



DEFENSE SECURITY COOPERATION AGENCY

**2800 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-2800**

07 JAN 2019

MEMORANDUM FOR DEPUTY UNDER SECRETARY OF THE AIR FORCE FOR
INTERNATIONAL AFFAIRS
DEPUTY ASSISTANT SECRETARY OF THE ARMY FOR
DEFENSE EXPORTS AND COOPERATION
DEPUTY ASSISTANT SECRETARY OF THE NAVY FOR
INTERNATIONAL PROGRAMS
DIRECTOR, DEFENSE CONTRACT MANAGEMENT AGENCY
DIRECTOR FOR SECURITY ASSISTANCE, DEFENSE FINANCE
AND ACCOUNTING SERVICE-INDIANAPOLIS OPERATIONS
DIRECTOR, DEFENSE INFORMATION SYSTEMS AGENCY
DIRECTOR, DEFENSE LOGISTICS AGENCY
DIRECTOR, DEFENSE LOGISTICS INFORMATION SERVICE
DIRECTOR, DEFENSE LOGISTICS AGENCY DISPOSITION
SERVICES
DIRECTOR, DEFENSE THREAT REDUCTION AGENCY
DIRECTOR, MISSILE DEFENSE AGENCY
DIRECTOR, NATIONAL GEOSPATIAL-INTELLIGENCE
AGENCY
DEPUTY DIRECTOR FOR INFORMATION ASSURANCE,
NATIONAL SECURITY AGENCY

SUBJECT: Update to Cargo Preference Requirements, DSCA Policy 19-32, [SAMM E-Change 437]

The United States requires a strong merchant marine operating within a national transportation system that is fully responsive and globally capable of meeting personnel and materiel movement requirements of the Department of Defense and its partners and allies. Current legislation for cargo preference requirements precedes the mass containerization of the shipping industry and a reduction of direct route operations. Simplifying and modernizing Cargo Preference requirements allows the Department to offer the flexibility required to meet the needs of our Partners and allies, while also promoting and facilitating an accessible, efficient U.S. maritime transportation system by retaining and encouraging a privately-owned and operated U.S. Flag merchant marine due to an increased revenue stream.

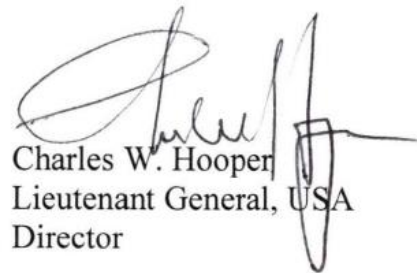
This memorandum updates the Cargo Preference requirements in Chapter 7 of the Security Assistance Management Manual (SAMM) to reflect the current ocean shipping environment and to ensure the maximum amount of applicable cargoes are carried by U.S. Flag vessels, while remaining responsive to foreign partners' needs.

Service on a U.S.-Flag vessel from the origin port to the destination port, known as P1, will remain the default mechanism for meeting the requirements of Cargo Preference requirements; however, DSCA, in coordination with the Maritime Administration (MARAD),

may approve other types of service such as P2 (combination of U.S.-Flag and non-U.S. Flag vessels) based on non-availability of U.S.-Flagged transportation or for extraordinary movements, such as munitions, which require special handling or security arrangements. In such cases, DSCA, in coordination with MARAD, will issue a Determination of Non-Availability (DNA). The DNA consolidates and replaces the requirement for a General Waiver or Non-Availability Waiver.

This requirement applies to defense articles procured with Foreign Military Financing or grant-origin Excess Defense Articles. Materiel procured using Title 10 and Title 22 Building Partner Capacity authorities must be delivered through the Defense Transportation System, which complies with these Cargo Preference requirements.

Attached is updated policy guidance and additional information on the changes, which will be incorporated to the SAMM as SAMM E-Change 437. The DSCA point of contact for this guidance is Mr. Todd Hughes, DSCA/SPP/SPI, todd.w.hughes4.civ@mail.mil, (703) 697-9068. The MARAD point of contact is Mr. Lalit Raina, MARAD, lalit.raina@dot.gov, (202) 366-2314.



Charles W. Hooper
Lieutenant General, USA
Director

Attachment:
As stated

cc:
STATE/PM-RSAT
AFRICOM
CENTCOM
EUCOM
NORTHCOM
PACOM
SOCOM
SOUTHCOM
TRANSCOM
USASAC
USASAC-NC
SATFA
TRADOC
NAVSUP WSS
NAVICP
NETSAFA
AFSAC
AFSAT
DISAM

MARCOR IP

SCETC

USCG International Affairs (G-CI)

US Customs and Border Protection

SAMM E-Change 437 - Update to Cargo Preference Requirements

1. Update/Add the following as Section C7.9.1., and renumber figures, tables and sections as needed.

C7.9.1. Cargo Preference (Ocean).

C7.9.1.1. Legal Requirements. Section 901(a) of the Merchant Marine Act of 1936, as amended by the Cargo Preference Act of 1954 (as codified under [46 U.S.C. §55305](#) and further amended by [Section 3511 National Defense Appropriations Act for Fiscal Year 2009 \(Public Law 110-417\)](#).) requires at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) of grant, credit, or guarantee-funded cargo, that is transported in ocean vessels, be transported in privately-owned U.S. Flag commercial vessels to the extent such vessels are available at fair and reasonable rates for privately owned U.S. Flag vessels, as determined by the [Department of Transportation's Maritime Administration \(MARAD\)](#).

C7.9.1.2. Policy Requirements. DSCA, in support of the U.S. maritime industry, requires 100% of applicable cargoes to be carried by U.S. Flag vessels unless a Determination of Non-Availability (DNA) is granted by DSCA, in coordination with [MARAD](#). These rules apply to materiel procured with grant funding provided under the Arms Export Control Act (AECA) and the Foreign Assistance Act (FAA) of 1961, as amended, including shipments of Excess Defense Articles and defense articles provided by loan or lease discussed in Chapter 11. Shipments of defense articles under specific Title 10 and Title 22 Building Partner Capacity authorities listed in Chapter 11 that utilize the BPC LOA process must be shipped through the Defense Transportation System (DTS) and comply with DoD policies. See [Department of Defense \(DoD\) Directive 4500.09E](#), "Transportation and Traffic Management," for further detail regarding the use of foreign-flag shipping and DoD policy.

C7.9.1.3. Types of Service. Service on U.S.-Flag vessels from the origin port to the destination port, known as P1, is the default mechanism for meeting the requirements of Section C7.9.1.2. Other types of service are P2 (combination of U.S.-Flag and non-U.S. Flag vessels) and P3 (entirely foreign-flag service). P2 and P3 services shall only be used when P1 is not available and a DNA has been granted from DSCA and MARAD – see Section C7.9.1.4 below. U.S.-Flag vessels likely can accommodate a cargo parcel upon identifying the cargo availability dates, pick up and drop off ports, etc. For a list of current U.S.-Flag carriers and POCs, please see [MARAD](#).

C7.9.1.4. Determinations of Non-Availability. In general, USG-appropriated funds cannot be used to pay for any portion of the shipment that is not occurring on a U.S. Flagged-vessel, unless a DNA is granted or some other provision of U.S. law applies. DNAs for utilizing services other than P1 transportation fall into two categories: non-availability and security (this does not include those statutory waivers authorized under [46 U.S.C. §55305](#) in the case of national emergencies). Partner countries must request DNAs on a case-by-case basis. DSCA will coordinate with MARAD prior to issuance of a DNA. DNA requests should be

submitted to DSCA/SPP/SPI with a copy to MARAD at least 21 days before the shipping date.

C7.9.1.4.1. DNA Applications. DNA applications must demonstrate that a reasonable, timely, and bona fide effort to arrange P1 service has been made and such vessels are not available. Applications must also show all comparative rates. Partner countries should submit DNA requests to DSCA with a copy to MARAD. DNA applications, submitted on a shipment-by-shipment basis, should include the information shown in [Table C7.T4](#).

C7.T4. - Required DNA Application Information

MARAD Control #:	To be obtained from MARAD
Shipper:	
USG agency:	
FMS Case Identifier:	
Freight forwarder:	

Shipping Line Booking #:	
Vessel Name:	
IMO#:	
Country of Registry:	
Carrier:	
Load Port:	
Load Date:	

Transship port #1:	
Vessel:	
IMO#:	
Country of Registry:	
Carrier:	
Arrival date:	
Departure date:	

Discharge Port:	
Discharge Date:	
Ultimate Consignee:	
Commodity:	
Equipment:	
Cargo Value:	
Weight: in Kgs.	
Revenue Tons:	
Ocean Freight for the U.S. -Flag portion: (in USD) (approx.)	
Ocean Freight for the non-U.S. - Flag portion: (in USD) (approx.)	

C7.9.1.4.2. Security Waivers. Security waivers may be requested to avoid unsafe or unsecure transportation conditions, such as the transshipment of classified and/or sensitive materiel, or Arms, Ammunition, and Explosives (AA&E). Partner countries must provide a justification to demonstrate the necessity of the waiver. The waiver request should be submitted by partner countries to DSCA/SPP/SPI with a copy provided to MARAD and should include the information shown in Table C7.T4.

C7.9.1.5. Defense Transportation System. Impelled cargo offered and moved within the DTS or cargo that is moving as a direct result of Federal Government involvement, indirectly through financial sponsorship of a Federal Program, or in connection with a guarantee provided by the Federal Government, will follow USTRANSCOM's procedures and the DTR to comply with Cargo Preference requirements. Movement within the DTS may be supported using pure U.S. Flag (P1 service), combination of U.S. & non-U.S. Flag vessel (P2 service) or non-U.S. Flag vessels (P3 service). Cargo moving within the DTS system that is utilizing a P2 or P3 service will follow the procedures per Section C7.9.1.4.

C7.9.1.6. Compliance Report. After delivery of any applicable cargoes, the recipient country is responsible for providing a report to DSCA/SPP/SPI and MARAD to ensure compliance with Cargo Preference requirements. The information should be provided to DSCA/SPP/SPI and MARAD within 20 working days following the date of loading in CONUS or within 30 working days following the date of loading for shipments originating OCONUS. The exporting activity (the Implementing Agency (IA) for Defense Transportation System shipments, FMS freight forwarder or recipient country for non-DTS shipments) must report the information described in [Table C7.T5](#).

Table C7.T5. Transportation Report Information

#	Transportation Report Information
1	FMS LOA identifier if FMF (including lease), FAA program name, or Building Partner Capacity-case LOA
2	Commodity description
3	Port of loading and port of unloading
4	Recipient country
5	Date of loading
6	Type of vessel (dry cargo, dry bulk, or tanker)
7	Name of vessel and flag of registry
8	Reference to any document granting a non-U.S. Flag vessel waiver for the shipment
9	FMS freight forwarder (not required for DTS)
10	Weight of shipment in pounds
11	Ocean freight cost

Notes:

1. Reporting requirement applies whether cargo moves on a non-U.S. Flag or U.S. Flag vessel and is irrespective of origin or destination of cargo (including cargo moving from foreign to foreign).
 - a. The Prime Contractor shall submit one legible copy of a rated on-board ocean bill of lading (master) for each shipment to:

The Office of Cargo and Commercial Sealift
 Maritime Administration (MAR-620)
 1200 New Jersey Avenue, SE
 Washington DC 20590.
 - b. Documents can also be submitted to our office electronically to Cargo.MARAD@dot.gov. This is a preferred method of submittals.
 - c. Tiered subcontractors rated master bills of lading shall be submitted through the Prime Contractor.
2. The Prime Contractor shall furnish bill of lading copies (i) within 20 working days of the date of loading for shipments originating in the United States, or (ii) within 30 working days for shipments originating outside the United States. Each bill of lading copy shall contain the following information:
 - a. Sponsoring U.S. Government agency.

- b. Name of vessel.
- c. Vessel flag of registry.
- d. Date of loading.
- e. Port of loading.
- f. Port of final discharge.
- g. Description of commodity.
- h. Gross weight in pounds and cubic feet if available.
- i. Total ocean freight revenue in U.S. dollars.