

May 23, 2022

Celeste Drake, Director
Made in America Office
Office of Management and Budget
725 17th Street NW
Washington, DC 20503 United States

Dear Director Drake:

The National Sand, Stone and Gravel Association (NSSGA) submits this comment to the Office of Management and Budget (OMB) on the Request for Information published in the Federal Register on April 21, 2022 on the implementation of the “Build America, Buy America Act” contained in P.L. 117-58

NSSGA represents aggregates producers and those who manufacture equipment and services that support the construction industry. Our members are essential to the work of this country, and we represent more than 90 percent of the crushed stone and 70 percent of the sand and gravel produced annually in the United States. Our members employ more than 100,000 hard-working men and women, who are responsible for the essential raw materials found in every home, building, road, port, dam and public works project.

Section 70917(C)(1) of the Build America, Buy America Act (BABA) specifically excludes “cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives” from the term “construction materials” as used under the act.

Section 70917(c)(2) specifically excludes “cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives” as being “inputs of the construction material” under “the standards developed under section 70915(b)(1)”. These standards in (b)(1) define “the term ‘all manufacturing processes’ in the case of construction materials” and cannot include “cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives”.

Our review of the OMB RFI dated April 21, 2022 finds OMB in complete agreement with NSSGA on the clear reading of the law excluding “cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives” from the BABA.

We highlight the following quote from the guidance “OMB also notes that under the Act, the term “construction materials” cannot include cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives. See IJJA 70917(c)(1). Further, OMB’s standards defining “all manufacturing processes” for construction material are prohibited from including cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives as inputs of the construction material. See IJJA 70917(c)(2).”

Within the exclusion the terms “aggregates such as stone, sand, or gravel” are straight forward, clear and unambiguous. The law provides examples of the meaning of the aggregate exclusion by stating “such as sand, stone or gravel”. The statutory construction analysis of the words “such as sand, stone or gravel” establish the intent of the aggregate exclusion to clearly include sand, stone or gravel.

The clarity in the law of the aggregates exemption from BABA should be reflected in OMB guidance implementing BABA. Clear guidance from OMB on the exclusion of “aggregates such as stone, sand, or gravel” from BABA is required to ensure no misunderstanding or confusion. The guidance must also make clear that procurement of aggregates such as stone, sand, or gravel are not accompanied by any paperwork burden related to BABA authority.

In the same manner, the law excludes “aggregate binding agents and additives” and “cement and cementitious materials”. Aggregate binding agents serve the purpose of binding aggregates together to produce pavements. Aggregate binding agents include asphalt cement binder, which is also a cementitious material. Asphalt cement binder is commonly referred to as “asphalt binder”.

Additives include polymers, chemicals and organic materials added at the asphalt plant or added to the cement binder prior to delivery to the plant. The science of better performing additives is a continuing effort lead by industry, OMB should not “freeze” the definition of additives to those in use today and should accommodate future advanced additives as they are developed. The physical and chemical properties of asphalt cement binders and mixtures are often improved by additives.

Cement is also specifically excluded from the definition of “construction materials” as well as the “standards that define the term ‘all manufacturing processes’ in the case of construction materials.”.

Clarity from OMB on these exclusions is particularly important in OMB’s standards development under 70915(b)(1), where the “cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives” exemptions may be the only “inputs” for the manufacture of a construction material. OMB’s recognition of the practical realities and of the use of these excluded materials as well as their use in manufacturing construction materials is critical.

The goals of the IJJA and BABA will be advanced by OMB with guidance on this exclusion that produces no procurement or construction delay with regard to exclusions provided in Sec. 70917(c). We look forward to continuing to work with OMB to implement this section of the BABA.

Sincerely,



Michele Stanley
Vice President, Government and Regulatory Affairs
National Stone, Sand & Gravel Association