



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

Memorandum

Subject: **Cargo Preference Act --
Attorney General Opinion**

Date: February 19, 1988

From: Deputy Administrator

Reply to
Attn. of: **HCC-2/HHO-32**

To: **Regional Federal Highway Administrators**

The attached legal memorandum from Charles J. Cooper, Assistant Attorney General, Office of Legal Counsel, to Wendy L. Gramm, Administrator for Information and Regulatory Affairs, Office of Management and Budget, responds to her letter requesting an opinion on whether a proposed rule requiring cement importers to ship on U.S. flag vessels at least 50 percent of their imported cement and clinker subsequently to be used on Federal-aid projects is legally required by the Cargo Preference Act of 1954 ("CPA"), 26 U.S.C. § 1241(b) (1982).

The Assistant Attorney General concludes that the CPA does not apply to such imports, and that the CPA does not mandate the imposition of the rule. The memorandum goes yet further, and in its last two paragraphs (pp. 8-9) states more broadly:

In closing, we note that our analysis of cement and clinker imports used in federal aid highway projects applies generally to all cargoes (other than cargoes destined for foreign nations) purchased with federal funding assistance by a person, organization, or governmental entity other than the United States. Because such cargoes are not obtained for the United States' own account, they fall outside the scope of the CPA's coverage, and, thus, are not subject to the CPA's cargo preference requirements.

CONCLUSION

For the foregoing reasons, we conclude that the FHWA's draft final rule requiring cement importers to ship at least fifty percent of all imported cement and clinker subsequently used on federally aided highway construction projects is not authorized by the CPA. (emphasis added)

Copy of 2/19 memo on-typed
To all R.O. + D.O. 2/19. BWR

We conclude from this unequivocal language that the CPA requirements are not authorized to be imposed on any materials, supplies, or equipment used on or in Federal-aid projects. All prior instructions to the contrary are revoked.

Effective immediately, no P.S.&E. authorization for Federal-aid projects shall contain a cargo preference specification or provision under the authority of the CPA. Where practical, addenda should be issued eliminating such provisions from solicitations advertised but not yet concluded.

Robert E. Farris
Robert E. Farris

Attachment

Cancelled

Federal Highway Administration
HCC-2:HTO'Reilly:jib:2-5-88:60764
cc: Regional Counsels
HOA-1 HOA-2 HOA-3
HRE HCC-1 HCC-2
HCC-50 HCC-10
OCC Subject, 4213
OCC Chron, 4213

REWRITTEN PER HTO-32:2-11-88
REWRITTEN PER REFarris:HOA-2:jib:2-17-88
HOA-3(ES)
HCC-2.1