

May 13, 2024



any targeted waivers, and provide clear visibility of these waivers' application periods. Such measures would not only address short-term implementation challenges related to requirements but also enable state DOTs to adapt this list according to their local guidelines and any region-specific waivers.

The creation of a well-defined list with comprehensive information would effectively communicate to contractors which products need to meet the new standards and the specific timelines for compliance. This resource would serve as a valuable market tool for manufacturers who are considering initiating or expanding their production capabilities to include specific items. Ideally, this catalog would encompass various categories of information useful to all stakeholders, including identifying products that are applicable under BABAA, those that are domestically produced but require increased capacity, and those not manufactured in the U.S.

Additionally, FHWA should utilize public interest waivers to address disruptions in the supply chain that significantly impact the availability of specific products or regions. This would ensure the agency could respond swiftly to scenarios such as weather emergencies that impair manufacturing capabilities, as was the case with the freeze in Texas that shut down plants that supply a significant amount of construction plastics. Public interest waivers in response to supply chain disruptions would prevent multiple lengthy waiver requests from different projects. We urge the FHWA to implement the necessary measures to manage unforeseen situations efficiently and prevent any adverse effects on project timelines and costs.

AGC believes that rescission of the Manufactured Products Waiver is not currently appropriate and that it would only be appropriate when FHWA has a complete understanding of American manufacturing capabilities and capacity to meet Buy America requirements for all products currently covered under the A Ubi ZUM fYX DfcXi WgK Ujj Yf"K \JY'5; 7 UddfWJHg: < K 5 gYZcfrj]b' attempting to gather information on this front through actions such as

the breadth of materials covered under the Manufactured Products Waiver is greater than what was requested in that RFI. For example, the recently approved waiver for the covered many additional materials not found in the RFI. While this type of project was atypical for what FHWA usually provides financial assistance for, the emergence of such cases suggests that rescission of the waiver should be deferred until there is a comprehensive understanding of the availability and status of all manufactured products used in construction projects, not solely those traditionally funded by FHWA.

Available data on materials continues to support the existence of the Manufactured Products K Ujj Yf": cf"YI Ua d"YzUWcfX]b[ 'hc'h"YI b]hYX G"Uhg; Yc`c[ ]WU`Gi fj Ym]g &\$\$` A ]bYfU`7ca a cX]m Survey, the United States imports more than 75% of its bauxite and 59% of its alumina.<sup>1</sup> These two materials are the necessary components to creating aluminum, which is used in various manufactured products such as electrical cables and wiring. As these required materials cannot be easily sourced domestically, it is necessary to import them to be able to manufacture aluminum. Yet even if aluminum were to be manufactured domestically, it would fail the cost of components test as the main components of aluminum are imported. If the Manufactured Products Waiver were to be removed, it would cause a huge demand on the alternate source of aluminum manufacturing,

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<sup>1</sup> <https://pubs.usgs.gov/periodicals/mcs2023/mcs2023-bauxite-alumina.pdf>



It is important to accommodate their specific situations and needs.

Removal of the Manufactured Products Waiver would disproportionately affect disadvantaged and remote communities which have the highest need of infrastructure improvements. For example, the 8 YdUfha YbhcZ < ci gjb[ 'UbX'I fVUb'8 Yj Y'cda Ybhf k I 8 ŁZci bX'hUhl a UbmHf]VYg'UFY'a cfY' disconnected from American supply chains than the average HUD grantee due to their fYa chYbYgg<sup>5</sup> As FHWA considers rescinding the Manufactured Products Waiver, it is important to consider the unintended consequences that this could have on tribal or disadvantaged communities that are less connected and have fewer transportation opportunities.

As one example to take into consideration, there are numerous communities in Alaska which are not connected to a road system and do not have access to waterway transportation for a majority of the year. These communities have limited opportunities to transport products for much needed infrastructure improvements. Adding further limitations to what these remote communities can utilize risks delaying projects for an even longer period of time than expected due to the short duration of construction seasons at these locations.

As BABAA requirements are already included in contracts, FHWA should provide clear guidance that the change in requirements does not apply to contracts that have already been agreed upon. Certain contract language for projects provides only the general requirements of BABAA and the release of additional requirements without this step could be interpreted to apply retroactively and jeopardize a project.

The Biden Administration has set forth ambitious goals in combatting climate change and rebuilding hY'bUhc bŋ]bZUgfi Wŋ fY' < ck Yj Yfz]Z hY'5 Xa ]b]gUhc b'k Ubhg U' fYbYf' Z h fYz k Y'Uj Y'hc 'VY' able to build it. The removal of the Manufactured Products Waiver could jeopardize our ability to do so, as many sustainable manufactured products are not sourced domestically.

As rapid technological development around the world increases the sustainability and reduce the Ya ]gg]cbg'cZdfcXi Wŋ]hVci 'X'\Ua dYf'5 a Yf]Wŋ Ybj ]fcb a YbU' [ cUg]ZUb'ja dcfUbhWŋbc'c [ ]W' innovation is first achieved abroad. FHWA is aware of this, as the agency has undergone a painstakingly detailed review of electric vehicle charging stations, which were previously classified as manufactured products, and provided that one specific product a detailed waiver and enabled a process of Buy America implementation. Such a detailed review would be necessary of all current and future manufactured products used in federal-aid projects.

AGC worries that if FHWA decides to revoke or modify the longstanding Manufactured Products Waiver without an adequate transition, it will limit our ability to rebuild American infrastructure and connect communities. Thank you for the opportunity to comment on this important issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Alex Etchen", written over a horizontal line.

Alex Etchen  
Vice President, Government Relations