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January 29, 2025

The Honorable Ted Cruz
Chairman
The Honorable Maria Cantwell
Ranking Member
Committee on Commerce, Science, and Transportation
United States Senate

The Honorable Sam Graves
Chairman
The Honorable Rick Larsen
Ranking Member
Committee on Transportation and Infrastructure
House of Representatives

Subject: *Department of Transportation, Federal Highway Administration: Buy America Requirements for Manufactured Products*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Transportation, Federal Highway Administration (FHWA) entitled “Buy America Requirements for Manufactured Products” (RIN: 2125-AG13). We received the rule on January 15, 2025. It was published in the *Federal Register* on January 14, 2025. 90 Fed. Reg. 2932. The effective date of the rule is March 17, 2025. FHWA noted that the rule’s “final assembly requirement” will become effective for Federal-aid projects obligated on or after October 1, 2025, and that the “55 percent requirement” will subsequently become effective for Federal-aid projects obligated on or after October 1, 2026. 90 Fed. Reg. 2933.

This rule amends FHWA’s Buy America regulation to terminate FHWA’s general waiver for manufactured products and establish Buy America requirements for manufactured products with respect to Federal-aid highway projects. According to FHWA, the standards for applying Buy America to manufactured products are generally consistent with the Office of Management and Budget’s guidance implementing the Build America, Buy America Act provisions of the Infrastructure Investment and Jobs Act. FHWA stated this means that to be considered “produced in the United States” and therefore Buy America-compliant, manufactured products must be manufactured in the United States and have greater than 55 percent of the manufactured product’s components, by cost, be mined, produced, or manufactured in the United States.

Enclosed is our assessment of FHWA’s compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to

the subject matter of the rule, please contact Charlie McKiver, Assistant General Counsel, at (202) 512-5992.

A handwritten signature in black ink that reads "Shirley A. Jones". The signature is written in a cursive, flowing style.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Jennifer Outhouse
Senior Attorney Advisor, Regulations Officer
Federal Highway Administration

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF TRANSPORTATION,
FEDERAL HIGHWAY ADMINISTRATION
ENTITLED
“BUY AMERICA REQUIREMENTS FOR MANUFACTURED PRODUCTS”
(RIN: 2125-AG13)

(i) Cost-benefit analysis

The Department of Transportation, Federal Highway Administration (FHWA) prepared an analysis of the costs and benefits for this rule. See 90 Fed. Reg. 2956. FHWA estimated that the total costs associated with the rule, between FY 2026 and FY 2035, will range from \$545 million to \$8,466 million at a two percent discount rate. *Id.* FHWA also estimated an additional \$167,000 per year in increased FHWA administrative costs and an additional \$22 million per year in administrative costs to recipients of FHWA financial assistance. *Id.* FHWA stated that the estimated annualized costs will be \$61 million to \$942 million per year at a two percent discount rate. *Id.* FHWA did not quantify the estimated benefits of the rule, but stated that the expected benefits relate to protecting and expanding domestic manufacturing, increasing the resiliency of supply chains, and increasing consistency in applying domestic content procurement preferences for manufactured products between FHWA and other federal agencies subject to the Build America, Buy America Act’s requirements. *Id.*

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603–605, 607, and 609

FHWA certified that this rule will not have a significant economic impact on a substantial number of small entities. See 90 Fed. Reg. 2957.

(iii) Agency actions relevant to sections 202–205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532–1535

FHWA determined that this rule will not have an effect on state, local, or tribal governments, in the aggregate, or on the private sector, of \$100 million in 1995 dollars, updated annually for inflation, in any one year. See 90 Fed. Reg. 2957.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

On March 12, 2024, FHWA published a proposed rule. 89 Fed. Reg. 17789. FHWA stated that they received comments from various interested parties. 90 Fed. Reg. 2936. FHWA responded to comments in the rule. *Id.*

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501–3520

FHWA determined that this rule contains no information collection requirements under the Act. 90 Fed. Reg. 2957.

Statutory authorization for the rule

FHWA promulgated this rule pursuant to Pub. L. No. 112-141, §§ 1303, 1525 (July 6, 2012); Pub. L. No. 109-59, § 1503, 119 Stat. 1144 (Aug. 10, 2005); 23 U.S.C. §§ 101 (note), 109, 112–114, 116, 119, 128, and 315; 31 U.S.C. § 6505; 42 U.S.C. §§ 3334, 4602 *et seq.*; Pub. L. No. 102-240, § 1041(a), 105 Stat. 1914 (Dec. 18, 1991); 23 C.F.R. § 1.32; and 49 C.F.R. § 1.85(a)(1).

Executive Order No. 12866 (Regulatory Planning and Review)

FHWA stated that this rule is significant under the Order. See 90 Fed. Reg. 2956. FHWA stated that the rule was submitted to the Office of Management and Budget for review. *Id.*

Executive Order No. 13132 (Federalism)

FHWA determined that this rule does not have federalism implications. See 90 Fed. Reg. 2957.