

DEPARTMENT OF TRANSPORTATION**Federal Highway Administration****Buy America Waiver Notification**

AGENCY: Federal Highway Administration (FHWA), Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice provides information regarding FHWA's finding that it is appropriate to grant a Buy America waiver to the Alaska Department of Transportation and Public Facilities (Alaska DOT&PF) for procurement of foreign iron and steel components for the lift systems in the Gustavus Ferry Terminal improvement project in Gustavus, Alaska, specifically including wire rope assemblies.

DATES: The effective date of the waiver is August 10, 2020.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Mr. Gerald Yakowenko, FHWA Office of Program Administration, (202) 366-1562, or via email at Gerald.Yakowenko@dot.gov. For legal questions, please contact Mr. Patrick C. Smith, FHWA Office of the Chief Counsel, 202-366-1345, or via email at Patrick.C.Smith@dot.gov. Office hours for FHWA are from 8:00 a.m. to 4:30 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:**Electronic Access**

An electronic copy of this document may be downloaded from the **Federal Register's** home page at: <http://www.archives.gov> and the Government Publishing Office's database at: <http://www.access.gpo.gov/nara>.

Background

FHWA's Buy America regulation in 23 CFR 635.410 requires a domestic manufacturing process for any steel or iron products (including protective coatings) that are permanently incorporated in a Federal-aid construction project. The regulation also provides for a waiver of the Buy America requirements when the application would be inconsistent with the public interest or when satisfactory quality domestic steel and iron products are not produced in the United States in sufficient and reasonably available quantities. This notice provides information regarding FHWA's finding that it is appropriate to grant Alaska DOT&PF a Buy America waiver for procurement of foreign iron and steel components for the lift systems in the Gustavus Ferry Terminal improvement

project in Gustavus, Alaska, specifically including wire rope assemblies.

Background on the Gustavus Ferry Terminal: Gustavus is a town in Southeast Alaska with a population of approximately 554. It is located on the north shore of the Icy Strait, which separates Chichagof Island to the south and the Alaska mainland to the north. Although Gustavus is located on the mainland, it sits on a peninsula surrounded by the mountains and icefields of Glacier Bay National Park on three sides and the Icy Strait on the fourth. Given its location, Gustavus is not connected to any highway system and can only be reached by boat or plane. Thus, the Gustavus Ferry Terminal and Gustavus Airport provide the only access between Gustavus and elsewhere.

The Gustavus Ferry Terminal is a multiple-use facility that provides public transportation via the Alaska Marine Highway System (AMHS) ferry service plus freight and fuel transfer operations through private carriers. The terminal consists of an approach trestle, a movable transfer bridge, mooring and fendering structures, and a freight dock. The terminal improvements project will realign a portion of the approach leading to the transfer bridge and modify the bridge substructure by replacing the existing pontoon float with a hoist-operated lift system, for which the wire rope assembly is needed.

The AMHS ferries, which operate out of the Gustavus Ferry Terminal, provide a vital link for Gustavus residents and visitors to reach other Southeast Alaska communities. The AMHS ferries transport both passengers and vehicles and furnish access to healthcare, supplies, and vital services that are not available locally. In addition, passengers brought to Gustavus from the mainland support the town's tourism industry. Gustavus receives ferry service from Juneau, Alaska, two days per week most of the year. By ferry, Juneau is about four-and-a-half hours away from Gustavus.

Considering the lack of access to Gustavus by road or bridge, the AMHS system is the only reliable and affordable mode of transportation for many users. As the only available means for owner-occupied vehicles to access Gustavus, the AMHS system is more critical to the community than most Federal-aid-supported ferry systems. Although Gustavus may also be accessed by air, the AMHS system provides a less costly alternative that is essential to many of its users (including lower-income users who cannot afford alternative modes). It also provides

transportation security on days when weather prevents travel by air.

Construction of the terminal improvements project at the Gustavus Ferry Terminal is currently underway. The community anticipates that AMHS ferry service will resume in the summer of 2020 following construction. The wire rope assembly that is the subject of this waiver request is critical to maintain the schedule of ongoing construction and restore AMHS ferry service to Gustavus. Delaying project completion will cause continued loss of AMHS ferry service to Gustavus and its residents.

Waiver Request and Supporting Information: The Alaska DOT&PF originally submitted a Buy America waiver request to FHWA for the wire rope assemblies and certain other parts, including hoists, sheaves, hanger rod clamps, and bridge control components, on February 2, 2017. Prior to submitting its waiver request, Alaska DOT&PF sought but failed to identify domestic manufacturers for these products.

In accordance with the Consolidated Appropriations Act of 2017 (Pub. L. 115-31), FHWA published a notice seeking comment on whether a waiver was appropriate on its website, <https://www.fhwa.dot.gov/construction/contracts/waivers.cfm?id=142>, on March 9, 2017. The FHWA received one comment in response to the publication. That comment did not offer any information on the availability of compliant products, nor did it suggest specific, additional actions that Alaska DOT&PF could take to maximize its use of goods, products, and materials produced in the United States. Thus, Alaska DOT&PF did not receive any new information indicating that the subject parts could be produced by domestic manufacturers.

Following publication of the notice, the President issued Executive Order 13788 on April 18, 2017. Consistent with Executive Order 13788, FHWA evaluated Alaska DOT&PF's request to determine whether it had sought to maximize the use of goods, products, and materials produced in the U.S. on the project.

Over the next three years, Alaska DOT&PF successfully found Buy America compliant parts or alternatives for most of the other items in its original request. Although Alaska DOT&PF initially believed it also found domestic alternatives for the wire rope assemblies, it learned in early 2020 that the alternatives it previously identified were not suitable for use. To establish that Alaska DOT&PF made adequate efforts to find domestic alternatives or maximize domestic content for the wire

rope assemblies, Alaska DOT&PF responded to several iterations of follow-up questions from FHWA explaining and providing documentation of Alaska DOT&PF's efforts.

Although Alaska DOT&PF did not identify compliant wire rope assemblies, it provided information to FHWA supporting its waiver request, including:

- Information describing the domestic content characteristics of the manufactured products needed, including the sources and assembly locations of those products;
- Information supporting the technical necessity of these specific products for the project's hoist-operated lift system and demonstrating that alternative designs were infeasible;
- Information documenting efforts to locate compliant manufactured products, including correspondence with potential domestic manufacturers;
- Information documenting efforts to maximize domestic content even if full compliance was not possible, including efforts to have foreign manufacturers incorporate domestic steel; and
- Information describing the effects of denying the request.

The following sections summarize relevant information from Alaska DOT&PF.

Alaska DOT&PF's Efforts to Identify Compliant Products and Maximize Domestic Content. After first requesting the waiver, Alaska DOT&PF initially believed it found a domestic supplier for the wire rope assemblies in August 2017. Pearlson Shiplift Corporation, the manufacturer of the hoists for the terminal's lift system, notified Alaska DOT&PF that it could supply compliant wire rope assemblies, which Alaska believed eliminated the need for a waiver for this part. Thus, the State let the contract believing that a domestic source for the rope was available. In May 2019, the terminal improvements project was awarded to Western Marine Construction for \$9,053,100 with the completion date set for July 1, 2020.

In January 2020, after assessing the strength demand for the higher capacity hoists¹ used in the project, Pearlson Shiplift Corporation notified Alaska DOT&PF that it was unable to provide Buy America compliant wire rope assemblies. Pearlson determined that only foreign-sourced assemblies were adequate. In response, the project's contractor, Western Marine

Construction, proposed to use Buy-America-compliant wire rope assemblies that had been salvaged from a previous ferry terminal project. However, in February 2020, Western Marine Construction's salvaged wire rope failed quality assurance testing and, because the strength of the salvaged wire rope was inadequate, Pearlson Shiplift Corporation would not permit its use. Pearlson Shiplift Corporation was unable to furnish Buy-America-compliant wire rope assemblies and, in March 2020, provided foreign-sourced assemblies to the contractor instead. The foreign-sourced wire rope assemblies cost approximately \$14,000.

In April 2020, Pearlson Shiplift Corporation again confirmed to Alaska DOT&PF that Buy-America-compliant wire rope assemblies are not available meeting the needed specifications for the higher capacity hoists being used on the project. The compliant ropes that are available are not suitable and will not serve the functions required for the hoists.

The wire rope assemblies needed for the project must provide superior strength, corrosion resistance, and durability. More specifically, they must have properties including: (i) Very high tensile strength and compactness, providing a 7-to-1 factor of safety, larger than the 5-to-1 factor commonly used for rigging; (ii) great corrosion resistance to withstand the corrosive seawater environment, which is provided by galvanizing each wire before weaving them into strands; and (iii) more flexibility and fatigue resistance or durability than standard ropes. Pearlson Shiplift Corporation will permit only ropes meeting these specifications to be used with its hoist systems. Pearlson Shiplift Corporation has developed a specialized rope meeting these specifications in partnership with Bridon-Bekaert-UK. Pearlson reports that, although it believes that shiplift wire rope assemblies were produced by manufacturers in the United States approximately 15 years ago, ropes meeting its specialized requirements are now produced exclusively at Bridon-Bekaert's facility in England. Alaska DOT&PF provided documentation of correspondence with domestic manufacturers supporting Pearlson's statements.

Although ultimately unsuccessful, Alaska DOT&PF made substantial efforts to find suitable Buy America compliant wire rope assemblies. In addition to the efforts described above, Alaska DOT&PF also contacted another domestic manufacturer of shiplift hoists and major domestic suppliers of wire ropes.

Because shiplift hoists are specialized systems, Alaska DOT&PF was able to locate only one other domestic manufacturer, Worthington Industries, in Cleveland, Ohio. When contacted, Worthington Industries reported it does not have a domestic supplier of the wire rope assemblies. It uses the same foreign vendor as Pearlson Shiplift Corporation, Bridon-Bekaert-UK.

Bridon-Bekaert USA (BBRG) and WireCo WorldGroup are the major domestic suppliers of wire ropes. They both reported to Alaska DOT&PF that they do not have the capacity in the United States to produce a Buy-America-compliant wire rope to meet or exceed the Pearlson design specifications.

The BBRG reported to Alaska DOT&PF that it does not have the capability to draw galvanized wire at its domestic facility, which is a requirement of the specifications. For BBRG to produce a Buy-America-compliant wire rope meeting the specifications, it would need to source the galvanized wires from others. Domestic demand for galvanized wire ropes of this type is low, leaving few options that are compliant. Moreover, a finished wire rope is composed of multiple wire diameters and tensile grades. Not all the wires required to make the finished rope are available domestically. The very low demand for shiplift ropes and domestic non-availability of certain required wires precludes any possibility of sourcing a potential "special run" at this time.

WireCo WorldGroup reported that it cannot achieve the strength requirements using standard steel wire produced domestically. The project would require a specialty drawing rod from a domestic supplier. This would take a significant amount of time and is not achievable without causing significant project delay.

Timing and Need for a Waiver. Given the developments between January and March 2020 discussed above, Alaska DOT&PF maintains that approval of a Buy America waiver for the wire rope assemblies is now critical to maintain the schedule of ongoing construction and restore AMHS ferry service to Gustavus. Alaska DOT&PF believes it has exhausted its options for domestic alternatives and has returned to its original waiver request to procure foreign-sourced components provided by Pearlson. The request has become urgent due to the construction schedule and the developments described in the preceding paragraphs. Delaying project completion will cause continued loss of AMHS ferry service to and from Gustavus.

¹ In January 2019, Alaska DOT&PF determined that the State-furnished hoists were structurally inadequate for the project. Accordingly, Pearlson Shiplift Corporation provided hoists meeting the higher load capacity requirements.

The impacts of loss of AMHS ferry service to Gustavus during the summer months would be significant. The economy in Gustavus relies heavily on summer tourism. Because of the large number of tourists who arrive by boat or plane in the area, Gustavus is considered the gateway to Glacier Bay National Park. Between 3,000 and 4,000 passengers visit Gustavus by ferry annually, with about half of that traffic in just three months between June and August. All of this traffic goes through the Gustavus Ferry Terminal. Thus, ongoing loss of AMHS ferry service to Gustavus during the summer months would have a devastating impact on the economy of the town.

Lack of ferry service also increases costs and economic stress related to supply deliveries, especially on small businesses. Although landing craft and fishing vessels may be used for freight deliveries while ferry service is suspended, many of the small businesses in Gustavus ordinarily rely heavily on the AMHS ferry service to obtain supplies. For example, small business owners often travel by ferry in their vehicles to Juneau, load their vehicles with needed supplies, and subsequently return to Gustavus by ferry. For these reasons, timely restoration of the ferry service to Gustavus is an economic necessity for the town.

Finding and Request for Comments

Based on all the information available to the Agency, FHWA concludes that there are no domestic manufacturers of the wire rope assemblies needed for the lift systems in the Gustavus Ferry Terminal Improvement project. This finding is only for the procurement of non-domestic iron and steel components for procurement of the wire rope assemblies for the project. This finding does not apply to other parts in the original waiver request, including hoists, sheave assemblies, hanger rod clamps, and bridge control components.

Alaska DOT&PF and its contractors and subcontractors involved in the procurement of the wire rope assemblies are reminded of the need to comply with the Cargo Preference Act in 46 CFR part 38, if applicable.

In accordance with the provisions of Section 117 of the SAFETEA-LU Technical Corrections Act of 2008 (Pub. L. 110-244, 122 Stat. 1572), FHWA is providing this notice as its finding that a waiver of Buy America requirements is appropriate. The FHWA invites public comment on this finding for an additional 5 days following the effective date of the finding. Comments may be submitted to FHWA's website via the

link provided to the waiver page noted above.

Authority: 23 U.S.C. 313; Pub. L. 110-161; 23 CFR 635.410.

Nicole R. Nason,
Administrator, Federal Highway Administration.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2013-0445; FMCSA-2018-0052]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to renew exemptions for three individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have “no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.” The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to continue to operate CMVs in interstate commerce.

DATES: Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates provided below.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366-4001, fmcsamedical@dot.gov, FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64-224, Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Operations, (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to

<http://www.regulations.gov/docket?D=FMCSA-2013-0445> or <http://www.regulations.gov/docket?D=FMCSA-2018-0052> and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Operations in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Docket Operations.

B. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.transportation.gov/privacy.

II. Background

On June 5, 2020, FMCSA published a notice announcing its decision to renew exemptions for three individuals from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8) to operate a CMV in interstate commerce and requested comments from the public (85 FR 34715). The public comment period ended on July 6, 2020, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that renewing these exemptions would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(8).

The physical qualification standard for drivers regarding epilepsy found in § 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria¹ to assist medical examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

¹ These criteria may be found in APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. *Epilepsy*: § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at <https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf>.