



NATIONAL STONE, SAND
& GRAVEL ASSOCIATION

August 18, 2022

The Honorable Polly E. Trottenberg
Deputy Secretary
U.S. Department of Transportation
1200 New Jersey Ave SE
Washington, DC 20590

RE: Docket No. DOT-OST-2022-0047: Construction Materials Used in Federal Financial Assistance Projects for Transportation Infrastructure in the United States Under Build America, Buy America Act; Request for Information

Dear Deputy Secretary Trottenberg:

The National Sand, Stone and Gravel Association (NSSGA) is the leading voice and advocate for the aggregates industry. Our members are stone, sand and gravel producers and the equipment manufacturers and service providers who support them. Our members are essential to the work of this country, employing 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. The NSSGA and its members fully support the goals of the Infrastructure Investment and Jobs Act (IIJA). We are committed to fulfilling the critical role the aggregates industry will play in providing billions of tons of aggregates the necessary to achieve the IIJA's goals.

The NSSGA submits this comment in response the Department of Transportation (DOT) Request for Information (RFI) Docket No. DOT-OST-2022-0047: Construction Materials Used in Federal Financial Assistance Projects for Transportation Infrastructure in the United States under the Build America, Buy America Act (BABA)(P.L.117-58).

The Department of Transportation's effort to implement the domestic procurement requirements for "construction materials" contained in the BABA must begin with clear, unambiguous communications to State DOTs, construction companies and construction materials providers of what "construction materials" are exempted in the BABA law itself, from BABA's requirements.

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”.

We are aware of wide-spread and unnecessary confusion among State DOT and construction companies and construction materials providers emanating from the lack of clarity in DOT’s, and other federal agencies’, guidance, waivers, and RFIs, concerning the applicability of BABA’s requirements to aggregates such as sand, stone or gravel.

Our review of the Office of Management and Budget (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 IIJA 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 IIJA 70917(c)(2).”

The goals of the BIL and BABA will be advanced by DOT when in its guidance and any and all BABA related communications it includes language on this exclusion that makes clear there is no paperwork burden associated with the exemption, and no procurement or construction delay or confusion should exist for the exempted materials.

NSSGA urges the DOT to immediately issue a communication to all State DOTs specifically and exclusively on the exemption of cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives from BABA’s requirements. We also believe that on the DOT and Federal-aid Highway Administration’s (FHWA) website pages addressing BABA a specific and clear statement of the exemptions should be prominently included.

Clarity from DOT on these exclusions is particularly important as standards development under 70915(b)(1) proceeds, and where the “cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives” exemptions are the only “inputs” for the domestic manufacture of a construction material, such as ready mixed concrete. Where this is the case, the manufactured construction material is clearly also exempt from BABA. The DOT’s recognition of the practical realities and of the use of BABA excluded materials, as well as their use in manufacturing construction materials, is critical.

Construction companies and construction materials providers were already operating within historically stressed supply chains even before the Bipartisan Infrastructure Law (BIL) and BABA became law. The BIL established high expectations for the successful investment of historic funding levels for



transportation, energy, water and all types of infrastructure. Achievement of those expectations requires that BABA's requirements be implemented with clarity. To the extent the current confusion and lack of clarity persist it will undermine the BIL's goals through higher materials prices, fewer bidders for projects involving federal funding and delay in establishing the very domestic manufacturing base BABA was intended to bring about.

For these reasons NSSGA additionally urges the DOT to extend the current 180-day waiver of BABA an additional 12-18 months to provide time for the DOT to issue clear and realistic guidance informed by the OMB's BABA guidance.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Johnson', is displayed within a white rectangular box.

Michael Johnson
President and CEO
National Stone, Sand & Gravel Association

