

November 18, 2022

Darren Timothy
Office of the Assistant Secretary for Transportation Policy
U.S. Department of Transportation
1200 New Jersey Avenue SE
Washington, DC 20590

Re: Notice of Proposed Waiver of That Requirement for a Narrow Category of Contracts and Solicitations, Docket No. DOT-OST-2022-0123

Notice of Proposed Waiver of Buy America Requirements for De Minimis Costs, Small Grants, and Minor Components; Docket No. DOT-OST-2022-0124

Dear Mr. Timothy:

We the below signed members of the Americans for Transportation Mobility write in support of the two Waivers to the Buy America Requirements for Construction Materials.

The new requirements created by the Build America, Buy America Act (BABA) included in the Infrastructure Investment and Jobs Act (IIJA) introduce significant changes to existing Buy America requirements that require additional analysis and guidance from the Administration to implement. While these waivers will provide some flexibility for the delivery of critical infrastructure projects, we believe it is necessary for the Administration to issue another transitional waiver and provide sufficient time to spell out clear guidelines for compliance with IIJAs requirements.

We know that the Administration shares our goals to support job creation, timely delivery of high-quality infrastructure projects, and building domestic capacity. However, further guidance related to these new requirements, particularly as it relates to manufactured products versus construction materials, is necessary to avoid unintended consequences that include the loss of good-paying construction jobs and higher project costs. Thus, we are asking the administration to provide clear and improved guidance clarifying the new Buy America requirements under IIJA.

Many of the effects of these requirements on supply chains and the infrastructure law remain unknown as we see how manufacturers adapt to the new requirements. The broadening of Buy America coverage under the IIJA will likely impact supply chains across multiple industries, including among suppliers to the construction industry. Given the significance of these new requirements, the need for proper federal guidance is clear. However, the limited guidance that does exist contains some clear conflicts with what is in IIJA.

For example, while it's clear that aggregates-based construction materials like concrete and asphalt are excluded from the new requirements under IIJA, the Office of Management and Budget's Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure (OMB guidance) made available for comment on April 18, 2022, is silent on whether these aggregates-based materials are excluded. However, the draft guidance does state that cement, stone, sand and/or gravel and additives that are mixed to create asphalt and concrete are excluded. Because of this lack of clear direction from the Administration, state departments of transportation and federal agencies have begun issuing guidance that conflicts with IIJA and each other;

with some excluding aggregates-based materials from Buy America requirements and some including them because they believe that the inputs fall under Buy America.

We recognize that IIJA is significant law with impacts that will be felt on the transportation sector for years to come, so it's appropriate that strengthening domestic manufacturing capacity to execute the law over the long-term occurs. We recognize this will take time, and waivers are necessary in that interim; however, it is key that the federal government use the time under these waivers to develop clear guidance to federal, state, and local agencies to ensure the law is implemented as Congress intended. We continue to urge the Administration to extend the Temporary Waiver of Buy America Requirements for Construction Materials until OMB has issued its final guidance to ensure a successful implementation process for BABA and success of the IIJA. We stand ready to provide any assistance the Administration may need in this regard from industry.

Thank you for the opportunity to comment.

Sincerely,

American Council of Engineering Companies
American Public Transportation Association
The Associated General Contractors of America
National Asphalt Pavement Association
National Stone, Sand, and Gravel Association
U.S. Chamber of Commerce