

MARAD Announces Guidance on Vessel Reflaggings



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On June 27, 2011, the U.S. Department of Transportation's Maritime Administration ("MARAD") published in the Federal Register a "Clarification" of its approval process relating to proposed transfers of U.S.-flag vessels over 1,000 gross tons to foreign registry pursuant to 46 CFR Part 221.

Under the newly announced process, MARAD will require owners to "self-certify" that the vessels do not contain polychlorinated biphenyls (PCBs) in regulated quantities, and to provide notice to the Environmental Protection Agency (EPA) of the transfer request. MARAD will then wait 30 days for the EPA to object before approving any transfer request.

The newly announced process applies retroactively to all requests filed since February 14, 2011 and to all future approvals for granting advance foreign transfer approvals pursuant to 46 U.S.C. §56101(b).

MARAD changed longstanding reflag policy in approximately late 2009 when it began requiring owners to obtain approvals from EPA in connection with the Toxic Substances Control Act, which prohibits the export of PCBs. After many months of internal deliberation, in 2010 EPA determined it would no longer issue such approvals, but MARAD refused to permit reflaggings without them. The new self-certification process appears aimed at breaking this log-jam.

The notice invites comments by concerned parties during a 30-day comment period.

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