



A bold voice for transportation workers

September 6, 2013

Mr. Gerald Yakowenko
Contract Administration Team Leader
Office of Program Administration
Federal Highway Administration
1200 New Jersey Ave., SE
Washington, DC 20590

**RE: Buy America Policy
Docket No. FHWA-2013-0041
Notice and Request for Comments**

Dear Mr. Yakowenko,

On behalf of the Transportation Trades Department, AFL-CIO (TTD), I write in response to the Federal Highway Administration's (FHWA) Buy America policy notice and request for comments. For reasons explained below, we support FHWA's decision to review several waivers to Buy America regulations and offer specific recommendations on how these rules should be applied to strengthen U.S. manufacturing.¹

TTD and our affiliates have long embraced the principle that a strong transportation system and strong manufacturing sector are intrinsically linked. To ensure that investments in our nation's infrastructure will sustain domestic manufacturing and the millions of jobs it supports, we have consistently advocated for the inclusion of strong Buy America policies in federal transportation infrastructure investments.

As the agency notes, FHWA's Buy America requirements date back to the 1980s when Congress established a domestic sourcing preference for American-made iron, steel and manufactured products for FHWA-funded infrastructure projects. Soon after, FHWA issued a blanket general waiver for manufactured products, thereby exempting these goods from the Buy America standards and significantly limiting the scope of the Buy America rules enacted by Congress. The agency subsequently issued two other general waivers for ferry boat equipment and for pig iron and processed, pelletized and reduced iron ores as well. Allowing these waivers to stand perpetually without review runs counter to the intent of the Buy America statute, and we agree with FHWA's decision to consider whether these three general waivers should be maintained, discontinued or altered.

¹ By way of background, TTD consists of 33 affiliated unions in the transportation sector, including several whose members would be impacted by the outcome of this proceeding. Attached is a list of TTD's affiliated unions.

Transportation Trades Department, AFL-CIO

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Edward Wytkind, President / Larry I. Willis, Secretary-Treasurer

As part of this effort, FHWA is seeking input on whether a domestic content level and final assembly requirement should apply to fuel efficient and low emission vehicles and related equipment purchased with FHWA's Congestion Mitigation and Air Quality Improvement (CMAQ) Program funds. While these goods are correctly identified as manufactured products which would otherwise fall under the general waiver mentioned above, FHWA recently determined that it is appropriate to apply Buy America requirements to federally funded purchases of such vehicles and equipment.

Maintaining the Definition for 'Domestically-Produced' Steel

As FHWA reviews these waivers, we urge the agency to maintain the use of the term 'steel' as defined in FHWA's Buy America statute (23 U.S.C. Section 313) and interpreted by the agency for decades. Under this section, steel is considered domestically produced when iron and other inputs are melted and poured in a blast or arc furnace that is located in the U.S. In particular, since the 1980s, FHWA has applied the term to mean that "All manufacturing processes of the steel material in a project (i.e., smelting, and any subsequent process which alters the steel material's physical form or shape or changes its chemical composition) must occur within the United States to be considered of domestic origin."² Defined this way, FHWA captures the essence of steel production: the labor-intensive process of using domestic furnaces to transform inputs into steel slab.

Maintaining this definition is important because as the agency notes, steel is one of the four most prevalent products used in highway construction. Our member unions represent thousands of workers employed in the iron ore industry and additional thousands who melt and pour steel through blast furnaces. And there are thousands of others who produce steel in electric arc furnaces. These jobs have been maintained and expanded as a result of the FHWA's long-standing interpretation of the term steel and the subsequent demands for products used in highway and bridge construction. Consequently, it is critical that FHWA continue defining steel in this manner, without modifications, to support the many Americans employed in steel production.

Maintaining the Minimal Use Exclusion for Steel

FHWA is also considering whether the current "minimal use threshold" for steel should be maintained or altered. The agency has long applied this standard for determining the amount of foreign-made steel permitted in FHWA-funded highway projects. The current threshold allows the use of minimal amounts of non-domestic steel in construction projects if the cost of the materials is no more than .1% of the total contract cost or \$2,500 (whichever is greater). While we accept the minimal use of foreign steel in construction projects, it is critical that the allowance threshold be kept low.

Our Buy America standards are designed to promote domestic manufacturers. The existing percentage and total contract cost threshold works well to support American workers by ensuring that only limited amounts of foreign steel are used in FHWA-funded projects. We agree with the

² FHWA Memorandum on Buy America Requirements, July 6, 1989.

agency that there are no existing standards or straight forward methods for raising the threshold, and we have serious concerns that raising the permitted amount of foreign steel would harm domestic steel producers. Accordingly, we support the existing minimal use threshold and urge the agency to maintain the current rate.

Domestic Content and Final Assembly Requirements, CMAQ Vehicles and Equipment

TTD agrees with and supports FHWA's decision that while fuel efficient and low emission vehicles and related equipment are manufactured products, these goods should be subject to Buy America standards, especially as states and localities increasingly use CMAQ funds to purchase these goods. In order to maximize the impact of federal tax dollars on local economies and support domestic manufacturers, the agency must require that vehicles and equipment purchased with CMAQ funds meet a minimum domestic content standard.

Specifically, we believe FHWA should set the standard at 60% or greater and increase the minimum over time, sliding to a full 100% of American-made content. We also believe that the definition of steel as defined above should be applied to high value items incorporated into vehicles, such as vehicle chasses. By measuring the American-made composition, FHWA helps expand domestic supply chains for fuel efficient and low emission products, attracting investors to our manufacturing sector along the way.

We recognize that the agency has concerns for how it can effectively determine where parts are manufactured, but for the passenger cars and trucks that states/localities are likely to purchase, resources are readily available to consumers and federal agencies that identify vehicle and vehicle parts' country of origin, country of final assembly and percentage value of domestic content. We also note that other DOT modal agencies are already applying comparable domestic sourcing standards. The Federal Transit Administration, for instance, has a 60% domestic content requirement for the procurement of rolling stock, and the Federal Railroad Administration applies a 100% content standard for high speed rail cars. Given their success in enforcing strong domestic content standards for products that are as complex as low emission and fuel efficient vehicles, TTD believes FHWA is capable of enforcing similar standards to ensure its funds support American workers.

Furthermore, we are opposed to implementing Buy America standards based solely on final assembly. While we agree that a final assembly requirement must apply, we believe that if left to stand as the lone requirement, it would do more to encourage offshoring of the production of vehicle parts than it would to support the U.S. manufacturing base capable of making the same products.

Millions of Americans are employed in the production of parts, components and subcomponents for passenger or specialized vehicles. Several hundred thousands are represented by our member unions alone. If FHWA requires only that the vehicle or piece of construction equipment is assembled in the U.S., the agency would cut out these workers from the production process. However, when final assembly is coupled with the abovementioned 60% domestic content standard, the incorporation of American-made products is encouraged, which in turn supports the

millions of workers who manufacture various vehicle parts and those who assemble the parts in U.S. assembly plants. As a result, FHWA would ensure that federal funds are used to support our own manufacturing sector, helping to spur the expansion of a domestic supply chain, which will in turn create investment incentives and produce new middle-class jobs.

At a time of stubbornly high unemployment rates, FHWA has the opportunity to help grow jobs and investment in our own manufacturing sector by implementing its Buy America statute. We believe FHWA must seize this opportunity, and we hope the agency will take our comments on how best to do so into consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Edward Wytkind', with a stylized, looping flourish at the end.

Edward Wytkind
President

TTD MEMBER UNIONS

The following labor organizations are members of and represented by the TTD:

Air Line Pilots Association (ALPA)
Amalgamated Transit Union (ATU)
American Federation of Government Employees (AFGE)
American Federation of State, County and Municipal Employees (AFSCME)
American Federation of Teachers (AFT)
Association of Flight Attendants-CWA (AFA-CWA)
American Train Dispatchers Association (ATDA)
Brotherhood of Railroad Signalmen (BRS)
Communications Workers of America (CWA)
International Association of Fire Fighters (IAFF)
International Association of Machinists and Aerospace Workers (IAM)
*International Brotherhood of Boilermakers, Iron Ship Builders,
Blacksmiths, Forgers and Helpers (IBB)*
International Brotherhood of Electrical Workers (IBEW)
International Longshoremen's Association (ILA)
International Longshore and Warehouse Union (ILWU)
International Organization of Masters, Mates & Pilots, ILA (MM&P)
International Union of Operating Engineers (IUOE)
Laborers' International Union of North America (LIUNA)
Marine Engineers' Beneficial Association (MEBA)
National Air Traffic Controllers Association (NATCA)
National Association of Letter Carriers (NALC)
National Conference of Firemen and Oilers, SEIU (NCFO, SEIU)
National Federation of Public and Private Employees (NFOPAPE)
Office and Professional Employees International Union (OPEIU)
Professional Aviation Safety Specialists (PASS)
Sailors' Union of the Pacific (SUP)
Sheet Metal, Air, Rail and Transportation Workers (SMART)
Transportation Communications Union/ IAM (TCU)
Transport Workers Union of America (TWU)
UNITE HERE!
United Mine Workers of America (UMWA)
*United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service
Workers International Union (USW)*
United Transportation Union (SMART)