

# Subpart 47.5 - Ocean Transportation by U.S.-Flag Vessels

**Parent topic:** [Part 47 - Transportation](#)

## 47.500 Scope of subpart.

This subpart prescribes policy and procedures for giving preference to U.S.-flag vessels when transportation of supplies by ocean vessel is required. This subpart does not apply to the Department of Defense (DoD). Policy and procedures applicable to DoD appear in DFARS Subpart 247.5.

## 47.501 Definitions.

As used in this subpart-

*Dry bulk carrier* means a vessel used primarily for the carriage of shipload lots of homogeneous unmarked nonliquid cargoes such as grain, coal, cement, and lumber.

*Dry cargo liner* means a vessel used for the carriage of heterogeneous marked cargoes in parcel lots. However, any cargo may be carried in these vessels, including part cargoes of dry bulk items or, when carried in deep tanks, bulk liquids such as petroleum and vegetable oils.

*Foreign-flag vessel* means any vessel of foreign registry including vessels owned by U.S. citizens but registered in a nation other than the United States.

*Government vessel* means a vessel owned by the U.S. Government and operated directly by the Government or for the Government by an agent or contractor, including a privately owned U.S.-flag vessel under bareboat charter to the Government.

*Privately owned U.S.-flag commercial vessel* means a vessel-

- (1) Registered and operated under the laws of the United States,
- (2) Used in commercial trade of the United States,
- (3) Owned and operated by U.S. citizens, including a vessel under voyage or time charter to the Government, and
- (4) A Government-owned vessel under bareboat charter to, and operated by, U.S. citizens.

*Tanker* means a vessel used primarily for the carriage of bulk liquid cargoes such as liquid petroleum products, vegetable oils, and molasses.

*U.S.-flag vessel* when used independently means either a Government vessel or a privately owned U.S.-flag commercial vessel.

## **47.502 Policy.**

(a) The policy of the United States regarding the use of U.S.-flag vessels is stated in the following acts:

(1) The Cargo Preference Act of 1904 ([10 U.S.C. 2631](#)), which requires the Department of Defense to use only U.S.-flag vessels for ocean transportation of supplies for the Army, Navy, Air Force, or Marine Corps unless those vessels are not available at fair and reasonable rates.

(2) The Merchant Marine Act of 1936 ([46 U.S.C. 1101](#)), which declares it is the policy of the United States to foster the development and encourage the maintenance of its merchant marine.

(3) The Cargo Preference Act of 1954 ([46 U.S.C. 1241\(b\)](#), which is Section 901(b) of the Merchant Marine Act). Under this Act, Government agencies acquiring, either within or outside the United States, supplies that may require ocean transportation shall ensure that at least 50 percent of the gross tonnage of these supplies (computed separately for dry bulk carriers, dry cargo liners, and tankers) is transported on privately owned U.S.-flag commercial vessels to the extent that such vessels are available at rates that are fair and reasonable for U.S.-flag commercial vessels. This applies when the supplies are-

(i) Acquired for the account of the United States;

(ii) Furnished to, or for the account of, a foreign nation without provision for reimbursement;

(iii) Furnished for the account of a foreign nation in connection with which the United States advances funds or credits, or guarantees the convertibility of foreign currencies; or

(iv) Acquired with advance of funds, loans, or guaranties made by or on behalf of the United States.

(b) Additional policies providing preference for the use of U.S.-flag vessels are contained in-

(1) [46 U.S.C. 1241\(a\)](#) for official business travel by officers and employees of the United States and for the transportation of their personal effects; and

(2) [46 U.S.C. 1241\(e\)](#) for the transportation of motor vehicles owned by Government personnel when transportation is at Government expense or otherwise authorized by law.

(c) The provisions of the Cargo Preference Act of 1954 may be temporarily waived when the Congress, the President, or the Secretary of Defense declares that an emergency justifying a temporary waiver exists and so notifies the appropriate agency or agencies.

## **47.503 Applicability.**

(a) Except as stated in paragraph (b) of this section and in [47.504](#), the Cargo Preference Acts of 1904 and 1954 described in [47.502\(a\)](#) apply to the following cargoes:

(1) Supplies owned by the Government and in the possession of-

(i) The Government;

(ii) A contractor; or

(iii) A subcontractor at any tier.

(2) Supplies for use of the Government that are contracted for and require subsequent delivery to a Government activity but are not owned by the Government at the time of shipment.

(3) Supplies not owned by the Government at the time of shipment that are to be transported for distribution to foreign assistance programs, but only if these supplies are not acquired or contracted for with local currency funds (see [47.504\(b\)](#)).

(b) Government-owned supplies to be shipped commercially that are-

(1) In the possession of a department, a contractor, or a subcontractor at any tier and

(2) For use of military departments shall be transported exclusively in privately owned U.S.-flag commercial vessels if such vessels are available at rates that are fair and reasonable for U.S.-flag commercial vessels.

(c) The 50-percent requirement shall not prevent the use of privately owned U.S.-flag commercial vessels for transportation of up to 100 percent of the cargo subject to the Cargo Preference Act of 1954.

## **47.504 Exceptions.**

The policy and procedures in this subpart do not apply to the following:

(a) Shipments aboard vessels as required or authorized by law or treaty.

(b) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 ([22 U.S.C. 2353](#)).

(c) Shipments of classified supplies when the classification prohibits the use of non-Government vessels.

(d) Subcontracts for the acquisition of commercial products, including commercial components, or commercial services (see [12.504\(a\)\(1\)](#) and (a)(11)). This exception does not apply to-

(1) Grants-in-aid shipments, such as agricultural and food-aid shipments;

(2) Shipments covered under 46 U.S.C. App.1241-1, such as those generated by Export-Import Bank loans or guarantees;

(3) Subcontracts under-

(i) Government contracts or agreements for ocean transportation services; or

(ii) Construction contracts; or

(4) Shipments of commercial products that are-

(i) Items the contractor is reselling or distributing to the Government without adding value (see FAR [12.501\(b\)](#)). Generally, the contractor does not add value to the items when it subcontracts items for f.o.b. destination shipment; or

(ii) Shipped in direct support of U.S. military-

(A) Contingency operations;

(B) Exercises; or

(C) Forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations.

## **47.505 Construction contracts.**

(a) Except as stated in paragraph (b) of this section, construction contractors, including subcontractors and suppliers, engaged in overseas work shall comply with the policies and regulations in this subpart.

(b) These requirements shall not apply to military assistance, foreign aid, or similar projects under the auspices of the U.S. Government when the recipient nation furnishes, or pays for, at least 50 percent of the transportation, in which event foreign-flag vessels may be used for a portion not to exceed 50 percent of the gross tonnage for the project.

## **47.506 Procedures.**

(a) The contracting officer shall obtain assistance from the transportation activity (see [47.105](#)) in developing appropriate shipping instructions and delivery terms for inclusion in solicitations and contracts that may involve ocean transportation of supplies subject to the requirements of the Cargo Preference Act of 1954 (see [47.502\(a\)\(3\)](#)).

(b) When the contractor notifies the contracting officer that a privately owned U.S.-flag commercial vessel is not available, the contracting officer shall seek assistance from the transportation activity.

(c) For purposes of determining the availability of privately owned U.S.-flag commercial vessels at fair and reasonable rates, rates filed and published in accordance with the requirements of the Federal Maritime Commission may be accepted as fair and reasonable. When applicable rates for charter cargoes are not in published tariffs, a determination as to whether the rates are fair and reasonable shall be obtained from the Maritime Administration.

(d) The Maritime Administration has issued regulations (46 CFR381) that require agencies to submit reports regarding ocean shipments. Contracting officers shall follow agency regulations when preparing, or furnishing information for, these reports.

## **47.507 Contract clauses.**

(a)

(1) Insert the clause at 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels, in solicitations and contracts that may involve ocean transportation of supplies subject to the Cargo Preference Act of 1954. (For application of the Cargo Preference Act of 1954, see 47.502(a)(3), 47.503(a), and 47.504.)

(2) If an applicable statute requires, or if it has been determined under agency procedures, that the supplies to be furnished under the contracts must be transported exclusively in privately owned U.S.-flag commercial vessels (see 47.502(a)(1) and 47.503(b)), use the clause with its Alternate I.

(3) Except for contracts or agreements for ocean transportation services or construction contracts, use the clause with its Alternate II if any of the supplies to be transported are commercial products that are shipped in direct support of U.S. military-

(i) Contingency operations;

(ii) Exercises; or

(iii) Forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations.

(b) The contracting officer may insert in solicitations and contracts, under agency procedures, additional appropriate clauses concerning the vessels to be used.