Biden Administration Rolls Back Manufactured Products Waiver

What happened: In a long-expected policy change **to be published Jan. 14**, the Federal Highway Administration (FHWA) will begin applying Buy America requirements to all manufactured products later this year. Since 1983, the agency has used its waiver authority to exempt this wide array of items used on federal-aid highway projects – including electronics, ITS hardware, electrical equipment, signal boxes, pumps and many more – from provisions mandating that they be produced in the United States. This action represents the latest – and likely one of the final – initiatives of the outgoing Biden administration to strengthen domestic manufacturing capabilities.

Why It matters: The Infrastructure Investment & Jobs Act (IIJA) maintained the longstanding domestic manufacturing requirements for iron and steel components permanently incorporated into federal-aid highway and bridge products. The law also added certain categories of construction materials to Buy America coverage.

In addition, while Buy America has ostensibly covered manufactured products for decades, FHWA has applied its waiver, under the rationale that documenting and certifying the origin of many such products would be cost-prohibitive. However, with the IIJA requiring federal agencies to periodically review these types of waivers, and the Biden White House tightening domestic preference mandates across the federal government, FHWA began reconsidering the manufactured products waiver over two years ago. ARTBA and many of its chapters, members and national allies submitted extensive comments and survey results arguing that rescinding the waiver would risk increased project costs and delays. Ultimately, the administration chose to prioritize its manufacturing agenda, although FHWA estimates that compliance with the new policy will cost up to $8.5 billion over the next 10 years.

What's next: Under the revised rule, manufactured products 1.) will need to be assembled in the United States, and 2.) more than 55 percent of their components (by cost) must be made in the United States. FHWA plans to phase in these requirements, with the first requirement applying to federal-aid projects obligated on or after October 1, 2025, and the second beginning October 1, 2026. The agency also noted that it will work with manufacturers and state transportation agencies to identify specific products that may require short-term waivers going forward.

During its first term, the Trump administration strongly supported domestic preference requirements and will likely do so again. The UTCA will work with ARTBA, our national affiliate, to continue recommending improvements to the waiver process and other policies to better achieve the twin priorities of short-term infrastructure improvements and long-term manufacturing enhancements.

The UTCA will be keeping their members informed of any other changes to Buy America.