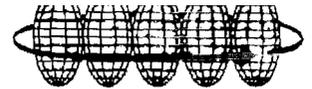


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November 13, 2001

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**RE: DFARS Case 2000-D014 -- Defense
Acquisition Regulation Supplement; Ocean
Transportation by U.S.-Flag Vessels**

Dear Sir:

The Transportation Institute represents U.S.-flag vessel operators engaged in the Nation's domestic and international waterborne commerce, including: a number of companies regularly transporting Department of Defense cargoes; companies under contract to the Military Sealift Command; companies under contract to operate government vessels in the Ready Reserve Force; companies participating in the Maritime Security Program; and, companies which have committed their resources as part of the Defense Department's Voluntary Intermodal Sealift Agreement. These U.S.-flag vessel operators are committed to providing a viable U.S.-flag fleet to serve the Nation's economic and sealift needs. As such, adherence to U.S. cargo reservation statutes is of the utmost importance to U.S.-flag vessel operators in their efforts to meet the many challenges facing them in an, unevenly competitive international shipping market. Therefore, the Institute appreciates the initiative of the Defense Acquisition Regulations Council to affirm the application of U.S. cargo preference policy for contracts at or below the simplified acquisition threshold for the transportation of supplies by sea (DFARS Case 2000-D014).

Under current Defense Acquisition Regulations (DFAR), contractors are only required to apply U.S. cargo preference policy to contracts and subcontracts above the simplified acquisition threshold. The proposed rule as outlined in this docket would eliminate the present exemption from the Nation's cargo preference statutes for contracts and subcontracts at or below the simplified acquisition threshold. The Transportation Institute supports this proposed change, as it would eliminate a loophole in U.S. cargo preference policy that unfortunately results in the loss of important cargo essential to the economic success of U.S.-flag vessel operators. For nearly 100 years, the United States has had some form of cargo

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preference policy to protect **essential** cargoes vital to national security or. as a means to provide a base cargo to support a viable merchant marine capable of meeting U.S. economic and national security interests at home and overseas.

While the Institute supports eliminating the present threshold exemption, we have concerns with other aspects of this proposal which, if implemented, would only serve to weaken U.S. cargo reservation policy. Presently, **Department of Defense (DOD)** regulations as prescribed in Transportation of Supplies by Sea (**DFARS 252.7023**) **contains** requirements for the use of U.S.-flag vessels when transporting supplies by sea under a DOD contract. A contractor is required to: (1) submit **any** request for use of **other** than U.S.-flag vessels in writing to the contracting officer; (2) provide a copy of the bill of lading to the **contracting officer** and the **Maritime Administration** after each shipment of supplies by sea; (3) provide with the final invoice a **representation** as to whether ocean transportation and U.S.-flag vessels were used in performance of the **contract**; and, (4) **include** the clause in subcontracts for construction supplies, **noncommercial** items, and certain commercial items, These **requirements** serve as an efficient means to ensure that contractors are aware of national policy with regard to the use of U.S.-flag vessels, enable transportation decisions to be reversed up front should it be necessary to do so, and provide **government contracting officers** with useful **tools** to carry out **their** responsibilities to ensure that U.S. laws are enforced properly.

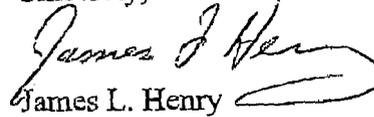
For these reasons, the **Institute** cannot support Alternate III (XXX 2001) in the proposed **rulemaking** that excludes the requirement for a contractor or **subcontractor** to provide a representation regarding ocean transportation in the **final invoice**. Alternate III is inconsistent with the **proposed** intent of this **rulemaking** to clarify that cargo preference policy is to apply to government contracts below the minimum threshold and only serves to **undermine** the effectiveness of the **rulemaking**. Alternate III eliminates the **power** of the **contracting officer** to adjust accordingly a contract for unauthorized use of foreign-flag vessels, the only penalty immediately available if U.S.-flag vessels are not used as mandated by law. **Alternate III**, if implemented, would most likely result in increased incidents of **non-compliance with** U.S. cargo reservation statutes. Effective implementation of U.S. cargo reservation statutes mandates **full** disclosure by government **contractors** through the demonstration up **front** that they are aware of U.S. policy with regard to the use of **U.S.-flag** vessels in ocean **transportation**. Government contracting officers must be provided with reasonable means to **ensure** compliance, to **make** contract **adjustments**, and to penalize for **failure** to adhere to U.S. laws. Alternate III would weaken cargo **preference** enforcement and, therefore, the Transportation Institute opposes it and asks that it be deleted from the **final** rule.

A decade ago, the U.S.-flag merchant marine responded to the Nation's call to sustain American troops engaged in the Persian **Gulf War**. **U.S.-flag** commercial vessels and vessels from the **government's reserve fleet and tic crews** serving on both **were able to carry out their**

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mission as a result of **established** U.S. maritime policy. Since the Persian Gulf War, the United States has taken steps to bolster U.S. **sealift capability through** the enactment of the **Maritime Security Program** and the Voluntary **Intermodal Sealift Agreement**. **Underscoring** all of these programs is the **understanding that** an active and **healthy** U.S.-flag **commercial** fleet depends on a **strong** U.S. cargo base, including those **cargoes funded** by U.S. Government resources. The Defense Acquisition Regulations Council, through the **proper** enforcement of U.S. laws, **must** encourage a viable U.S.-flag **merchant** fleet and **complement** the efforts of other defense agencies **in their** missions to supply and sustain U.S. troops as they protect U.S. interests at home and abroad. The U.S.-flag merchant marine is a key partner in that mission.

Sincerely,



James L. Henry
President

JLH:tlh