

Cargo Preference Requirements – Questions and Answers

1) *What is Cargo Preference?*

The U.S. Congress has passed various laws meant to promote and facilitate a U.S. maritime transportation system that is accessible and efficient in the movement of goods and people. The U.S. DOT's Maritime Administration (MARAD) has the responsibility for enforcing cargo preference statutes and regulations. MARAD oversees the administration of and compliance with US cargo preference laws and regulations that require shippers to use U.S.-flag vessels to transport any government-impelled ocean-borne cargoes.

2) *What is the purpose of Cargo Preference requirements?*

Cargo preference policies are intended to provide a revenue base that will retain and encourage a privately owned and operated U.S.-flag merchant marine. These policies are important for:

- Maintaining a pool of highly-qualified U.S.-citizen mariners for sealift support,
- Maintaining a U.S.-flag fleet for sealift contingencies, and
- Maintaining a U.S.-flag fleet for carrying a substantial part of the Nation's waterborne foreign trade.

3) *Where can I find out more about MARAD's Cargo Preference policies?*

- [MARAD's Cargo Preference web page](#); and
- [Title 46 CFR Part 381](#)

4) *Does the policy require that 50% of covered equipment and material cargoes to be transported on U.S.-flag vessels?*

Yes. Part 381 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.”

5) *Do MARAD's requirements apply to the Federal-aid highway program?*

Yes, recent statutory amendments to the authorizing legislation have made it clear that Cargo Preference Act requirements apply to all Federal and federally-assisted programs (such as the Federal-aid highway program). The Office of Program Administration's December 11, 2015

memorandum and the accompanying legal opinion dated December 8, 2015 cancels the [FHWA's February 19, 1988 memorandum](#) on this subject.

6) *Does the policy apply to all highway materials and construction equipment?*

The requirements apply to materials or equipment that are acquired for a specific Federal-aid highway project. In general, the requirements are not applicable to goods or materials that come into inventories independent of an FHWA funded-contract. For example, the requirements would not apply to shipments of Portland cement, asphalt cement, or aggregates, as industry suppliers and contractors use these materials to replenish existing inventories. In general, most of the materials used for highway construction originate from existing inventories and are not acquired solely for a specific Federal-aid project. However, if materials or equipment are acquired solely for a Federal-aid project, then the Cargo Preference Act requirements apply.

7) *Do the Cargo Preference requirements apply to construction equipment that is not permanently incorporated in project?*

Yes. If the construction equipment is acquired for a specific Federal-aid project, then oceanic shipments are covered by the CPA requirements.

8) *What are some examples of situations where the Cargo Preference requirements apply?*

The requirements apply to the oceanic shipment of materials or equipment that is intended for use on a specific Federal-aid project, such as a precast concrete structural members, fabricated structural steel, tunnel boring machines, or large-capacity cranes.

9) *When will the Cargo Preference Act requirements become effective on Federal-aid highway projects?*

The FHWA expects all recipients to insert the appropriate contract provisions in all Federal-aid contracts awarded after February 15, 2016. The contract provisions should require compliance with the requirements of 46 CFR 381 and incorporate by reference the recommended clauses in 46 CFR 381.7(b) – (“Contractor and Subcontractor Clauses. “Use of United States-flag vessels”) until FHWA-specific clauses are approved.

10) *How will FHWA implement Cargo Preference Act requirements?*

After coordination with MARAD, it is anticipated that FHWA will incorporate the appropriate contract clauses in the next revision of form FHWA-1273 "Required Contract Provisions Federal-Aid Construction Contracts." The FHWA will use notice and comment rulemaking to implement these revisions.

11) What information does MARAD use in determining if a U.S.-flag commercial vessel operates at a fair and reasonable rate?

The phrase 'vessels are available at fair and reasonable rates for United States-flag commercial vessels' is a statutory requirement established by Congress (46 USC 55305(b)), and implemented by regulations of the US Maritime Administration (46 CFR 381.7(b)). Because cargo type and volume can vary greatly, MARAD determines whether any particular rate is fair and reasonable by considering a number of factors, including but not limited to: rates obtained in response to the RFQ and accompany RFQ shipping details, the types of ships capable of moving the particular cargo, information from U.S.-flag operators concerning rates for similar cargo, current supply and demand for vessels, and historical rate information. Federal-aid recipients may obtain specific information regarding the availability of U.S.-flag commercial vessels by contacting [MARAD's Office of Cargo and Commercial Sealift.](#)