



Implementation of Cargo Preference Act Requirements

I. BACKGROUND

The Cargo Preference Act (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." On January 7, 2016, the Federal Highway Administration (FHWA) advised Caltrans on the applicability of the CPA and implementing regulations (46 CFR 381) to the Federal-aid highway program. FHWA will use notice and comment rulemaking to implement appropriate contract clauses in the next revision of Form FHWA-1273 "Required Contract Provisions Federal-Aid Construction Contracts."

II. POLICY

Until Form FHWA-1273 is modified, local agencies must insert a contract clause referencing and requiring compliance with the CPA requirements and its implementing regulations in 46 CFR 381 for all Federal-aid projects. The clause should incorporate the recommended clauses in 46 CFR 381.7(a)-(b).

III. PROCEDURE

Local agencies must include the following contract clause (either directly or by reference) in all Federal-aid contracts **awarded after February 15, 2016**:

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 (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.*

The following Local Assistance Procedures Manual (LAPM) Exhibits will be revised to include the new contract provision:

- LAPM Exhibit 12-D, PS&E Checklist
- LAPM Exhibit 12-G, Required Federal-aid Contract Language



IV. APPLICABILITY/IMPACTS

All Federal-aid contracts awarded after February 15, 2016 must include the contract provisions provided in this Office Bulletin to comply with the CPA and 46 CFR Part 381. Failure to insert the contract provisions may lead to federal ineligibility of a contract.

Original Signed By

Recommended:

David Giongco, Policy Liaison
Office of Policy Development and Quality Assurance

Date

Original Signed By

Approved:

Mohammad Maljai, Acting Chief
Office of Policy Development and Quality Assurance

Date

Attachments:

1. January 7, 2016 FHWA California Division letter: "Implementation of the Cargo Preference"
2. December 11, 2015 FHWA policy memorandum: "Implementation of Cargo Preference Act Requirements in the Federal-aid Highway Program"

Superseded by LPP 16-03