the Cooperating Sponsor is arranging inland transportation, the bill of lading will only show the discharge port, which is where the carrier's responsibility ends. Carriers would not want to be liable for ultimate destination if their responsibility ended at the ocean port of discharge.

*Comment:* MARAD expressed concern regarding language in § 1599.15(c)(i), asking why FAS only requires a report regarding claims be submitted for US-flag vessels, and not for foreign flag vessels. MARAD stated that this rule should apply equally to all vessels regardless of nationality of registry.

*Response:* KCCO does pursue claims on both U.S. and foreign flag vessels. FAS will amend the regulation to require both U.S. and foreign flag vessel reports.

*Effective Date:* In order to ensure that the McGovern-Dole International Food for Education and Child Nutrition Program is implemented this fiscal year, it is essential that this rule be made effective June 20, 2003. A delay in the effective date may jeopardize FAS' ability to review the assistance proposals received in sufficient time to conclude agreements prior to the lapse of funding authorization for this fiscal year. In addition, the program's focus on school feeding and other educational aspects of assistance requires that FAS strive to conclude agreements in sufficient time to meet the needs of the school year. The need to prepare and review proposals and procure and ship commodities consequently constitutes good cause to make this rule effective June 20, 2003.

#### List of Subjects in 7 CFR Part 1599

Agricultural commodities, Exports, Foreign aid.