



DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA-2022-0027]

Notice and Request for Comment on FHWA's Review of its General Applicability Waiver of Buy America Requirements for Manufactured Products

AGENCY: Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

ACTION: Notice; extension and reopening of comment period.

SUMMARY: The FHWA is extending the comment period for a request for comments on its existing general applicability waiver for manufactured products under FHWA's Buy America waiver authorities, which was published on March 17, 2023, in the Federal Register. The comment period is currently set to close on April 17, 2023. The extension is based on concern expressed by a number of stakeholders that the original comment period was inadequate to meaningfully review the request for comments, analyze the impact of any possible changes to the existing general applicability waiver for manufactured products, gather information, and provide comprehensive comments. The FHWA recognizes that others interested in commenting may have similar concerns and agrees that the comment period should be extended. Therefore, the comment period is reopened and the closing date for comments is [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*], which will provide stakeholders and others interested in commenting additional time to submit responses to the docket.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Please submit your comments to the Federal eRulemaking Portal at www.regulations.gov, Docket: FHWA-2022-0027, and follow the online instructions for submitting comments.

Instructions: You must include the agency name and docket number at the beginning of your comments. Except as described below under the heading “Confidential Business Information,” all submissions received, including any personal information provided, will be posted without change or alteration to www.regulations.gov. For more information, you may review DOT’s complete Privacy Act Statement published in the Federal Register on April 11, 2000 (65 FR 19477).

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Mr. Brian Hogge, FHWA Office of Infrastructure, 202-366-1562, or via email at Brian.Hogge@dot.gov. For legal questions, please contact Mr. David Serody, FHWA Office of the Chief Counsel, 202-366-4241, or via email at David.Serody@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 and Filing

A copy of this notice, all comments received on this notice, and all background material may be viewed online at www.regulations.gov using the docket number listed above. Electronic retrieval assistance and guidelines are also available at www.regulations.gov. An electronic copy of this document also may be downloaded from the Office of the Federal Register’s Website at: www.FederalRegister.gov and the Government Publishing Office’s Website at: www.GovInfo.gov.

Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom

of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this notice, it is important that you clearly designate the submitted comments as CBI. You may ask FHWA to give confidential treatment to information you give to the agency by taking the following steps: (1) Mark each page of the original document submission containing CBI as “Confidential”; (2) send FHWA, along with the original document, a second copy of the original document with the CBI deleted; and (3) explain why the information you are submitting is CBI. The FHWA will protect confidential information complying with these requirements to the extent required under applicable law. If DOT receives a FOIA request for the information that the applicant has marked in accordance with this notice, DOT will follow the procedures described in its FOIA regulations at 49 CFR 7.29. Only information that is marked in accordance with this notice and ultimately determined to be exempt from disclosure under FOIA and § 7.29 will not be released to a requester or placed in the public docket of this notice. Submissions containing CBI should be sent to: Mr. Brian Hogge, FHWA, 1200 New Jersey Avenue, SE, HICP-20, Washington, DC 20590. Any comment submissions that FHWA receives that are not specifically designated as CBI will be placed in the public docket for this matter.

Background

On November 15, 2021, the President signed into law the Bipartisan Infrastructure Law (BIL), enacted as the Infrastructure Investment and Jobs Act (IIJA), (Pub. L. 117-58). The BIL includes the Build America, Buy America Act (“BABA”). BIL, div. G sections 70901-27. Section 70914(d) of BABA requires Federal Agencies to review existing general applicability waivers of Buy America requirements by publishing in the Federal Register a notice that: (i) describes the justification for a general

applicability waiver; and (ii) requests public comments for a period of not less than 30 days on the continued need for the general applicability waiver. Following the initial notice and review and consideration of comments received, the Agency must publish in the Federal Register a determination on whether to continue or discontinue the general applicability waiver. BABA section 70914(d).

On March 17, 2023, at 88 FR 16517, in accordance with section 70194(d) of BABA, FHWA published in the Federal Register a notice of a review of its public interest waiver of general applicability of FHWA's Buy America requirement for manufactured products, known as the Manufactured Products General Waiver, and requested comments. The notice set a closing date of April 17, 2023, for the comment period. In a comment submitted in response to that notice, a coalition of stakeholders has expressed concern that this closing date does not provide sufficient time to review and provide comprehensive comments and requested a 90-day extension of the comment period.¹

The FHWA recognizes that others interested in commenting may have similar concerns and agrees that the comment period should be extended. The FHWA, however, does not agree that the comment period should be extended for such a long duration and notes that many stakeholders have already provided substantive, responsive comments. The BABA is meant to strengthen domestic manufacturing by expanding the coverage and application of Buy America preferences in Federal financial assistance programs for infrastructure. Consistent with this goal, BABA section 70914(d) also requires Agencies

¹ This coalition was comprised of the Associated General Contractors of America, American Association of State Highway and Transportation Officials, American Concrete Pipe Association, American Council of Engineering Companies, American Highway Users Alliance, American Road & Transportation Builders Association, American Society of Civil Engineers, American Traffic Safety Services Association, Associated Equipment Distributors, National Asphalt Pavement Association, National Association of Surety Bond Producers, National Ready Mixed Concrete Association, National Stone, Sand & Gravel Association, National Utility Contractors Association, Portland Cement Association, Power and Communication Contractors Association, Surety & Fidelity Association of America, U.S. Chamber of Commerce, and Water and Sewer Distributors of America. Comment from Coalition of Stakeholders (Mar. 31, 2022), <https://www.regulations.gov/comment/FHWA-2022-0027-0012>.

to review existing waivers of general applicability that effectively limit the extent to which Buy America preferences are applied. To carry out this purpose, FHWA believes it necessary to proceed with the review of comments submitted on the review of the Manufactured Products General Waiver as expeditiously as possible, while also providing sufficient time for all commenters to provide information on the issues raised in the March 17 notice. While FHWA agrees with the coalition of stakeholders that more than 30 days is needed to achieve these dual purposes, FHWA believes that extending the comment period by 90 days would unnecessarily delay FHWA's ability to review comments and publish a determination on whether to continue or discontinue the Manufactured Products General Waiver under BABA section 70914(d)(2)(B) in a timely manner. For that reason, FHWA is reopening and extending the comment period by 30 days for these organizations and others to submit comments. The closing date for the comment period is [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

Andrew Rogers,
Deputy Administrator,
Federal Highway Administration.

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