

SUMMARY OF THE PROCEDURES TO FOLLOW UNDER DEPARTMENT OF DEFENSE CONTRACTS WHEN U.S.-FLAG SERVICE IS NOT AVAILABLE.

The Military Cargo Preference Act of 1904 requires that all supplies bought for the Army, Navy, Air Force, Marine Corps, Space Force, or a Defense Agency may only be transported must be carried solely (100%) on U.S.-flag vessels. If U.S.-flag vessels are not available, there is a procedure in place allowing the conditional use of foreign-flag vessels.

If a Department of Defense (DOD) contractor or subcontractor believes U.S.-flag vessels are unavailable, they must request an exemption from the DOD contracting officer before the movement takes place. The DOD contracting officer must gain authorization from the applicable transportation command *prior* to allowing the use of foreign-flag vessels for military cargo.

Contractors shall plan ahead and give plenty of notice before a foreign-flag vessel can be waived into service. Specifically, DFARS 252.247-7023 states that the contractor must submit a request for use of such vessels in writing to the contracting officer no less than **45 days** prior to the sailing date necessary to meet its delivery schedules.

Also, if no U.S.-flag service is available, it does not automatically mean that the contractor can immediately use a foreign-flag vessel for point-to-point delivery. The regulations require that a combination U.S.-flag / foreign-flag service (in a transshipment) be used next. The last priority would be all foreign-flag service. All foreign-flag service is only an option if all U.S. or U.S.-flag / foreign-flag combination service does not exist.

In addition to combination U.S.-flag / foreign-flag service taking precedence over all foreign-flag service, preference and priority is also given to shipping companies that are members of the Voluntary Intermodal Service Agreement (VISA). U.S.-flag service providers (or combination providers) with VISA membership take precedence over non-VISA members as they have guaranteed the military shipping space on their vessels in time of war.

While many contractors may be seeking waivers for the use of foreign vessels for the first time, rest assured that the waiver process is quite well established and dozens of waiver requests are handled successfully each year.

The entire waiver process usually takes ten to fifteen business days, though urgent matters may be expedited.

For clarity's sake the waiver procedures are summarized on the following pages.

Procedures for Waiver Processing

The DOD contracting regulations¹ provide that the following procedures are to be followed when 100% U.S.-flag service is not available for the transportation of supplies for one of the U.S. Armed Forces, by sea:

- If there are no U.S.-flag vessels available to move a specific military shipment, the DOD prime contractor must identify ocean transportation that maximizes the use of U.S.-flag vessels, and then ask for an exemption from the 100% U.S.-flag shipping requirement from the DOD contracting officer.
- Before any exemption is issued, The DOD Contracting Officer must seek the advice and gain authorization from the applicable transportation command prior to allowing the use of non-U.S.-flag vessels for military cargo.
- The Army's Military Surface Deployment and Distribution Command (SDDC) provides formal advice on the availability of U.S.-flag vessels for ocean liner and intermodal transportation. The Navy's Military Sealift Command (MSC) provides formal advice on the availability of U.S.-flag vessels for voyage and time charters.

1. SDDC (liner and intermodal) requests should be sent to:

usarmy.scott.sddc.mbx.ffw-team@army.mil

Please use this e-mail account for all exemption requests. If you would like to speak to someone, please contact:

Jamie Hagemeyer
International Sealift Contract
Management
Military Surface Deployment and
Distribution Command
Phone: 618-220-5050

Cheryl Williams
Chief, International Sealift Contract
Management
Military Surface Deployment and
Distribution Command
Phone: 618-220-6925

2. MSC (voyage and time charter) requests should be sent to:

elloise.m.hitsheiw@navy.mil with copy to: msc.n101.ffw@navy.mil

Please use this e-mail account for all exemption requests. If you would like to speak to someone, please contact:

Elloise M. Hitsheiw
Policy and Compliance, N04101 Supervisory Procurement Analyst
Military Sealift Command
Phone: 757-443-1185

¹ PGI 247.573(b)(1) for Contracting Officers and DFARS 252.247-7023(d) for Contractors

- SDDC or MSC will, in turn, consult with the Maritime Administration (MARAD) so that a quick market survey can be conducted to determine if U.S.-flag vessels can be used on the requested routing. After considering MARAD's advice, SDDC or MSC will transmit their formal recommendation to the DOD contracting officer.
- Typically DOD Contracting Officers concur with the advice provided by SDDC or MSC and will either direct the contractor to a U.S.-flag carrier or grant an exemption allowing combination U.S.-flag / foreign-flag service, or the use of non-U.S.-flag vessel.
- This procedure is to be followed for each shipment, as no "blanket" exemptions are granted for the length of a project or the length of a contract. However, exemptions have been approved for as much as 60 days when several small shipments take place in a market where U.S.-flag vessel service is not available. Exemptions are rarely granted for more than 60 days as U.S.-flag vessel operators regularly review and change worldwide ocean service.

DOD contractors and entities using the established Universal Service Contract (USC) for DOD cargo do not have to follow this waiver procedure as the automated booking process in the USC maximizes the use of U.S.-flag vessels.

Please also note that the DOD contractor is required by regulation to send proof to MARAD and the DOD contracting officer that the U.S-flag shipping requirements have been met.

This proof comes in the form of a completed ocean bill of lading identifying the ocean carrier as U.S. or foreign-flag, as well as other data. This bill of lading reporting requirement applies to all DOD supplies transported by sea, whether U.S.-flag or foreign-flag, and can be found in the DOD contracting regulations at [DFARS 252.247-7023\(e\)](#). Bills of lading are preferred sent electronically to: cargo.marad@dot.gov

If you have questions regarding these procedures, please contact the Maritime Administration Office of Cargo and Commercial Sealift at: 202-366-4610 or Cargo.MARAD@dot.gov.

SDDC / MSC ASSISTANCE IN LOCATING U.S.-FLAG SERVICE

Transportation of military supplies by sea must be shipped on U.S.-flag ships per 10 USC 2631. This requirement shall be included as a contract clause in all DOD contracts and cited as DFARS 252.247-7023.

Only the applicable transportation command (SDDC/MSC) can issue a waiver allowing use of a foreign vessel for military cargo.

To assist with MARAD's U.S.-flag vessel availability determination the following basic information is needed:

1. Cargo (description, type, weight and dimensions of cargo, units if containerized)
2. Available for Loading Date (ready for pick-up):
3. Required Shipping Date (must be shipped by):
4. Required Delivery Date:
5. Preferred Port of Embarkation (POE):
6. Preferred Port of Debarkation (POD):
7. Prime Contract Number (if under a government contract):
8. Name of Shipper:
9. Name of Consignee:
10. Point of Contact:
11. Special Instructions (Hazmat? Other concerns?):

Forward these eleven (11) shipments details with your Foreign Waiver Request to the appropriate transportation command.

SDDC at:
usarmy.scott.sddc.mbx.ffw-team@army.mil

MSC at:
elloise.m.hitshe@navy.mil;
msc.n101.ffw@navy.mil