

## Aggregates Exemption from Federal Buy America Requirements

The Infrastructure Investment and Jobs Act (IIJA) provides historic federal investment into existing and new programs to improve infrastructure across the country. One of the key policy changes made under the IIJA was the creation of new federal Build America Buy America (BABA) sourcing requirements, which include the addition of “construction materials” to Buy America preferences across federal infrastructure programs.

The aggregates industry worked with Congress, as they crafted the new statutory requirements to exclude aggregates, cement, and asphalt additives and binder. Specifically, the aggregates exemption was included in law under:

- Section 70917(C)(1) which 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) which 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.”

Per the law, the Office of Management and Budget (OMB), is crafting BABA guidance that will be used across federal agencies in charge of executing federal infrastructure funding. [OMB’s Request for Information dated April 18, 2022](#) provides a clear understanding of the law by explicitly stating, “cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives” are excluded from the BABA requirements.

This exclusion has also been used in the various temporary implementation guidance issued by federal agencies, including the Federal Highway Administration’s August 2 [overview](#) of Buy America requirements.

*FHWA Explanation of Buy America Exclusion from 8/2/22 Presentation*

The aggregates industry strongly supports the goals of Congress and the Administration to expeditiously improve our outdated infrastructure. It is imperative that federal and state partners responsible for distributing federal investments follow the BABA law, as written by Congress, and not impose any sourcing requirements or paperwork burdens on cement, aggregates and asphalt additives and binder. This will ensure maximum project delivery and American job creation.

### Construction Materials (cont’d.)

#### Items excluded from construction materials under OMB Memo M22-11:

- An item of primarily iron or steel
- A manufactured product
- Cement and cementitious materials
- Aggregates such as stone, sand, or gravel
- Aggregate binding agents or additives

Asphalt concrete pavement mixes are typically composed of asphalt cement (a binding agent) and aggregates such as stone, sand, and gravel. Accordingly, asphalt is also excluded from the term construction materials.