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Before the Subcommittee on Merchant Marine  
of the House Merchant Marine and Fisheries Committee  
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Mr. Chairman and Members of the Subcommittee:

Good morning. I am here today, along with my colleague from the Maritime Administration, Deputy Administrator Elaine Chao, to discuss a number of issues relating to the application of our cargo preference laws. I would like to take the opportunity first briefly to address the Federal-aid highway program and then allow the Deputy Administrator to speak to the remaining issues.

I believe that a brief explanation of how the Federal-aid highway program works would be a useful background for my comments. The Federal Highway Administration's (FHWA) program is one of federal assistance to the States. The States acquire title to land and construct State-owned highways on it. We reimburse the States for a percentage of the cost of acquisition and construction. The construction of highway projects is performed by contracts awarded by the States; the Federal Government is not a party to the contracts. Our role is one of prior approval of plans, specifications, and estimates to make certain that these

Federal-aid highways are constructed in accordance with relevant Federal requirements.

The application of cargo preference requirements to the Federal-aid program began on July 24, 1979, with the issuance of an FHWA Notice to all field offices advising that the cargo preference regulations promulgated by the Commerce Department were applicable to the Federal-aid highway program (MARAD was a part of the Commerce Department at that time).

The Commerce Department regulations, published in the Federal Register on November 1, 1977, implemented the Cargo Preference Act of 1954.

The regulations, still current, require at least 50 percent of the gross tonnage of items that are procured, contracted for, or otherwise obtained for the account of the United States and are to be shipped by ocean vessel to be transported on privately-owned, United States-flag, commercial vessels to the extent such vessels are available at fair and reasonable rates. The FHWA's 1979 Notice directed its field offices to disseminate widely information on cargo preference requirements and declared that the requirements would be applicable to Federal-aid highway construction projects.

On two subsequent occasions -- March 28, 1983, and October 24, 1985 -- the FHWA again advised all field offices that cargo preference requirements were applicable to the Federal-aid program and set forth implementing policy. The FHWA policy is that, since cargo preference is mandated for all ocean shipments of items incorporated into Federal-aid projects, specific contractual

provisions relating to cargo preference must be included when ocean transportation of items is a possibility. Accordingly, in all such cases, specific clauses set out in FHWA regulations must be included in the contracts let by States with Federal-aid highway funds; these clauses are applicable to all contractors and subcontractors. Compliance by contractors and subcontractors is secured principally through the enforcement of the contract let by the State.

The question you have asked us to address today is the extent to which those cargo preference requirements apply to shipments of clinker and cement imported in connection with FHWA-aid highway programs. Specifically, we believe the overall question presents the following three issues:

- 1) Whether cargo preference applies to imported components of materials, that is, to cement not delivered to the job site but incorporated into concrete (or to clinker manufactured into cement) at some other place and then delivered to the job site.
- 2) Whether it applies to materials acquired from a supplier having a commercial sales relationship to the state's contractor or subcontractor, rather than from a contractor or subcontractor.
- 3) Whether it applies to materials bought from inventory, that is, items imported before the formation of the contract, or to materials not imported for a specific contract.

We realize the importance of these issues and appreciate your Subcommittee's concern about early resolution of this important question. It raises complex factual, legal and policy problems. Accordingly, the Department has instituted a review of our policy on cargo preference as it applies to construction undertaken with Federal-aid highway funds. As you know, because there was a Buy American requirement for cement used in such highway projects until 1984; it came almost exclusively from domestic sources. However, that is no longer the case.

In recent weeks, the FHWA and the Maritime Administration have been working together to examine this issue in light of legal precedent and administrative practice under the cargo preference laws. That process is continuing and involves review at the most senior levels of the Department. Regrettably, I cannot report to this Subcommittee this morning the outcome of that review, but I can assure you that we will resolve this matter soon and advise you of the outcome.

Mr. Chairman, that concludes my prepared remarks. We will be happy to answer questions from you or the Subcommittee Members on this matter before Deputy Administrator Chao speaks to the remaining issues.