Cargo Preference: What You Should Know

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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?**

- **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

- **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

  - § 381.5 Fix American-flag tonnage first
    - Compensatory Cargo
  - § 381.7 Federal Grant, Guaranty, Loan and Advance of Funds Agreements
Reporting Requirements

  - [https://www.law.cornell.edu/cfr/text/46/381.7](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](mailto:cargo.marad@dot.gov)

- MARAD provided tracking number should be included in the subject line
Contact MARAD for pre-shipment / post-shipment issues
  - **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

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

- **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

- **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 than $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
Are there resources for potential applicants/borrowers to learn more?

- Cargo Preference FAQ’s – MARAD website
- Cargo Preference Training is available online
  - [https://www.dau.edu/training/p/apply-for-a-course](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