

# Agenda

**July 23, 2013**  
**10:30 am – 12:30 pm**

**SACOG**  
 1415 L Street, Suite 300  
 Sacramento, CA 95814

Contact: José Luis Cáceres  
 (916) 320-6218

**Telephone Number: (712) 432-1438**  
**Participant Access Code: 932832#**

**Meeting called by:** Muhaned Aljabiry  
**Facilitator:** Muhaned Aljabiry  
**Recorder:** Bruce Abanathie

**Agenda Topics**

Item	Description	Time	Presenter
1	Agenda	10:30	Muhaned Aljabiry
2	Ground Rules	10:35	Muhaned Aljabiry
3	Approval of 04/23/2013 meeting minutes	10:40	Muhaned Aljabiry
4	Announcements and updates: <ul style="list-style-type: none"> <li>• CT Federal Programming Staffing – Muhaned Aljabiry</li> </ul>	10:45	All
5	<b>Follow-Up Items from last meeting:</b> <ol style="list-style-type: none"> <li>1. Rachel to provide the ATP Trailer Bill for distribution to the CFPG- Item Completed</li> <li>2. Email the Link to PPP and FSTIP-</li> <li>3. MPOs to email new weblinks to FTIP amendments if they have changed, and notify the programming office of any staff changes related to programming</li> </ol>	10:50	Muhaned Aljabiry
6	MAP 21 - Update	10:55	Rachel Falsetti,
7	CMAQ cost-effectiveness analysis tools and emission factor tables to address PM 2.5 requirements.	11:20	Jon Taylor & Dennis Wade - CARB
8	Buy America Requirements – Update: <ol style="list-style-type: none"> <li>1. Buy America Waiver Requests</li> <li>2. Implementation: MAP-21 Requirements for Right of Way</li> </ol>	11:35	Jack Lord- FHWA Gary Gutierrez-CT
9	Conformity determinations in 8-hr ozone areas	12:05	Jack Lord- FHWA
10	<ul style="list-style-type: none"> <li>• Follow-Up Items</li> <li>• Open Forum</li> <li>• Future Agenda Items</li> </ul>	12:15	All
11	<b>Future meeting dates and locations:</b> <ul style="list-style-type: none"> <li>• Sept ?, 2013, MTC (10:30 am – 12:30 pm)</li> <li>•</li> </ul>	12:20	All

## California Federal Programming Group (CFPG)

Minutes for: July 23, 2013

### 1. Agenda:

Muhaned Aljabiry (CT Federal Programming Office) reviewed the agenda and noted the follow-up item attachments that were emailed as well. No changes requested.

### 2. Ground Rules:

- Since there are phone participants, everyone who speaks should state his/her name and agency.
- Keep comments as brief as possible.
- Stick to the current agenda item. Additional items not in the agenda will be added to the end and will be discussed if time permits.
- Turn off cell phones and limit interruptions.
- This is a forum to hear everyone's concerns, comments and suggestions. Please make sure your voice is heard.
- Facilitator to ask before moving on to the next item if anyone on the phone has any additional comments on the item, then pause for a few seconds.
- Respond to follow-up items and meeting notices by the deadlines.
- Except for follow-up items, the minutes will include discussions that take place during the meeting only. If you do not want what you say during the meeting included in the minutes, state "off the record."
- **When not speaking, phone participants to keep their phones on mute if possible.**
- **Do not place conference call on hold. Please hang up and redial if you must take another call.**
- Meeting minutes to be distributed to the group with 10 days after the meeting.

**Bolded items were emphasized by Muhaned.**

### 3. Minutes of the Last Meeting – Muhaned Aljabiry

The final minutes of the April 23, 2013 meeting were provided via email prior to the meeting. No comments – approved.

### 4. Announcements and Updates:

- a. CT Federal Programming Staffing – Muhaned Aljabiry  
Staff adjustments have been made during Abhijit's absence. Staff assignments will resume once Abhijit returns.
- b. Muhaned sent a webinar announcement for the TAP.
- c. Abhijit sent out several state-managed program updates before he left. Please make sure that you have the updates and are working on getting them into your FTIPs.

### 5. Follow-up Items from Last Meeting – Abhijit Bagde

- a. Rachel to provide the ATP Trailer Bill for distribution to the CFPG- Item Completed.

- b. Email the Link to PPP and FSTIP – Item completed
- c. MPOs to email new weblinks to FTIP amendments if they have changed, and notify the programming office of any staff changes related to programming

## **6. MAP 21 - Update – Rachel Falsetti**

(NOTE: This item was taken out of sequence, but remains in sequence for the minutes)

Rachel Falsetti, Chief of Division of Transportation programming, provided an update on state activities to implement MAP-21.

FHWA is going through the performance measure rule making process. The first rules will be for safety, due the end of September. The remaining rules are expected around April 2015. *Rachel will send a link to the information.*

After the NPRM are out, Caltrans will assemble groups to make comments on the proposed rules. After the rules are made, Caltrans will work with the regions to establish performance measures in CA that will make CA compliant. This must take place within 18 months of the final rule making.

Funding will be managed essentially the same as in the 2012-13 FY. Additional RSTP “any area” funds are being apportioned to the regions on a STIP formula basis – as agreed upon by the regions.

Rachel stated that the proposed Transportation Trailer Bill for the Active Transportation Program (ATP) did not pass, but that in the budget bill the fund sources proposed as part of the ATP (SR2S, BTA, EEM, TAP, and a portion of the HSIP) would be put on hold until there was a program developed for the ATP. Discussions are in progress with the stakeholders to develop a program.

Muhaned asked for an update on AB 466. Rachel stated that AB 466 memorializes the distribution and management of the Congestion Mitigation Air Quality (CMAQ) program funds. This legislation is expected to pass.

Sam Kaur (SCVTA) asked about the \$30 million RSTP to be distributed by the STIP formula. Are these funds part of the \$457 million of local side of STP? Rachel clarified that these are the any area funds that go the state in general, that the \$457 million are the regional apportioned funds that are distributed by the population formula.

Muhaned reaffirmed that his office was working on the CMAQ and RSTP apportionments and would have the information to the regions in the next week.

## **7. CMAQ Cost Effectiveness Analysis Tools to Address PM 2.5**

(NOTE: This item was taken out of sequence, but remains in sequence for the minutes)

Dennis Wade (ARB) discussed an email that he sent to Abhijit for distribution to the CFPG that explains the new factors and calculations. The new factors are based on the new conformity software, EMFAC 2011. This information is posted on the ARB website *Dennis will send an email to Muhaned with the link to the site.*

Dennis noted that PM 2.5 can be treated the same as PM 10, as 2.5 is merely a subset of the PM factors. ARB will also be updating the CMAQ 2005 cost effectiveness guidance.

Muhaned stated that with these new tools, local agencies can specify PM 2.5 benefit projects when requesting obligation.

## **8. Buy America Requirements Updates – Jack Lord**

Jack Lord (FHWA CA Division) sent Muhaned a notice from the Federal Register seeking comments on the Buy America general waivers that have been in existence for many years. The deadline for comments is August 9, 2013.

### **8. a. Buy America Waiver Requests**

An update note from Jean Mazur (FHWA) stated that FHWA and Caltrans Division of Local Assistance (DLA) are working to establish a second list of vehicle purchase projects for the waiver approval process. FHWA is going to begin a quarterly waiver posting process for Buy America. All waiver requests need to go through the DLA for processing to FHWA.

Additionally, everyone should have received the notice from DOT/FHWA regarding the extension of the date of implementation of the MAP-21 imposed Buy America requirements for utility relocations

Muhaned asked Jack if the Buy American waiver request process would change. Jack stated that he is not sure about any changes, but from the volume of requests being received, they are going to have to develop some process to manage the requests in a timely manner.

Bruce Abanathic (KCAG) In regard to the Federal Register, most of the general waivers are not significant to our purposes, however the “minimum use threshold” is. The current level is \$2,500 or 1/10<sup>th</sup> of 1% of the total contract value whichever is greater. Since these amounts were determined several decades ago, the levels should reflect more of the costs incurred today. Just as an off-the-top figure, and increase to the dollar amount commensurate with inflation and an increase to the percentage to the full 1%. Do we want to have individualized comments or a statewide comment or both? Jack recommends the combination of a coordinated statement and supported by numerous individual statements.

On the compilation of the prior waiver requests, Bruce mentioned that the discussion was inclusive of the Alternate Fuel Vehicles (AFV) and the supporting infrastructure. The infrastructure projects were – without notice – removed from the list without explanation. We cannot have an effective AFV program without the supporting infrastructure. Can we get a waiver request that includes these infrastructure projects? Jack stated that he would research this. It would be good to send these requests in writing.

Muhaned asked if Bruce would collect comments. Bruce stated that he would add any comments received as an addendum to the minutes. August 5<sup>th</sup> is the deadline for comments.

### **8. b. MAP-21 Requirements for Right of Way – Gary Gutierrez, Caltrans DLA**

Gary stated that they have been working with the utilities and FHWA to look into where the Buy America is not working.

Historically, as of October 1, 2012, with the inception of MAP-21, and due to a minor clause a federalized project (and all of its elements) was identified based on the NEPA scope/requirements. The interpretation of that clause included utilities as part of the federalized portion of a project. This changed the perception that utility work was only included as part of the project when federal funds were used for reimbursable utility work (prior to MAP-21).

Right now, utilities are considered part of the project any time that a project is federalized. Anything covered by the NEPA document is considered part of the federalized project. Currently Electric utility companies have been pushing back, while at the same time making a tremendous effort working with their vendors and understanding what materials are subject to and to find a way to eventually meet the Buy America requirements.

For gas transmission, the biggest problem is with high pressure gas valves that are not made in the U.S.

Projects are being deferred because they cannot meet Buy America. On July 11, 2013, USDOT issued a letter stating that there would be a transition period for both on-system on off-system projects that will allow any project that has a utility agreement signed by December 31, 2013, and is not seeking federal reimbursement for utility relocation may move forward without meeting the new MAP-21 requirements. Caltrans is trying to identify what projects fall within that definition and moving quickly on executing the utility agreements.

Cindy Simeroth (Caltrans D-5) asked how we can determine whether a utility relocation is federally funded or not? Gary has not had the opportunity to review this, but Muhaned stated that some projects the funding is clear, whereas some of the SHOPP and other complicate funding mechanism projects it may not be as clear. Rachel Falsetti added that in a local agency sponsored project that the funding should be clear, but in a state managed project the direction will come from the Caltrans Budget office through the project manager to identify the status of phase and element funding. The programming office is coordinating the funding mechanisms for state sponsored projects and can provide the information as well.

Gary discussed three categories of projects that Caltrans has identified in response to the transition period. The first is projects that are currently under construction. For these projects they are trying to ascertain if any are using federal money in the utility relocations. Gary identified a few projects that would be cleared to proceed and some that still need some clearances or modifications in their funding scheme. The projects with electrical utility involvement are moving easier than those with gas line involvement.

Theresa Arnold (SACOG) asked if these projects actually went to construction prior to having a utility agreement executed. Gary stated that this is a common practice in advancing projects. Caltrans relies on the R/W clearance to identify any construction related problems and assumes that the utility companies will sign the agreements. Theresa noted that this practice was previously used on local projects, but has been denied for more than two years. Gary affirmed that Caltrans has also been informed by FHWA that this practice will not longer be acceptable.

The second category of projects is the projects that have been waived at prior CTC meetings due to the fact that the utility relocations could not be certified as Buy America compliant. Caltrans is looking at these projects to ascertain whether or not there is federal money in those utility relocations. If there is not federal money, these projects can move forward to a utility agreement.

The final category of projects is the projects that will be prepared for CTC vote prior to December 31, 2013. These projects are being reviewed for the application of federal funding in the R/W phase.

Gary stated that any utility relocation agreements that do not involve federal fund

reimbursement, the MAP-21 added Buy America language can be stricken from the agreement.

Theresa noted that most of the discussion is related to public utility companies and asked about those functions that are considered utilities, such as water and sewer lines, but are controlled within the local agencies. Gary stated that the local agency utilities are handled on a case by case basis.

Gary recommended that every agency comment on the Federal Register posting regarding the new fund limits for waiver requests. This is an opportunity to set standards where they will apply to more projects.

SANDAG – asked if the date of the E-76 has any effect on the transition period. Gary noted that the prior key issue was the date of the utility agreement and had no connection to the E-76 date. According to the memorandum the utility agreement date is still the key decision making point.

Muhaned asked if the Buy America applied to only the material or if it applies to both the material and the location of assembly. Gary noted that FTA and FHWA diverge on this question and he will address the FHWA side. Where the ore is obtained is not considered, ore, ingot, and pig iron can be obtained from anywhere in the world. Once the material lands in the US all manufacturing must be done in the US.

The gas valves mentioned earlier are mostly poured in the Baltic States, and then assembled in the US. These items do not meet the Buy America requirements.

Muhaned asked what will happen after the transition period ends 12/31/13. Gary responded that on the electrical side progress is being made that will probably make meeting the requirements possible, but on the gas side things are not moving as well. Muhaned also asked if we as a state are being proactive in addressing the gas side of the equation. Gary described the difficulties in addressing the gas valve problem in that it would be difficult to get project level waivers and a nationwide waiver requires a different and much longer process and has a greater potential for failure.

All Buy America waiver requests should go through Caltrans District Local Assistance.

Jose-Luis Caceres (SACOG) asked about the difference in purchasing buses that are not made in the US. Gary stated FTA has different standards. Ted Matley (FTA)

## **9. Conformity Determinations in 8 Hour Ozone Areas – Jack Lord, FHWA**

Jack stated that all of the 2008 conformity determinations have been completed.

### **10a. Follow up Items**

- 6. Rachel will send a link to the FHWA rule making and state activities for MAP-21 to Muhaned for distribution.*
- 6. The Programming office will send out the apportionments for FY 13-14 by next week (7/31/13)*
- 7. Dennis will send an email to Muhaned with the link to the ARB site with the new calculations and factors for PM 2.5 and CMAQ cost effectiveness.*
- 8.a. MPOs will send comments on Buy America issues in the Federal Register to Bruce to be*

*added as an addendum to the minutes. August 5<sup>th</sup> is the deadline for comments.*

*8b. Gary will provide the FHWA/Caltrans decision on the date that will be considered for the need to meet Buy America (e.g. the utility agreement execution date).*

*8.b. Ted Matley to send FTA policy and guidance on Buy America.*

**10b. Open Forum**

Jose-Luis suggested that it is time to start thinking about the next FTIP workshop.

**10c. Future Agenda Items**

None stated

**11. Next Meetings:**

September 10, 2013 Caltrans, Sacramento (10:30 am – 12:30 pm)

October 22, 2013, MTC, Oakland (10:30 am – 12:30 pm)

HANDOUT FOR ITEM NO. 8:

Buy America Requirements

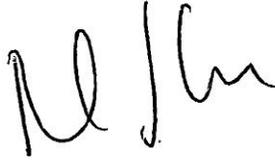
## Memorandum

*Flex your power!  
Be energy efficient!*

To: DISTRICT DIRECTORS  
DISTRICT DEPUTY DIRECTORS  
DISTRICT RIGHT OF WAY MANAGERS  
DISTRICT SINGLE FOCAL POINTS

Date: July 18, 2013

From: BRENT L. GREEN  
Chief  
Division of Right of Way and Land Surveys



Subject: **INSTRUCTIONS FOR IMPLEMENTING FEDERAL HIGHWAY'S JULY 11, 2013  
MEMORANDUM REGARDING THE APPLICATION OF BUY AMERICA**

This memorandum provides guidance on the implementation of changes to the preparation and execution of Utility Agreements (UA) based on Federal Highway Administration's (FHWA) July 11, 2013 memorandum from Gloria Shepherd entitled, "*Application of Buy America to non FHWA-funded Utility Relocations.*" (Attached)

This change provides opportunities to remove many constraints for projects already in construction, and projects that have not yet gone to construction.

In addition, the FHWA California Division has also provided additional "*Clarification on the Application of Buy America in California.*" (Attached)

The Department of Transportation (Caltrans) is working closely with FHWA to ensure we have a common understanding of the July 11, 2013 memo's intent. Caltrans recognizes the urgency to move projects forward immediately. We are carefully reviewing how to handle the projects currently in construction, and those that have "Non-Compliant" Right of Way Certifications (RW Certs) which include the projects that went to the May and June California Transportation Commission (CTC) meeting that were not voted due to this issue, and may include Non-compliant RW Certs intended for the August CTC meeting.

Definition: Non-Compliant Right of Way Certifications. "*Non-Compliant" RW Certs are a term Caltrans defined to reflect a RW Cert that meets all the normal requirements for certification with the exception of not having utility agreements executed that included Buy America language. A Non-compliant RW Cert is not an official cert; it is simply a document that Caltrans used to process through the Division of Transportation Programming so that the project would be highlighted at the Commission meeting as being constrained due to Buy America. A non-compliant RW Cert does not meet the requirements of Ready to List (RTL) and RTL is a pre-requisite for a funds request.*

We also provide guidance on other projects in the pipeline where utility agreements are expected to be executed prior to December 31, 2013.

Below, is a guideline on the implementation of the July 11, 2013 memorandum in the following categories:

1. On-system Projects in Construction
2. Projects with Non-Compliant RW Certifications
3. Projects in the pipeline that have not yet certified but will have executed utility agreement prior to January 1, 2014

### **1. On-System Projects in Construction**

For those projects in construction, FHWA's July 11, 2013 memo may eliminate the Buy America constraints on a few or all of these projects.

We are working with the Districts one-on-one to move these projects forward.

#### **Scenario 1**

Projects in construction where Federal Funds for utility agreements were not authorized or obligated should move forward immediately after outstanding utility agreements (without the Buy America Clause) are executed. This situation even applies to projects that use Federal Funds on other elements of the project, for example, in the construction phase.

#### **Scenario 2**

The July 11th, 2013 memo applies for non-Federally funded utility relocations. Therefore, the Districts must provide a funding plan demonstrating that only state or local funds will be used for the utility agreements. Once the funding plan is approved by the Division of Budgets and the Division of Transportation Programming then, the projects can be moved forward to construction.

### **2. Projects with Non-Compliant RW Certifications.**

The projects that were presented at the May and June CTC meeting and were not allocated due to Buy America constraints did not achieve RW Certification or RTL. So, while the July 11, 2013 memo removes the necessity of having a Buy America clause in the utility agreements, the projects (like any other project) still require an approved R/W Certification to achieve Ready to List (RTL) status and subsequent processes to move them forward through the Division of Transportation Programming.

The following steps are required to move these previously Buy America constrained projects forward:

1. Prepare and execute new utility agreements without the Buy America clause. This applies only to those agreements which are non-Federally funded.

DISTRICT DIRECTORS

July 18, 2013

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2. Prepare a new R/W Certification document signed by the District that includes copies of the executed utility agreements. If the R/W Certification is a Cert 3 or 3W, send it to HQ for review and approval by Headquarters Division of Right of Way and Land Surveys, and FHWA.
3. Process the approved R/W certification through Office Engineer and subsequent processes in the same manner as other projects.
4. Send an updated funds request with the updated information including the RTL.

**3. Projects in the pipeline that have not yet certified but will have executed utility agreement prior to January 1, 2014.**

All other projects that are not in construction, or do not already have non-compliant R/W Certifications must adhere to the information contained in the July 11, 2013 memo. For purposes of Right of Way certification, utility agreements executed prior to January 1, 2014 will not require compliance with Buy America or require a Buy America clause in the Utility Agreement provided they are not federally funded. It is important to assure that there are not Federal funds being used for the utility relocation work.

Effective January 1, 2014 all utility agreements must include the Buy America clause.

Denix Anbiah will be sending a separate letter for projects that are off the State Highway.  
(Note: Federal Highways July 11, 2013 applies to both on and off-system projects)

If you have any questions please contact Gary Gutierrez, at (916) 206-7144, or Jennifer Lowden at (916) 653-2129.

Attachment

- c:
- Malcolm Dougherty, Director
  - Norma Ortega, Acting Chief Deputy Director
  - Karla Sutliff, Deputy Director, Project Delivery
  - Steven Keck, Acting Chief Financial Officer
  - Kome Ajise, Deputy Director, Planning and Modal Programs
  - Ronald Sheppard, Acting Chief, Division of Budgets
  - Rachel Falsetti, Chief, Division of Transportation Programming
  - James Davis, Chief, Division of Project Management
  - Denix Anbiah, Chief, Division of Local Assistance
  - Gary Gutierrez, Supervising Transportation Engineer, Division of Design

**DEPARTMENT OF TRANSPORTATION**  
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July 17, 2013

To: Local and Regional Transportation Partners

Dear Transportation Partners:

The Department received direction from the Federal Highway Administration (FHWA) on a July 11, 2013 memorandum titled "Application of Buy America to non FHWA-funded Utility Relocations." On July 12, 2013, the FHWA California Division provided additional clarification and direction in a letter entitled "Clarification on the Application of Buy America in California." Attached please find the memorandum and letter from FHWA providing a time extension for Buy America compliance under certain conditions.

For projects that are **off** the State Highway System (SHS), if the utility relocation is not funded with federal funds AND if the utility agreement is signed by December 31, 2013, then Buy America requirements do not apply to the utility relocation. If you have any questions, please contact your District Local Assistance Engineer (DLAE).

For projects that are **on** the SHS, a separate letter is forthcoming.

Sincerely,

A handwritten signature in black ink, appearing to read "Denix D. Anbiah".

DENIX D. ANBIAH  
Chief, Division of Local Assistance

Attachments



U.S. Department  
of Transportation  
**Federal Highway  
Administration**

California Division

July 12, 2013

650 Capitol Mall, Suite 4-100  
Sacramento, CA 95814

(916) 498-5001  
(916) 498-5008

In Reply Refer To:  
HDA-CA

Mr. Malcolm Dougherty  
Director, California Department of Transportation  
1120 N Street, MS-49  
Sacramento, CA 95814

Attention: Ms. Karla Sutliff, Deputy Director, Project Delivery  
Mr. Brent Green, Chief, Division of Right of Way and Land Surveys  
Mr. Denix Anbiah, Chief, Division of Local Assistance  
Mr. Fardad Falakfarsa, Chief, Federal Resources Office

Subject: Clarification on the Application of Buy America in California

Dear Mr. Dougherty:

I am writing to provide policy clarification for the application of Buy America under the Moving Ahead for Progress in the 21st Century Act (MAP-21).

#### **Application of Buy America and MAP-21**

Implementation of MAP-21 has broadened how Buy America is applied to federally funded highway construction projects. As a result of MAP-21, application of the requirements of the Buy America under MAP-21 is determined by considering both the date that federal highway funds were/will be obligated to the project and the date of execution of construction contracts necessary to implement the project.

MAP-21 requires that all aspects of a highway construction project (as defined by the project's NEPA decision document) comply with Buy America if any federal highway funds are obligated to the project on or after October 1, 2012. As a result, compliance with Buy America may now be required for aspects of the project that are not reimbursed with federal highway funds.

In addition, contracts required to implement the highway project that are executed on or after October 1, 2012, also invoke the Buy America requirements of MAP-21. In this context, "contract" means a utility agreement, railroad agreement, or other construction contract that is necessary to implement the project and is eligible for federal highway funds.

Based on the above, application of Buy America under MAP-21 is determined by considering the following conditions:

1. All contracts that are necessary to implement the project and that have federal highway funds are subject to Buy America. This is true regardless of when those funds were obligated or when the contracts were executed.
2. All construction contracts, including utility and railroad agreements, executed before October 1, 2012, are not subject to Buy America unless federal highway funds will be used on those contracts.
3. Obligation of federal highway funds on or after October 1, 2012, on any activity necessary to implement the project invokes the Buy America requirements of MAP-21 to all project

construction activities that come under contract on or after October 1, 2012, regardless of the funding source for that work.

4. Buy America applies to all project construction contracts that executed on or after October 1, 2012, and that include work that is eligible for federal highway funds, regardless of the funding source for those contracts. Executing a contract (utility agreement, railroad agreement, or construction contract) after October 1, 2012, without Buy America compliance requirements renders all project activities placed under a contract executed after October 1, 2012, ineligible for federal funds. This may be applied retroactively to October 1, 2012.

To assist in applying the above conditions to practical situations, a table of sample scenarios is enclosed.

### **Transition Plan**

Notwithstanding conditions 1-4 above, the Federal highway Administration (FHWA) has established a transition plan for the application of Buy America to utility relocations. During the transition plan, project-specific utility relocation agreements executed before January 1, 2014, that do not have federal funding, are not required to comply with Buy America. This exemption does not apply to master, area-wide, or state-wide utility agreements.

### **Items subject to Buy America**

Buy America provisions are applicable to, but are not limited to, the following:

1. Steel or iron products used in pavements, bridges, tunnels or other structures, which include, but are not limited to, the following: fabricated structural steel, reinforcing steel, piling, high strength bolts, anchor bolts, dowel bars, permanently incorporated sheet piling, bridge bearings, cable wire/strand, pre-stressing/post-tensioning wire, motor/machinery brakes and other equipment for moveable structures;
2. Guardrail, guardrail posts, end sections, terminals, cable guardrail;
3. Steel fencing material, fence posts;
4. Steel or iron pipe, conduit, grates, manhole covers, risers;
5. Mast arms, poles, standards, trusses, or supporting structural members for signs, luminaries, or traffic control systems;
6. Steel or iron components of recast concrete products, such as reinforcing steel, wire mesh and pre-stressing or post-tensioning strands or cables; and
7. Steel transmission or distributions pole structures, predominately steel cross arms, anchors, steel or iron conduit, steel rebar to be furnished in conjunction with: concrete foundations,
8. concrete transmission or distribution pole structures, or any prefabricated concrete vaults or similar concrete structures, steel pipes for the transmission or distribution of gases or liquid fluids.

### **Exemptions from Buy America**

We understand that, when Buy America is applicable to utility relocations, some utility companies may be reluctant to certify Buy America compliance due to difficulties in tracing the origin of their materials. The attached policy memorandum titled "Clarification of Manufactured Products under Buy America," dated December 21, 2012, includes exemptions for certain products. The following is a list of other exclusions associated with Buy America that are based on that memo and other FHWA policy documents:

1. Miscellaneous steel or iron components, subcomponents and hardware necessary to encase, assemble

and construct the above components (or manufactured products that are not predominately steel or iron). Examples include, but are not limited to: cabinets, covers, shelves, clamps, fittings, sleeves, washers, bolts, nuts, screws, tie wire, spacers, chairs, lifting hooks, faucets, door hinges, guy wires, transformers, insulators, cutouts, surge arrestors, switches, hardware, fasteners, brackets, base plates, conductor or other separately provided attachments to be ordered separately and thereafter affixed to the pole structures.

2. Items that are not 90% iron or steel (i.e., wood poles, copper wire, etc.)
3. Items that are in place in one location at the project site and are relocated to another part of the site.
4. Items or work that are not eligible for federal highway funds, including but not limited to work that is a betterment, spare items used for future replacement, items used for maintenance, etc.
5. Items that are not permanently incorporated into the project and are not a functional part of the project (i.e., scaffolding, sheet piles left in place after construction that are not an integral part of the finished product). This includes equipment that was placed in a temporary location to facilitate construction of the project.
6. Work for which the utility company cannot legally be reimbursed from federal funds.

#### **Minimal Amounts of Foreign Iron and Steel**

Minimal amounts of foreign iron and steel materials used on highway projects are not subject to Buy America. The minimal amount allowed is the greater of \$2,500 or 0.1% of the contract value, calculated on a contract by contract basis. Calculations of 0.1% amount shall consider the following:

1. The value of iron and steel to be that are exempt from Buy America (i.e., exempted items listed above) may be excluded from the calculation.
2. Iron and steel products that are certified as compliant with Buy America may be excluded from the calculation.
3. The value of iron and steel shall include costs charged by the vendor/supplier that are necessary to prepare the item for use at the project site, including, assembly, testing, and transportation that are invoiced.

If you have any questions regarding our interpretation the applicability of MAP-21 as it relates to Buy America, please feel free to call Steve Pyburn, Construction Program Manager, at (916) 498-5057.

Sincerely,



For Vincent P. Mammato  
Division Administrator

Enclosure

cc: (email)

Karla Sutliff  
Brent Green  
Denix Anbiah  
Fardad Falakfarsa



Action Before 10/1/2012 <sup>1</sup>	Action After 10/1/2012 <sup>1,2</sup>	Does Buy America Apply Does MAP-21 Apply
UA executed. UA has no federal funds. Federal funds obligated for construction contract.	No future contracts executed or federal funds obligations. Change order adds federal funds to the construction but not the UA.	UA: Buy America does not apply. Construction contract: Buy America applies. MAP-21: Does not apply.
UA1 Signed. UA1 has no federal funds.	Federal funds obligated for construction UA2 executed. UA2 has no federal funds.	UA1: Buy America does not apply. Construction contract and UA2: Buy America Applies. MAP-21: Applies. Construction, UA 2 and other project activities that come under contract after 10/1/2012 are subject to Buy America.
UA Signed. UA Has no federal funds.	Construction contract executed. Construction contract has no federal funds.	UA: Buy America does not apply. Construction contract: Buy America Applies. MAP-21: Applies. Construction, UA 2 and other project activities that come under contract after 10/1/2012 are subject to Buy America.
UA1 Signed. UA1 Has federal funds.	Construction contract executed. Construction contract has no federal funds. UA2 Signed. UA2 Has no federal funds.	UA1: Buy America applies. Construction contract and UA2: Buy America Applies. MAP-21: Applies. Construction, UA 2 and other project activities that come under contract after 10/1/2012 are subject to Buy America.
UA1 Signed. UA1 Has no federal funds. Construction contract executed. Construction contract has no federal funds.	UA2 Signed. UA2 Has no federal funds. No future federal highway fund obligations or additional project contracts planned.	UA1: Buy America does not apply. Construction contract: Buy America does not apply. UA2: Buy America Applies. MAP-21: Applies. Execution of UA2 triggers MAP-21 and project activities that come under contract after 10/1/2012 are subject to Buy America. If UA2 does not comply with Buy America, all project activities placed under a contract executed after 10/1/2012 are ineligible for federal funds. This may be irrelevant since no additional contracts are needed and no federal funds will be used on the project.
UA1 Signed. UA has no federal funds.	Preliminary design contract executed after January 1, 2013. Construction contract executed. Construction contract has no federal funds. UA2 executed. UA2 has no federal funds.	UA1: Buy America does not apply. Construction contract and UA2: Buy America Applies. MAP-21: Applies. Execution of the design contract triggers requirements of MAP-21. Construction, UA 2 and other project activities that come under contract after 10/1/2012 are subject to Buy America.

**UA: Utility (or Railroad) Agreement**

1. During a transition period established by FHWA on July 11, 2013, project-specific utility relocation agreements executed before January 1, 2014, that do not have federal funding, are not required to comply with Buy America.
2. Executing a contract (utility agreement, railroad agreement, or construction contract) after 10/1/2012 without Buy America compliance requirements renders all project activities placed under a contract executed after 10/1/2012 ineligible for federal funds. This may be applied retroactively to 10/1/2012.



U.S. Department  
of Transportation

**Federal Highway  
Administration**

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# Memorandum

Subject: Application of Buy America  
to non FHWA-funded Utility Relocations

Date: July 11, 2013

From: Gloria M. Shepherd   
Acting Associate Administrator  
for Infrastructure (HIF-1)

Reply to  
Attn. of: HIPA-30

To: Division Administrators  
Directors of Field Services

In Section 1518 of the Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21), Congress amended existing law to broaden the applicability of Buy America to non FHWA-funded utility relocations. For FHWA-funded projects, Buy America now applies to all contracts within the scope of a National Environmental Policy Act (NEPA) determination and eligible for assistance under title 23, United States Code, so long as one such contract is funded by FHWA. That is, if a project receives FHWA funding for any development or construction activities, including NEPA studies, right-of-way acquisition, preliminary engineering, or construction, Buy America applies to all contracts within the scope of the NEPA determination regardless of whether the contract uses FHWA funding.

The broadened application of Buy America has created implementation issues for the utility industry. Many utility companies are now revamping their supply chains to ensure that their steel and iron products comply with Buy America. Because highway construction projects are now being delayed or are threatened with delay, **for non-Federally funded utility relocations**, FHWA is providing utility companies a reasonable period of time, **through December 31, 2013**, to take the necessary steps to ensure that their steel and iron products used in relocation work as part of Federal-aid highway projects comply with Buy America. These necessary steps include, but are not limited to, making the necessary arrangements with vendors to obtain appropriate certifications with respect to Buy America compliance and taking necessary actions to review new Buy America compliant materials to ensure compatibility with company product specifications and standards. **This memorandum covers any project-specific utility agreements for non-Federally funded utility relocations executed on or before December 31, 2013**, and does not apply to master, area-wide, or state-wide utility agreements.

If you have any questions, please contact either Mr. Gerald Yakowenko at 202-366-1562 or Mr. Edwin Okonkwo at 202-366-1558.

comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2013-094, and should be submitted on or before July 31, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>23</sup>

**Elizabeth M. Murphy,**  
*Secretary.*

[FR Doc. 2013-16529 Filed 7-9-13; 8:45 am]

BILLING CODE 8011-01-P

**DEPARTMENT OF TRANSPORTATION**

**Federal Highway Administration**

[FHWA Docket No. FHWA-2013-0041]

**Buy America Policy**

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** The FHWA is seeking comments regarding the continued need, in whole or in part, for the general waivers from Buy America for manufactured products; for ferry boat equipment; and for pig iron and processed, pelletized, and reduced iron ores. These waivers have been in effect since 1983, 1994, and 1995, respectively. The FHWA is also seeking comment on the continuing need for the FHWA's minimal use threshold

(currently established at \$2,500 or 1/10 of 1 percent of the total contract value, whichever is greater).

**DATES:** Comments must be received on or before August 9, 2013. Late comments will be considered to the extent practicable.

**ADDRESSES:** Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590, or submit electronically at <http://www.regulations.gov> or fax comments to (202) 493-2251. All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification or receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Page 19477-78).

**FOR FURTHER INFORMATION CONTACT:** Mr. Gerald Yakowenko, Contract Administration Team Leader, Office of Program Administration, (202) 366-1562, or Mr. Michael Harkins, Office of the Chief Counsel, (202) 366-4928, Federal Highway Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are from 8 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**Electronic Access and Filing**

This document and all comments received may be viewed online through the Federal eRulemaking portal at: <http://www.regulations.gov>. Regulations.gov is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site. An electronic copy of this document may also be downloaded by accessing the Office of the Federal Register's home page at: <http://www.archives.gov/federal-register/>, or the Government Printing Office's Web page at: <http://www.gpo.gov/fdsys>.

**Regulatory Background**

The FHWA's Buy America policy in 23 CFR 635.410 requires a domestic manufacturing process for any steel or iron products (including protective

coatings) that are permanently incorporated into a Federal-aid highway construction project. The regulation is based on the statutory authority in 23 U.S.C. 313(a) which states: "Notwithstanding any other provision of law, the Secretary of Transportation shall not obligate any funds authorized to be appropriated to carry out the Surface Transportation Assistance Act of 1982 (96 Stat. 2097) or this title and administered by the Department of Transportation, unless steel, iron, and manufactured products used in such project are produced in the United States."

The statute provides for the application of the Buy America requirements to any project using Title 23 funding; however, exceptions are provided where the Secretary finds that: (1) The application of the requirement would be inconsistent with the public interest, (2) where materials and products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or (3) that inclusion of domestic material will increase the cost of the overall project contract by more than 25 percent.

Based on the Secretary's authority to grant waivers from Buy America, the FHWA has issued three general waivers from Buy America. These waivers pertain to manufactured products, ferry boat equipment, and pig iron and processed, pelletized, and reduced iron ores, and have been in effect since 1983, 1994, and 1995, respectively. With this notice, the FHWA is seeking comment regarding whether these waivers continue to be necessary, in whole or in part, and, if so, what limits should be placed on these waivers. Additionally, FHWA's regulations at 23 CFR 635.410(b)(4) permit the incorporation of foreign steel and iron into a project if the cost of such items does not exceed one-tenth of one percent (0.1 percent) of the total contract cost or \$2,500, whichever is greater. The FHWA is also seeking comment on the continuing need for the provision and, if so, whether the threshold is appropriate.

**Manufactured Products**

*General Manufactured Products*

Section 165 of the Surface Transportation Assistance Act (STAA) of 1982, Public Law 97-424 (1983), is the source legislation for FHWA's Buy America requirements.<sup>1</sup> This statute

<sup>1</sup> Congress codified Section 165 of the STAA of 1982, as amended, at 23 U.S.C. 313 with the enactment of Section 1903 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A

<sup>23</sup> 17 CFR 200.30-3(a)(12).

replaced an earlier statutory version of Buy America from Section 401 of the STAA of 1978, Public Law 95–599 (1978), that applied to the Federal-aid highway program. Section 165 of the STAA of 1982 was implemented with a November 25, 1983, final rule which implemented FHWA's Buy America regulatory policies now found in 23 CFR 635.410. In the preamble to the 1983 final rule (48 FR 53099), the FHWA summarized and addressed more than 560 public comments, including comments on the FHWA's interim decision to waive the application of Buy America to manufactured products (48 FR 1946), and found that it was in the public interest to waive application of Buy America to manufactured products other than steel and iron manufactured products.

In discussing the rationale for continuing the general waiver for manufactured products in the preamble to the 1983 final rule, the FHWA stated that the agency had issued an identical general waiver for manufactured products in implementing the 1978 Buy America provisions. In issuing the waiver for the 1978 Buy America statute (43 FR 53717 and 45 FR 77455), the FHWA explained that steel was the only significant foreign commodity having a significant nationwide effect on the cost of Federal-aid highway construction projects.<sup>2</sup> While natural materials (e.g., sand, stone, gravel, and earth materials) and petroleum-based products (e.g., fuels, lubricants, and bituminous products) are also used in large amounts in Federal-aid highway construction projects, foreign competition in natural materials was not significant due to their high cost in transportation and petroleum-based products were not available from domestic sources in sufficient and reasonable quantities.

In examining the legislative history of the 1983 Buy America statute, the FHWA found that Congress considered which products should specifically be covered (such as steel, cement, and asphalt), and focused solely on steel and cement. Therefore, the FHWA determined that the best interpretation of congressional intent was that Congress, with the enactment of Section

165 of the STAA of 1982, did not intend to override the existing policy with respect to manufactured products that applied to the 1978 Buy America statute. While Congress subsequently modified the 1983 Buy America statute to repeal the statute's coverage of cement (Pub. L. 98–229, Section 10 (1984) and to add coverage for iron (Intermodal Surface Transportation Efficiency Act (ISTEA), Pub. L. 102–240, Section 1048(a) (1991)), Congress left the remaining provisions intact.

Additionally, in the preamble to the 1983 final rule, the FHWA noted, and agreed with, statements from commenters who noted the difficulty in tracing the origin of various materials comprising manufactured products. The FHWA further noted comments regarding the difficulty of tracing the origin of steel components and subcomponents of various manufactured products, such as traffic controllers. After consideration of all the comments, the FHWA found that it was in the public interest to waive the application of Buy America to manufactured products other than steel and cement manufactured products. Subsequently, in a December 12, 1997, memorandum, the FHWA reinforced and clarified the concept of this public interest exclusion by stating that Buy America requirements are applicable to the steel components of predominantly steel products. However, that memo did not define the term “predominantly steel product.”

The American Recovery and Reinvestment Act of 2009 (Recovery Act) brought a renewed interest from public and industry representatives in ensuring that Federal funds were used to support domestic manufacturing. While the “Buy American” provisions of the Recovery Act Section 1605 did not apply to the Federal-aid highway program, the FHWA took great efforts to ensure that Buy America provisions were included and enforced on all Recovery Act projects.<sup>3</sup>

As a result of this heightened awareness, construction project inspection staff and audit representatives spent significant resources in examining compliance with Buy America requirements for all steel or iron products. Compliance issues were noted regarding manufactured

products that contained miscellaneous steel or iron components such as light bulbs, sinks, toilets, faucets, tie wires, lifting hooks, traffic controller mounting brackets, nuts, bolts, washers and screws. Many of these products would typically have been labeled as miscellaneous steel components or steel subcomponents comprising part of a manufactured product that would have been subject to the general waiver granted in the 1983 final rule.

Nevertheless, continuing requests for clarifications regarding Buy America requirements during Recovery Act implementation and National Review Team oversight efforts led the FHWA to issue a memorandum on December 21, 2012. Moreover, given the broadened scope of the Federal-aid highway program since 1983 as well as the evolution of technologies, products, and construction methods used in highway and bridge construction, the FHWA felt that issuing some guidance to clarify the existence and use of this waiver was prudent. This December 2012 memorandum was intended to clarify the long-standing policy regarding the application of Buy America requirements to steel or iron manufactured products as it related to the waiver granted for manufactured products in the 1983 final rule. Since the existence of this waiver is found in the preamble of the 1983 rulemaking document with very little other guidance available regarding its existence and application, the FHWA wanted to ensure that FHWA Division Offices were aware of the existence of the waiver and that the waiver was consistently applied. The memorandum specifically identified a list of products that are subject to Buy America requirements, defined the term predominantly steel or iron manufactured product by a 90 percent content requirement, and provided examples of miscellaneous steel or iron products.

However, this correspondence has triggered opposition from various groups in the manufacturing industry. Also, a bill has been introduced in the House of Representatives (HR 949) that would require the FHWA to reexamine the agency's standing nationwide Buy America waivers by issuing a notice and request for public comments on the continuing need for these waivers. While the FHWA maintains that the agency has not changed the application or scope of the manufactured products waiver, the FHWA agrees with the intent of HR 949 that, due to the age of the manufactured products waiver, it is prudent to seek public comments as part

Legacy for Users (SAFETEA-LU), Public Law 109–59 (2005).

<sup>2</sup>Note that the 1983 final rule did not use the term “general waiver.” Instead, the 1983 final rule simply said that the FHWA found it in the public interest to waive the application of Buy America to manufactured products other than steel and cement manufactured products. The term “general waiver” is being used for purposes of this notice to help clarify that the waiver issued for manufactured products in the 1983 final rule is a waiver of general applicability that is not subject to a project-by-project determination.

<sup>3</sup>Title XII of the Recovery Act specifically stated that Recovery Act funded highway projects were to be administered as if apportioned under chapter 1 of title 23 U.S.C. Therefore, Recovery Act-funded highway projects were administered under the FHWA's traditional Buy America requirements in 23 CFR 635.410 instead of the Recovery Act specific Buy American provisions codified in 2 CFR Part 172.

of a review of the continued need for this waiver.

The FHWA supports the application of Buy America in the most effective and efficient manner possible. The application of Buy America is most effective and efficient whenever it is applied to products that are available from domestically produced sources in sufficient and reasonably available quantities and of a satisfactory quality. As stated in the 1983 final rule, the FHWA found that the waiver of Buy America to manufactured products does not have any significant impact since manufactured products comprised a small percent of the highway construction program. With this notice, the FHWA is reevaluating this finding and requesting comments on the manufactured products waiver as well as the needed parameters of the waiver if continued.

The most prevalent materials used in highway construction can be included in four major material categories: Bituminous products, Portland cement products, aggregates, and steel products. Based on a report titled "Distribution of Costs on Federal-aid Highway Construction Contracts Over \$1,000,000 on the National Highway System Reported During Calendar Year 2004" (the last year for which data was available), the approximate value of the materials used as a percentage of the overall value of all construction contract was as follows: Bituminous products (7.8%), Portland cement products (0.7%), aggregates (17.8%) and steel products (4.8%) (<http://www.fhwa.dot.gov/policy/ohim/hs04/hm/costpie.htm#alt1>). Of these materials, it appears that only steel/iron products would be appropriate for consideration under the public interest waiver provisions available under 23 U.S.C. 313.

The market conditions and assumptions that led to FHWA's decision not to include oil products (bituminous products or asphaltic cement) in the November 25, 1983, general waiver still exist today. Petroleum and petroleum-based products that are permanently incorporated in a project (such as asphalt cement) are generally not available from domestic sources in sufficient and reasonably available quantities. In the preamble to the 1983 final rule, the FHWA noted that over 200 comments were received regarding the application of Buy America provisions to oil products and virtually all commenters asked that oil and/or petroleum products and/or asphalt be exempt from coverage.

As noted above, Congress specifically modified the 1983 Buy America statute to repeal the statute's coverage of cement. Aggregates and other natural materials, such as sand, stone, and gravel are used in large quantities in highway construction; however, foreign competition is very limited due to the difficulty and high cost of transporting these heavy materials over long distances. Thus, subjecting these products to Buy America requirements will place an undue administrative burden on State DOTs in ensuring Buy America compliance and could unnecessarily delay, or even halt, projects for difficulties in tracing the origin of all items used to manufacture these products. Moreover, some of the ingredients used to make concrete products, such as Portland cement in concrete or asphalt cement in bituminous concrete, are not domestically manufactured in sufficient and reasonably available quantities to meet the demand for these products.

Thus, the application of Buy America to only steel and iron products seems to have the highest potential of realizing the intent of the Buy America statutory provisions in protecting the domestic manufacturing industry. The FHWA has applied, and intends to continue to apply, Buy America to predominantly steel and iron products delivered to a project site for permanent incorporation into that project. This includes predominantly steel and iron products that are incorporated into precast concrete products.

Additionally, for items that may be comprised of steel and iron components or subcomponents, the application of Buy America to the steel and iron in these items would have no impact because the availability of these items are not driven by the demands of the needs for highway construction. For example, some projects, such as in the construction and improvement of rest areas, may involve the incorporation of light bulbs. Light bulbs are not made special for highway construction and, thus, there is no way to trace where the steel and iron that is incorporated into a light bulb is manufactured. The same problem is attendant with other products, also involved in the construction and improvement of rest areas, such as faucets and door hinges. The preamble to the 1983 final rule cited the example of a traffic controller as a manufactured product, where it would be inconsistent with the public interest to apply Buy America requirements. In general, traffic controllers and traffic management hardware and equipment are examples of manufactured products that are

composed of multiple components and subcomponents whose origins are difficult, if not impossible to trace.

#### Vehicles

One example of the broadened scope of the Federal-aid highway program involves the Congestion Mitigation and Air Quality Improvement (CMAQ) Program. The CMAQ program was created under the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991, Public Law 102-240, and is codified at 23 U.S.C. 149. The CMAQ Program provides annual apportionments to States for projects or programs that will contribute to attainment or maintenance of the national ambient air quality standards (NAAQS) for ozone, carbon monoxide (CO), and particulate matter (PM). One type of CMAQ project that is being programmed at a growing rate by State, local governments, and private sector sponsors is acquisition of fuel efficient and low emission vehicles and equipment. With recent developments in clean fuel and low emission technologies as well as broader production and availability of these types of vehicles in the U.S. market by the automotive industry, the FHWA is seeing an increased demand to use CMAQ funds to purchase these vehicles and associated items, such as construction equipment and locomotives.

The FHWA currently has not established a Buy America policy for these types of projects. While vehicles are a manufactured product, with the increased use of CMAQ funds for these types of projects, the FHWA has recently determined that the Buy America program is appropriate to apply to these types of projects. For example, the FHWA granted conditional waivers given to Alameda County, San Francisco County, and Merced County, CA, for vehicle purchases on November 21, 2011, notices (76 FR 72027 and 76 FR 72028) and March 30, 2012 (77 FR 19410). These waivers were granted upon the condition that the final assembly of the vehicles occur in the United States. However, the FHWA did not apply a domestic content standard to these waivers. A vehicle manufacturer relies on numerous international sources for various components and it is virtually impossible to track the specific country of origin for small steel components and subcomponents even though a manufacturer can certify where the final assembly of the vehicle occurs. The difficulty of tracing and documenting domestic manufacturing processes for every manufacturing step for all

components and subcomponents illustrates the need for the public interest exception provided by 23 U.S.C. 313(b).

The FHWA was, and remains, uncertain whether such a domestic content requirement would further the objectives of the CMAQ Program in encouraging State and local entities to pursue clean fuel technologies. Moreover, the FHWA has no data to determine what such a content standard should be. Also, the practicality of establishing such a limit for just the iron and steel components in vehicles or equipment is questionable. The FHWA is unaware of any method the agency can use to determine where the components and subcomponents, including the steel and iron contained in the steel and iron components of a vehicle, were manufactured. Similarly, the FHWA has no basis for defining the point of final assembly for vehicles as well as vehicle retrofit projects.

#### Ferry Boat Equipment

On February 9, 1994, FHWA published a notice in the **Federal Register** (59 FR 6080) announcing a nationwide waiver of the Buy America requirements for certain steel products used in the construction of ferry boats. The FHWA granted this waiver after publishing a notice in the **Federal Register** (58 FR 33295) and requesting comment for which two comments were received. The items included in the waiver are marine diesel engines, electrical switchboards and switchgear, electric motors, pumps, ventilation fans, boilers, electrical controls, and electronic equipment. Other steel and iron products used in the construction of ferry boats that are manufactured domestically are not waived, including steel and stainless steel plate and shapes, sheet steel and stainless steel, steel and stainless steel pipe and tubing, and galvanized steel products. The FHWA has not reevaluated the continuing need for this waiver since it was issued in 1994. Based on the FHWA's present knowledge, however, the FHWA has no information that would lead us to believe that domestic manufacturers of the waived ferry boat components are now available. The FHWA invites comments on the continuing need for this nationwide waiver.

#### Pig Iron and Processed, Pelletized, and Reduced Iron Ores

On March 24, 1995, FHWA published a notice in the **Federal Register** announcing a nationwide waiver of the Buy America requirements for certain components used in the manufacturing

process for steel and iron products. The specific components include pig iron and processed, pelletized, and reduced iron ores. The FHWA granted this waiver after publishing a notice in the **Federal Register** (59 FR 43376) and requesting comment for which 10 comments were received. Based on the findings of a nationwide review, and a review of the comments submitted in response to the waiver proposal, the FHWA believed that the supply from domestic sources of pig iron and processed, pelletized, and reduced iron ore was not adequate to permit full compliance with the Buy America requirements. The FHWA has not reevaluated the continuing need for this waiver since it was issued in 1995. Based on the FHWA's present knowledge, however, the FHWA has no information that would lead us to believe that the supply of domestic pig iron and processed, pelletized, and reduced iron ore is adequate to meet the needs of domestic steel and iron manufacturers. The FHWA invites comments on the continuing need for this nationwide waiver.

#### Minimal Use Exclusion

One regulatory criterion that was addressed in the November 25, 1983, final rule to implement the public-interest exclusion provision of 23 U.S.C. 313(b) is the minimal use provision in 23 CFR 635.410(b)(4). This provision allows for a minimal amount of non-domestic steel to be incorporated if “. . . the cost of such materials used does not exceed one-tenth of one percent (0.1 percent) of the total contract cost or \$2,500, whichever is greater.” However, this provision requires the contracting agency to maintain a running list of non-domestic steel or iron components or subcomponents as a construction project proceeds. The threshold amounts have not been revised since the November 25, 1983, final rule and managing the documentation of compliance with this threshold can be problematic on large, complex projects.

One potential method of easing the inspection and reporting burden on contracting agencies for Buy America compliance would be to raise the minimal use threshold; however, there is no clear approach for doing so. Consideration could be given to raising the \$2,500 threshold by a multiplier related to relevant producer price indices for steel or iron products or relevant cost indices for highway construction. In either case, it is difficult to establish an index that is representative of all of the iron and steel products that are used in the Federal-aid

highway program. The multiplier could be as high as 2.5 (based on the Producer Price Index Commodity information for iron and steel products for the period 1983 to 2013 for group WPS101). (<http://data.bls.gov/pdq/querytool.jsp?survey=wp>). The FHWA invites comment on the continuing need for the minimal use threshold contained in the regulations. For commenters believing that this provision continues to be needed, the FHWA requests comment on whether the monetary threshold should be raised and the appropriate method of doing so.

#### Invitation for Public Comment

The FHWA requests public comment and input on issues related to the application of Buy America requirements to manufactured products, including various manufactured products that include steel or iron subcomponents. Specifically, the FHWA invites public comment on the following issues:

1. Has the nature of the Federal-aid highway program and the U.S. steel/iron manufacturing industry changed to such a degree that FHWA needs to reconsider its criteria for applying Buy America requirements to manufactured products?
2. Are there specific or general types of manufactured products that should not be covered by a public interest waiver and why?
3. Are there specific or general types of manufactured products that should be covered by a public interest waiver and why?
4. Are there specific issues that should be considered for manufactured products that include steel or iron components and subcomponents? Should the FHWA continue to distinguish manufactured products that are comprised predominantly of steel and iron for purposes of requiring all manufacturing processes to occur in the United States? How should a predominantly steel and iron product be defined? Should the FHWA continue to consider a predominantly steel and iron product as one comprising 90 percent steel and iron?
5. Should vehicles be subject to Buy America? If so, what types of vehicles? How should the FHWA define vehicle? Should the definition of vehicle include construction equipment, such as street sweepers, backhoes, refuse trucks, dump trucks, graders, etc.? Should the FHWA broaden the definition of vehicle to include bicycles, electric bicycles, and neighborhood vehicles? Also, what standard should the FHWA apply (i.e., final assembly in the U.S.)? For final assembly, what constitutes final assembly? Should there be a domestic

content threshold? If so, what content should be covered (i.e., steel and iron or all content comprising a vehicle) and what should the percentages be? Should there be different percentages for different types of vehicles? What data is available to support the use of a percentage? What types of vehicles would be available to State and local agencies at any given percentage?

6. Should vehicle retrofits be subject to Buy America? If so, what standard should be applied? Should the standard differ from that of a whole vehicle (i.e., if final assembly is the standard for a vehicle, should the FHWA be concerned about Buy America when an engine is purchased on its own for incorporation into a vehicle)?

7. What standard should apply to locomotives, rail cars, and locomotive parts that are purchased for locomotive retrofits? Should the FHWA require the application of the Federal Railroad Administration's policy, which views locomotives and rail cars as "end products" that must be assembled in the United States and all components (including components purchased for retrofits) be manufactured in the United States?

8. Do the minimal use threshold provisions of 23 CFR 635.410(b)(4) represent reasonable criteria for expressing the public interest exclusion limitations for the Federal-aid highway program, and present an appropriate balance between an undue administrative burden in accounting for every steel and iron item in a project versus giving effect to the intent of Buy America?

9. Are there any domestic suppliers available that can domestically produce pig iron and processed, pelletized, and reduced iron ores in sufficient quantities of a satisfactory quality to supply the entire need for Federal-aid highway projects?

10. Are there any domestic suppliers available that can domestically produce ferry boat equipment in compliance with the FHWA's Buy America requirements?

11. If any of the general waivers (manufactured products, ferry boat equipment, and pig iron) to Buy America are rescinded, what would be the implications to administering Federal-aid highway projects?

12. What would be the potential advantages or disadvantages of FHWA adopting a policy for manufactured products similar to that used by many Federal agencies who implemented the Recovery Act Buy America requirements? (Note: 2 CFR 176.70(a)(2)(i) states: "Production in the United States of the iron or steel used

in the project requires that all manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel additives. These requirements do not apply to iron or steel used as components or subcomponents of manufactured goods used in the project.")

Issued on: July 3, 2013.

Victor M. Mendez,

Federal Highway Administrator.

[FR Doc. 2013-16554 Filed 7-9-13; 8:45 am]

BILLING CODE 4910-22-P

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA-2013-0156]

#### Pipeline Safety: Meetings of the Gas and Liquid Pipeline Advisory Committees

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Notice of advisory committee meeting.

**SUMMARY:** This notice announces a public meeting of the Gas Pipeline Advisory Committee (GPAC) also known as the Technical Pipeline Safety Standards Committee, and the Liquid Pipeline Advisory Committee (LPAC) also known as the Technical Hazardous Liquid Pipeline Safety Standards Committee. The committees will meet in joint session to discuss a variety of topics to keep committee members up-to-date on DOT's pipeline safety program.

**DATES:** The meetings will be held on August 8-9, 2013.

**ADDRESSES:** The meeting will take place at The Westin Arlington Gateway, 801 Glebe Road, Arlington, VA 22203, Fitzgerald Ballroom, Phone (703) 717-6200, Web site <http://www.starwoodhotels.com/westin/property/overview/index.html?propertyID=1513>.

Any additional information will be published on the PHMSA Web site at <http://www.phmsa.dot.gov/public>, under "News and Updates" on the homepage.

The meetings will not be web cast; however, presentations will be available on the meeting Web site and posted in the E-Gov Web site at <http://www.regulations.gov> in docket number PHMSA-2013-0156 within 30 days following the meeting.

**Comments:** Comments on the meeting may be submitted to the docket in the following ways:

**E-Gov Web site:** <http://www.regulations.gov>. This site allows the public to enter comments on any Federal Register notice issued by any agency.

**Fax:** 1-202-493-2251.

**Mail:** Docket Management Facility; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., West Building, Room W12-140, Washington, DC 20590-001.

**Hand Delivery:** Room W12-140 on the ground level of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

**Instructions:** Identify the docket number PHMSA-2013-0156 at the beginning of your comments. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. You should know that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). Therefore, you may want to review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000, (65 FR 19477) or view the Privacy Notice at <http://www.regulations.gov> before submitting any such comments.

**Docket:** For access to the docket or to read background documents or comments, go to <http://www.regulations.gov> at any time or to Room W12-140 on the ground level of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

If you wish to receive confirmation of receipt of your written comments, please include a self-addressed, stamped postcard with the following statement: "Comments on PHMSA-2013-0156." The Docket Clerk will date-stamp the postcard prior to returning it to you via the U.S. mail. Please note that due to delays in the delivery of U.S. mail to Federal offices in Washington, DC, we recommend that persons consider an alternative method (internet, fax, or professional delivery service) of submitting comments to the docket and ensuring their timely receipt at DOT.

Responses to Follow-up Items from 7/23/13  
CFPG Meeting

**Subject:** Responses to Follow-up Items from 7/23/13 CFPG Meeting

To the CFPG:

Follow-up items from the July 23 CFPG meeting and responses are listed below:

- Rachel will forward a link to Muhaned regarding the latest updates on the MAP-21 Performance Measures Rule Making and ATP.

The funding for the 2014 FY that was previously discussed and modified due to discussions with the regions so we can finalize for now. Right now we plan to apportion CMAQ based on what we have in the past

For the funding that is specified to go to the regions as part of STP, the 50% will go by population and the additional around 30 million will be distributed through a formula like that which is used for the STIP. This was the compromise proposal that was received from the regions.

As far as the TAP and that will be determined through the Active Transportation Program discussions that are being handled by Agency. I have attached the framework that was send out by Agency on July 12, 2013.

Here is a link regarding Performance Measure Rulemaking that I am sure you are all well aware of. The safety NPRM will be coming out soon sometime around September.

Link to the NPRM schedule

<http://www.fhwa.dot.gov/tpm/about/schedule.cfm>



Map-21 FFY 2014  
funding.pdf



Active  
Transportation Progra

- Dennis Wade to send Muhaned a link to the PM-10 calculation and conversion from the PM-2.5 value. The PM size fraction table has been posted to ARB's CMAQ Cost Effectiveness Tools page, at <http://www.arb.ca.gov/planning/tsaq/eval/eval.html>

- Gary Gutierrez will send the FHWA interpretation to the Buy America requirements as they relate to the obligation or utility agreement dates.

The question was: Does the date of funds request or funds obligation have any bearing on whether a project utility relocation is subject to buy America or not?

The answer: No. As of July 11, 2013, the FHWA memo granting a transition period only requires two criteria a) no federal funds on the utility relocation effort, and b) the utility agreement must be fully executed on or before December 31, 2013. However, starting January 1, 2014, the previous FHWA guidelines and MAP-21 constraints will be reenacted and the funds request/obligation dates will need to be considered...but in the mean time, we do not need to concern ourselves with the funds request/obligation dates.

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*Muhaned Aljabiry, PE, Chief  
Office of Federal Transportation Management Program*

*California Department of Transportation*  
*(916)654-2983*

## MAP-21 FFY 2014 Distribution Proposal

The Administration Proposal for the 2014 Federal Fiscal Year is based on the following guiding principles:

- 1) Projects that are already programmed in the 2014 Federal Fiscal Year will be funded.
- 2) Maintain the split of funding between the state and locals at close to the historical 60% State and 40% Local ratio.
- 3) The Governor's Proposal for the Active Transportation Program shifts all federal Transportation Alternatives Program funding to local agencies. The Active Transportation Program promotes and brings additional funding to bicycle and pedestrian projects that support SB 375 goals and funding for sustainable communities.
- 4) Maintain and preserve the existing state and local infrastructure and maintain the bridge program at current levels.
  - a. 74 Percent of the State Highway System (SHS) (37,100 lane miles) are also the National Highway System (NHS) and are eligible for National Highway Performance Program funds.
  - b. 26 Percent of the SHS (13,300 lane miles) are on the State System but not on the NHS and are eligible for Surface Transportation Program funds only.

Federal Fiscal Year 2013 Disposition by Major Program (Dollars in Millions)		
Program	State	Local
National Highway Performance Program (NHPP)	\$1,563	
Local Bridges On-system		\$221
Surface Transportation Program (STP)	\$300	\$457
Off-system Bridges		\$75
Safe Routes to School (SRTS)		\$21
Congestion Mitigation and Air Quality (CMAQ)		\$445
Metropolitan Planning (MP)		\$48
State Planning and Research (SP&R)	\$70	
Highway Safety Improvement Program (HSIP)	\$123	\$67
Rail Road Crossing	\$7	\$7
Transportation Enhancement (TE)		
Transportation Alternative Program (TAP)	\$17	\$50
Recreational Trails	\$5	
<b>TOTAL</b>	<b>\$2,085</b>	<b>\$1,391</b>
	<b>60%</b>	<b>40%</b>

Proposed Federal Fiscal Year 2014 Disposition by Major Program (Dollars in Millions)		
Program	State	Local
NHPP	\$1,563	
NHS Bridges		\$221
STP	\$321	\$457
Off-system Bridges		\$75
CMAQ		\$445
MP		\$48
SP&R	\$70	
HSIP	\$102	\$67
RRXing	\$7	\$7
Active Transportation Program/TAP		
TAP		\$72
HSIP from state share for ATP		\$21
<b>TOTAL</b>	<b>\$2,063</b>	<b>\$1,413</b>
	<b>59%</b>	<b>41%</b>

Additional ATP funds (non-federal) \$41

# Active Transportation Program

## Suggested Framework for August 2013 Legislation

As originally proposed in the January 2013 Governor's Budget, the Active Transportation Program (ATP) would fully consolidate 6 existing state and federal funding programs that in whole, or in part, fund biking and walking projects. Additionally, the proposal would focus more federal funds on active transportation by dedicating Transportation Alternative Program (TAP) funds to active transportation and directing \$21 million in other federal funds for this purpose.

The adopted budget did not enact the new program, but did include language restricting expenditures of related funds until legislation is enacted that creates a new consolidated program to promote active transportation. The framework outlined below is intended to achieve the policy goals of consolidation, but also address concerns brought forward in the spring that some project types would not fit well in a fully consolidated program.

**Recreational Trails** – Retain funding for motorized trails and funding for natural surface trails in the Department of Parks (60 percent of Rec Trails) and utilize the rest (40%) in the ATP to achieve the benefits of consolidation for those projects types that fit the active transportation model the best. Do NOT “opt out” of the federal Recreational Trails Program.

**Environmental Enhancement Mitigation Program (EEMP)** – Retain funding for conservation lands and forestry in the EEMP (60 percent of EEMP) and utilize the rest (40%) in the ATP to achieve the benefits of consolidation for those projects types that fit the active transportation model the best.

**Safe Routes to Schools** – Neither current state law nor current federal law sets a funding floor for SR2S – add a funding floor of \$24 million annually within the ATP for the first two years so that while SR2S projects compete on their merits for an increased share of funding, they are guaranteed no less than what state funding has historically provided.

**Bicycle Transportation Account** – Fully consolidate in the ATP.

**Transportation Alternative Program** – Fully consolidate in the ATP.

**Federal Safety Funds / other Federal Funds** - \$21 million in additional federal funds fully consolidated in the ATP.

**Cap and Trade Funds** – No Cap and Trade funds were appropriated in the Budget, but the proposed Administration Three-year Investment Plan includes Active Transportation. Add to statute for ATP funding: “Greenhouse Gas Reduction Fund monies as appropriated for this purpose in the annual Budget Act”

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**Suggested Next Steps** – Administration will make edits to the baseline language presented with the January Budget, to conform to the above. Meet again with the workgroup on July 23 to discuss this updated language and to discuss this and other language issues. Input will be taken for additional edits to be drafted by administration and legislative staff.