



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

# Memorandum

Subject **INFORMATION:** Buy America Guidance

Date July 11, 1994

From Director, Office of Engineering

Reply to  
Attn. of HNG-22

To Regional Federal Highway Administrators

The purpose of this memorandum is to disseminate the findings of the recent nationwide Buy America materials certification review and to discuss actions which we are taking as a result of that review.

The nationwide review of the Buy America materials certification process was initiated by Mr. Willett's September 16, 1993, memorandum. The division offices were requested to examine their SHA's certification process to determine if foreign steel or iron materials were being used. The memorandum specifically identified "pig iron" as a manufactured product of particular interest because of allegations that foreign "pig iron" was being used to produce materials certified as being in compliance with the Buy America requirements.

The response to the nationwide review request was excellent. The reports from the division offices revealed a great deal about the Buy America certification processes being utilized. The SHA's rely on supplier certifications to ensure Buy America compliance. Almost all division offices were satisfied with the certification process used in their State and feel that the process serves them well.

At least five States use a "step" certification process. This procedure creates a paper trail throughout the manufacturing process, with each handler certifying that their individual "step" complied with the Buy America requirements. The AASHTO and FHWA support the use of "step" certifications as a means to ensure compliance with the Buy America requirements.

A majority of the certifications, submitted with the division office reports, stated that the steel being certified was "melted and manufactured in the USA." The phrase "melted and manufactured" is ambiguous when referring to steel/iron production. It could be interpreted to mean all melting and manufacturing processes from raw iron ore to the final steel/iron product, but it could also be interpreted to mean only the final melting and manufacturing process, ignoring any earlier melting or manufacturing process, which may have



involved a foreign source. An effective certification should clearly state (consistent with the language in 23 CFR §635.410) that all manufacturing processes involved with the production of the steel and iron materials occurred domestically. Some division offices noted that an FHWA developed Buy America standard specification would provide uniformity between the various States. However, we do not presently believe there is sufficient need for developing such a specification.

In addition to foreign pig iron, instances of foreign processed, pelletized and reduced iron ore being used to manufacture steel and iron products for subsequent permanent incorporation in Federal-aid projects were noted. Processing, pelletizing and reduction of iron ore are methods by which raw iron ore is improved to produce enriched ore. Eight States noted the use of foreign "pig iron," three States found foreign pelletized iron ore and one State discovered processed iron ore was being used. All of these present Buy America compliance problems.

Several States reported that domestic "pig iron" is not always readily available. Based on the results of the review, we are pursuing a nationwide Buy America waiver through the Federal Register process. Along with "pig iron," we have also included processed, pelletized and reduced iron ore as materials that would be eliminated from coverage. The decision on the waiver will be based upon comments received and, if approved, could cover all or only some of the materials listed.

During the period we are pursuing the nationwide waiver process, the following interim policy will be adopted. The procedures which a State followed relative to "pig iron" and/or processed, pelletized and reduced iron ore, prior to the nationwide review, may be continued. Steel and iron materials, permanently incorporated into a Federal-aid project, may be produced from foreign "pig iron," and/or foreign processed, pelletized and reduced iron ore provided all other manufacturing processes have occurred domestically, and provided further that this was the State's practice prior to September 1993. This policy may change as a result of the nationwide waiver effort discussed above. If modification of this policy is necessary at the end of the nationwide waiver process, we will take the appropriate action.

Several questions raised as a result of the nationwide review concerned the application of Buy America requirements to alloys added during steel production. These alloys, such as manganese, tungsten, carbon, vanadium and chromium, are added to achieve certain characteristics within the final product. It has always been the FHWA's position that neither the Buy America legislation nor the requirements of 23 CFR restrict the use of foreign alloys in the production of domestic steel or iron. This holds true even though the alloys may contain traces or incidental amounts of ferrous material.

Finally, several State Buy America specifications were submitted as part of the nationwide review. Some of these specifications did not include the changes made by ISTEA, such as the addition of iron as a covered material, and

the application of a coating to either steel or iron material. Each division office is requested to verify that their State specifications incorporate the changes required by ISTEA. If you have any questions, please contact either Mr. David R. Geiger at (202) 366-0355 or Mr. Edward A. Sheidahl at (202) 366-1565.



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