



May 12, 2024

Mr. Brian Hogge

Federal Highway Administration Office of Infrastructure

1200 New Jersey Ave, SE

Washington, DC 20590

Re: "Request for information on the Use of Manufactured Products in Highway Projects," Docket No.: FHWA 2023-0040

Dear Mr. Hogge:

We extend sincere appreciation for providing the opportunity to comment on the Request for Information (RFI) regarding proposed rescission of the Manufactured Products General Waiver. Your commitment to seek input underscores the collaborative spirit necessary to address challenges and shape effective transportation policies.

Our agency has significant concerns regarding potential negative implications to Alaska's transportation projects and the broader public interest after reviewing the proposal to rescind the Manufactured Products General Waiver and transition to the Buy America Build America (BABA) legislation requirements regarding manufactured products.

Abandoning the Manufactured Product General Waiver appears to be a course of action not in the best interest of the public, and the Alaska Department of Transportation and Public Facilities (AK DOT&PF) recommends retaining the Manufactured Products General Waiver (Waiver). Our reservations are multifaceted and center around the following considerations:

### Supply Chain

- Our suppliers, contractors, and organizations like Associated General Contractors (AGC) have expressed consensus that the American manufacturing industry is not ready to support providing the required scale and type of American-source manufactured products and components removal of this waiver would require.
- Utility related products, many of which are specific to each utility company, will not be able to comply with the elimination of the Waiver. This will create significant delays on projects with utility components within the state. Currently over 70% of AK DOT&PF's highway projects involve utility relocations. Utilities require timely replacement to effectively maintain their systems and this proposed waiver elimination would stress systems by adding cost and time.

- As discussed earlier, the US manufacturing supply does not appear prepared to handle the increase in demand. This will adversely impact the delivery of the federal program, increasing project costs and the length of time to complete and closeout projects.

### **Technical Feasibility**

- The new BABA rule requires projects to demonstrate manufactured products are 55-percent, by cost, produced in the United States. There is currently no mechanism to determine the cost of individual components utilizing current contracting methods. To determine this could require auditing highly proprietary cost information from suppliers. Implementing this at best will be extremely difficult and most likely impossible. The AK DOT&PF perceives significant risk in audits in the absence of clear guidance and requirements around how this is determined, and is further concerned about straining the limits of the de minimis. Recent implementation of similar requirements on FAA projects within the state has found this may require engineers or inspectors to disassemble manufactured products by hand to attempt to verify compliance. This adds liability to the AK DOT&PF and potentially reduces the final quality of the installed product.
- Tracing the origin of components of manufactured products would be time-consuming and costly, if even possible. States, contractors, suppliers, and manufacturers do not currently have mature systems in place to comply with this rule. Contractor self-certification is the only mechanism available at this time to document compliance, putting significant financial risk on contractors and the State.

### **Public Interest**

- The significant increase in effort and time in bid document preparation by designers, bid preparation time and effort by contractors, and construction compliance inspections will slow delivery of the essential mission of improving transportation infrastructure within the State of Alaska and nationally.
- The requirements impose undue strain on the existing limited construction industry workforce resources both regionally and nationally as these resources would be forced into efforts of ensuring compliance with more stringent and challenging to document requirements.
- The current Buy America waiver system, not including the Manufactured Product General Waiver, has proven ineffective and burdensome, leading to delays and increased costs in project completion. The current waiver system appears under resourced, leading to non-responsive requests, excessive costs, and years of lost time on state and local organization's projects where ultimately no American made products were found or installed. This waiver system led to massive workarounds or elimination of scope and public benefit to remain compliant, and in no case did this process serve the best interest of the public or result in increased American manufacturing.
- Identifying and documenting manufactured product origins places implementation of the program at risk in the near term due to not being able to identify all necessary manufactured products origin being specified on current designs. This, combined with the ineffective waiver process, places the federal program at risk of not delivering timely and cost effective projects for the public.

If the Manufactured Product General Waiver is not retained, the AK DOT&PF requests the following actions to mitigate the impacts of the Waiver's elimination:

1. FHWA should develop a list of manufactured products meeting Buy America Requirements. In partnership with the States, and to avoid the many implementation challenges listed previously, the FHWA should work in earnest with manufacturers who have advocated for the elimination of the Waiver to develop a list of products meeting the Buy America Requirements and make clear by rule the States can rely on the list in determining compliance. Until such list is developed the Waiver should remain valid.
2. If FHWA does not take recommendation #1, FHWA should establish a new Manufactured Product Waiver with a focused listing of manufactured products, and categories of manufactured products, known to not have sufficient production in the United States for a minimum period of five years. Establish a re-evaluation process every 5-years to determine if production in the United States was sufficient to support the product being eliminated from the waiver. This approach would afford the flexibility to ensure the successful completion of FHWA-funded projects in Alaska while aligning with the objectives of the BABA legislation.
3. Provide a suitable buffer period for implementation of no less than 3-years, allowing contracting agencies, contractors, and manufacturers adequate time to research, design and adapt processes to proposed requirements. This timeframe is based on the AK DOT&PF's past experiences with FHWA Buy America, where it took 3-years and political pressure to secure a Buy America Waiver once the designer completed the research and had submitted the waiver request. With no other relief designed into the system and the extremely long waiver acquisition timelines the 3-year timeline would help mitigate delays to currently planned critical infrastructure projects.

This buffer period will also allow FHWA and States to develop defensible compliance strategies, as the mechanism to prove compliance for manufactured products appears complex to say the least. Without this buffer period both the department and FHWA run the risk of federal funding not being delivered timely.

If recommendation #3 is not taken it is then recommended the Waiver recession apply only to new design starts instead of new construction obligations. This allows designers to prepare the projects for the requirements and ensure the project is not delayed directly before bidding because this research and design work has not yet been taken into account.

4. De Minimis and Small Grants Waiver values should be increased – at least by inflation from the Start of the IIJA. Per comments from Idaho, Montana, North Dakota, South Dakota, and Wyoming you have received, “the dollar amounts of the waiver should be increased to reflect the significant inflation reported in FHWA’s NHCCI (inflation index for highway construction) since enactment of the IIJA and going forward... Accordingly, in this rule FHWA should establish a small grants waiver, worded as per the August 16, 2023 decision but with the dollar levels set 39 percent higher, plus by adding a clause further increasing those amounts by inflation in the NHCCI since the third quarter of 2023, with adjustments at least annually.” We also agree this inflation clause should be applied to iron and steel.

Additionally, Alaska’s project costs are typically two to three times higher than projects in the lower 48 states, and as a result the minimums on the Small Grant Waivers provide little to no benefit to the state of Alaska as was intended. AK DOT&PF requests Alaska have a multiplier of 3 times the Small Grant Waiver minimum to account for the economic differences the state faces.

5. Given many agencies are not experts in the determination of manufactured product origins at this time, it is expected there will be manufactured products not identified through this RFI process. It is then recommended that when waivers are sought for new manufactured products on individual projects the waivers be converted to national waivers until a period of time where US production is demonstrated. This will reduce the number of future waiver requests the Made in America Office would be required to process.
6. Consider including manufactured products in the De Minimis and Small Grants Waiver. Currently they are excluded because the Manufactured Products Waiver is in place.
7. Alaska also concurs with the following statement submitted by Idaho, Montana, North Dakota, South Dakota, and Wyoming stating, "Special Circumstances Facing Small Market, Rural, Cold Weather States: As rural States that may be considered "small market" by vendors of some materials and products, we are particularly concerned that the burden of an absence of waivers could fall heavily on us, as scarce Buy America qualified products tend to be sent to more populous areas. The blow to program delivery, local jobs, and transportation benefits that would follow could very well be magnified by the short construction season in our northern, high elevation States – where even short delays and project disruptions can push project completion into the "next construction season." That outcome also increases costs as, in addition to inflation, at least some costs would be added due to demobilization and mobilization of the construction forces associated with a project being pushed into an additional construction season. A delayed effective date for any repeal of the current Buy America waiver for manufactured products should be provided to low population, high elevation, cold weather States (as relief in addition to any other waiver or delayed effective date)"

Concerning the specific challenges posed by the potential unavailability of various products in the United States, we acknowledge the significant impact this waiver elimination could have on Alaska's transportation projects including project delays, disruptions, compliance challenges, and increased costs. The following list of products are requested to be placed on a specific manufactured product waiver to avoid the consequences above:

1. Marine vessel components including but not limited to:
  - a. marine rubber fenders,
  - b. assembled electronics and electronic components,
  - c. "Shiplift" wire ropes or like components,
  - d. chain and couplers,
  - e. bearings for hydraulic cylinders,
  - f. components of hydraulic power units,
  - g. anchor,
  - h. chain,
  - i. pipe valves,
  - j. interior insulated wall panels,
  - k. kitchen/galley furniture,
  - l. and appliances in and for marine ferries.
2. geotextiles (engineering fabric),
3. rolled erosion control products,
4. LED lighting,
5. luminaires, specifically the heads and bases, especially for unique city applications,

6. electrical components (including but not limited to switchgear, transformers, controls and switches),
7. signal and signal systems,
8. traffic signal controllers (assembled electrical control boxes and cabinets),
9. traffic sensors,
10. environmental sensors (visibility, precipitation, road surface condition, etc.),
11. closed-circuit TV cameras,
12. communication modems and switches,
13. electronic screening equipment,
14. electronic message signs,
15. pedestrian crossing beacons (RRFB),
16. permanent crash cushions
17. generators,
18. pumps (including submersible and controls),
19. sprinklers,
20. motors,
21. aeration equipment,
22. ultraviolet disinfection equipment,
23. valve actuators,
24. PFAS treatment systems and media,
25. brass products,
26. water meters (including irrigation service meters),
27. water main and valves (in general, appurtenances),
28. cathodic protection systems,
29. bridge joints and bearing pads,
30. various avalanche control systems and products,
31. and communication devices.

While we remain dedicated to collaborating with FHWA to find mutually beneficial solutions for the successful implementation of the BABA legislation, we remain firm in our stance that the removal of the Manufactured Product General Waiver is neither in the best interest of the state or the public. We appreciate your attention to our concerns and look forward to the continued partnership in addressing the challenges ahead.

Thank you for considering our feedback and for your support of Alaska's transportation systems.

Sincerely,

A handwritten signature in black ink, appearing to read 'Chris Goins', with a long horizontal flourish extending to the right.

Christopher Goins, P.E.

AK DOT&PF Southcoast Regional Director