



September 6, 2013

U.S. Department of Transportation  
1200 New Jersey Avenue, SE  
Docket Operations, M-30  
West Building Ground Floor  
Room W12-140  
Washington, DC 20590-0001

**RE: Docket No. FHWA-2013-0041**

Dear Docket Clerk:

On behalf of the more than 1,500 member organizations of the American Public Transportation Association (APTA), I write to provide comments on the Federal Highway Administration's (FHWA) Notice of Request for Comments (Notice) on the Administration's Buy America Policy, which was released for comment on July 10, 2013, at 78 FR 41492.

***About APTA***

APTA is a non-profit international trade association of more than 1,500 public and private member organizations, including public transit systems; high-speed intercity passenger rail agencies; planning, design, construction and finance firms; product and service providers; academic institutions; and state associations and departments of transportation. More than ninety percent of Americans who use public transportation are served by APTA member transit systems.

APTA speaks for its members. Its Board of Directors reiterated that fact on March 9, 2013, when it adopted the following statement: "While APTA encourages its members to provide specific examples or impacts in support of the association's positions, APTA crafts its comments to represent those of all APTA members. The association goes to great lengths to ensure its regulatory comments represent the consensus views of our members. Every APTA member has the opportunity to review drafts, participate in discussions, and assist in crafting those consensus comments. In short, we speak with a single voice and, when the rare instance occurs that we cannot reach consensus, we do not speak at all. APTA's comments are those of our more than 1,500 members. This consensus-based method of crafting regulatory comments is a factor underlying APTA's selection of one of Washington's most trusted brands in a broad survey conducted by the National Journal and we encourage all federal agencies to recognize the representative nature of the association's regulatory comments."

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## **FHWA's Manufactured Product Waiver**

APTA strongly supports Buy America and the Administration's efforts to ensure US sourced products are used to the maximum extent practical in federally assisted products. However, rescinding the long-standing FHWA general waiver for manufactured products would, we believe, be counter-productive.

FHWA has repeatedly found that manufactured products account for an extremely small portion of expenditures under the Administration's programs, and therefore determined that it was in the public interest to waive application of Buy America's extensive sourcing, monitoring, and reporting requirements to manufactured products. Thus, the FHWA found that the waiver of Buy America requirements for manufactured products did not have a significant impact on the agency's aim of protecting the domestic manufacturing industry. Without specific data that contradict this finding, repeal of the manufactured products waiver would, by FHWA's own standard, add considerable burdens to recipients of FHWA funds without significantly benefiting domestic manufacturing. We believe a requirement to apply a yet-to-be-determined standard of Buy America compliance on this small portion of the program would prove onerous for FHWA, its grantees, and their contractors. A requirement to track, at some level of detail, the US sourced portion of these expenditures would necessitate the expenditure of precious resources at each level to track, check, and ensure the level of US content. This diversion of resources would doubtlessly increase project costs without necessarily creating US jobs. We have seen no information to suggest what percentage of manufactured products procured for FHWA assisted projects are or – more importantly – are not already US sourced. Rescinding the waiver could well sacrifice US construction jobs without creating a significant number of US manufacturing jobs.

FHWA has asked specifically whether a rescission of the manufactured products waiver should be considered for vehicles. We believe it is contrary to FHWA's intent of effective and efficient application of the Buy America program to create special sub-rules for an ever smaller portion of the Administration's programs. As with the general waiver, application of Buy America requirements will burden FHWA, grantees, and contractors. While the burden is a virtual certainty, once again, the benefit or potential benefit has not been established. There is no indication that vehicles purchased under the various FHWA programs would or would not comply with a Buy America standard.

Underlying this discussion is the fact that FHWA has not proposed a standard for what might constitute compliance for any manufactured product. Without some potential standard, it is impossible to gauge the order of magnitude of the resulting burden, but there will doubtlessly be some burden. Any definition of compliance must necessarily account for non-availability of products, treatment of products that are a hybrid of domestic and foreign components and subcomponents, and the myriad other situations grantees are likely to face on a daily basis.

Additionally, FHWA, its grantees, and their contractors are already in the process of finding some reasonable means to apply Buy America to utility relocation projects. Changing the underlying rule by withdrawing the manufactured products waiver during this process would only add additional uncertainty and further delay projects and the thousands of construction jobs associated with those projects.

We urge FHWA to leave its long standing Buy America waiver for manufactured products in place, at least until such time as a definition of compliance, evidence that the benefit of withdrawing the waiver would outweigh the costs of doing so, and a practical means of applying the rule – particularly in cases of utility relocation – are established and subjected to the formal rulemaking process.

We appreciate the opportunity to assist the Administration in finding a practical way of increasing US sourced materials in FHWA assisted projects and would be happy to provide any additional information necessary to continue this effort. For additional information, please contact James LaRusch, APTA's chief counsel and vice president corporate affairs, at (202) 496-4808 or [jlarsch@apta.com](mailto:jlarsch@apta.com).

Sincerely,

A handwritten signature in black ink, appearing to read "Michael P. Melaniphy", written over a light gray rectangular background.

Michael P. Melaniphy  
President & CEO

MPM/jpl