



April 17, 2023

Shailen P. Bhatt
Administrator
Federal Highway Administration
U.S. Department of Transportation
1200 New Jersey Ave. SE
Washington, DC 20590

RE: Docket No. FHWA-2022-0027, Review of General Applicability Waiver of Buy America Requirements for Manufactured Products

Dear Administrator Bhatt:

Associated Builders and Contractors hereby submits the following comments in response to the ~~Notice and request for comments on the general applicability waiver for Buy America requirements on manufactured products, published in the Federal Register on March 17, at 88 Federal Register 16517.~~

About Associated Builders and Contractors

ABC is a national construction industry trade association representing more than 22,000 member companies. ABC and its 68 chapters help members develop people, win work and deliver that work safely, ethically and profitably for the betterment of the communities in which ABC and its members work.

than 100 construction professionals comprise 99% of construction firms in the United

ptions, among other factors, have contributed to significant price increases. In March 2023, construction input prices were up 39.0% from the same month in February 2020.⁷

Implementation Should Be Delayed

and nature of the issues facing the industry that are outlined in the guidance, ABC should maintain its general applicability waiver of domestic content requirements for manufactured products.

Federal agencies were forced to provide six-month Buy America requirements for federal agencies continue to provide additional broad waivers.

Buy America requirements were initially addressed in the April 2022 OMB Memorandum, Initial Implementation Guidance on Application of Buy America Requirements to Federal Financial Assistance Programs for Infrastructure.⁸ The guidance provided instructions to agencies on the application of BABA requirements to federally financed infrastructure projects. ABC has submitted comments to individual federal agencies with respect to their implementation of these requirements.

Several federal agencies tasked with federal assistance of infrastructure projects have expressed the need for deliberate implementation of updated BABA requirements. On March 28, 2022, the U.S. Department of Transportation announced a six-month waiver of BABA requirements¹⁰ and the U.S. Department of Housing and Urban Development followed suit with a similar waiver on May 3, 2022.¹¹ Both agencies have provided information to immediately implement these requirements,

⁷ [Construction Input Prices Down Year-Over-Year for First Time Since August 2020, Still Up 39.0% in April 2023](#).

⁸ [Initial Implementation Guidance on Application of Buy America Requirements to Federal Financial Assistance Programs for Infrastructure](#).

¹⁰ U.S. Environmental Protection Agency, [U.S. Environmental Protection Agency Announces Six-Month Waiver of Buy America Requirements](#) ([https://www.epa.gov/newsroom/recordings/20220328-epa-announces-six-month-waiver-buy-america-requirements](#)), the U.S. Department of Housing and Urban Development, [U.S. Department of Housing and Urban Development Announces Six-Month Waiver of Buy America Requirements](#) ([https://www.hud.gov/newsroom/recordings/20220503-hud-announces-six-month-waiver-buy-america-requirements](#)).

Because construction materials have not previously been subject to Made in America rules as have iron and steel, there is a need to gather data on domestic sourcing capacity to inform stronger standards. For example, while the exact impact on highway project construction is unknown, the Department believes that it could be significant. The Department is committed to ensuring Buy America compliant construction materials and the need to implement the requirement in a way that is not overly burdensome.¹²

Despite the expiration of these waivers, similar issues continue to affect the implementation of BABA requirements on federal assistance programs across additional federal agencies with responsibility for infrastructure funding.

Most recently, the FHWA established a new public interest waiver on BABA requirements

in a timely manner may lead to additional delays and increased costs on infrastructure projects. Maintaining the general applicability waiver for manufactured products will reduce the quantity of waiver applications and alleviate these concerns.

In addition, ABC suggests future BABA implementation efforts incorporate a governmentwide database of products and materials that are actively seeking a waiver, as well as those that have been granted a waiver. This will eliminate inconsistencies between active and previous agency decisions and alleviate multiple requests to multiple agencies by construction industry stakeholders. In a win-win for the government workforce and its contractors, this will reduce time needed to evaluate materials, which will eliminate risk, cut costs and help get more projects built with domestic materials in the long run.

III. Responses to Specific Questions in the Notice

- 1. Does the justification that was used by FHWA in granting the General Waiver in 1983 still apply? Specifically, is FHWA's approach to the application of Buy America requirements to manufactured products still appropriate, considering the enactment of the BABA, and standards established therein?*

The prior justification for the general applicability waiver, that critical manufactured products for federally assisted highway construction are not domestically available in sufficient quantities,¹⁶ still applies. As mentioned above, construction firms continue to report significant wait times as supply chain disruptions persist. Maintaining the waiver remains in the public interest to avoid worsening these ongoing issues.

- 6. Should FHWA consider defining the term "produced in the United States" for manufactured products via rulemaking? If so, should it consider adopting the definition for the same term that is used in S00912 30057004 as the term that S8400102g0381'a*

Vice President of Regulatory, Labor and State Affairs
Associated Builders and Contractors
brubeck@abc.org