November 2, 2010

The Honorable Robert S. Rivkin
General Counsel
U.S. Department of Transportation

The Honorable David T. Matsuda
Administrator
U.S. Maritime Administration

1200 New Jersey Avenue, SE
Washington, D.C. 20590

Re: Application of Cargo Preference to Department of Energy Loan Guarantees

Dear Messrs. Rivkin and Matsuda:

Thank you again for the opportunity to meet last Friday to discuss the application of the Cargo Preference Act of 1954, as amended, to Department of Energy (DOE) loan guarantees.

USA Maritime supports the rigorous enforcement of our nation's cargo preference laws. The cargo preference laws are essential to the continued existence of a fleet of privately owned U.S.-flag vessels. This fleet is instrumental to the supply and support of our troops abroad and the maintenance of a pool of trained mariners essential to support the U.S. Government's sealift objectives. The privately owned U.S.-flag merchant marine has transported over 90 percent of the equipment and supplies used in the conflicts in Iraq and Afghanistan at a fraction of the cost of other alternatives.

The 1954 Act is broadly written in order to reach our national goal of maintaining a fleet of vessels adequate to support our national defense and to carry a substantial portion of U.S. foreign commerce. The 1954 Act is one of the most important policies underpinning the privately owned U.S.-flag merchant marine and the ability of the United States to control its own sealift. The 1954 Act applies whenever the U.S. Government provides financing which generates movements of equipment, materials or commodities by water, whether it be imports or exports.

The DOE loan guarantee program authorized under Title XVII of the Energy Policy Act of 2005 and substantially funded by the American Recovery and Reinvestment Act of 2009 falls within the 1954 Act. The U.S. Government is providing financing in the form of loan guarantees backed by the full faith and credit of the United States for the purpose of making energy investments in U.S. infrastructure. Cargo preference applies by law to any cargoes generated by these guarantees.

We respectfully disagree with DOE's contrary opinion. The plain language of the statute, particularly as amended in 2008, applies cargo preference to the DOE loan guarantee program. We believe that the import of the phrase "[w]hen the United States Government . . . provides financing in any way with Federal funds for the account of any persons unless otherwise exempted" is unmistakable and not modified in any way by other clauses.

The Department of Transportation's exclusive authority to decide whether cargo preference applies to DOE loan guarantees is also clear. Before 2008, the law provided DOT with strong inter-agency authority to enforce cargo preference. The 2008 amendment made that stronger by adding the words that DOT "shall have the sole responsibility for determining if a program is subject to the requirements of this section."

Finally, what may be lost in any legal discussion is that these jobs are critical to the U.S. Merchant Marine, and the support and creation of U.S. citizen mariner jobs is squarely within the purpose of the American Recovery and Reinvestment Act.

We urge the Department in the strongest terms to use the authority granted it by Congress to determine that cargo preference applies to the DOE loan guarantee program.

Very truly yours,

James L. Henry
Chairman, USA Maritime
President
Transportation Institute

Jared T. Henry
Vice-President
Hapag-Lloyd USA, LLC

Gunnar Lundeberg
President/ Secretary-Treasurer
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cc: Rosalind A. Knapp, Esquire
K. Denise Krepp, Esquire