



US Department
of Transportation
**Federal Highway
Administration**

Office of the Administrator

400 Seventh Street, S.W.
Washington, D.C. 20590

March 17, 1994

Refer to: HCC-1

Mr. T. Peter Ruane
President and Chief Executive Officer
American Road and Transportation
Builders Association
Washington, D.C. 20024-2713

Dear Mr. Ruane:

In your letter dated January 24, you inquired regarding the position of the Federal Highway Administration (FHWA) on the question of the impact of the North American Free Trade Agreement (NAFTA) on the Buy America provisions of the Federal-aid highway program. In our letter to you dated February 17, we indicated that we were reviewing the matter and would be in further contact with you. Having completed this review, we will now respond directly to your inquiry.

DIRECT FEDERAL PROCUREMENT

Pursuant to the Buy American Act (41 U.S.C. § 10(a)), the Government generally was required to procure only articles, materials, and supplies that have been mined, produced, or manufactured in the United States. Article 1001 of the NAFTA, however, now mandates that certain Executive Branch agencies, including the Department of Transportation, acquire goods and services valued at or above \$50,000 from Mexico and \$25,000 from Canada, and construction contracts valued at or above \$6.5 million from either country, without regard to the restrictions of the Buy American Act. Although the Canadian Free Trade Agreement is suspended while NAFTA is effective, its lower threshold of \$25,000 was retained for Canada in NAFTA.

On January 5, 1994, the Federal Acquisition Regulations (FAR) were amended to reflect the new NAFTA provisions through an interim rule (59 FR 544). Therefore, when the FHWA directly procures goods, services, and construction work above the threshold values, it cannot require the offeror to comply with the domestic content requirements of the Buy American Act. The FAR interim rule does not apply to transportation services and to service contracts.

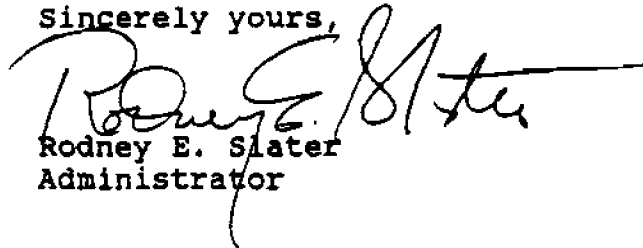
FEDERAL ASSISTANCE PROGRAMS (NONPROCUREMENT)

The FHWA requires that all Federal-aid highway construction projects comply with the Buy America requirements set forth in 23 CFR § 635.410. These requirements are distinct from the statutory requirements of the Buy American Act, which are explained above and only apply to direct Federal procurement. Basically, the regulatory requirements of Buy America are narrower and only cover iron and steel materials.

As stated in the section above, article 1001 of the NAFTA is the treaty provision that mandates that the Federal Government acquire certain goods and services without regard to the Buy American Act. Article 1001 of the NAFTA, however, expressly exempts grants, loans, cooperative agreements, and other forms of Federal financial assistance from its coverage. Thus, unless future negotiations among the three nations create additional requirements, the NAFTA does not affect the Buy America requirements for Federal-aid highway construction projects.

I hope that the foregoing is responsive to your inquiry.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Rodney E. Slater", written in black ink. The signature is fluid and extends across the width of the typed name below it.

Rodney E. Slater
Administrator