




Memorandum

U.S. Department
of Transportation

**Federal Highway
Administration**

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 21st 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.