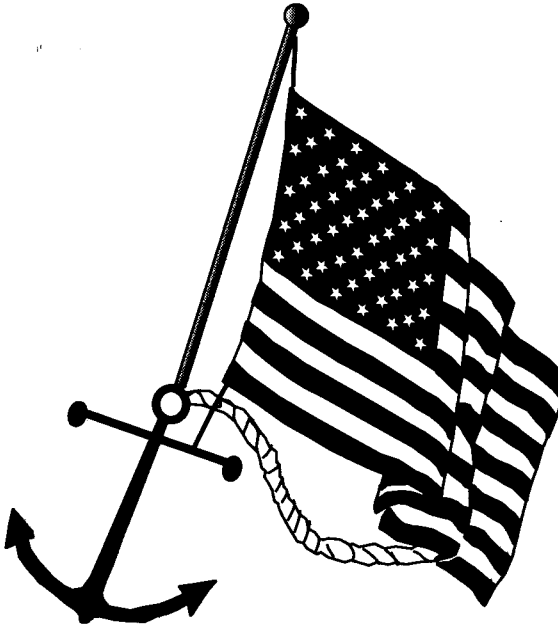
The Maritime Administration And Cargo Preference



U.S. Department of Transportation
Maritime Administration

FOREWORD

This pamphlet is intended to serve as an introduction to U.S. cargo preference requirements. It is recommended that the reader consult with legal counsel as to the specific application of any of the U.S. cargo preference laws or regulations. General inquiries concerning this publication or the U.S. cargo preference laws may be made to the Office of Cargo Preference, Maritime Administration (MARAD).

It is also recommended that the reader communicate with the same office of MARAD prior to arranging ocean transportation if there are any questions regarding the applicability of the U.S. cargo preference laws, or specific questions as to vessel availability at fair and reasonable rates. Knowledgeable personnel in the Office of Cargo Preference will be pleased to work with you on these questions.

Relevant information on MARAD's Office of Cargo Preference is as follows:

United States Department of Transportation
Maritime Administration
Office of Cargo Preference, Room 8118
400 Seventh Street, S.W.
Washington, D.C. 20590
Tel: 202-366-4610
Fax: 202-366-5522
Help Line: 1-800-9USFLAG
Web Site: http://www.marad.dot.gov/offices/cargo_pref.html
E-mail: cargo@marad.dot.gov

Revised: April 2000

MARITIME ADMINISTRATION AND CARGO PREFERENCE

A. WHAT IS THE MARITIME ADMINISTRATION?

MARAD of the U.S. Department of Transportation is the Federal Agency responsible for promoting and maintaining the U.S.-flag merchant marine necessary for the defense and economic security requirements of the United States. MARAD's responsibilities include the proper application of certain U.S. cargo preference laws.

B. WHAT IS CARGO PREFERENCE?

Cargo preference is the reservation, by law, for transportation on U.S.-flag vessels, of all or a portion of all oceanborne cargo which moves in international trade either as a direct result of the Federal Government's involvement or indirectly because of the financial sponsorship of a Federal program or guarantee provided by the Federal Government.

C. WHY DO WE HAVE CARGO PREFERENCE?

The U.S. cargo preference laws are part of the overall statutory program to support the privately owned and operated U.S.-flag merchant marine. In this regard, they are not unlike the cargo preference laws of other industrial nations. These laws require that a certain percentage of Government-impelled cargo be carried on U.S.-flag vessels. Our merchant marine is vital to U.S. national security, providing essential sealift capability in wartime. In addition, the ships that carry these cargoes provide important jobs for American seafarers who are available in time of national emergency to crew the sizeable fleet of reserve Government vessels. The U.S. cargo preference laws, by guaranteeing the availability of cargo to U.S.-flag ships, are important to the financial viability of U.S.-flag vessel operating companies thereby ensuring that the vessels, trained crews, and vessel service industries continue to exist. They also help protect our ocean commerce from foreign domination, and enhances our balance of payment position.

D. WHAT ARE THE U.S. CARGO PREFERENCE LAWS?

The primary U.S. cargo preference laws are set forth in the following statutes:

1. **CARGO PREFERENCE ACT OF 1904** (Public Law 58-198, approved April 28, 1904 (33 STAT. 5187), as amended (10 U.S.C. 2631)).

The Cargo Preference Act of 1904, requires that military cargoes be shipped exclusively on vessels of the United States or belonging to the United States. It does not mandate the use of privately-owned, U.S.-flag commercial vessels. However, the Cargo Preference Act of 1954, requires that 50 percent of such military cargoes be shipped on privately-owned, United States-flag commercial vessels.

The Cargo Preference Act of 1904, is implemented by the Department of Defense under regulations set forth in 48 CFR Subpart 247.5—**Ocean Transportation By U.S.-Flag Vessels.**

2. **PUBLIC RESOLUTION 17.**—(Public Resolution 17–73d Congress, approved March 26, 1934 (48 STAT. 500), as amended (46 App. U.S.C. 1241-1)).

Public Resolution 17, requires that all cargoes generated by the Export-Import Bank, be shipped on U.S.-flag vessels. MARAD may grant general waivers permitting up to 50 percent of the cargo generated by an individual loan to be shipped on vessels under the flag of the recipient nation. It also may grant statutory waivers permitting a specific shipment to be made on a foreign-flag vessel if a U.S.-flag vessel is not available at a reasonable rate, or if the U.S.-flag vessel cannot accommodate the cargo. Marad's criteria for granting waivers can be found on our web page.

Public Resolution 17 is implemented by the Export-Import Bank under regulations set forth in 12 CFR 402.3—**Marine Transportation and insurance.** *(a) Marine transportation.*

3. **CARGO PREFERENCE ACT OF 1954.** (Public Law 83-664, approved August 26, 1954 (68 STAT. 832), as amended (46 App. U.S.C. 1241(b)(1)).

The Cargo Preference Act of 1954, amended Section 901 of the Merchant Marine Act, 1936, to require that at least 50 percent of certain Government-generated cargoes be shipped on privately-owned U.S.-flag commercial vessels to the extent such vessels are available at fair and reasonable rates for U.S.-flag vessels. Every Department or Agency having responsibility under the Cargo Preference Act of 1954, is required to administer its programs with respect to it under regulations issued by the Secretary of Transportation, who will review such administration and report annually to the Congress.

The Cargo Preference Act of 1954 is administered by all Departments and Agencies, other than the Department of Defense, under the Federal Acquisition regulations set forth in 48 CFR Subpart 47.5 **Ocean Transportation By U.S.-Flag Vessels,** and MARAD's regulations set forth in (a) 46 CFR, Part 381-**Cargo Preference-U.S.-Flag Vessels,** (b) 46 CFR, Part 382 **Determination Of Fair And Reasonable Rates For The Carriage Of Bulk And Packaged Preference Cargoes On U.S.-Flag Commercial Vessels,** and (c) 46 CFR, Part 383-**Determination Of Fair And Reasonable Guideline Rates For The Carriage Of Less-Than-Shipload Lots Of Bulk Preference Cargoes Carried On U.S. - Flag Liner Vessels.**

4. **FOOD SECURITY ACT OF 1985.** Subtitle C of Title XI of Public Law 99-198, approved December 23, 1985 (99 STAT. 1354, 1490), as amended (46 App. U.S.C. 1241e-1241o)).

The Food Security Act of 1985, amended the Cargo Preference Act of 1954, by the addition of Sections 901a through 901k to the Merchant Marine Act, 1936, in order to increase the minimum U.S.-flag requirement from 50 to 75 percent for shipments of agricultural cargoes under certain foreign assistance programs of the United States Department of Agriculture and the Agency for International Development.

The Food Security Act of 1985 is implemented by a Memorandum of Understanding between MARAD, the Commodity Credit Corporation of the Department of Agriculture, and the Agency for International Development of the Department of State.

E. *WHAT ARE THE U.S. CARGO PREFERENCE REGULATIONS?*

The U.S. Cargo Preference Laws are implemented under the following regulations:

1. **FEDERAL ACQUISITION REGULATIONS ON U.S. CARGO PREFERENCE.** On April 1, 1984, the Federal Acquisition Regulations (FAR) became the primary regulations for use by all Federal Departments and Agencies in their acquisition of supplies and services with appropriated funds. The purpose of the FAR is to provide for coordination, simplicity and uniformity in the Federal acquisition process and to ensure consistency in the contractual arrangements made by the civilian and defense Agencies. The FAR has a separate U.S.-flag shipping provision for the Department of Defense and other departments or agencies of the Federal Government.

a. ***Department of Defense Preference Cargoes.***

Department of Defense preference cargoes are subject to the requirements set forth in 48 CFR, Subpart 247.5-**Ocean Transportation By U.S.-Flag Vessels.** These regulations are implemented by the Department of Defense.

b. ***Non-Department of Defense Preference Cargoes.***

Non-Department of Defense preference cargoes are subject to the requirements set forth in 48 CFR, Subpart 47.5 –**Ocean Transportation By U.S.-Flag Vessels**. These regulations are implemented by the Department or Agency shipping the preference cargo.

Please note the provision in 48 CFR 47.507(a), requiring the contracting officers of all such Departments and Agencies to insert the U.S.-flag shipping provisions contained in 48 CFR 52.247-64, in solicitations and contracts which may involve ocean transportation of equipment, materials and commodities, generated by the Federal contract. These shipping provisions require that from 50 percent to 100 percent of all supplies, materials, or equipment be transported on U.S.-flag vessels, dependent on the governing U.S. cargo preference law or Agency policy required to ensure that the Agency meets its compliance requirement.

2. **MARITIME ADMINISTRATION's U.S. CARGO PREFERENCE REGULATIONS.**

MARAD's regulations are set forth in (a) 46 CFR, Part 381-**Cargo Preference—U.S.-Flag Vessels**, (b) 46 CFR, Part 382-**Determination Of Fair And Reasonable Rates For The Carriage Of Bulk And Packaged Preference Cargoes On U.S.-Flag Commercial Vessels**, and (c) 46 CFR, Part 383-**Determination Of Fair And Reasonable Guideline Rates For The Carriage Of Less-Than-Shipload Lots Of Bulk Preference Cargoes Carried On U.S.-Flag Liner Vessels.**

MARAD's U.S. cargo preference regulations prescribe the rules, regulations and procedures to be followed by all U.S. Departments and Agencies having responsibility under the Cargo Preference Act of 1954, in the administration of their programs.

It is the responsibility of each affected Department or Agency to ensure its compliance with the Cargo Preference Act of 1954. This is accomplished by the Department or Agency inserting appropriate clauses in its program documentation (including third-party contracts executed

between its program participants and other parties). Such clauses must require that no less than 50 percent of the freight tonnage generated (computed separately for dry bulk carriers, cargo liners, and tankers) be transported on privately owned U.S.-flag commercial vessels.

A uniform system for the collection of shipping data is set forth at 46 CFR 381.3. This regulation provides that documentation (bills of lading) or shipping reports essential to the monitoring and administration of the Act be sent to MARAD. Such documentation must be furnished within 20 working days of the date of loading for shipments originating in the United States, and 30 working days for shipments originating outside of the United States.

F. WHAT ARE MARITIME ADMINISTRATION's CARGO PREFERENCE FUNCTIONS?

The principal functions of MARAD under the U.S. Cargo Preference Laws are:

1. To establish regulations and procedures for Government agencies to ensure that the U.S. cargo preference laws are implemented as intended by the Congress.
2. To determine which programs, projects, and contracts are encompassed by the U.S. cargo preference laws.
3. To determine the availability of U.S.-flag service when that availability is questioned by another agency, contractor, or program participant.
4. To provide guidance concerning the reasonableness of ocean freight rates to Federal agencies and participants in programs sponsored by those agencies.
5. To monitor the compliance of Government agencies and commercial shippers subject to the U.S. cargo preference laws.
6. To report annually to the Congress on compliance with the U.S. cargo preference laws by the Federal agencies.
7. Marad is the sole agency responsible for granting waivers for PR 17 and Defense Security Cooperation Agency cargoes.

G. WHAT IF A U.S.-FLAG VESSEL IS NOT AVAILABLE TO TRANSPORT A PREFERENCE CARGO?

It is not possible to list all the criteria on which a service determination may be made, because many situations are unique. However, two criteria are always basic to MARAD's determinations:

A. If a commercial shipping system exists, it is presumed that the system should be available and employed for preference cargoes if the cargo can be accommodated, and if the waterborne transportation is provided by U.S.-flag vessels; and

B. Specific Comptroller General opinions applicable to the situation under review will be applied.

In the event qualified U.S.-flag service is not available for the ocean transportation of a specific cargo, MARAD has established priorities for varying U.S.-flag shipping services for cargo preference compliance purposes. These priorities reflect applicable Comptroller General and court decisions.

1. The following all U.S.-flag vessel services have equal status in selection by shippers of preference cargoes:
   a. Direct U.S.-flag service;
   b. U.S.-flag vessel service utilizing a U.S.-flag vessel with relay/transshipment to another U.S.-flag vessel to final discharge port;
   c. Intermodal services to the final destination or from the point of origin utilizing only U.S.-flag vessels for any water segment of the route.

2. In the event that all U.S.-flag vessel service is not available, the use of U.S.-flag vessels with relay or transshipment via a foreign-flag vessel to the final discharge port is permitted. In this instance, the foreign-flag transportation segment must be less than the U.S.-flag transportation segment.

3. Visit our web page at **http://www.marad.dot.gov/offices/cargo_pref.html** to find listings of U.S.-flag carriers and vessels. This page will also contain a link to the U.S. Coast Guard's listing of detained vessels.

H. WHAT IF THE FREIGHT RATE OF AN AVAILABLE U.S.-FLAG VESSEL IS NOT FAIR AND REASONABLE FOR THE TRANSPORTATION OF A PREFERENCE CARGO?

Without the concurrence of MARAD, Federal agencies or their program participants are not authorized to make determinations that the freight rate offered by an available U.S.-flag vessel is not fair and reasonable so that a foreign-flag vessel can be used to transport the preference cargo.

MARAD is responsible for the calculation of so-called Fair and Reasonable Guideline Rates for the ocean transportation by U.S.-flag vessels of preference cargoes under the Cargo Preference Act of 1954:

a. In full shipload lots, whether liner or bulker, under regulations set forth in 46 CFR, Part 382, ***Determination Of Fair And Reasonable Rates For The Carriage Of Bulk And Packaged Preference Cargoes On U.S.-Flag Commercial Vessels,***

b. In less than full shipload lots on liner vessels, under regulations set forth in 46 CFR, Part 383, ***Determination Of Fair And Reasonable Guideline Rates For The Carriage Of Less-Than-Shipload Lots Or Bulk Preference Cargoes Carried On U.S.-Flag Liner Vessels***, and

c. Where a subsidized U.S.-flag vessel is competing with a nonsubsidized U.S.-flag vessel for the same cargo, under regulations set forth in 46 CFR 381.8, ***Subsidized Vessel Participation.***

Concerning reasonableness of rates, MARAD applies the Comptroller General's decision of February 17, 1955 (B-95832), "that only rates `for United States-flag commercial vessels' are to be considered in determining a fair and reasonable rate, so that foreign-flag rates do not enter into the determination."

I. WHERE CAN I GET A COPY OF THE U.S. CARGO PREFERENCE LAWS AND REGULATIONS?

Visit our web page at **http://www.marad.dot.gov/offices/cargo_pref.html** to download the U.S. Cargo Preference Laws and regulations or use our e-mail address at **cargo@marad.dot.gov.**

Additional information concerning MARAD's fair and reasonable rate regulations should be directed to:

Maritime Administration
Office of Financial and Rate Approvals
400 Seventh Street, S.W., MAR-560, Room 8117
Washington, DC 20590
Tel: 202-366-2324
Fax: 202-366-7901

Other questions concerning cargo for U.S.-flag commercial vessels should be directed to any of the following MARAD offices:

MARITIME ADMINISTRATION REGION OFFICES

NORTHEAST REGION

Maritime Administration
New York Office
1 Bowling Green, Room 418
New York, NY 10004-1415
Tel: 212-668-3330
Fax: 212-668-3382

CENTRAL REGION

Maritime Administration
New Orleans Office
501 Magazine Street
Room 1223
New Orleans, LA 70130-3394
Tel: 504-589-2000
Fax: 504-589-6559

WESTERN REGION

Maritime Administration
San Francisco Office
201 Mission Street, Suite 2200
San Francisco, CA 94105-1905
Tel: 415-744-3125
Fax: 415-744-2576

Maritime Administration
Seattle Office
915 2nd Avenue Room, 3196
Seattle, WA 98174
Tel: 206-220-7717
Fax: 206-220-7715

GREAT LAKES REGION

Maritime Administration
Chicago Office
2860 South River Road,
Room 185
Des Plaines, IL 60018-2413
Tel: 847-298-4535
Fax: 847-298-4537

Maritime Administration
St. Louis Office
1222 Spruce Street
Room 10.200
St. Louis, MO 63103-2831
Tel: 314-539-6783
Fax: 314-539-6787

SOUTH ATLANTIC REGION

Maritime Administration
Norfolk Office
7737 Hampton Boulevard
Building 4D, Room 211
Norfolk, VA 23505
Tel: 804-441-6393
Fax: 804-440-0812