

Written Statement for the Record of

USA MARITIME

Before the

Subcommittee on Coast Guard and Maritime Transportation
Committee on Transportation and Infrastructure
U.S. House of Representatives

Maritime Transportation Regulations: Impacts on Safety, Security, Jobs
and the Environment, Part I

September 10, 2013

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I. Introduction

USA Maritime is a coalition of ship owning companies, maritime labor organizations and maritime trade associations which directly or indirectly represent virtually every one of the privately owned U.S.-flag oceangoing commercial vessels operating regularly in the U.S. foreign trade which participate in the Maritime Security Program and which depend on cargo preference. USA Maritime is pleased to provide a statement for the record in the examination by the Subcommittee on Coast Guard and Maritime Transportation of some of the issues facing the U.S.-flag fleet trading internationally.

II. Summary

USA Maritime strongly supports existing cargo preference laws and existing cargo preference regulations. Cargo preference is a necessary and cost-efficient way to help sustain the privately owned U.S.-flag commercial fleet, which is a critical national defense asset. Without a fully funded Maritime Security Program and full compliance with cargo preference requirements, the U.S. Government would have to spend far in excess of the cost of these programs to replicate the national security capabilities of the privately owned U.S.-flag commercial fleet. Unfortunately, the history of cargo

preference administration indicates that cargo reservation requirements are often not self-enforcing and strict U.S. Maritime Administration (MARAD) oversight is necessary to ensure that the law is followed and its purposes fulfilled across the U.S. Government. Now, more than ever, rigorous enforcement of cargo preference requirements is needed to preserve and grow the existing fleet of militarily useful U.S.-flag oceangoing vessels in an era of budget austerity. Through this review, the Subcommittee on Coast Guard and Maritime Transportation has an opportunity to improve MARAD's oversight of cargo preference requirements and thereby achieve MARAD's mission of promoting the U.S. merchant marine by ensuring that U.S. Government-impelled cargo is in fact carried by U.S.-flag vessels.

III. Cargo Preference is a Necessary and Cost-Efficient Way to Sustain the Privately Owned U.S.-Flag Commercial Fleet – a Critical National Defense Asset

A. The Private U.S. Merchant Marine is Critical to National Defense

Throughout its history, the United States has depended upon a viable U.S.-flag merchant marine for its economic and military national security. In his second annual address to Congress on December 8, 1790, President George Washington encouraged Congress to “render our commerce and agriculture less dependent on foreign bottoms.”¹ This proscription remains just as relevant 223 years later.

The maintenance of a strong privately owned U.S.-flag merchant marine is an essential part of our Nation's official national security strategy. According to National Security Directive 28, which was signed by President Bush in 1989, and which still governs sealift policy:

¹ Second Annual Address of George Washington (Dec. 8, 1790), in Edwin Williams, *The Statesman's Manual* 37 (1854).

Sealift is essential both to executing this country's forward defense strategy and to maintaining a wartime economy. The United States' national sealift objective is to ensure that sufficient military and civil maritime resources will be available to meet defense deployment, and essential economic requirements in support of our national security strategy.²

This policy is reflected in current pronouncements. For example, the Department of the Navy's fiscal year 2012 budget request provides that:

This budget supports maintaining a robust strategic sealift capability to rapidly concentrate and sustain forces and to enable joint and/or combined campaigns. This capability relies on maintaining a strong U.S. commercial maritime transportation industry and its critical intermodal assets.

As stated succinctly by General John W. Handy (then Commander, U.S. Transportation Command) in 2002 – “We simply cannot, as a nation fight the fight without the partnership of the commercial maritime industry.”³

The fleet of privately owned U.S.-flag vessels supported by cargo preference laws and the Maritime Security Program has proven in recent years to be instrumental to the supply and support of our troops abroad. The privately owned U.S. merchant fleet has transported over 90 percent of the equipment and supplies used in the conflicts in Iraq and Afghanistan at a fraction of the cost of other alternatives.⁴ As

² National Security Directive 28 (Oct. 5, 1989).

³ Statement of General John W. Handy, Commander, U.S. Transportation Command before the House Armed Services Committee, Merchant Marine Panel on the Maritime Security Program (MSP) (Oct. 8, 2002). Similarly, the Navy League of the United States has indicated that “[t]he ability to access this maritime capability of ships [the U.S.-flag commercial fleet] and seafarers is essential to our national and economic security.” Navy League of the United States, Maritime Policy 2011-12 at 17.

⁴ Senate Armed Services Committee, Hearing on the Defense Authorization Proposed Budget Request for Fiscal Year 2012 and Future Years, U.S. Transportation Command and U.S. Africa Command (April 7, 2011) (Statement of General Duncan J. McNabb) at 14.

General Duncan J. McNabb, then Commander, U.S. Transportation Command informed the U.S. Congress – “USTRANSCOM’s partnership with the U.S. commercial sealift industry and the Department of Transportation has been vitally important in developing new routes for conveying cargo around the globe – particularly to regions with undeveloped infrastructure.”⁵

The fleet of privately owned U.S.-flag vessels also employs the pool of trained U.S. citizen merchant mariners essential to support the U.S. Government’s sealift objectives. As indicated by the Navy League of the United States – “Skilled Mariners are more critical than ever to ensuring our ability to sustain U.S. national and global security interests.”⁶ As we know this Subcommittee is well aware, the U.S. Government cannot mobilize its fleet of reserve vessels held in inactive and active status without that pool of mariners actively employed by the privately owned U.S.-flag fleet.

B. The U.S.-Flag Fleet Depends on Cargo Preference

The cargo preference laws are essential to maintaining a commercial U.S. -flag merchant marine. Virtually every privately owned U.S.-flag vessel engaged in the foreign trade depends to some degree on cargo preference to remain economically viable.⁷ Indeed, absent cargo preference, it is no exaggeration at all to say that the U.S.-flag fleet in foreign commerce would disappear and the U.S. Government would have to duplicate that sealift capability at enormous expense with government-owned

⁵ Id. at 15.

⁶ Navy League of the United States, Maritime Policy 2011-12 at 17.

⁷ *E.g.* Econometrica, Inc., “Maritime Security Program Impact Evaluation,” Submitted to the U.S. Department of Transportation, Maritime Administration (July 2009) at 26-27, 45.

vessels. As then Senator Barack Obama indicated in 2008 – “A strong U.S.-flag commercial fleet needs our nation’s cargo preference laws.”⁸

As stated by General Duncan J. McNabb, then Commander, U.S. Transportation Command, on April 7, 2011 to the Senate Armed Services Committee (emphasis added) –

We have a commercial-first if we can use commercial. It’s the cheapest way to do it. It keeps our U.S.-flag fleet strong. It’s good for jobs. All of those things are positive and that’s what we do. They have done superbly.

. . . so what happens to the U.S.-flag fleet as we come down perhaps on some of the requirements that we’re depending on them now, and we are working closely with them to make sure that we maintain the robustness. *They do depend absolutely on cargo preference. They absolutely do depend on our maritime security program, MSP. And those two programs are really valuable so that we keep a very, very strong U.S.-flag fleet, which is in the interest of the taxpayer and in the interest of the warfighter.*⁹

Similarly, in a May 4, 2011 letter to Rep. Steven C. LaTourette, Gen. McNabb stated that –

The movement of U.S. international food aid has been a major contributor to the cargo we have moved under the cargo preference law that our U.S. commercial sealift industry depends on. Any reductions will have to be offset in other ways to maintain current DoD sealift readiness.

⁸ Letter from Sen. Barack Obama to Presidents of Maritime Unions, available at <http://www.maritimetrades.or/article.php?sid=18&pid=992>.

⁹ Senate Armed Services Committee, Hearing on the Defense Authorization Proposed Budget Request for Fiscal Year 2012 and Future Years on the U.S. Transportation Command and U.S. Africa Command (April 7, 2011) (testimony of General Duncan J. McNabb).

C. Cargo Preference is a Cost-Efficient Way to Support a Privately Owned U.S.-Flag Fleet

Cargo preference rests on the common sense idea that the U.S. Government should reserve a portion of the ocean cargo it generates, either directly or indirectly, to U.S. companies, just as it generally makes its other purchases within the United States. U.S.-flag vessels fly the American flag, are owned by American companies and employ civilian American officers and crews.

Cargo preference is a highly cost efficient way to support a privately owned U.S.-flag commercial fleet. Cargo preference leverages the cost of shipping goods and commodities to provide a national security benefit. Specifically, the cost of shipping -- which if spent on foreign vessels would provide the U.S. no national security benefit and virtually no U.S.- economic activity -- is used under cargo preference to obtain a national security capability (a fleet of militarily useful U.S.-flag vessels), support U.S. jobs, stimulate U.S. economic activity *and* obtain the needed ocean transportation services. In fact, a July 2009 study for MARAD determined that it would cost approximately \$13 billion in capital cost just to duplicate a portion of the commercial sealift capability provided by the commercial fleet of U.S.-flag vessels supported by cargo preference and the Maritime Security Program.¹⁰ The U.S. Transportation Command estimates that it would cost an additional \$52 billion to replicate the

¹⁰ Econometrica, Inc., "Maritime Security Program Impact Evaluation," Submitted to the U.S. Department of Transportation, Maritime Administration (July 2009) at 2.

intermodal systems developed by U.S.-flag carriers and their affiliates operating in the foreign trade.¹¹

Even if U.S.-flag transportation costs more, it is more than offset by the direct purchases made by U.S. ship owners and crews throughout the United States and the Federal, state and local taxes paid by ship owners and their crews. A 1995 study determined that every dollar spent by the federal government on U.S.-flag transportation led to \$1.26 in federal income tax revenue when all of the economic impact was considered.¹²

IV. Cargo Preference Cannot Achieve Its Purpose Without Effective MARAD Enforcement

A. The Purpose of Cargo Preference is to Support a Private U.S. Merchant Marine

As an amendment to the Merchant Marine Act, 1936, the Cargo Preference Act of 1954 became part and parcel of the overall statutory purposes driving U.S. maritime policy contained in the 1936 Act. As codified in 2006, these purposes remain the guide for all policies affecting the U.S. merchant marine. Thus, one purpose of cargo preference, like other U.S. Government maritime programs is to promote having “a merchant marine . . . capable of serving as a naval and military auxiliary in time of war or national emergency . . . owned and operated as vessels of the United States by citizens of the United States . . . manned with a trained and efficient citizen personnel.”

In the words of a Presidential Directive issued by President John F. Kennedy in 1962—

¹¹ Id. at 29.

¹² Nathan Associates Inc., “Economic Analysis of Federal Support for the Private Merchant Marine” (Jan. 1995).

The policy of the United States is to have a modern, privately owned, merchant marine sufficient to carry a substantial portion of the waterborne export and import foreign commerce of the United States and capable of serving as a naval and military auxiliary in time of war or national emergency. The achievement of this national policy is even more essential now because of the worldwide economic and defense burdens facing the United States. For these reasons, I stated in my message on transportation to the Congress of the United States, on April 4, 1962, that I was directing all executive agencies to comply fully with the purpose of our various cargo preference laws.¹³

In the words of President Obama's fiscal year 2012 budget request and MARAD's fiscal year 2012 budget request – "Cargo preference provides a revenue source to help sustain a privately-owned U.S. flag merchant marine . . . "¹⁴

B. MARAD is Responsible for Promoting the Merchant Marine Through Cargo Preference

MARAD is chiefly responsible for promoting the maritime objectives of the U.S. Government. According to MARAD's 2008 Annual Report to Congress – "The Maritime Administration is at the forefront in maintaining a strong and visible U.S.-flag fleet through a number of statutory programs, including the reservation for transportation on U.S.-flag vessels of certain government-impelled, ocean-borne cargo in international trade."¹⁵ Regrettably, MARAD has not kept up its part since 2008.

MARAD's responsibilities are reflected in the Cargo Preference Act of 1954. From 1970 to 2008 that Act provided that any "agency having responsibility under this

¹³ Senate Committee on Commerce, Report on Implementation of the Cargo Preference Laws by the Administrative Departments and Agencies," 87th Cong., 2d Sess. (Report No. 2286) (Oct. 8, 1962) at 43.

¹⁴ Office of Management and Budget, Fiscal Year 2012, Appendix, Budget of the U.S. Government at 962; Maritime Administration, Budget Estimates, Fiscal Year 2012 at 80.

¹⁵ The Maritime Administration Annual Report to Congress 2008 at 15.

section shall administer its programs with respect to this section under regulations prescribed by the Secretary of Transportation.” In 2008, Congress made it even clearer that it was MARAD’s responsibility to enforce the Cargo Preference Act of 1954 by adding language as follows—

Each department or agency that has responsibility for a program under this section shall administer that program with respect to this section under regulations and guidance issued by the Secretary of Transportation. The Secretary, after consulting with the department or agency or organization or person involved, *shall have the sole responsibility* for determining if a program is subject to the requirements of this section.¹⁶

The Congressional conference report accompanying the enactment of MARAD’s cargo preference authority states clearly that Congress placed these responsibilities on MARAD for two reasons – (1) to ensure uniform administration of cargo preference agency-by-agency; and (2) to ensure that the purpose of promoting the U.S. merchant marine via cargo preference was fulfilled. Specifically, the conference report provided that—

There is a clear need for a centralized control over the administration of preference cargoes. In the absence of such control, the various agencies charged with administration of cargo preference laws have adopted varying practices and policies, many of which are not American shipping oriented. *Since these laws were designed by Congress to benefit American shipping, they should be administered to provide maximum benefits to the American merchant marine.* Localizing responsibility in the Secretary to issue standards to administer these cargo preference laws gives the best assurance that the objectives of these laws will be realized.¹⁷

¹⁶ Pub. L. No. 110-417, § 3511, 122 Stat. 4356, 4769-70 (2008) (emphasis added).

¹⁷ Conf. Report No. 91-1555 (1970), *reprinted in* 1970 U.S.C.C.A.N. 4260 (emphasis added).

USA Maritime believes strongly that these MARAD responsibilities remain as important today, if not more important, than they have been in the last 45 years.

C. Cargo Preference Compliance Has Not Always Been Automatic

All too often, cargo preference is either not complied with at all or applied in a way as to make it ineffective. This is not a new phenomenon. For example, the U.S. Senate Commerce Committee found in 1962 that –

[T]here has been evidenced in at least several of the administrative departments an apparent desire on the part of those responsible for shipping arrangements to evade the cargo preference requirement whenever opportunity offered.

And, unfortunately, the 1962 Senate Commerce Committee Report could have been written today. In that report, the Committee found, among other things, that agencies shipping international food aid “had revised certain procedures [charter terms] for the handling of Government-financed cargoes, to the detriment of U.S.-flag vessel owners,” that petroleum had been purchased on a “destination delivered basis” which excluded U.S.-flag carriers and that U.S.-flag ship owners were not given sufficient opportunity to bid for the carriage of materials sent overseas by the U.S. Government for overseas construction of aid projects.

For example, the U.S. Agency for International Development has undertaken procurements in the billions of dollars in Iraq, Afghanistan and Pakistan and has routinely avoided cargo preference when ocean transportation was involved. Numerous cargo preference waivers have been granted by USAID for shipments without USAID involving MARAD in the waiver process or canvassing the U.S.-flag carriers to validate

assumptions that no U.S.-flag service was available. Had either MARAD or the carriers been involved, they would have had the opportunity offer service for the shipments.

In another instance, the U.S. Department of Energy issued billions of dollars of loan guarantees and avoided cargo preference throughout until the industry prompted MARAD to take a stand on the application of cargo preference. Although the application of cargo preference to those guarantees should not have been in doubt, it took months to persuade DOE to alter its position and even then U.S.-flag carriers have carried virtually none of the cargoes shipped under that program.

These and many other instances show that MARAD should make it a top priority to improve its regulations so as to ensure cargo preference compliance.

V. MARAD Should Improve Its Oversight of Cargo Preference Requirements

The need to improve oversight of cargo preference is greater than ever. Over time, the U.S. Department of Defense has increased reliance on the privately owned U.S.-flag commercial fleet. Yet, the cargo base that supports the U.S.-flag fleet is in decline. The United States has closed many bases around the world. The conflict in Iraq has drawn down, and the conflict in Afghanistan is drawing down. The reservation percentage applicable to U.S. international food aid cargoes was reduced from 75 percent to 50 percent in 2012 – with disastrous effects on the U.S.-flag fleet. Moreover, the U.S. Government has already reduced significantly its spending on international food aid and the Obama Administration has proposed eliminating in-kind U.S. international food aid altogether in favor of cash assistance – a proposal to which USA Maritime is adamantly opposed.

The need, therefore, is great for MARAD to undertake rigorous enforcement of the existing cargo preference laws to ensure that the requirements apply where, by law, they should apply and to ensure that agencies and contracting officers follow the letter and spirit of the requirements. President Kennedy's direction to federal agencies not to treat cargo preference as a minimum but rather a proscription that U.S.-flag vessels should be followed as much as possible.

Almost exactly two years ago – on September 30, 2011 – MARAD held a listening session on what it could do to improve its administration of cargo preference. Industry commenters universally demanded that MARAD do its job and promulgate regulations to implement the 2008 cargo preference amendment enacted by Congress as soon as possible.

Now it is two years later and nothing has been done. The industry can no longer wait for MARAD and implores this Subcommittee and the full Committee to use its influence to institute the long overdue regulations.

VI. Conclusion

Perhaps nothing is more important to the viability of the privately owned U.S.-flag commercial fleet than adequate cargo preference enforcement. MARAD must substantially improve its cargo preference efforts to prevent a significant decrease in the number of vessels under U.S.-flag.

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