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Cargo Preferences for U.S.-Flag Shipping

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Summary

Long-standing U.S. policy has treated the U.S.-flag international fleet as a naval auxiliary to be available in times of war or national emergency. When the United States is involved in an extended military conflict overseas, 90% or more of military cargoes are typically carried by ship. To support the U.S. merchant marine, Congress has required that "government-impelled" cargo sent overseas be carried on U.S.-flag ships. Government-impelled cargo (a.k.a. "preference cargo") is government-owned cargo, such as military supplies and food aid, and any cargo that is somehow financed by the federal government, such as by the Export-Import Bank. While export shipments account for the vast bulk of government-impelled cargo, in 2008 Congress extended the law to require that state and local governments and private entities importing goods with federal financial assistance ship at least 50% of such cargo in U.S.-flag vessels. Regulations to implement that requirement have not been issued.

Historically, cargo preference law has been used to assure that a large proportion of government-impelled cargoes is shipped in *privately* owned U.S.-flag ships rather than in *government*-owned vessels such as those now controlled by the Military Sealift Command (MSC). Military cargo then, and more so now, accounts for the overwhelming bulk of preference cargoes. Since 1954, an agreement between U.S. government cabinet departments has restricted the size of the military-owned fleet and has required the military to turn first to the private fleet before using its own ships. The cost of employing U.S. citizens aboard U.S.-flag commercial vessels appears to be higher than the costs of employing the federal civilian mariners that crew government-owned ships.

It appears preference cargo now accounts for almost all of the revenues of the U.S.-flag international fleet. U.S.-flag ships do not appear competitive with foreign-flag ships in carrying the overwhelming bulk of exports and imports transacted in the private sector. However, Congress has directed that the U.S. government pay the additional cost of U.S.-flag shipping in order to maintain the U.S.-flag international fleet as a naval auxiliary to be available in times of war or national emergency. This cost may be influenced by the level of competition among U.S.-flag carriers bidding for preference cargoes and the procedures for determining "fair and reasonable rates."

The needs of the commercial market increasingly have diverged from those of the military, as the trend toward highly specialized and larger ships in the commercial sector appears inconsistent with the military's shipping requirements. However, the knowledge and skills of the mariners aboard U.S.-flag commercial ships are transferrable to manning a military reserve fleet of ships.

In the 114th Congress, several disparate bills would have the effect of either increasing or decreasing the volume of preference cargo significantly. The bills involve the future of food-aid policy, the existence of the Export-Import Bank, and the level of operating subsidy provided to U.S.-flag carriers. The boom in domestic oil and gas production also has led to discussions in Congress about whether U.S.-flag tankers should be guaranteed a portion of the cargo if these products are exported. These issues are arising at a time when U.S.-flag operators face a potential decline in the amount of preference cargo due to overseas troop withdrawals and changes in food-aid policy.

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Introduction

Long-standing U.S. policy has treated the U.S.-flag international fleet as a naval auxiliary to be available in times of war or national emergency. When the United States is involved in an extended military conflict overseas, 90% or more of military cargoes are typically carried by ship. Congress also has determined that for economic security reasons, the United States should have a commercial fleet active in international commerce.[1]

To support the U.S.-flag international fleet, Congress has required that "government-impelled" cargo sent overseas be carried on U.S.-flag ships. Government-impelled cargo is government-owned cargo such as military supplies, foreign aid such as food, and any privately owned cargo financed by the federal government, such as goods purchased with an Export-Import Bank loan. Regulations suggested, but not formally proposed, by the U.S. Maritime Administration (MARAD) would also require that some U.S.-bound cargo financed by the government be carried on U.S.-flag ships.[2] Cargo reserved for U.S.-flag vessels is referred to as "preference cargo."[3]

Cargo preference requirements are highly controversial, particularly among shippers of civilian aid cargoes, because they significantly increase shipping costs and may delay shipments.[4] However, preference cargo is critical to some U.S.-flag ship lines, as U.S.-flag ships are not price-competitive with foreign-flag ships in carrying the overwhelming bulk of exports and imports transacted in the private sector.

This report explains the motivation behind cargo preference law, discusses issues concerning the cost-effectiveness of the program, and reviews attempts to apply cargo preference to the nation's

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[1] U.S. merchant vessels have been utilized since the nation's first naval conflicts, and this has been stated policy at least since the Merchant Marine Act of 1920 (P.L. 66-261) and the Merchant Marine Act of 1936 (P.L. 74-835), which are codified today at 46 U.S.C. §50101:

> (a) Objectives.-It is necessary for the national defense and the development of the domestic and foreign commerce of the United States that the United States have a merchant marine-
>
> (1) sufficient to carry the waterborne domestic commerce and a substantial part of the waterborne export and import foreign commerce of the United States and to provide shipping service essential for maintaining the flow of the waterborne domestic and foreign commerce at all times;
>
> (2) capable of serving as a naval and military auxiliary in time of war or national emergency;
>
> (3) owned and operated as vessels of the United States by citizens of the United States;
>
> (4) composed of the best-equipped, safest, and most suitable types of vessels constructed in the United States and manned with a trained and efficient citizen personnel; and
>
> (5) supplemented by efficient facilities for building and repairing vessels.
>
> (b) Policy. It is the policy of the United States to encourage and aid the development and maintenance of a merchant marine satisfying the objectives described in subsection (a).

[2] http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201504&RIN=2133-AB74.

[3] Cargo preference does not apply to purely private-sector commercial cargo, 99% of which is imported and exported in foreign-flag ships.

[4] Regarding the shipping costs of food aid, see Government Accountability Office (GAO), *International Food Assistance[:] Cargo Preference Increases Food Aid Shipping Costs, and Benefits Are Unclear*, GAO-15-666, August 2015; Kenneth Button, Wayne Ferris, and Phillip Thomas, "Food Aid Reforms Will Not Significantly Affect Shipping Industry or Surge Fleet," Center for Public Service, George Mason University, June 2015; Stephanie Mercier and Vincent H. Smith, *Military Readiness and Food Aid Cargo Preference: Many Costs and Few Benefits*, American Enterprise Institute, September 2015; and Elizabeth R. Bageant, C. Barrett, and E. Lentz, "Food Aid and Agricultural Cargo Preference," *Applied Economic Perspectives and Policy* (2010), vol. 32(4), pp. 624-641.

oil trade. The report also identifies several disparate bills reflecting wide disagreement on the future direction of cargo preference policy.

The Three U.S.-Flag Fleets

The United States has three separate U.S.-flag fleets capable of carrying commercial cargo.

The **U.S.-flag domestic fleet** comprises ships and barges that carry cargo and passengers between U.S. ports, including most U.S. island territories. Under a 1920 law, the Jones Act, such activity may be conducted only by vessels under U.S. ownership, built in the United States, and crewed by U.S. citizens.[5] The domestic fleet is often referred to as the "Jones Act" fleet.[6] These vessels do not receive direct government subsidies, but benefit by having exclusive access to cargoes such as oil shipments from Texas to the Northeast and goods moving by containership from California to Hawaii. Jones Act ships are not affected by cargo preferences, because the services they provide cannot be offered by foreign-flag ships.

The **U.S.-flag international fleet** comprises vessels registered under U.S. law that carry cargo and passengers between the United States and other countries. U.S.-flag ships in foreign trade must be owned and crewed by U.S. citizens,[7] but need not be built in the United States. Unlike the Jones Act fleet, the U.S.-flag international fleet faces competition from vessels registered in other countries. The privately owned U.S.-flag international cargo fleet consists of roughly 80 ships, including 43 containerships and 18 ships with roll-on/roll-off ramps to transport vehicles, including military vehicles.[8] The fleet is owned by 19 different ocean carriers and is crewed by a pool of approximately 3,200 private-sector merchant mariners.

The **Military Sealift Command** (MSC) in the Department of Defense (DOD) operates a fleet of about 120 ships. Many of these resupply Navy combatant ships at sea (an activity called "unrep," for underway replenishment) or perform missions such as ocean surveillance and submarine tendering. Approximately 50 MSC vessels carry military cargoes in port-to-port voyages similar to those undertaken by commercial ships. The cargo component of the MSC fleet includes oil tankers, containerships, and ships designed to carry oversize cargo, but the most prevalent type is roll-on/roll-off ships. The MSC fleet is mostly crewed by about 6,000 licensed mariners, who are federal civilian employees. The vessels these civilian mariners (known as "CivMars") crew do not plan to sail in combat waters. The MSC does not receive a direct appropriation from Congress. It bills DOD for the ocean transportation services it provides, and its budget is delineated in "working capital funds."[9]

The government-owned fleet of cargo ships also includes a reserve fleet of inactive vessels available for military deployment. These vessels are on standby at various ports. The Ready Reserve Force (RRF) consists of 46 ships that can sail upon either five or 10 days' notice. The RRF has a skeleton crew of 460 commercial mariners (10 per ship), but would require an

[5] There are certain exceptions to the U.S. citizen requirement. For details, see 46 U.S.C. §8103.

[6] The Jones Act was included in the Merchant Marine Act of 1920 (P.L. 66-261).

[7] There are certain exceptions to the U.S. citizen requirement. For details, see 46 U.S.C. §8103.

[8] http://www.marad.dot.gov/resources/data-statistics/. The U.S.-flag international fleet may include some seagoing barges, but MARAD data does not indicate the number, if any.

[9] These are the Navy Working Capital Fund (http://www.secnav.navy.mil/fmc/fmb/Documents/15pres/NWCF_Book.pdf) and the Transportation Working Capital Fund (http://www.transcom.mil/documents/annual_reports/annual_report.pdf).

additional 1,200 mariners to sustain its operation once activated.[10] The average age of the ships in the RRF is 40 years, about 20 years beyond the typical economic life of a foreign-flag commercial ship. The RRF consists mostly of roll-on/roll-off ships, and is a subset of a larger National Defense Reserve Fleet (NDRF), which also comprises vessels not expected to be activated on short notice and ships that are ready for scrapping. The NDRF is managed by MARAD, an agency of the U.S. Department of Transportation, in peacetime and the MSC when activated for military deployment. The reserve fleet is relevant to cargo preference because the U.S.-flag privately owned fleet provides employment for mariners who would be drawn upon to sail reserve fleet ships when activated.

The existence of both a privately owned deep-sea U.S.-flag fleet and a government-owned fleet capable of carrying similar types of military cargo overseas is a key motivation behind cargo preference laws.

A Brief History of the Cargo Preference Act of 1954

In the Military Transportation Act of 1904 (P.L. 58-198), Congress required that all U.S. military supplies be transported on U.S. vessels but did not specify whether government-owned or privately owned U.S.-flag vessels had to be used. In 1949, the Army's Transport Service, including 241 ships, was consolidated with the Navy's cargo (noncombatant) fleet of 94 ships to form the Military Sea Transportation Service (MSTS), with a total fleet of 335 ships.[11] The MSTS fleet carried not only strictly military personnel and cargo, but also significant amounts of military-related cargo such as the dependents and personal property of military personnel and employees of military contractors. Foreigners with government grants to study at U.S. universities, civilian employees of other federal agencies, and refugees and displaced persons also traveled aboard MSTS ships. Moreover, MSTS ships often sailed to and from busy ports that also were served by commercial carriers. The MSTS found that it could transport passengers and cargo in government-owned vessels for 80% or less of the cost of using private U.S.-flag shipping space.[12]

According to a 2004 study, the privately owned U.S.-flag carriers were not competitive vis-à-vis foreign-flag carriers in carrying commercial U.S. imports and exports after World War II, and therefore "lobbied strenuously for the military's business." They sought to limit the size of the MSTS fleet, fearing that its expansion could ultimately result in the nationalization of the U.S.-flag fleet. Carriage of military cargoes was also important for private U.S.-flag operators as a basis for claiming political support, as it allowed them to point to their role in providing sealift in wartime.[13] In a 1950 Senate hearing, the MSTS commander revealed that it was MSTS policy to maximize the use of its own ships before cargo was offered to commercial carriers.[14]

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[10] Oral testimony of MARAD Administrator Paul N. Jaenichen, House Committee on Armed Services, Subcommittee on Seapower and Projection Forces, Hearing—*Sealift Force Requirements*, July 30, 2014.

[11] Salvatore R. Mercogliano, "Sealift: The Evolution of American Military Sea Transportation" (Ph.D. diss., University of Alabama, 2004), p. 243.

[12] Senate Committee on Interstate and Foreign Commerce, *Merchant Marine Study and Investigation*, S.Rept. 81-2494, August 30, 1950, p. 62.

[13] Salvatore R. Mercogliano, "Sealift: The Evolution of American Military Sea Transportation" (Ph.D. diss., University of Alabama, 2004), p. 445.

[14] Senate Committee on Interstate and Foreign Commerce, Subcommittee on Merchant Marine and Maritime Matters, Hearing—*Merchant Marine Study and Investigation (Transportation of Cargoes by the Military)*, Part 5, March 21 and 29, 1950, p. 1061.

In 1951, the Department of Commerce, then the parent agency of MARAD, signed a memorandum of understanding with DOD identifying the priority MSTS was to follow in obtaining additional shipping capacity. First, it would purchase space on privately owned U.S.-flag liner[15] services; second, it would charter privately owned U.S.-flag vessels; third, it would activate government-owned vessels held in the military reserve fleet. Only after all those options were exhausted would MSTS buy space on or charter foreign-flag ships.[16] In 1954, the two departments signed another memorandum of understanding that severely restricted the size of the MSTS fleet to 151 ships and required approval of both secretaries for nonemergency expansion of the fleet. The objective of restricting the size of the MSTS fleet was to commit more military cargo to the privately owned U.S.-flag fleet. The "Wilson-Weeks" agreement, named after the two secretaries, remains substantively in effect today.[17]

Competition between the government-owned and privately owned fleets in carrying military-related cargo gave impetus to the Cargo Preference Act of 1954 (P.L. 83-644).[18] As originally introduced, the act would have eliminated the MSTS entirely, requiring that 100% of government-impelled cargoes be carried in *privately* owned U.S.-flag vessels. Due to opposition from the Eisenhower Administration, which favored repealing cargo preference requirements in favor of direct subsidies to U.S.-flag operators, the 100% requirement was reduced to 50%, the Commerce Department was relieved of direct responsibility for administering the law, and a provision was added requiring that U.S.-flag commercial vessels charge the government "fair and reasonable rates." The clear intent of the legislation was to encourage greater use of U.S.-flag private operators and reduce the role of the MSTS as a vessel operator.[19]

Since passage of the 1954 act, Congress has amended the Cargo Preference Act numerous times, generally in favor of private U.S.-flag carriers. U.S. foreign-aid cargo was a substantial share of total U.S. exports in the 1950s, and many of the amendments concerned carriage of food aid.

In 1961 (P.L. 87-266), Congress required that ships eligible for food-aid cargoes must either be built in the United States, or, if built abroad, must have sailed under the U.S. flag for the previous three years. Congress wanted to discourage foreign-flag ships from entering the U.S. cargo preference trade only temporarily in periods when the world shipping market was oversupplied. In the Merchant Marine Act of 1970 (P.L. 91-469), Congress empowered MARAD to regulate how other federal agencies should comply with the 1954 act after hearing allegations that other

[15] Liner refers to ships sailing between a series of ports on a regular basis. Today, the term is associated with containerships.

[16] René De La Pedraja, *A Historical Dictionary of the U.S. Merchant Marine and Shipping Industry* (Westport, CT: Greenwood Press, 1994), p. 660.

[17] Testimony of David T. Matsuda, MARAD Administrator, House Committee on Transportation and Infrastructure, Subcommittee on Coast Guard and Maritime Transportation, "State of the U.S. Merchant Fleet in Foreign Commerce," July 20, 2010. The Administrator testified that along with the Wilson-Weeks agreement, the "National Security Directive on Sealift" (National Security Directive 28, October 5, 1989) governed sealift policy with respect to the use of U.S.-flag commercial vessels.

[18] This act amended the Merchant Marine Act of 1936 (P.L. 74-835), which had directed a federal commission to study and devise means by which U.S. importers and exporters could be induced to use U.S.-flag vessels, gave preference to U.S.-flag vessels for carriage of domestic mail, and required federal employees on official business to travel on U.S.-flag vessels.

[19] See for instance, House Committee on Merchant Marine and Fisheries, "Operations of Military Sea Transportation Service in Relation to Maintenance and Development of the Merchant Marine," H.Rept. 83-2672, August 19, 1954.

agencies intentionally did not fully comply with the law or interpreted the law differently than MARAD.[20] Also in 1970, DOD renamed the MSTS the Military Sealift Command (MSC).[21]

In the Food Security Act of 1985 (P.L. 99-198), Congress increased the requirement for the share of food-aid tonnage shipped on U.S.-flag vessels from 50% to 75%. It also mandated that a certain portion of such cargo be shipped through Great Lakes ports.

In 1996, Congress established the Maritime Security Program (MSP; P.L. 104-239) to replace a similar program that had been in existence since 1936—the Operating Differential Subsidy program (ODS). The MSP provides a flat per-ship operating subsidy intended to offset the higher cost of registering under the U.S. flag. This change from the ODS, whose subsidy rates fluctuated based on the difference between American and foreign crewing costs aboard a particular vessel, was intended to encourage U.S.-flag operators to constrain their operating costs.[22] A study sponsored by MARAD at the time showed that U.S. crew salaries were about three times greater than those aboard vessels sailing under European flags and several times greater than those of Asian-flag ships.[23] Another important difference between the MSP and ODS programs is that MSP carriers are obligated to provide overland transport (to and from ports) to the military in addition to port-to-port ocean transport. Thus, through an operating subsidy, the military gains access to a worldwide commercial distribution network without having to fund the capital costs of that network. In 1997, Congress allowed MSP carriers to carry preference cargoes in foreign-built vessels (P.L. 105-85, §3603(b)). U.S.-flag international operators have stated that without both cargo preference and the MSP there would be no incentive to flag their ships under U.S. registry.

In the FY2009 Defense Act (P.L. 110-417, §3511), Congress granted MARAD the authority to require "make up" cargoes if federal agencies fell short of the percentage of cargo required to be shipped on U.S.-flag vessels and to impose civil penalties.

In 2012, Congress reversed its action of 1985, lowering the required share of food aid that must be carried in U.S.-flag vessels from 75% back to 50% (Moving Ahead for Progress in the 21st Century Act, P.L. 112-141).[24]

Competition between the MSC and the commercial fleet for carriage of military-related cargo has continued. At a recent hearing, a representative of the U.S.-flag shipping industry stated the following:

> DOD must continue to abide by its long-standing "commercial first" policy to provide military cargo to privately owned United States flag vessels when available in lieu of government-owned or controlled vessels. This policy has resulted in military cargo support for the United States flag fleet, and we strongly urge Congress to ensure that DOD continues its unwavering adherence to this essential policy.

[20] Murray A. Bloom, "The Cargo Preference Act of 1954 and Related Legislation," *Journal of Maritime Law and Commerce*, v. 39, no. 3, July 2008, pp. 290-291.

[21] René De La Pedraja, *A Historical Dictionary of the U.S. Merchant Marine and Shipping Industry* (Westport, CT: Greenwood Press, 1994), p. 400.

[22] House Committee on National Security, *Maritime Security Act of 1995*, August 3, 1995, H.Rept. 104-229, p. 9.

[23] H.S. Marcus, P.T. Weber, Massachusetts Institute of Technology, "Competitive Manning of U.S. Flag Vessels," 1994. A 1994 GAO study (*Maritime Industry[:] Cargo Preference Laws—Estimated Costs and Effects*, November 1994, RCED-95-34, http://www.gao.gov/assets/160/154784.pdf) reported similar results (p. 41).

[24] For further details on recent legislation related to food-aid cargo preference, see CRS Report R41072, *U.S. International Food Aid Programs: Background and Issues*, by Randy Schnepf.

At this same hearing, this witness stated that "United States flag vessels participating in MSP carried more than 90% of the war material to the forward-operating bases during the recent Afghanistan and Iraq conflicts."[25]

Signs of tension between the MSC and private owners of U.S.-flag vessels have appeared periodically. Commercial operators have sought to perform "unrep" missions to resupply Navy ships at sea, but the MSC continues to use its own ships and mariners for these missions. In one instance in the early 1980s, U.S.-flag tanker operators sued the MSC, claiming that it improperly tallied the costs for using its own tankers in order to justify rejecting the bids of private operators, which were much higher.[26] In the late 1980s, the MSC fleet expanded from about 120 vessels to nearly 200, despite the opposition of commercial operators.[27]

In the early 1990s, when two U.S.-flag container carriers, Sea-Land and American President Lines, were threatening to reflag their ships under foreign registry, they called for requiring more military-related shipping activity to be turned over to commercial operators.[28] At this time, there was reportedly an attempt by the Navy to amend the Wilson-Weeks agreement so as to effectively annul it.[29] After the MSC attempted to use one of its own vessels for a large overseas shipment of tanks, legislation was introduced that would have written the Wilson-Weeks agreement into statute.[30] When the MSC began acquiring its own fleet of roll-on/roll-off ships and contested with MARAD over control and administration of the reserve fleet, tensions with the commercial industry increased further.[31] Since the mid-1990s, the MSC fleet has stabilized at around 120 ships, and the focus of U.S.-flag carriers has shifted from containing the size of the MSC fleet to fully funding the MSP program in annual appropriations and to more vigorous enforcement of civilian cargo preferences.

U.S.-flag operators have also been wary of MSC attempts to allow foreign-flag carriers to bid on MSC contracts in an effort to increase competition and obtain lower rates, even though the foreign carriers would have used U.S.-owned ships and U.S. crews.[32]

In recent years, military cargo has accounted for the vast majority of government-sponsored cargo. According to the latest available data compiled by MARAD, in FY2011 military cargo accounted for about 86% of cargo preference tonnage, while food aid accounted for 11% and

[25] Written testimony of Niels M. Johnsen, on behalf of USA Maritime, House Committee on Transportation and Infrastructure, Subcommittee on Coast Guard and Maritime Transportation, Hearing—*Merchant Marine Issues*, September 10, 2014.

[26] "Merchant Fleet Is At War With Navy," *Washington Post*, July 14, 1983. See also GAO, *Industry Concerns Regarding the Policies and Procedures of the Military Sealift Command*, T-NSIAD-88-40, August 9, 1988.

[27] This development coincides with the issuance of National Security Directive 28 (October 5, 1989) governing sealift policy, buildup for the Persian Gulf War, and restructuring of the military's transportation command; see Salvatore R. Mercogliano, "Sealift: The Evolution of American Military Sea Transportation" (Ph.D. diss., University of Alabama, 2004), pp. 373-432.

[28] "APL and Sea-Land Want U.S. To Bolster Defense Cargo Pact," *Journal of Commerce*, March 16, 1992.

[29] "Navy Seeks Cancellation of Preference Agreement, New Pact Gives No Priority to U.S.-Flags," *Journal of Commerce*, May 9, 1990.

[30] H.R. 57, 103rd Congress. The bill had two cosponsors. Other than a hearing (House Committee on Merchant Marine and Fisheries, Subcommittee on Merchant Marine, *Cargo Preference*, February 24, 1993), the bill received no further action.

[31] "The Merchant Marine: Time to Strike the Colors," *Washington Post*, October 5, 1995.

[32] "Defense Contract Bids Raise Questions," *Journal of Commerce*, August 26, 1997; "Navy Seeks Right to Hire Foreign Shippers," *Washington Post*, August 29, 1986.

civilian agency cargoes accounted for 3%.[33] The percentage breakdown of revenue was roughly the same.

Application of Cargo Preference to Imports

Historically, debate over cargo preference requirements has centered primarily on U.S. exports. While the requirements have long been imposed on imports directly impelled by the federal government, such as military equipment and the household goods of servicemembers returning to the United States, they were not enforced on goods imported with federal financial assistance by local or state agencies or private parties.

The FY2009 Defense Act (P.L. 110-417, §3511) specifies that cargo preference requirements apply to cargo that is imported by an organization or person if the federal government "provides financing in any way with federal financial funds for the account of any persons unless otherwise exempted." At least 50% of such cargo must be shipped in U.S.-flag vessels. The law directs the Department of Transportation to issue regulations and guidance to govern the administration of cargo preference by other federal agencies.[34]

While the language was intended to alleviate disputes about the application of cargo preference to particular cargoes, such disputes persist. In 2010, a dispute arose over the application of imported wind turbines financed with Department of Energy Loan Guarantees.[35] MARAD's attempt to apply cargo preference requirements in the 2009 law to vessel components imported for ships constructed with federal loan guarantees has generated objections from commenters who contend that Section 3511 of P.L. 110-417 does not provide MARAD with that authority.[36]

MARAD has not begun a rulemaking process to clarify how the cargo preference requirements of the FY2009 Defense Act will be implemented. The agency submitted a draft notice of proposed rulemaking for Office of Management and Budget approval in December 2011, but the draft notice is still apparently under interagency review and has not been published.[37] The Federal Highway Administration has interpreted the law to apply cargo preference requirements to federally supported highway projects carried out by state departments of transportation and other agencies, but it has not yet issued notification and guidance.[38]

Current State of the U.S.-Flag International Fleet

In 1955, U.S.-flag ships carried about 25% of U.S. foreign trade. Today, their market share is around 1%. The U.S.-flag international fleet has shrunk during this time from 850 ships to 80

[33] Data on cargo preference tonnage by agency is available in MARAD's annual reports to Congress; http://www.marad.dot.gov/resources/maritime-publications/.

[34] The application of the law to nonfederal entities is codified at 46 U.S.C. §55305. 46 C.F.R. §381.7 indicates cargo preference includes cargoes that are generated by a federal grant, guaranty, loan and/or advance of funds program and applies to the borrower, grantee, and any of their contractors or subcontractors.

[35] "For Some Cargo, DOE Prefers Foreign Flag," *Journal of Commerce*, October 18, 2010.

[36] 80 *Federal Register* 22611, April 22, 2015. For comments filed, see http://www.regulations.gov, searching under docket no. "MARAD 2015-0049" and "MARAD 2011-0082." Comments filed by "McKeever - Bloom" and "Overseas Shipholding Group" question MARAD's authority. Comments filed by U.S. shipbuilders and domestic ocean carriers contend that the requirement would severely disrupt shipbuilding supply chains.

[37] http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201504&RIN=2133-AB74.

[38] Communication from Federal Highway Administration to CRS, October 27, 2015.

ships.[39] Sixty of these ships receive annual Maritime Security Program operating subsidies of $3.1 million each. In return for the subsidies, these 60 ships are to be made available to DOD in times of war or national emergency. The MSP vessels are designated as "militarily useful" by MARAD in consultation with DOD, and are funded from MARAD's budget.[40]

The size of the privately owned fleet fluctuates. As of August 2015, it was about the same size it was in 2000, but in the intervening period it reached a peak of 107 ships in 2011.[41] During the first seven months of 2015, 10 ships left and eight ships joined the fleet.[42] A vessel cannot be transferred to a foreign flag without MARAD's approval unless it no longer receives MSP subsidies or is being replaced with an equally capable vessel.[43] Ships joining the U.S.-flag international fleet would seek a "registry endorsement" from the U.S. Coast Guard, submitting documentation demonstrating U.S. ownership, among other things.[44] Over 30 of the U.S.-flag ships carrying preference cargoes (about 40% of the fleet) were built before 2000. If preference cargoes were not available, they might be scrapped, as likely being too old to be attractive to a foreign-flag carrier.

About 60% of the 80 ships in the fleet are controlled by U.S. entities owned by four large foreign shipping lines (they are permitted as "documentation citizens," as explained below). The ships owned by these entities also make up the majority of the vessels receiving MSP subsidies. The largest operator of U.S.-flag international vessels, Maersk Line, which also owns Farrell Lines, owns 27 U.S.-flag vessels. Most of the U.S. owners not affiliated with a foreign parent company have small fleets under the U.S. flag. Three of them have between five and seven ships each, and about a dozen companies have one or two U.S.-flag ships each. By contrast, the leading foreign-flag containership lines operate hundreds of containerships each, and the largest foreign-flag tanker operators own more than 100 ships each.

Information about the revenues and profits of U.S.-flag international maritime operations is not publicly available. However, it appears that the profitability of U.S.-flag international services is highly dependent on revenues from preference cargos, as many of the operators also use foreign-flag vessels to compete for commercial business.

According to a MARAD study, "U.S.-flag carriers face a significantly higher cost regime than do foreign-flag carriers."[45] This study found that a U.S.-flag containership in international trade, for example, has a daily operating cost that is more than twice that of a foreign-flag containership (see **Table 1**). According to the study, the largest cost difference comes from higher wage costs for U.S.-flag containerships.

Table 1. Daily Operating Costs, U.S. vs Foreign-Flag Containership

(2010)

Cost Categories	U.S.-Flag	Foreign-Flag
Wages	$14,872	$2,698

[39] As of August 2015.

[40] Congress did not act on an FY2002 budget request to transfer funding of the MSP from the Department of Transportation to DOD.

[41] http://www.marad.dot.gov/resources/data-statistics/.

[42] http://www.marad.dot.gov/wp-content/uploads/pdf/DS_CY15-Flag-Changes-20150821.pdf.

[43] 46 U.S.C. §56101.

[44] 46 U.S.C. §12103, §12111.

[45] MARAD, *Comparison of U.S. and Foreign-Flag Operating Costs*, September 2011, p. 1.

Cost Categories	U.S.-Flag	Foreign-Flag
Stores/Lubes	$1,053	$2,200
Maintenance and Repair	$2,866	$3,237
Insurance	$959	$868
Overhead	$1,444	$581
Total Daily Cost	**$21,194**	**$9,583**

Source: MARAD, *Comparison of U.S. and Foreign-Flag Operating Costs*, September 2011, p. 13.

Note: Wages include basic wages, subsistence, overtime, travel, training, pensions, and union fees.

Several recent developments suggest that the volume of preference cargo may change in the coming years. U.S. food-aid policy has been increasing the use of cash payments and local or regional sourcing of food overseas, potentially reducing food-aid shipments from the United States. The drawdown of forces in Iraq and Afghanistan has reduced military shipments to these regions. The authorization of the Export-Import Bank that generated about 2% of U.S.-flag freight revenue from government-sponsored cargo in 2011 expired on July 1, 2015, although bills reauthorizing the Bank have passed both houses.[46] On the other side of the ledger, an increased U.S. military presence in Asia and the Pacific, where voyages between stations are relatively long, could increase demand for U.S.-flag shipping.[47]

Issues for Congress

Ship Design Needs Diverge

One of the long-standing tenets of U.S. maritime policy is that it is essential to sustain a merchant marine capable of serving military needs in the event of war. The trend toward highly specialized and larger ships in the commercial sector appears inconsistent with the military's shipping needs. In planning for war or national emergencies, the military seeks versatility in terms of where its cargo ships can go and what they can carry, so ships equipped to load and unload diverse cargos in shallow harbors lacking shoreside cranes are preferable. In the commercial sector, smaller mixed-cargo vessels of this sort are typically deployed on trade routes to less developed countries rather than on heavily trafficked routes.

Roll-on/roll-off ships are particularly useful for the military, and they make up a disproportionate share of the vessels eligible for cargo preference. In the commercial market, however, this ship type has evolved into specialized vessel types that do not offer the flexibility the military requires. One example is "pure car carriers," ships designed around the weight and dimension of the passenger automobile and unable to accommodate the wider variety of equipment and supplies for which military sealift may be required. The military also seeks fast ships whose engines are fuel-inefficient relative to commercial carrier needs. Commercial vessels built during the past few years have generally been designed to operate at relatively slow speeds to conserve fuel, and this is potentially inconsistent with military needs.

[46] Based on FY2011 shipments, the latest year available from MARAD; H.R. 22 (Senate-passed) and H.R. 597 (House-passed).

[47] Military Sealift Command, *2013-2018 Strategic Plan*, September 2012, p. 14-15; http://www.msc.navy.mil/publications/MSC_StrategicPlan.pdf.

With these changes in commercial ship designs, the military utility of the U.S. merchant marine may now have more to do with the crews than with the ships themselves. In other words, while merchant ship design may be deviating from military needs, the knowledge and skills of their crews are still transferrable to manning the NDRF or other MSC ships.

CivMar vs. Commercial Mariner Crewing Costs

It may cost more to ship military cargo aboard U.S.-flag commercial vessels than aboard MSC vessels because of a cost differential between federal civilian and commercial mariners. While by law the pay for CivMars must be comparable to the pay of crews in the commercial maritime sector,[48] CivMar compensation lags behind that of commercial crews in other respects. A 2001 study requested by the Navy found that commercial mariner leave earnings were significantly greater than those for CivMars.[49] While commercial mariners typically work six months at sea and receive six months of shore leave during the course of a year, federal civilian mariners typically work at sea nine months and receive three months of shore leave. Thus, filling a billet (one shipboard position) requires two to 2.5 mariners in the commercial fleet and 1.25 in the MSC fleet.[50]

While the same unions that represent commercial mariners also represent civil service mariners, CivMars are not allowed to strike and are not obligated to join a union and pay dues. U.S.-flag shipping lines typically have exclusive contracts with specific maritime unions, and U.S. commercial mariners typically receive their ship assignments through a union hiring hall. The MSC does not negotiate wages and benefits with labor unions; civil service mariner wages and benefits are based on the federal government's General Schedule (GS) pay schedule.[51]

While crew costs are a significant factor in determining shipping costs, they are not the only factor. Vessel-related costs (such as depreciation, insurance, and interest payments) and administrative overhead are difficult to compare between the MSC and private vessel owners because the MSC generally does not account for these costs as the private sector does.[52]

The question of whether MSC or private U.S.-flag ships can provide the least-cost transport for military cargo is a significant one. Budgetary considerations aside, if the objective of sealift policy is merely to sustain the existence of U.S.-controlled and -crewed ships, rather than to maintain a U.S.-flag commercial fleet, that objective can be met equally well whether those ships are government-owned and crewed by federal employees or are privately owned and crewed. However, switching to an entirely government-owned fleet would require making fuller use of MSC-owned vessels or acquisition of additional vessels. Such a change in policy also might reduce the number of mariners available to serve in the RRF if activated.

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[48] 5 U.S.C. §5348(a).

[49] CNA, "Is CivMar Compensation Comparable with Industry," Research Memorandum D0003631.A2, May 2001; as summarized in CNA, "Analysis of CivMar Attrition and the Role of Shore Leave, May 2006, p. 5; https://www.cna.org/CNA_files/PDF/d0013980.a4.pdf.

[50] Michael Morris, *U.S. Naval Institute Proceedings*, "We Need More Civil-Service Mariners," October 2001, pp. 76-79. (The author is an MSC employee.)

[51] Michael Morris, *U.S. Naval Institute Proceedings*, "We Need More Civil-Service Mariners," October 2001, p. 76-79 (The author is an MSC employee.)

[52] MSC used to perform cost comparisons between use of its own fleet and privately owned vessels, as required by OMB Circular A-76. The methodology used was frequently disputed by U.S.-flag carriers. Congress has forbidden DOD from conducting these cost studies since FY2008; see CRS Report R40854, *Circular A-76 and the Moratorium on DOD Competitions: Background and Issues for Congress*, by Valerie Bailey Grasso.

Ratio of Commercial to Government-Sponsored Cargo

One rationale for supporting privately owned U.S.-flag vessels in international trade is that the government gains access to shipping space through the MSP program by paying only a portion of operating costs ($3.1 million per ship per year) rather than having to purchase and maintain the ships at government expense. In other words, revenue derived from private-sector commercial shippers was expected to finance much of the supply of vessels that DOD might need only intermittently.

MARAD stopped tracking the amount of U.S. waterborne foreign trade carried by U.S.-flag ships in 2003, when it fell below 2% of total tonnage.[53] If preference cargo is now supporting almost all of the costs of the U.S.-flag commercial fleet, then commercial shipments are no longer helping to minimize the government's costs.

One rationale for maintaining a reserve of idle government-owned ships (the RRF and NDRF) is to limit the disturbance to U.S. foreign commerce when a surge in military sealift is needed. The reserve fleet can be activated and additional crew obtained from mariners on shore leave or otherwise inactive without removing commercial vessels from their regular service. However, if the commercial vessels are carrying little private-sector commerce, then the concern that their use for military sealift would disturb U.S. foreign commerce is unwarranted, potentially reducing the necessity for the reserve fleets.[54] This argument presupposes that the capacity of the U.S.-flag international fleet is sufficient for projected military sealift needs and that foreign-flag vessels would not be interested in carrying military cargo.

Competition Among U.S.-Flag Carriers

The small size of the U.S.-flag fleet may limit competition in bidding for preference cargoes.

The 1954 act directs that the requirement that 50% of government-impelled cargoes travel by U.S.-flag ship be calculated separately for each of three vessel categories: dry bulk (e.g., ships carrying grain in bulk form), dry cargo liner (e.g., containerships), and tanker (e.g., ships carrying oil or other bulk liquids). It appears that only seven privately owned U.S.-flag vessels are capable of moving bulk food aid. Of these, four are more than 30 years old, older than the normal 20-year to 25-year economic life of oceangoing ships. The three newer ships are all owned by a single operator.[55]

Lack of competition in the U.S.-flag dry bulk sector has been a persistent concern. In 2000, a proposal to allow a temporary waiver from the three-year wait requirement for foreign-built dry bulk vessels to be eligible to carry preference cargoes was proposed but was not acted upon.[56] In 1970, the ODS program was modified to include dry bulk vessels (since 1936, only liner carriers

[53] http://www.marad.dot.gov/wp-content/uploads/pdf/NMSS_011414_Jaenichen_NMS_Symposium_Opening_SLIDES.pdf. No other federal agencies that collect international trade or waterborne freight data appear to track international shipments in U.S.-flag vessels; thus, the government appears to be no longer reporting data that might indicate success in achieving one of the objectives of U.S. maritime policy, that U.S.-flag ships carry a substantial portion of U.S. foreign waterborne commerce (see footnote 1).

[54] In an emergency, cargo preference requirements can be waived (46 U.S.C. §55305(c)), potentially avoiding disturbance to the shipment of preference cargoes.

[55] MARAD fleet statistics; http://www.marad.dot.gov/resources/data-statistics/.

[56] Senate Committee on Commerce, Science, and Transportation; Hearing—*Reauthorization of the U.S. Maritime Administration*, May 16, 2000.

had been eligible) in order to increase the number of U.S.-flag operators. Dry bulk vessels do not receive MSP subsidies because the military does not ship this type of cargo.

In the container sector, relatively little competition exists among U.S.-flag carriers eligible to carry preference cargos. Although there are three operators in this sector, one of them operates almost two-thirds of the fleet. Dry bulk operators provide limited competition to the containership operators in carrying bagged food aid.

How "Fair and Reasonable" Rates Are Determined

How rates are deemed "fair and reasonable" has a bearing on the cost of U.S.-flag shipping. For different types of preference cargo, Congress has specified whether or not a comparison with world market shipping rates is to be part of a rate reasonableness determination.

Congress specified in the Military Transportation Act of 1904 that rates for military cargo cannot be "excessive or unreasonable" and that U.S.-flag operators cannot charge the military more than they charge private-sector customers for shipping like goods.[57] Based on this language, the military routinely compares proposed U.S.-flag charges with those of foreign-flag operators to determine rate reasonableness. DOD regulations note that the purpose of the 1904 act is to provide a subsidy to U.S.-flag operators, and therefore U.S.-flag operators' charges can be higher than foreign-flag charges, but not excessively so.[58]

For foreign-aid bulk cargo, Congress specified in the Cargo Preference Act of 1954 that U.S.-flag vessels were to be used "to the extent such vessels are available at fair and reasonable rates *for United States-flag commercial vessels*" (italics added). The rate reasonableness standard does not incorporate a comparison with foreign-flag rates. Based on this language, MARAD determines reasonable rates based on its estimate of the cost to U.S.-flag operators for delivering the shipment, plus a reasonable profit.[59] It assumes that the vessel will be returning empty, but makes a cost adjustment if the vessel does carry cargo on the return leg. Under this rate evaluation method, there may not be much incentive for carriers to be efficient—for instance, by investing in more efficient, modern vessels or seeking out commercial cargo, especially if the number of carriers bidding for the cargo, as discussed above, is limited.

For liner carriers (namely containership lines), which, unlike dry bulk vessels, receive MSP operating subsidies to offset higher U.S.-flag operating costs, a comparison with foreign-flag rates is part of the rate reasonableness determination. U.S.-flag liner operators are allowed to earn freight revenues at least equal to what foreign-flag operators would earn for carrying preference cargo.[60] Also, if a U.S.-flag liner operator's rates are published and filed with the Federal Maritime Commission (the agency with regulatory jurisdiction over international liner services), they are automatically considered to be fair and reasonable, irrespective of what a foreign-flag carrier might charge for the same service.[61]

[57] 10 U.S.C. §2631.

[58] 48 C.F.R. §247.5 (specifically §247.573-1 (c)(3)). A report has to be prepared supporting the contention that U.S.-flag rates are excessive. The Secretary of the Army or the Navy makes the final determination.

[59] 46 C.F.R. §382.

[60] 46 C.F.R. §381.4.

[61] 48 C.F.R. §47.506(c).

Foreign Parent Companies Questioned

While some U.S.-owned container shipping lines at one time were among the largest and most successful ship lines in the world, these companies with international operations have since been sold to foreign lines. In addition to carrying preference cargoes, most of the former U.S.-owned lines, such as Sea-Land, American President Lines, and Farrell Lines, had ships that participated in the MSP, a program that also has U.S. citizen ownership requirements. Therefore, when these U.S. lines were sold to foreign owners, the new owners set up U.S. entities so that these ships could continue participating in the MSP and cargo preference. Under U.S. shipping law, they qualify as "documentation citizens," which are companies located in the United States and operated by U.S. citizens but with a "foreign parent."[62] The chief executive of the foreign parent company must submit an agreement stating that the parent will not influence the operation of the vessel in a manner adversely affecting the interests of the United States.[63] However, concerns about whether these ships are, in effect, foreign-controlled have been persistent.[64]

In 2013, Liberty Maritime, which sought to enroll two more ships into the MSP program, sued MARAD, claiming that some MSP participants were masquerading as U.S.-owned entities.[65] The U.S. District Court for the Eastern District of New York dismissed the suit, in part on the grounds that it was an inappropriate court of jurisdiction.[66]

Commercial U.S.-Flag Operations in "War Zones"

One of the justifications for government support for a private U.S.-flag fleet is that foreign ships and foreign crews cannot be relied upon to sail into war zones. Several incidents of resistance or refusal involving foreign-flag vessels during and since the Vietnam War appear to support this concern. During the Vietnam War, DOD provided incentive pay for U.S. merchant mariners to sail into war zones.[67] However, it may be the case that a U.S.-flag commercial operator carrying military supplies does not sail to the final port of destination. For instance, a U.S.-flag ship might sail to a hub port in the region of a war zone, where the cargo is transferred to a foreign-flag feeder vessel for movement to a port in, or next to, the war zone. While use of foreign-flag feeder vessels is allowed, to encourage full U.S.-flag service, a carrier that provides U.S.-flag service to the final destination port receives priority in the award of cargo preference bids over bidders that do not.[68]

The U.S.-flag carriers (particularly containership operators) that are affiliated with a large foreign-parent operator may be better equipped to arrange ground transport for U.S. military shipments overseas than the smaller U.S.-flag carriers not affiliated with a foreign parent. Large containership carriers with worldwide operations have been providing these sorts of arrangements

[62] 46 C.F.R. §296.10.

[63] 46 C.F.R. §296.3(b)(14).

[64] "Subsidizing Foreign Carriers," *Journal of Commerce*, October 16, 1997; "American Carriers Are Left Behind In Cargo Program," *New York Times*, November 20, 2012.

[65] "Liberty Maritime Files Suit Against MARAD," *Marine Log*, January 24, 2013.

[66] Liberty Global Logistics v. U.S. Mar. Admin., 2014 U.S. Dist. LEXIS 124713 (E.D.N.Y. 2014).

[67] Salvatore R. Mercogliano, "Sealift: The Evolution of American Military Sea Transportation" (Ph.D. diss., University of Alabama, 2004), p. 293.

[68] In one case, a U.S.-flag operator allegedly falsely certified that it hauled exclusively on U.S.-flag vessels when it had transhipped the cargo to foreign flag vessels; *Traffic World*, "Denying Wrongdoing, APL Agrees To Pay $600,000 To Settle Dispute," March 25, 1996.

for commercial customers since the 1980s, organizing overland transport and storage along with ocean carriage. They have established networks of ground transport providers and are otherwise familiar with peculiarities in moving freight in a particular region. MARAD's Administrator has noted that when Pakistan closed its border during the war in Afghanistan, it was the MSP carriers—that is, mainly the foreign parents of entities operating U.S.-flag vessels—that were able to set up an alternative route for U.S. military supplies, using their contacts with ground transport providers in the overseas region to move cargo to the war zone.[69] Because they do little commercial business, U.S.-flag carriers without foreign parents are unlikely to be able to provide a similar level of service.

Cargo Preference for Oil Shipments?

The boom in U.S. shale oil and natural gas production has led to discussion, particularly in the House Committee on Transportation and Infrastructure, Subcommittee on Coast Guard and Maritime Transportation, about whether to require the use of U.S.-flag tankers for the export of oil and liquefied natural gas (LNG). U.S.-flag shipping interests, including labor unions representing U.S. mariners, have long sought a legal requirement that a portion of U.S. oil trade be shipped on U.S.-flag tankers. With the exception of Alaska oil (see below), cargo preference has never applied to purely private transactions.

In the 1970s, the focus was whether to apply cargo preference requirements to the importation of oil. In 1974, the Energy Transportation Security Act (ETSA; H.R. 8193, 93rd Congress) would have required that 30% of imported oil be carried in U.S.-flag and U.S.-built tankers. The bill was pocket-vetoed by President Ford. In the 94th Congress (1975), Congress created the Strategic Petroleum Reserve (P.L. 94-163). Since the oil for the reserve is purchased by the federal government, half the oil shipped by vessel must be transported by U.S.-flag tankers pursuant to the Cargo Preference Act of 1954.[70] In the 95th Congress (1977), the ETSA was reintroduced (H.R. 1037, S. 61) with modifications. A version requiring that 9.5% of all U.S. oil imports be carried in U.S.-flag tankers passed the House by voice vote, but was then defeated in a recorded vote of 257 to 165. In the House floor debate, supporters of the bill primarily cited national security and the importance of boosting the domestic shipbuilding base.[71] Members opposing the bill cited costs to consumers, potential retaliation from trading partners, and the political influence of the U.S.-flag shipping industry.[72] That neither DOD nor the Department of State had testified in support of a national security rationale for the bill was also noted in the floor debate. The Senate never took up the measure.

In 1983, a bill was introduced (H.R. 1242, 98th Congress) to require both liquid and dry bulk import and export cargo be transported in U.S.-flag and U.S.-built ships, beginning with 5% the first year and increasing 1% per year until 20% was reached. This bill had 45 House cosponsors. Two hearings were held on the bill, but it received no further action.

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[69] Oral testimony of MARAD Administrator Paul N. Jaenichen, House Committee on Armed Services, Subcommittee on Seapower and Projection Forces, Hearing—*Sealift Force Requirements*, July 30, 2014.

[70] At the time, GAO estimated that U.S.-flag shipping costs would be 2.3 to 2.8 times those of foreign-flag vessels, and questioned whether there was an adequate supply of U.S.-flag tankers. GAO, *Transportation Planning For The Strategic Petroleum Reserve Should Be Improved*, LCD-78-211, October 18, 1978.

[71] *Congressional Record—House*, October 19, 1977, p. 34177 et seq.

[72] "The Maritime Payoff," *Wall Street Journal*, August 4, 1977; "The Great Ship Robbery," *New York Times*, August 6, 1977; "How To Buy A Bill," *Washington Post*, September 1, 1977.

In 1995, when Congress lifted the export ban on Alaska North Slope oil (P.L. 104-58), it required that the oil be exported on U.S.-crewed and -flagged tankers, but did not require that the tankers be U.S.-built. At that time, U.S. shipyards and U.S. mariners feared loss of ship repair business and sailing jobs in the absence of a U.S.-flag requirement. (U.S.-flag ships pay a 50% tariff on nonemergency repairs made in foreign yards). After the ban was lifted, roughly 5% to 7% of Alaskan oil was exported, mostly to South Korea, Japan, and China, before exports ceased in 2000.[73]

In 2006, when the United States was still expected to be an importer rather than an exporter of LNG, Congress specified that federal regulators give "top priority" to the processing of licenses for offshore LNG import terminals if they would be supplied by U.S.-flag tankers.[74] LNG shippers contended that requiring U.S.-flag vessels on certain routes would hinder their ability to supply LNG under short-term contracts, which was how LNG was increasingly traded as the global market matured.[75]

U.S. Crewing Costs

The 113th Congress directed MARAD to submit a national maritime strategy toward making U.S.-flag vessels more competitive in international shipping, identify federal regulations and policies that reduce U.S.-flag operators' competitiveness, and ensure compliance by federal agencies with cargo preference laws (P.L. 113-281, §603). This same law also required the Coast Guard to initiate a National Academies study of Coast Guard regulations that affect the ability of U.S.-flag vessels to compete effectively (§605).

Among the reasons U.S.-flag shipping is not price-competitive with foreign-flag ships is crewing costs (see **Table 1**). For U.S.-flag ship operators, crewing costs account for about 68% of ship operating costs, compared to 35% for foreign-flag ship operators.[76] From 2000 to 2013, U.S. ship crew wages and salaries roughly doubled in real terms, increasing at roughly three times the rate of all transportation workers.[77] Another factor could be the size of crews. A 1990 study by the National Academies requested by the Coast Guard noted that crew size requirements mandated by statute date back to 1915, when vessels were powered by steam boilers and turbines that required round-the-clock attention.[78] This same statute was also discussed in a 1984 National Academies study requested by MARAD.[79] The statute is still in effect.[80] MARAD's study comparing U.S.- and foreign-flag ship operating costs surveyed vessel operators and found that they perceive work rules as requiring larger crews on U.S.-flag vessels.[81] However, MARAD compared the size of crews on ships calling at U.S. ports and found U.S.-flag vessels had slightly smaller crews than

[73] U.S. Energy Information Administration, Crude Oil Exports by Destination (as of August 2015); http://www.eia.gov/dnav/pet/pet_move_expc_a_EP00_EEX_mbbl_m.htm.

[74] P.L. 109-241, §304.

[75] See filings of Shell and the Center for LNG at http://www.regulations.gov under docket no. MARAD-2007-26841.

[76] MARAD, *Comparison of U.S. and Foreign-Flag Operating Costs*, September 2011, p. 6.

[77] Bureau of Transportation Statistics, *National Transportation Statistics*, Table 3-26; http://www.rita.dot.gov/bts/sites/rita.dot.gov.bts/files/publications/national_transportation_statistics/html/table_03_26.html.

[78] National Research Council, *Crew Size and Maritime Safety* (Washington, DC: National Academy Press, 1990), pp. 39-40, 77.

[79] National Research Council, *Effective Manning of the U.S. Merchant Fleet* (Washington, DC: National Academy Press, 1984), pp. 5, 20-22, 65, 69.

[80] 46 U.S.C. §8104(d) and (e)(1).

[81] MARAD, *Comparison of U.S. and Foreign-Flag Operating Costs*, September 2011, pp. 6, 43-48.

foreign-flag ships (but its analysis did not account for vessel size and age—factors in determining crew size).[82]

Legislation in the 114th Congress

Congress is considering several bills that could significantly affect the volume of preference cargo.

H.R. 1987, as passed by the House, would increase MARAD's enforcement of food-aid cargo preference requirements.[83] The bill would raise the share of food aid that must be carried in U.S.-flag ships from 50% to 75%, reversing the reduction that was enacted in the surface transportation act of 2012 (MAP-21).[84] S. 525, sponsored by Senator Corker, the chairman of the Foreign Relations Committee, takes the opposite approach. It would further reduce the U.S.-flag shipping requirement for food aid under Title II of the Food for Peace Act (7 U.S.C. 1721 et seq.) from 50% to 0%, and increase the amount of food aid supplied locally from overseas, thereby decreasing the amount of food aid shipped from the United States.[85] The Administration also supports changes in food-aid policy that would have the effect of reducing U.S.-flag shipments, and sought $25 million in its FY2016 MARAD budget request to "otherwise retain" U.S. merchant mariners. Congress has not approved similar requests in recent years.

Congress is also reauthorizing the Export-Import Bank, almost all of whose financed cargoes are carried on U.S.-flag ships.[86] While the Bank's authorization expired on July 1, 2015, the House and Senate have passed reauthorization bills.[87]

The National Defense Authorization Act for FY2016 (H.R. 1735), which passed the House and the Senate but was vetoed by President Obama on October 22, 2015,[88] expressed concern for a recent decline in military and food-aid cargoes, and would have increased operating subsidies for MSP carriers from $3.1 million per ship to $3.5 million. H.R. 702, as passed by the House, would increase MSP operating subsidies to about $5 million per ship.

[82] MARAD, *Comparison of U.S. and Foreign-Flag Operating Costs*, September 2011, p. 6.

[83] MARAD's mission is to promote the U.S.-flag merchant marine. Indicative of its mission, it was not transferred from the Department of Commerce to the Department of Transportation until 1981, even though the Department of Transportation had been established in 1966 for the purpose of consolidating modal administrations.

[84] H.R. 5769, 113th Congress, as passed by the House, would have increased food-aid cargo preference back to 75%, but the Senate was opposed to the measure, and it was dropped in the final version of the bill.

[85] For further information on food-aid programs and as they relate to cargo preference, see CRS Report R41072, *U.S. International Food Aid Programs: Background and Issues*, by Randy Schnepf.

[86] See CRS Report R43581, *Export-Import Bank: Overview and Reauthorization Issues*, by Shayerah Ilias Akhtar.

[87] On July 30, 2015, the Senate passed H.R. 22 with an amendment containing a six-year surface transportation reauthorization, as well as a provision (agreed to by a vote of 64-29) to reauthorize the Bank through FY2019. On October 27, 2015, the House voted (313-118) in favor of H.R. 597, which, as amended, is substantively the same as the Ex-Im Bank extension agreed to by the Senate.

[88] https://www.whitehouse.gov/sites/default/files/omb/legislative/sap/114/saphr1735r_20150512.pdf.

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