   

Cargo Preference: What You Should Know

Keith Crum
Trade Specialist, Office of Cargo & Commercial Sealift

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1200 New Jersey Ave., SE | Washington | DC 20590
www.dot.gov

MARAD
U.S. MARITIME ADMINISTRATION

Mission

The mission of the Maritime Administration is to "foster, promote, and develop the merchant maritime industry of the United States to meet the Nation's economic and security needs."

49 USC § 109 (a) and 46 USC § 50101

What is Cargo Preference?

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- **Cargo Preference** is a national shipping strategy mandated by law and is designed to maintain a nation's presence and economic viability in the international shipping market.
- In short, certain percentages of certain cargo classes must be carried on vessels registered to a nation when the cargo is supported by that nation's federal funding.
- Such cargo is commonly referred to as "**government-impelled**," and is typically 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 (i.e., **grants, loans, or loan guarantees**).
- Cargo preference applies to all phases of the shipping process, including shipments made foreign-to-foreign, foreign-to-U.S., or U.S.-to-foreign

Federal Laws and Regulations

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- 46 USC § 55305 – Cargoes financed by the United States Government
  - (b) Minimum Tonnage – Requires at least 50% of Civilian Agencies cargo be carried on U.S.-flag vessels (ex: 100 containers for the project, at least 50 must sail U.S.-flag)
  - Priority 1 (P1) – 100% U.S.-flag shipment
  - Priority 2 (P2) – Combination of U.S.-flag and foreign flag shipment
  - Priority 3 (P3) – 100% foreign flag shipment
- Federal Acquisition Regulation (FAR) 52.247-64 – Preference for Privately Owned U.S.-Flag Commercial Vessels
  - (4) Acquired with advance of funds, loans, or guaranties made by or on behalf of the United States
    - (b) The Contractor shall use privately owned U.S.-flag commercial vessels to ship at least 50 percent of the gross tonnage involved under this contract
- 46 Code of Federal Regulations (CFR) Part 381 - Cargo Preference – U.S.-Flag Vessels
  - § 381.5 Fix American-flag tonnage first
    - Compensatory Cargo
  - § 381.7 Federal Grant, Guaranty, Loan and Advance of Funds Agreements

Reporting Requirements

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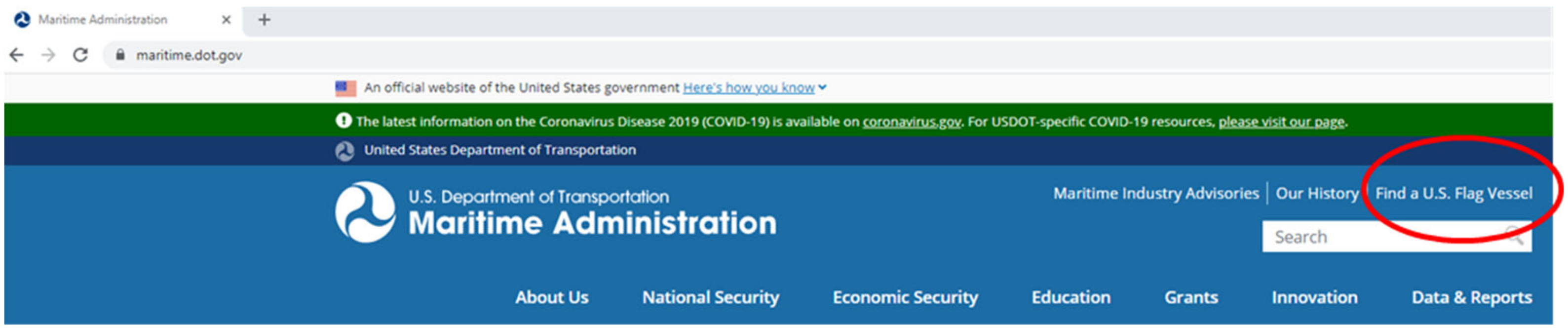
- 46 Code of Federal Regulations (CFR) Part 381.7 - Federal Grant, Guaranty, Loan and Advance of Funds Agreements.
  - https://www.law.cornell.edu/cfr/text/46/381.7
  - (a)(1) – At least 50% of any equipment, materials or commodities procured, contracted or obtained with Federal funds which may be transported by ocean vessel, shall be transported on privately owned U.S.-flag commercial vessels
  - (a)(2) – Within 30 working days* of loading an on-board rated Bill of Lading shall be furnished to both the Contracting Officer (DOE) and MARAD for all U.S.-flag and foreign flag ocean going shipments (*originating outside the U.S.)
  - (b)(1) – Contractor agrees to utilize U.S.-flag vessels to ship at least 50% of the gross tonnage to the extent these vessels are available at fair and reasonable rates for U.S.-flag commercial vessels.
  - (b)(2) – Contractor agrees to provide a rated on-board rated Bill of Lading within 30 working days* of loading to the Contracting Officer (DOE) and MARAD for all U.S.-flag and foreign flag ocean going shipments (*originating outside the U.S.)
- Contractor should send Bills of Lading and other reporting to cargo.marad@dot.gov
- MARAD provided tracking number should be included in the subject line

Cargo Preference Resources

- Contact MARAD for pre-shipment / post-shipment issues
  - New “Find a US-flag vessel” link - https://www.maritime.dot.gov/
    - **Important to speak directly with U.S.-flag carrier desk in the U.S. and properly declare cargo as U.S. Government-impelled (Cargo Preference) cargo
  - MARAD’s Office of Cargo and Commercial Sealift: cargo.MARAD@dot.gov
    - Available to conduct U.S.-flag vessel availability surveys if a shipper is unable to locate service after doing their own due diligence



- Cargo Preference FAQs – MARAD website
  - https://www.maritime.dot.gov/ports/cargo-preference/frequently-asked-questions-faqs-cargo-preference
- Cargo Preference Training is available online
  - https://www.dau.edu/training/p/apply-for-a-course
    - Courses CLC 038, CLC 049, CLC 053, CLC 068

Cargo Preference Questions

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- When does compliance with Cargo Preference begin?
  - Any material or equipment purchased, financed or attributed to the loan that is transported via ocean must comply with Cargo Preference
  - Material or equipment purchased prior to the loan, that was transported via ocean freight, but considered an eligible project cost for the loan, is subject to Cargo Preference
- How deep into the supply chain is compliance required?
  - The law and the FAR 52.247-64 transfer to contractors and subcontractors
  - Purchases are generally made for the intent of the project
- How is compliance monitored?
  - Compliance is monitored by submission of freight rated Bills of Lading (B/Ls)
    - FAR 52.247-64 requires that the contractor ship at least 50% of the gross tonnage of ocean cargo onboard U.S.-flag vessels. MARAD interprets Gross Tonnage as Revenue Tons. A Revenue Ton is a billing unit in the shipping industry. One Revenue Ton equals weight in Metric Tons or volume in cubic meters, whichever is higher in terms of freight.
      - Generally, Twenty-Foot Equivalent Units (TEU's) are counted and compared between U.S.-flag and foreign flag shipments for containerized cargo
    - Borrower must submit all ocean freight rated B/Ls (U.S. and foreign flag) to MARAD and the Contracting Officer (DOE)

Cargo Preference Questions

MARAD

- What is the DOE's role?
  - Under 46 USC 55305
    - (d)(1): Each department or agency (DOE) that has responsibility for a program under this section shall administer the program with respect to this section under regulations and guidance issued by the Secretary of Transportation
    - (2)(C): The Secretary may impose on any person that violates this section, or a regulation prescribed under this section, a civil penalty of not more that $25,000 for each violation willfully and knowingly committed, with each day of a continuing violation following the date of shipment to be a separate violation.
- Can the borrower receive a waiver?
  - Under 46 USC 55305
  - (c) Waivers. – The President, The Secretary of Defense, or Congress (by concurrent resolution or otherwise) may waive this section temporarily by
    - (1) declaring the existence of an emergency justifying a waiver; and
    - (2) notifying the appropriate agencies of the waiver.
- Are there consequences for non-compliance?
  - Compensatory cargo will be requested to make up the difference

Cargo Preference Questions

- Are there resources for potential applicants/borrowers to learn more?
  - Cargo Preference FAQ's – MARAD website
  - https://www.maritime.dot.gov/ports/cargo-preference/frequently-asked-questions-faqs-cargo-preference
  - Cargo Preference Training is available online
    - https://www.dau.edu/training/p/apply-for-a-course
    - Courses CLC 038, CLC 049, CLC 053, CLC 068
  - MARAD's Office of Cargo and Commercial Sealift: cargo.MARAD@dot.gov
    - Available to conduct U.S.-flag vessel availability surveys if a shipper is unable to locate service after doing their own due diligence

Cargo Preference Questions

- How can borrowers proactively comply?
  - Plan shipping budgets with U.S.-flag pricing built in
    - Contact U.S.-flag carriers early for pricing **and availability**
    - Make sure to call the U.S.-flag desk and declare the cargo government impelled
      - Government impelled cargo receives priority over commercial cargo and cannot be bumped
  - Plan construction schedules with U.S.-flag transit times in mind
  - Ask questions and follow the law
    - Memorandum M-21-26 - Increasing Opportunities for Domestic Sourcing and Reducing the Need for Waivers from Made in America Laws
    - EO 14005 - Ensuring the Future is Made in All of America by All of America's Workers
    - EO 14017 - America's Supply Chain
  - Engage with MARAD early and often rather than waiting until a problem arises
    - MARAD can assist with availability concerns, if after the contractor has done their own due diligence
    - MARAD can also assist in communicating with carriers if issues arise