



THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

April 12, 2013

The Honorable Barbara A. Mikulski
Chairwoman
Committee on Appropriations
United States Senate
Washington, DC 20510

Dear Chairwoman Mikulski:

This letter concerns the annual report required by Section 122 of the Department of Transportation Appropriations Act, 2012 (Title I, Division C of Public Law 112-55), on waivers of the Buy America requirement contained in Section 313 of Title 23, United States Code:

Not less than 15 days prior to waiving, under his statutory authority, any Buy America requirement for Federal-aid highway projects, the Secretary of Transportation shall make an informal public notice and comment opportunity on the intent to issue such waiver and the reasons therefor: *Provided*, That the Secretary shall provide an annual report to the Appropriations Committees of the Congress on any waivers granted under the Buy America requirements.

This provision has been included in each Appropriations Act since the enactment of the Consolidated Appropriations Act, 2008 (Public Law 110-161, enacted December 26, 2007).

Section 117(b) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users Technical Corrections Act of 2008 (Public Law 110-244, enacted June 6, 2008) also requires a report on waivers of the Buy America requirement:

Annual Reports.—Not later than February 1 of each year beginning after the date of enactment of this Act, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the projects for which the Secretary made findings under section 313(b) of title 23, United States Code, during the preceding calendar year and the justifications for such findings.

I am pleased to enclose the fourth annual report, covering calendar year 2011. It lists 8 waivers granted during the year, and provides the cost and justification for each. These waivers—6 under the regular Federal-aid program and 2 under the American Recovery and Reinvestment Act (Recovery Act)—represent about \$6,510,355 in contract costs, which is approximately 0.0124 percent of the total Federal-aid highway program and Recovery Act expenditures for the period (\$52.701 billion).

The Honorable Barbara A. Mikulski

A similar letter has been sent to the Ranking Member of the Senate Committee on Appropriations; the Chairman and Ranking Member of the House Committee on Appropriations; the Chairman and Ranking Member of the Senate Subcommittee on Transportation, Housing and Urban Development, and Related Agencies, Committee on Appropriations; and to the Chairman and Ranking Member of the House Subcommittee on Transportation, Housing and Urban Development, and Related Agencies, Committee on Appropriations. A similar letter also has been sent to the Chairman and Ranking Member of the Senate Committee on Environment and Public Works; and the Chairman and Ranking Member of the House Committee on Transportation and Infrastructure.

Sincerely yours,

Ray LaHood

Enclosure



THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

April 12, 2013

The Honorable Richard C. Shelby
Vice Chairman
Committee on Appropriations
United States Senate
Washington, DC 20510

Dear Vice Chairman Shelby:

This letter concerns the annual report required by Section 122 of the Department of Transportation Appropriations Act, 2012 (Title I, Division C of Public Law 112-55), on waivers of the Buy America requirement contained in Section 313 of Title 23, United States Code:

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The Honorable Richard C. Shelby

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Sincerely yours,

Ray LaHood

Enclosure



THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

April 12, 2013

The Honorable Harold Rogers
Chairman
Committee on Appropriations
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

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The Honorable Harold Rogers

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Sincerely yours

Ray LaHood

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THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

April 12, 2013

The Honorable Nita M. Lowey
Ranking Member
Committee on Appropriations
U.S. House of Representatives
Washington, DC 20515

Dear Congresswoman Lowey:

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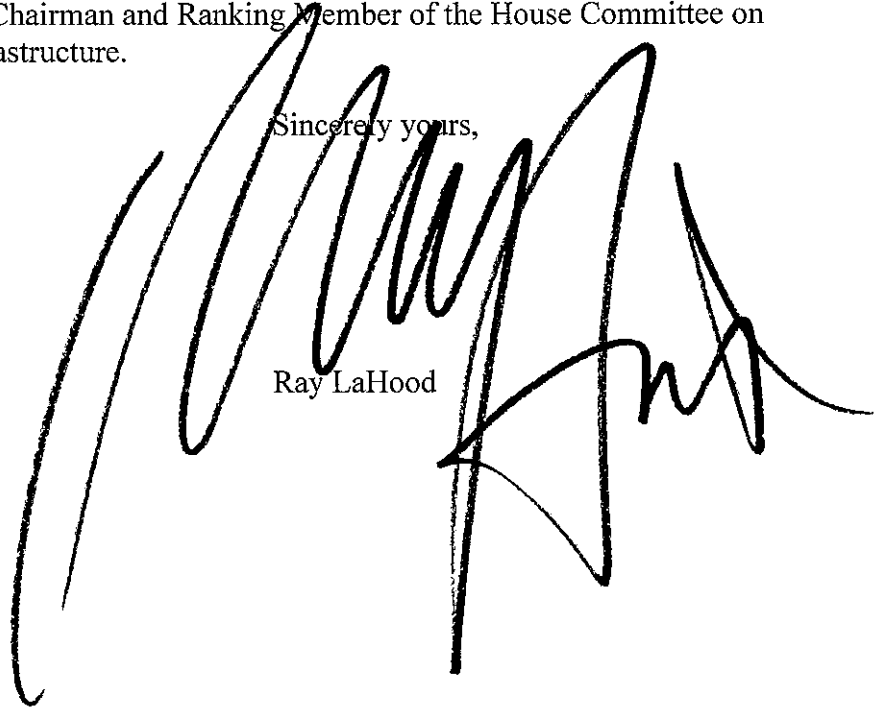
The Honorable Nita M. Lowey

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Sincerely yours,

Ray LaHood

Enclosure

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THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

April 12, 2013

The Honorable Patty Murray
Chairman
Subcommittee on Transportation, Housing
and Urban Development, and Related Agencies
Committee on Appropriations
United States Senate
Washington, DC 20510

Dear Chairman Murray:

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Sincerely yours,

Ray LaHood

Enclosure



THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

April 12, 2013

The Honorable Susan M. Collins
Ranking Member
Subcommittee on Transportation, Housing
and Urban Development, and Related Agencies
Committee on Appropriations
United States Senate
Washington, DC 20510

Dear Senator Collins:

This letter concerns the annual report required by Section 122 of the Department of Transportation Appropriations Act, 2012 (Title I, Division C of Public Law 112-55), on waivers of the Buy America requirement contained in Section 313 of Title 23, United States Code:

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Sincerely yours,

Ray LaHood

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THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

April 12, 2013

The Honorable Tom Latham
Chairman
Subcommittee on Transportation, Housing
and Urban Development, and Related Agencies
Committee on Appropriations
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

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Sincerely yours,

Ray LaHood

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Enclosure



THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

April 12, 2013

The Honorable Ed Pastor
Ranking Member
Subcommittee on Transportation, Housing
and Urban Development, and Related Agencies
Committee on Appropriations
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Pastor:

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Sincerely yours,

Ray LaHood

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THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

April 12, 2013

The Honorable Bill Shuster
Chairman
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

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The Honorable Bill Shuster

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Sincerely yours,

Ray LaHood

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THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

April 12, 2013

The Honorable Nick J. Rahall, II
Ranking Member
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Congressman Rahall:

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The Honorable Nick J. Rahall, II

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Sincerely yours,

Ray LaHood

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THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

April 12, 2013

The Honorable Barbara Boxer
Chairman
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

Dear Chairman Boxer:

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Ray LaHood

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THE SECRETARY OF TRANSPORTATION
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April 12, 2013

The Honorable David Vitter
Ranking Member
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

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I am pleased to enclose the fourth annual report, covering calendar year 2011. It lists 8 waivers granted during the year, and provides the cost and justification for each. These waivers—6 under the regular Federal-aid program and 2 under the American Recovery and Reinvestment Act (Recovery Act)—represent about \$6,510,355 in contract costs, which is approximately 0.0124 percent of the total Federal-aid highway program and Recovery Act expenditures for the period (\$52.701 billion).

Page 2

The Honorable David Vitter

A similar letter has been sent to the Chairman of the Senate Committee on Environment and Public Works and the Chairman and Ranking Member of the House Committee on Transportation and Infrastructure. A similar letter also has been sent to the Chairman and Ranking Member of the Senate Committee on Appropriations; the Chairman and Ranking Member of the House Committee on Appropriations; the Chairman and Ranking Member of the Senate Subcommittee on Transportation, Housing and Urban Development, and Related Agencies, Committee on Appropriations; and to the Chairman and Ranking Member of the House Subcommittee on Transportation, Housing and Urban Development, and Related Agencies, Committee on Appropriations.

Sincerely yours,

Ray LaHood

Enclosure

Annual Report

**FEDERAL HIGHWAY ADMINISTRATION'S
FOURTH ANNUAL REPORT ON
BUY AMERICA WAIVERS
(Calendar Year 2011)**

**As required by
Section 122 of the Consolidated Appropriations Act, 2012
and
Section 117(b) of the
SAFETEA-LU Technical Corrections Act of 2008**

REPORTING REQUIREMENT:

Section 122 of the Department of Transportation Appropriations Act, 2012 (Title I, Division C of Public Law 112-55), requires:

Not less than 15 days prior to waiving, under his statutory authority, any Buy America requirement for Federal-aid highway projects, the Secretary of Transportation shall make an informal public notice and comment opportunity on the intent to issue such waiver and the reasons therefor: *Provided*, That the Secretary shall provide an annual report to the Appropriations Committees of the Congress on any waivers granted under the Buy America requirements.

Additionally, Section 117(b) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users Technical Corrections Act of 2008 (Public Law 110-244, enacted June 6, 2008), titled “Buy America Waiver Notification and Annual Reports,” requires the Secretary to submit a report to Congress on waivers of the Buy America requirement contained in Section 313 of Title 23, United States Code:

Annual Reports.—Not later than February 1 of each year beginning after the date of enactment of this Act, the Secretary shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the projects for which the Secretary made findings under section 313(b) of title 23, United States Code, during the preceding calendar year and the justifications for such findings.

This report is limited to Buy America waivers processed during calendar year 2011 for Federal-aid highway construction projects.

Federal-Aid Highway Program

The Federal-aid highway program is a State-administered, federally funded highway program. The Federal Highway Administration (FHWA) makes Federal-aid highway funds available to the State departments of transportation (State DOT) each year. The State DOTs, which are responsible for project development and contracting, must comply with Buy America requirements on all Federal-aid highway construction projects.

The current Buy America regulation is based on Section 165 of the Surface Transportation Assistance Act of 1982. Initially, Section 165 covered steel, cement, and manufactured products. In 1983, the provision was amended to cover only steel materials. Subsequently, Section 1048(a) of the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991 amended Section 165 to expand Buy America coverage to iron. In addition, Section 1041(a) of ISTEA clarified FHWA’s implementing regulation (Title 23, Code of Federal Regulations (CFR), Part 635.410) so that the action of applying a coating to a covered material (i.e., steel or iron) is considered a manufacturing process subject to Buy America. The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Public Law 109-59) codified the Buy America provision as Section 313 of Title 23, United States Code (U.S.C.).

Buy America

Simply stated, Buy America requires the use of domestic steel and iron whenever Federal-aid highway funds are obligated for a project.¹

All steel and iron materials to be permanently incorporated into a project are covered under Buy America requirements. The manufacturing process for steel or iron materials is considered complete when all grinding, drilling, and finishing of the steel or iron material has been accomplished. The steel or iron product may then be ready for use as such (i.e., fencing, posts, girders, pipe, manhole cover, etc.) or may be incorporated as a component in a further manufacturing process. The assembly of the final product need not be accomplished domestically so long as only the steel or iron component manufactured domestically is installed and no manufacturing process is performed on the steel or iron component outside the United States.

All manufacturing processes involved in the production of steel or iron material products (i.e., smelting or any subsequent process which alters the material's physical form, shape, or chemical composition) must occur within the United States to be considered of "domestic origin." These processes include rolling, extruding, machining, bending, grinding, drilling, and coating. Coating includes epoxy coating, galvanizing, painting, and any other coating that protects or enhances the value of the material. If domestically produced steel billets or iron ingots are shipped overseas for any of these processes, and then returned to the United States, the resulting product does not conform with the Buy America requirements.

For the Buy America requirements to apply, the steel or iron product must be permanently incorporated into the project. Buy America does not apply to temporary steel items, such as temporary sheet piling, temporary bridges, or steel scaffolding and falsework. Further, Buy America does not apply to materials that remain in place at the contractor's convenience (e.g., sheet pilings or forms). Buy America also does not apply to minimal use of the material when the total cost for all foreign source iron and steel items, as delivered to the project site, is less than \$2,500 or one-tenth-of-one-percent of the contract amount, whichever is greater.

Waivers

Under 23 U.S.C. 313(b), the Secretary may waive the Buy America requirements for specific products on a Federal-aid construction project when:

Buy America is inconsistent with the public interest;
Such materials and products are not produced in the United States in sufficient and reasonably available quantities and of satisfactory quality; or
Inclusion of domestic material will increase the cost of the overall project contract by more than 25 percent.

¹ Pursuant to a final rule published in the *Federal Register* in 1983 (48 FR 53099), FHWA waived the application of Buy America to manufactured products except any iron and steel incorporated into such products.

The FHWA's Buy America waiver regulation is codified in 23 CFR 635.410. The FHWA may approve waivers when:

(i) The application of those provisions would be inconsistent with the public interest; or (ii) Steel and iron materials/products are not produced in the United States in sufficient and reasonably available quantities which are of satisfactory quality.

To qualify for a waiver based on a 25 percent cost increase, the request must also satisfy 23 CFR 635.410(b)(3) which requires the use of alternative bidding procedures to justify the use of foreign steel or iron. Under these procedures, alternatives for using foreign and domestic products must be bid. The use of foreign products may be justified if the lowest total bid for furnishing domestic steel or iron products is 25 or more percent higher than the bid for furnishing the corresponding foreign steel or iron products. The 25 percent differential applies to the total bid.

A waiver process is initiated by the contracting agency (a State DOT or local public agency) when it believes that a waiver is warranted under 23 CFR 635.410. All waiver requests submitted to FHWA are posted on a dedicated Web site for informal public notice at <http://www.fhwa.dot.gov/construction/contracts/waivers.cfm>. The postings solicit public comments on the intent to issue a waiver for a 15-day period. All comments received within the 15-day comment period are evaluated and all potential domestic sources are verified. During the 15-day comment period, FHWA conducts additional nationwide reviews by coordinating the waiver reviews with appropriate industry associations such as the National Steel Bridge Alliance, American Iron and Steel Institute, America Institute of Steel Construction, and other potential domestic manufacturers.

Following this comment period, FHWA develops findings and justifications for the waiver and publishes a waiver notification in the *Federal Register* documenting its findings regarding the waiver. The effective date of the waiver is the date following publication of the notice in the *Federal Register*. Upon publication of the *Federal Register* notice, the public may submit comments on this finding to the Web site for an additional 15 days following the effective date of the finding.

Waiver Report

Waivers are usually requested on a project-specific basis, but some are requested on a nationwide basis. No nationwide waivers have been approved during the period covered by this report.

During calendar year 2011, FHWA processed eight Buy America waiver requests, representing approximately \$6,510,355 in contract costs. The waivers are listed in Appendix A. As noted in the Appendix, six of the eight waivers were for regular Federal-aid highway construction projects. These six waivers represent \$6,052,932 in contract costs, which is approximately 0.013 percent of the total Federal-aid highway program for the period (\$46.706 billion). The FHWA granted four waivers totaling \$240,932 because specialty iron and steel products were not available domestically. The other two waivers granted under the regular Federal-aid highway program involved the use of Congestion Mitigation and Air Quality Improvement Program funds to purchase alternative fuel vehicles for use in the Bay Area of California. The waivers covered electric vehicles, plug-in hybrid vehicles, and an automatic battery switching mechanism. The FHWA granted a partial waiver from the Buy America requirements in the public interest by waiving the domestic manufacturing requirement for the vehicles' steel and iron components so long as the final assembly of the vehicles takes place in the United States. These two waivers represent \$5,813,000 in costs, which is approximately 0.0124 percent of the total cost of Federal-aid projects. In each case, the basis for the application was that a comparable product was not available domestically.

The remaining two of the eight waivers were for projects funded under the American Recovery and Reinvestment Act (Recovery Act). The total cost of the two waivers is \$456,423, which represents 0.0078 percent of Recovery Act expenditures during the year (\$5.995 billion). The FHWA granted these two waivers because specialty iron and steel products were not available domestically.

Buy America Waivers Processed/Approved in 2011

| State | Date | Item | Cost of waiver item | Justification | Recovery Act | FR Publication date |
|-----------|-----------|--|---------------------|----------------------------|--------------|---------------------|
| Oregon | 1/10/2011 | (1) Galva-nized ground bushing (3/4"-4"). (2) Form 5/Form 7 conduit body assembly and (3) Sealing locknuts (1.5"-2") | \$66,132.00 | Not available domestically | NO | 8/15/2011 |
| Oregon | 4/6/2011 | RuggedCom RS900G, RS800L, and RS930L network controllers | \$358,953.00 | Not available domestically | YES | 8/2/2011 |
| Oregon | 4/12/2011 | 1/2" x 0.008 Steel fibers w/290ksi ult. Strength for UHPC | \$18,000.00 | Not available domestically | NO | 8/22/2011 |
| New York | 4/12/2011 | 1/2" x 0.008 Steel fibers w/290ksi ult. Strength for UHPC | \$146,000.00 | Not available domestically | NO | 8/22/2011 |
| Louisiana | 5/12/2011 | 5 3/8" stud link chain | \$97,470.00 | Not available domestically | YES | 8/22/2011 |

| State | Date | Item | Cost of waiver item | Justification | Recovery Act | FR Publication date |
|------------|-----------|---|---------------------|----------------------------|--------------|---------------------|
| Iowa | 8/23/2011 | 1/2" x 0.008 Steel fibers w/290ksi ult. Strength for UHPC | \$10,800.00 | Not available domestically | NO | 9/29/2011 |
| California | 5/12/2011 | 79 all electric sedan (Nissan Leaf), 11 all electric vans (Ford Transit Connect) | \$3,370,000 | Public interest | NO | 11/22/2011 |
| California | 5/31/2011 | 12 all battery electric vehicles, 12 plug-in hybrid vehicles, and 5 neighbor-hood electric vehicles and Automated Battery Switching Mechanism | \$2,443,000 | Public interest | NO | 11/22/2011 |

TOTAL COST OF WAIVER ITEMS = \$6,510,355