



U.S. Department
of Transportation
**Federal Highway
Administration**

California Division

January 7, 2016

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In Reply Refer To:
HDA-CA

Mr. Malcolm Dougherty
Director
California Department of Transportation
1120 N Street
Sacramento CA 95814

Attn: Karla Sutliff

Subject: Implementation of the Cargo Preference

Mr. Dougherty:

I am writing to advise you of the result of a recent legal opinion that concluded the Cargo Preference Act of 1954 (CPA) now applies to federally funded highway construction projects. This letter summarizes certain elements of that act, as well as actions that will be necessary by Caltrans and local agencies for compliance.

The CPA requires that

“ . . . at least 50 percent of any equipment, materials or commodities procured, contracted for or otherwise obtained with funds granted, guaranteed, loaned, or advanced by the U.S. Government under this agreement, and which may be transported by ocean vessel, shall be transported on privately owned United States-flag commercial vessels, if available.”

This requirement applies to materials or equipment acquired for specific Federal-aid highway projects.

FHWA has issued a policy memorandum with guidance on implementing the CPA. That memorandum, dated December 11, 2015, requires state and local agencies to insert a contract clause that references and requires compliance with the CPA and the implementing regulations in 46 CFR 381.

To implement the CPA on federally funded highway projects, relevant provisions will be added to Form FHWA-1273. Until Form FHWA-1273 is modified, federally funded construction projects awarded after February 15, 2016 shall include the following contract clause (either directly or by reference):

“Use of United States-flag vessels: The contractor agrees—

“(1) To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.

“(2) To furnish within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, ‘on-board’ commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (b) (1) of this section to both the Contracting Officer (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

“(3) To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this contract.”

Guidance documents for this requirement, including the December 11, 2015 policy memo, the associated legal opinion, and a page of Questions and Answers are available on the CPA construction program guidance webpage: <https://www.fhwa.dot.gov/construction/cqit/cargo.cfm>.

If you have any questions regarding the implementation of the requirements of the CPA, please contact Steve Pyburn at steve.pyburn@dot.gov, or (916) 498-5057.

Sincerely,



For: Vince Mammano
Division Administrator
Federal Highway Administration