



August 18, 2022

The Honorable Polly E. Trottenberg  
Deputy Secretary  
U.S. Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, DC 20590-0001

Re: Construction Materials Used in Federal Financial Assistance Projects for Transportation Infrastructure in the United States under the Build America, Buy America Act (DOT-OST-2022-0047)

Dear Deputy Secretary Trottenberg:

On behalf of the National Association of State Aviation Officials (NASAO), I appreciate the opportunity to share these general comments to the U.S. Department of Transportation in response to the Request for Information (RFI) on Construction Materials Used in Federal Financial Assistance Projects for Transportation Infrastructure in the United States Under the Build America, Buy America Act, published on July 28, 2022.

NASAO is the nationally recognized voice for the public interest in aviation on behalf of the states and territories. NASAO represents state officials of all 50 states, Guam, and Puerto Rico, who, as part of their many responsibilities, make decisions on funding aviation systems and airport infrastructure at our nation's more than 3,300 public-use airports.

NASAO is concerned that if the new Buy America requirements are not carefully implemented, it could negatively impact the delivery of airport projects across the country due to higher bid prices and supply lead times. A phased approach will help with the transition, while minimizing disruptions to project delivery.

To ensure a smooth transition, it will be critical for the U.S. Department of Transportation and the Federal Aviation Administration (FAA) to conduct trainings and provide adequate time for state aviation agencies and the broader stakeholder community to understand the new Buy America requirements and prepare for implementation of these new requirements. In addition, it is important that the Department and the FAA provide timely and regular communication throughout the transition to ensure new Buy America requirements are consistently implemented across the country. State aviation agencies will be a key partner in this endeavor.

NASAO provides the following responses to questions posed within the RFI:

*(2) Are there materials used in DOT-funded projects that do not clearly fit in any one of the three categories: steel and iron; manufactured products; or construction materials? How should DOT assign them to one of these statutory categories?*

These following materials need clarification on whether they fit in the three categories:

- Asphalt
- Seal coats and prime coats
- Joint sealants
- Paints
- Seed
- Mulch, fertilizer, sod, lime

*(7) Are there some items in OMB's list of construction materials that typically are used in DOT-funded projects only after they have been combined into a manufactured product? For example, is glass regularly used by itself as a construction material, or does it usually arrive at a project already incorporated with other materials as a manufactured product?*

Cementitious materials and asphalt cement when used as a component of a pavement mix design.

*(10) A commenter on DOT's proposed temporary Buy America waiver for construction materials stated that "the ability to certify materials will grow over time, so there should be a good faith certification process that can be refined over time." What would such a "good faith certification process" that can be implemented in the near term (i.e., prior to the expiration of the temporary waiver on November 10, 2022) look like? What steps would be required to refine those processes over time?*

NASAO recommends that the certification could be for a short period of time (i.e., 5 years) after which, the federal agency would require a new application to review. This would give industries time to grow and agencies the time to move projects forward but allow for a reevaluation of construction item availability from time to time.

*(11) Is the standard in the OMB Initial Implementation Guidance sufficiently clear to enable a bidder or offeror for a DOT-funded project to certify the construction materials to be used in the project are produced in the United States? If not, what further clarification is needed?*

NASAO believes further clarification of OMB Initial Implementation Guidance is needed for compliance. For example, are the construction items only those that are specifically listed (i.e., permissive language)? Who interprets whether other construction items are required to meet the BABA requirements?

*(13) Are there any construction materials commonly used in DOT-funded projects that are known not to be produced in the United States based on OMB's final manufacturing process and the immediately preceding manufacturing stage standard, or are known not to be produced in sufficient quantity or of satisfactory quality? What is the basis for that knowledge?*

The following are not produced in sufficient quantity:

- Chain link fencing fittings and hardware

- Electrical subcomponents
- Pigment in pavement marking pairing sock material for underdrains

Thank you for the opportunity to provide input on the new Buy America requirements. NASAO looks forward to continuing the dialogue on implementing the Infrastructure Investment and Jobs Act (P.L. 117-58).

Sincerely,

A handwritten signature in black ink, appearing to read "G. Pecoraro". The signature is stylized and written in a cursive-like font.

Gregory Pecoraro  
NASAO President and CEO