

108TH CONGRESS  
1ST SESSION

# H. R. 2845

To amend the Merchant Marine Act, 1920, to allow transportation of merchandise in noncontiguous trade on foreign-flag vessels, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 24, 2003

Mr. CASE introduced the following bill; which was referred to the Committee on Transportation and Infrastructure, and in addition to the Committee on Armed Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend the Merchant Marine Act, 1920, to allow transportation of merchandise in noncontiguous trade on foreign-flag vessels, 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 Non-  
5 contiguous Shipping Open Market Act of 2003”.

6 **SEC. 2. TRANSPORTATION OF CERTAIN MERCHANDISE.**

7 (a) IN GENERAL.—Section 27 of the Merchant Ma-  
8 rine Act, 1929 (46 App. U.S.C. 883) is amended by insert-

1 ing “(a) IN GENERAL.—” before the first sentence, and  
2 by adding at the end the following:

3 “(b) NONCONTIGUOUS TRADE EXEMPTION.—Sub-  
4 section (a) shall not apply with respect to transportation  
5 in noncontiguous trade of merchandise on a foreign quali-  
6 fied freight vessel for which the Secretary of Transpor-  
7 tation has issued a certificate of documentation.

8 “(c) DEFINITIONS.—In this section:

9 “(1) FOREIGN QUALIFIED FREIGHT VESSEL.—  
10 The term ‘foreign qualified freight vessel’ means a  
11 freight vessel (as that term is defined in section  
12 2101 of title 46, United States Code) of not less  
13 than 1,000 gross tons that—

14 “(A) was not built in the United States (or  
15 if rebuilt, not rebuilt in the United States);

16 “(B) is registered in a foreign country; and

17 “(C) employs United States citizens to the  
18 extent required of vessels registered under sec-  
19 tion 12102 of this title.

20 “(2) NONCONTIGUOUS TRADE.—The term ‘non-  
21 contiguous trade’ means—

22 “(A) trade between a point in the contig-  
23 uous 48 States and a point in Alaska, Hawaii,  
24 Puerto Rico, or the insular territories or posses-  
25 sions of the United States; or

1           “(B) trade between a point in Alaska, Ha-  
2           warii, Puerto Rico, or the insular territories or  
3           possessions of the United States and another  
4           point in Alaska, Hawaii, Puerto Rico, or the in-  
5           sular territories and possessions of the United  
6           States.”.

7           (b) COASTWISE ENDORSEMENTS.—12106(b) of title  
8 46, United States Code, is amended—

9           (1) by inserting “(1)” after “(b)”;

10          (2) by inserting “to paragraph (2) and” after  
11          “Subject”; and

12          (3) by adding at the end the following:

13          “(2)(A) Paragraph (1) shall not apply with respect  
14 to a foreign qualified freight vessel used for transportation  
15 referred to in section 27(b) of the Merchant Marine Act,  
16 1920 (46 App. U.S.C. 883(b)), for which the Secretary  
17 of Transportation has issued a certificate of documenta-  
18 tion.

19          “(B) In subparagraph (A) the term ‘foreign qualified  
20 freight vessel’ has the meaning given that term in section  
21 27(c) of the Merchant Marine Act, 1920 (46 App. U.S.C.  
22 883(c)).”.

23          (c) FOREIGN TRANSFER.—Section 9(c) of the Ship-  
24 ping Act, 1916 (46 App. U.S.C. 808) is amended by in-

1 serting “(1)” before the first sentence, and by adding at  
2 the end the following:

3 “(2)(A) Notwithstanding paragraph (1), a foreign  
4 qualified freight vessel for which the Secretary has issued  
5 a certificate of documentation after the date of enactment  
6 of this Act and that is used solely for transportation re-  
7 ferred to in section 27(b) of the Merchant Marine Act,  
8 1920 (46 App. U.S.C. 883(b)) may be placed under for-  
9 eign registry without the approval of the Secretary at any  
10 time after that vessel is issued a certificate of documenta-  
11 tion. At such time as that vessel is placed under foreign  
12 registry, the Secretary shall revoke the certificate of docu-  
13 mentation issued by the Secretary.

14 “(B) In subparagraph (A) the term ‘foreign qualified  
15 freight vessel’ has the meaning given that term in section  
16 27(c) of the Merchant Marine Act, 1920 (46 App. U.S.C.  
17 883(c)).”.

18 **SEC. 3. CITIZENSHIP AND TRANSFER PROVISIONS.**

19 (a) CITIZENSHIP OF CORPORATIONS, PARTNERSHIPS,  
20 AND ASSOCIATIONS.—Section 2 of the Shipping Act, 1916  
21 (46 U.S.C. App. 802) is amended by adding at the end  
22 the following:

23 “(d)(1) The following provisions of this section shall  
24 not apply to a foreign qualified freight vessel used for

1 transportation referred to in section 27(b) of the Merchant  
2 Marine Act, 1920 (46 App. U.S.C. 883(b)):

3 “(A) The text of subparagraph after ‘possession  
4 thereof’.

5 “(B) subsection (c).

6 “(2) In paragraph (1) the term ‘foreign qualified  
7 freight vessel’ has the meaning given that term in section  
8 27(c) of the Merchant Marine Act, 1920 (46 App. U.S.C.  
9 883(c)).”.

10 (b) APPROVAL OF TRANSFER OF REGISTRY OR OP-  
11 ERATION UNDER AUTHORITY OF A FOREIGN COUNTRY OR  
12 FOR SCRAPPING IN A FOREIGN COUNTRY; PENALTIES.—  
13 Section 9 of the Shipping Act, 1916 (46 U.S.C. App. 808)  
14 is amended by adding at the end the following:

15 “(e)(1) In lieu of the penalty under subsection (d),  
16 a person that commits an act described in paragraph (2)  
17 in violation of this section is liable to the United States  
18 Government for a civil penalty of not more than \$10,000  
19 for each violation.

20 “(2) The acts referred to in paragraph (1) are the  
21 following:

22 “(A) Charter, sell, or transfer a foreign quali-  
23 fied freight vessel used for transportation referred to  
24 in section 27(b) of the Merchant Marine Act, 1920

1 (46 App. U.S.C. 883(b)), or interest in or control  
2 of such a vessel.

3 “(B) Place under foreign registry a foreign  
4 qualified freight vessel used for transportation re-  
5 ferred to in section 27(b) of the Merchant Marine  
6 Act, 1920 (46 App. U.S.C. 883(b)), that is docu-  
7 mented in the United States.

8 “(C) Operate under the authority of a foreign  
9 country a foreign qualified freight vessel used for  
10 transportation referred to in section 27(b) of the  
11 Merchant Marine Act, 1920 (46 App. U.S.C.  
12 883(b)).

13 “(f) To promote the transfer of foreign vessels to be  
14 documented under chapter 121 of title 46, United States  
15 Code, for use for transportation referred to in section  
16 27(b) of the Merchant Marine Act, 1920 (46 App. U.S.C.  
17 883(b)), the Secretary may grant approval under sub-  
18 section (e) with respect to such a vessel before the date  
19 the vessel is documented.”.

20 “(g) In subsections (e) and (f), the term ‘foreign  
21 qualified freight vessel’ has the meaning given that term  
22 in section 27(c) of the Merchant Marine Act, 1920 (46  
23 App. U.S.C. 883(c)).”.

1 **SEC. 4. LABOR PROVISIONS.**

2 (a) LIABILITY FOR INJURY OR DEATH OF MASTER  
3 OR CREW MEMBER.—Section 20(a) of the Act of March  
4 4, 1915 (38 Stat. 1185, chapter 153; 46 U.S.C. App.  
5 688(a)), is amended—

6 (1) by inserting “(1)” after “(a)”;

7 (2) by adding at the end of paragraph (1) (as  
8 designated under paragraph (1) of this subsection)  
9 the following new sentence: “In an action brought  
10 under this subsection against a defendant employer  
11 that does not reside or maintain an office in the  
12 United States (including any territory or possession  
13 of the United States) and that engages in any enter-  
14 prise that makes use of one or more ports in the  
15 United States (as defined in section 2101 of title 46,  
16 United States Code), jurisdiction shall be under the  
17 district court most proximate to the place of the oc-  
18 currence of the personal injury or death that is the  
19 subject of the action.”; and

20 (3) by adding at the end the following new  
21 paragraph:

22 “(2)(A) The employer of a master or member of the  
23 crew of a vessel—

24 “(i) may, at the election of the employer, par-  
25 ticipate in an authorized compensation plan under

1 the Longshore and Harbor Workers' Compensation  
2 Act (33 U.S.C. 901 et seq.); and

3 “(ii) if the employer makes an election under  
4 clause (i), notwithstanding section 2(3)(G) of the  
5 Longshore and Harbor Workers' Compensation Act  
6 (33 U.S.C. 902(3)(G)), shall be subject to that Act.

7 “(B) If an employer makes an election, in accordance  
8 with subparagraph (A), to participate in an authorized  
9 compensation plan under the Longshore and Harbor  
10 Workers' Compensation Act—

11 “(i) a master or crew member employed by that  
12 employer shall be considered to be an employee for  
13 the purposes of that Act; and

14 “(ii) the liability of that employer under that  
15 Act to the master or crew member, or to any person  
16 otherwise entitled to recover damages from the em-  
17 ployer based on the injury, disability, or death of the  
18 master or crew member, shall be exclusive and in  
19 lieu of all other liability.”.

20 (b) MINIMUM REQUIREMENTS.—All vessels, whether  
21 documented in the United States or not, operating in the  
22 coastwise trade of the United States shall be subject to  
23 minimum international labor standards for seafarers  
24 under international agreements in force for the United

1 States, as determined by the Secretary of Transportation  
2 on the advice of the Secretaries of Labor and Defense.

3 **SEC. 5. REGULATIONS REGARDING VESSELS.**

4 (a) APPLICABLE MINIMUM REQUIREMENTS.—Except  
5 as provided in subsection (b), the minimum requirements  
6 for vessels engaging in the transportation of cargo or mer-  
7 chandise in the United States coastwise trade shall be the  
8 recognized international standards in force for the United  
9 States (as determined by the Secretary of the department  
10 in which the Coast Guard is operating, in consultation  
11 with any other official of the Federal Government that the  
12 Secretary determines to be appropriate).

13 (b) CONSISTENCY IN APPLICATION OF STAND-  
14 ARDS.—In any case in which any minimum requirement  
15 for vessels referred to in subsection (a) establishes a lower  
16 standard than a minimum that is applicable to vessels that  
17 are documented in a foreign country and that are admit-  
18 ted to engage in the transportation of cargo and merchan-  
19 dise in the United States coastwise trade, the standard  
20 applicable to such vessels that are documented in a foreign  
21 country shall be the standard to be applied to United  
22 States documented vessels.

23 **SEC. 6. ENVIRONMENTAL STANDARDS.**

24 All vessels, whether documented under the laws of the  
25 United States or not, engaging in the United States coast-

1 wise trade shall comply with all applicable United States  
2 and international environmental standards in force for the  
3 United States.

4 **SEC. 7. REQUIREMENTS FOR CERTAIN NONCITIZENS IR-**  
5 **REGULARLY ENGAGING IN DOMESTIC COAST-**  
6 **WISE TRADE.**

7 (a) IN GENERAL.—Each person or entity that is not  
8 a citizen of the United States, as defined in section  
9 2101(3a) of title 46, United States Code, that owns or  
10 operates vessels that irregularly engage in the United  
11 States domestic coastwise trade shall—

12 (1) name an agent upon whom process may be  
13 served;

14 (2) abide by all applicable laws of the United  
15 States, including applicable environmental and tax  
16 laws; and

17 (3) post evidence of documentation and en-  
18 dorsements aboard such vessel indicating the owner  
19 or owners of such vessel, including any person con-  
20 trolling vessels and the number of port calls and  
21 coastwise trips made during that calendar year.

22 (b) PERSONS TREATED AS SINGLE EMPLOYER.—For  
23 purposes of paragraph (3), all persons treated as a single  
24 employer under subsection (a) or (b) of section 52 of the

1 Internal Revenue Code of 1986 shall be treated as 1 per-  
2 son.

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