



# Memorandum

U.S. Department of Transportation

**Federal Highway  
Administration**

Subject: **ACTION**: Revised Policy for the Approval of  
Buy America Waivers

Date: March 13, 2008

From: Dwight Horne  
Director, Office of Program Administration

Reply to  
Attn. of: HIPA-30

To: Associate Administrators  
Directors of Field Services  
Federal Lands Highway Division  
Resource Center Director  
Division Administrators

This memorandum rescinds my July 3, 2003 memorandum titled "[Re-Delegation of Buy America Waiver Approval Guidance.](#)" Effectively immediately, all Buy America waiver requests must be submitted for review and consideration by this office. This change is necessitated by a provision in Public Law 110-161, the "Consolidated Appropriations Act, 2008." Division K, Section 130 of this law states:

*"Not less than 15 days prior to waiving, under her statutory authority, any Buy America requirement for Federal-aid highway projects, the Secretary of Transportation shall make an informal public notice and comment opportunity on the intent to issue such waiver and the reasons therefore: Provided, That the Secretary shall provide an annual report to the appropriations Committees of the Congress on any waivers granted under the Buy America requirements."*

Due to the statutory requirement for the Secretary of Transportation to implement an informal public notice and comment opportunity for each waiver, it is necessary for all waiver requests to be submitted to this office for review. We have established an internet Web page titled: "[Notice of Buy America Waiver Request](#)" (<http://www.fhwa.dot.gov/construction/contracts/waivers.cfm>) to provide notification and the opportunity for public comment for every Buy America waiver. We encourage interested parties to subscribe to this notification system to receive a notice regarding current waiver requests. While the statute provides for a minimum 15-day comment period, contracting agencies should recognize that coordination activities following the comment period may result in a waiver decision more than 15 days after the initial posting.

FHWA's policy provides for the consideration of a Buy America waiver when it is consistent with the public interest or when satisfactory quality domestic steel and iron products are not sufficiently available.

**MOVING THE  
AMERICAN  
ECONOMY**



Please inform your respective State DOTs and local public agencies that waiver requests that are based on an adverse impact to a contractor's construction schedule will not be accepted when domestic material is available.

With the implementation of this system, it will be even more important that contracting agencies assess the availability of domestic iron and steel products during the design stage of a project so that unanticipated delays will not take place once construction starts.

Please consider making the appropriate changes to your stewardship and oversight agreements to ensure that Buy America waiver requests are submitted to this office for all Federal-aid construction projects, regardless of any other oversight agreement that is in effect for that project. You may contact Mr. Edwin Okonkwo, our Buy America coordinator (202-366-1558), should you have any questions on this matter.