WINSTON & STRAWN LLP

BLOG

DOE Relents on Application of Cargo Preference Act

MARCH 17, 2011

After months of negotiations, the U.S. Department of Transportation's Maritime Administration ('MARAD") reached an agreement with the U.S. Department of Energy ("DOE") regarding the application of cargo preference requirements, which require the use of U.S.-flag vessels for government-impelled cargoes, to the DOE loan guaranty program.

The agreement was signaled by DOE's update to its loan guaranty website, which previously had stated that cargo preference requirements do not apply to projects funded under the program. The website now indicates that, while DOE does not agree with MARAD's view that cargo preference applies, "the two Departments have agreed, as a matter of policy, that DOE will apply the U.S.-flag requirements of the Cargo Preference Act in administering DOE's loan guaranty program." The DOE announcement also reports that, under the interagency agreement, the requirements will not be applied to projects completed or contracted-for prior to March 1, 2011.

DOE's surrender was largely driven by amendments to the Cargo Preference Act of 1954 made in 2008 pursuant to legislation sponsored by Sen. Daniel Inouye (D-HI). The amendments, which were included as § 3511 of Public Law 110-417, made MARAD the deciding agency on questions about the application of cargo preference, and provided it with real enforcement authority including the ability to require that agencies make up for cargo volumes improperly shipped foreign-flag, and the ability to impose civil penalties of $25,000 per day for willful violations.

The agreement to apply cargo preference to the loan guaranty program was broadly applauded by U.S.-flag interests, including the Seafarers International Union and USA Maritime, a coalition of U.S. carriers, labor-management associations, and labor unions participating in the international trades that pushed aggressively for the application of cargo preference to the program.

1 Min Read

Author

Bryant Gardner

This entry has been created for information and planning purposes. It is not intended to be, nor should it be substituted for, legal advice, which turns on specific facts.