



July 7, 2010

The Honorable David T. Matsuda
Maritime Administrator
1200 New Jersey Avenue, SE
Washington, D.C. 20590

Dear Mr. Matsuda:

We write to support the required application of the Cargo Preference Act of 1954, as amended (1954 Act), to the Department of Energy's Loan Guarantee Program.

We are all members of USA Maritime which is a coalition of carriers and maritime unions committed to promoting and protecting the U.S. maritime industry. We all support the rigorous enforcement of the cargo preference laws. The cargo preference laws, as you know, provide essential cargo to a fleet of privately owned U.S.-flag vessels available to the United States in times of war and national emergency.

We understand that the Department of Energy (DOE) may have concluded that the 1954 Act does not apply to its Loan Guarantee Program authorized under Title XVII of the Energy Policy Act of 2005. Specifically, the DOE web-site provides that the 1954 Act does not apply because imports for use in guaranteed projects "do not fall into any of the categories of transactions involving maritime transport that are specified by the Cargo Preference Act . . .".

We respectfully believe this conclusion is in error. The Title XVII loan guarantees issuable by DOE consist of Federal financing no different than other forms of Federal government programs that are plainly covered by the 1954 Act.

As MARAD's regulations make clear, the 1954 Act applies to all "guarantees made by or on behalf of the United States." Similarly, MARAD's web site indicates that the 1954 Act applies to "cargo that is moving . . . in connection with a guarantee provided by the Federal Government." The Title XVII loan guarantees are undoubtedly "guarantees made by or on behalf of the United States" or "provided by the Federal Government" as the full faith and credit of the United States is pledged under those guarantees.

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It is possible that there is a misunderstanding regarding the application of the phrase “with Federal funds” in the 1954 Act. The 1954 Act provides that it applies whenever the Federal government “provides financing in any way with Federal funds.” Title XVII authorizes DOE to issue some guarantees where the “cost” of the guarantee – as defined in the Federal Credit Reform Act – is paid by the private project sponsor rather than the Federal government. The term “cost” is defined with reference to the Federal Credit Reform Act to mean the net present value estimate of what the Federal government may have to pay over the life of the guarantee to cover defaults and other payments less receipts such as fees. As MARAD is well aware, these estimates are often at variance with experience.

Although this authority exists, DOE’s solicitations for loan guarantee applications indicate to the contrary that Federal government appropriations will be used for most if not all guarantees. For example, DOE’s October 7, 2009 solicitation indicates it will directly pay the “subsidy cost” for all guarantees covered by the solicitation. Therefore, regardless of the interpretation of “with Federal funds,” the 1954 Act definitively applies to these guarantees.

And, in any event, the 1954 Act applies when the Federal government provides financing “*in any way*” with Federal funds. The credit subsidy cost potentially payable by a project sponsor is only the *estimated* cost, not the actual or total cost. If there are defaults in the program, the Federal government, not the private project sponsors, must make good on the guarantees regardless of whether the cost was correctly estimated. The fact that the Federal government remains the fund provider, regardless of the private cost set aside, makes the program just as much a Federally funded program to which the 1954 Act applies as when all the funding comes from the Federal government at the outset.

We also wish to point out that not applying the 1954 Act to the DOE Loan Guarantee Program would be contrary to the spirit and purpose of the stimulus bill which provided substantial funding to the Program. The purpose of that bill is first and foremost to create jobs, and the application of the 1954 Act would create and sustain jobs aboard U.S.-flag vessels and ashore in related industries.

At least 50 percent of the goods that will be shipped by water that will be financed by the DOE guarantees must be shipped in privately owned U.S.-flag commercial vessels. We urge MARAD to work immediately with DOE to ensure that the 1954 Act requirements are fully applied to the DOE Loan Guarantee Program.

Thank you for your attention to this important matter. We look forward to working with you and your staff on cargo preference and other matters important to the U.S.-flag industry.

Very truly yours,

James L. Henry
Chairman, USA Maritime
Chairman & President,
Transportation Institute

Don Keefe
President
Marine Engineers' Beneficial Association

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