

103<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 57

To amend title 10, United States Code, to clarify the preference for United States-flag merchant vessels in the carriage of Department of Defense cargoes, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 5, 1993

Mrs. BENTLEY introduced the following bill; which was referred jointly to the Committees on Merchant Marine and Fisheries and Armed Services

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## A BILL

To amend title 10, United States Code, to clarify the preference for United States-flag merchant vessels in the carriage of Department of Defense cargoes, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “United States Mer-  
5 chant Marine Utilization and Preference Act of 1993”.

6 **SEC. 2. FINDINGS AND POLICY.**

7 (a) FINDINGS.—The Congress finds that, for national  
8 defense, it is in the interest of the United States that a

1 clear understanding exists among the Department of  
2 Transportation and the Department of Defense, in par-  
3 ticular, and all other Federal departments and agencies,  
4 that all Federal departments and agencies have com-  
5 plementary interests in the control and utilization of  
6 ocean-going merchant vessels that are registered or docu-  
7 mented under the laws of the United States.

8 (b) POLICY.—It is the policy of the United States  
9 that—

10 (1) the Federal Maritime Administration and  
11 its wartime counterpart have broad powers of con-  
12 trol over ocean-going United States-flag merchant  
13 vessels; and

14 (2) the Secretary of Defense, operating under  
15 the national policy promulgated in section 101 of the  
16 Merchant Marine Act, 1936 (46 App. U.S.C. 1101),  
17 ensure that military drafts of United States-flag  
18 merchant vessels (including breakbulk, roll-on-roll-  
19 off, lift-on lift-off (cellularized and containerized),  
20 multipurpose carriers, tankers, and various auxil-  
21 iaries), are operated in conformity with the require-  
22 ments and plans of the Department of Defense and  
23 military exigencies.

24 **SEC. 3. PURPOSE.**

25 The purpose of this Act is to—

1 (1) clarify the Department of Defense cargoes  
2 transported by water that are required to be trans-  
3 ported on privately owned United States-flag vessels;

4 (2) clarify the Department of Defense cargoes  
5 transported by water that may be transported on  
6 vessels that are owned, controlled, or chartered by  
7 the Government of the United States; and

8 (3) reduce to a minimum the number of cargo  
9 transport vessels maintained and operated by the  
10 Military Sealift Command in order to give preference  
11 to privately owned United States-flag vessels for  
12 transportation by water of Department of Defense  
13 cargoes.

14 **SEC. 4. TRANSPORTATION BY WATER OF DEPARTMENT OF**  
15 **DEFENSE CARGOES.**

16 Section 2631 of title 10, United States Code, is  
17 amended to read as follows:

18 **“§ 2631. Transportation by water of Department of**  
19 **Defense cargoes**

20 “(a) Except as otherwise provided in this section,  
21 under conditions other than full or partial mobilization de-  
22 clared by the President, transportation by water for De-  
23 partment of Defense cargoes shall be obtained, consistent  
24 with military requirements and prudent management, in  
25 the following order of priority:

1           “(1) To the maximum extent practicable, use of  
2 privately owned United States-flag vessels that are—

3                   “(A) operating in United States liner or  
4 tramp trades, and

5                   “(B) not chartered to the Government.

6           “(2)(A) Time charter or voyage charter of suit-  
7 able privately owned United States-flag vessels—

8                   “(i) operating in liner service providing  
9 partial or total space available, or

10                   “(ii) operating in tramp service,  
11 to the extent those vessels are voluntarily made  
12 available to the Department of Defense.

13           “(B) Time charters and voyage charters pursu-  
14 ant to this paragraph shall be kept to the minimum  
15 necessary to meet requirements which, barring rea-  
16 sonable foresight, cannot be met by United States-  
17 flag liner or tramp operators.

18           “(3)(A) In the event suitable United States-flag  
19 vessels are not available in accordance with para-  
20 graphs (1) and (2), and upon the written approval  
21 of the Secretary of Transportation, use of—

22                   “(i) vessels in the nucleus fleet established  
23 under section 2631a; and

24                   “(ii) to the extent vessels in the nucleus  
25 fleet are not available, as determined by the

1 Secretary of Defense, foreign-flag vessels to the  
2 extent necessary to meet urgent military re-  
3 quirements.

4 “(B) Any use of a foreign-flag vessel pursuant  
5 to this paragraph shall be limited to a single voyage.

6 “(b)(1) Except as provided in paragraph (2), any ap-  
7 propriate tariff that a person has filed with the Federal  
8 Maritime Commission under either the Shipping Act of  
9 1916 or the Shipping Act of 1984 shall apply to transpor-  
10 tation of Department of Defense cargo on any United  
11 States-flag vessel that is operated by that person.

12 “(2)(A) This section does not prohibit an agency that  
13 is responsible for procuring transportation of Department  
14 of Defense cargo from procuring that transportation from  
15 a person at a negotiated rate that is more favorable to  
16 the United States Government than a tariff filed by that  
17 person that is otherwise applicable under paragraph (1).

18 “(B) Any rate that is negotiated under this subpara-  
19 graph shall be filed with the Federal Maritime Commis-  
20 sion in the manner prescribed by the Commission.

21 “(c)(1) The Office of the Chief of Naval Operations  
22 shall be solely responsible in the Department of Defense  
23 for obtaining, providing, operating, and controlling Gov-  
24 ernment-owned or Government-chartered vessels—

1           “(A) to transport Department of Defense car-  
2           goes in areas that are not served by privately owned  
3           United States-flag merchant vessels; and

4           “(B) for purposes of any partial or full mobili-  
5           zation conducted for any reason declared by the  
6           President.

7           “(2)(A) The Military Sealift Command is the sole  
8           manager for ocean transportation of Department of De-  
9           fense cargoes.

10          “(B) The purpose of any ocean transportation pro-  
11          vided by the Department of Defense is to support and aug-  
12          ment persons who provide transportation by water in com-  
13          mercial service to the extent those persons cannot provide  
14          the vessels or services required by the Department of De-  
15          fense.

16          “(C) Except as provided in this section and section  
17          2631a, the Department of Defense shall not engage in  
18          competition with private persons in the provision of trans-  
19          portation by water in commercial service.”.

20       **SEC. 5. NUCLEUS FLEET.**

21          Chapter 157 of title 10, United States Code, is  
22          amended by inserting after section 2631 the following:

23       **“§ 2631a. Nucleus fleet**

24          “(a)(1) The Secretary of Defense shall establish and  
25          maintain at all times under the exclusive custody, jurisdic-

1 tion, and control of the Department of Defense, a fleet  
2 of vessels, of a size and composition appropriate to meet  
3 military requirements. Such fleet shall be known as the  
4 ‘nucleus fleet’.

5 “(2) The nucleus fleet may be comprised of—

6 “(A) Government-owned vessels, operated by ei-  
7 ther—

8 “(i) the Military Sealift Command or other  
9 Department of Defense agency with civil service  
10 employees, or

11 “(ii) companies that are citizens of the  
12 United States under section 2 of the Shipping  
13 Act, 1916, with commercial crews; or

14 “(B) privately owned United States-flag vessels  
15 that are chartered by the Department of Defense.

16 “(b)(1) Under conditions other than full mobilization,  
17 the nucleus fleet—

18 “(A) shall consist of such number and types of  
19 vessels as is appropriate to respond to changes in  
20 the military situation, as determined by the Sec-  
21 retary of Defense; and

22 “(B) may include transport, cargo, tanker, roll-  
23 on roll-off, lift-on lift-off, geared, and nongear-  
24 sels and auxiliaries in appropriate numbers—

1           “(i) to carry out logistic needs of the mili-  
2           tary departments which cannot be met by pri-  
3           vate United States commercial interests;

4           “(ii) to provide immediate capability in an  
5           emergency; and

6           “(iii) to provide an adequate base for nec-  
7           essary expansion to meet emergency or mobili-  
8           zation requirements in support of approved  
9           plans for national defense, national emergency,  
10          national mobilization, or national interest.

11          “(2)(A) Under conditions other than full mobiliza-  
12          tion, that portion of the nucleus fleet maintained for pur-  
13          poses of transportation by water shall remain within close  
14          tolerance to the following numbers of vessels by types:

15                 “(i) 10 dry cargo vessels.

16                 “(ii) 22 tanker vessels.

17          “(B) The numbers set forth in subparagraph (A)(i)  
18          and (ii)—

19                 “(i) shall be reduced by one for each vessel de-  
20                 activated under subsection (c)(2)(A) or for which a  
21                 contract of charter is terminated under subsection  
22                 (c)(2)(B); and

23                 “(ii) are subject to review and redetermination  
24                 by the Secretary of Defense in accordance with mili-  
25                 tary operation requirements.

1       “(C) Any change in the composition of the nucleus  
2 fleet from the numbers and types of vessels specified in  
3 subparagraph (A)(i) and (ii) shall not be effective unless—

4               “(i) a request for that change is submitted by  
5 the Secretary of the Navy to the Secretary of De-  
6 fense;

7               “(ii) the change is approved by the Secretary of  
8 Defense; and

9               “(iii) the change is reported to the Congress  
10 with supporting rationale.

11       “(3) In addition to the numbers of vessels specified  
12 under paragraph (2), the nucleus fleet may include such  
13 miscellaneous service support vessels and naval fleet auxil-  
14 iary vessels as the Military Sealift Command determines  
15 to be necessary to retain and operate for purposes of pro-  
16 viding indirect support of other vessels of the Department  
17 of the Navy.

18       “(c)(1) If a vessel in the nucleus fleet is inactive for  
19 a period of 30 days, it shall be placed in reduced operating  
20 status.

21       “(2) If vessel in the nucleus fleet is inactive for 120  
22 days—

23               “(A) in the case of a vessel that is owned by  
24 the United States, it shall be deactivated and placed

1 in reserve or disposed of, as considered appropriate  
2 by the Secretary of Defense; and

3 “(B) in the case of a privately owned vessel, the  
4 contract under which it is chartered shall be termi-  
5 nated on the earliest possible date.

6 “(d)(1) Under conditions of full mobilization, in addi-  
7 tion to the numbers and types of vessels authorized under  
8 subsections (a), (b), and (c)—

9 “(A) the nucleus fleet may be augmented by  
10 those types and numbers of vessels determined to be  
11 appropriate by the Secretary of Defense, in accord-  
12 ance with the priority established under section  
13 2631(a);

14 “(B) the specific types of vessels to be added to  
15 the nucleus fleet, and an appropriate schedule for  
16 their transfer to or acquisition for the nucleus fleet,  
17 shall be determined only by the Chief of Naval Oper-  
18 ations.

19 “(2)(A) Any vessels to be added to the nucleus fleet  
20 pursuant to paragraph (1) shall be provided by the Sec-  
21 retary of Transportation in accordance with mobilization  
22 procedures approved by the Secretary of Defense.

23 “(B) In addition to additional vessels provided under  
24 subparagraph (A) for the nucleus fleet, the Secretary of  
25 Transportation shall provide to the Secretary of Defense

1 such additional miscellaneous service support vessels and  
2 naval fleet auxiliary vessels as the Secretary of Defense  
3 determines to be necessary for purposes of providing indi-  
4 rect support of other vessels of the Department of the  
5 Navy for purposes of a full mobilization.

6 “(3) During periods of full or partial mobilization,  
7 the Secretary of Defense shall—

8 “(A) continuously review the number of mer-  
9 chant vessels under the control of the Department of  
10 Defense;

11 “(B) determine any of those vessels that are ex-  
12 cess to the needs of the department; and

13 “(C) transfer to the Secretary of Transpor-  
14 tation such excess vessels.

15 “(4)(A) Upon the termination of hostilities or in the  
16 event of a partial demobilization prior to the termination  
17 of hostilities, the nucleus fleet shall be reduced to the num-  
18 bers and types of vessels in the fleet before full mobiliza-  
19 tion, as determined by the Secretary of Defense.

20 “(B) In the event of a reduction in the nucleus fleet  
21 under this paragraph, any vessels in the fleet that are re-  
22 tained as part of either the active or laid-up permanent  
23 operating forces of the Department of the Navy shall be  
24 released from control by the Department of Defense in  
25 the following order of priority:

1 “(i) Foreign-flag vessels that are under charter.

2 “(ii) United States-flag vessels that are under  
3 charter from private owners.

4 “(iii) United States Government-owned mer-  
5 chant vessels that are desired for sale or charter by  
6 United States citizens for United States-flag oper-  
7 ation in commercial service.

8 “(C) Vessels that are sold or chartered pursuant to  
9 subparagraph (B)(iii) are deemed to be war-built vessels  
10 for purposes of the Merchant Ship Sales Act of 1946 (50  
11 App. U.S.C. 1735 et seq.).”.

12 **SEC. 6. CLERICAL AMENDMENT.**

13 The table of sections at the beginning of chapter 157  
14 of title 10, United States Code, is amended by striking  
15 the item relating to section 2631 and inserting the follow-  
16 ing:

“2631. Transportation by water of Department of Defense cargoes.  
“2631a. Nucleus fleet.”.

17 **SEC. 7. READY RESERVE FORCE.**

18 Section 11 of the Merchant Ship Sales Act of 1946  
19 (50 App. U.S.C. 1744) is amended by adding at the end  
20 the following:

21 “(e) USE OF VESSELS IN READY RESERVE FORCE.—

22 “(1) USE IN PEACETIME.—Vessels in the Ready  
23 Reserve Force component of the National Defense  
24 Reserve Fleet may be used in peacetime for routine

1 movements of cargo as part of military exercises  
2 only if that use does not compete with United  
3 States-flag commercial vessel operators.

4 “(2) DEACTIVATION FOLLOWING NATIONAL  
5 EMERGENCY.—A vessel in the Ready Reserve Force  
6 component of the National Defense Reserve Fleet  
7 that is activated to meet military sealift require-  
8 ments associated with a national emergency shall be  
9 deactivated in an expeditious manner if those re-  
10 quirements no longer exist.”.

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