

IMPLEMENTATION OF BUY AMERICA PROVISIONS: STAKEHOLDER PERSPECTIVES

(118–46)

HEARING
BEFORE THE
SUBCOMMITTEE ON
HIGHWAYS AND TRANSIT
OF THE
COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE
HOUSE OF REPRESENTATIVES
ONE HUNDRED EIGHTEENTH CONGRESS
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FEBRUARY 9, 2024

SUMMARY OF SUBJECT MATTER

TO: Members, Committee on Transportation and Infrastructure
FROM: Staff, Subcommittee on Highways and Transit
RE: Subcommittee Hearing on “Implementation of Buy America Provisions: Stakeholder Perspectives”

I. PURPOSE

The Subcommittee on Highways and Transit of the Committee on Transportation and Infrastructure will meet on February 15, 2024, at 10:00 a.m. ET in 2167 Rayburn House Office Building to receive testimony at a hearing entitled, “Implementation of Buy America Provisions: Stakeholder Perspectives.” The hearing will provide an opportunity for Members to review and discuss implementation of Buy America provisions under the Subcommittee’s jurisdiction, including the Build America, Buy America Act (BABAA), as included in the Infrastructure Investment and Jobs Act (IIJA) (P.L. 117–58). At the hearing Members will receive testimony from the American Association of State Highway and Transportation Officials (AASHTO), the Associated General Contractors of America (AGC), Nucor Corporation, the National Asphalt Pavement Association (NAPA), and the United Steelworkers (USW).

II. BACKGROUND

HISTORY OF DOMESTIC SOURCING PREFERENCES

The Buy American Act of 1933 (41 U.S.C. §§ 8301–8305) was the first Federal law to require the domestic sourcing of products and components for projects purchased with Federal funds.¹ “The Buy American Act requires Federal agencies to procure domestic materials and products.”² This law set forth standards for goods purchased directly by the Federal Government when two conditions are present: “(1) the procurement must be intended for public use within the United States; and (2) the items to be procured or the materials from which they are manufactured must be present in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.”³ Subsequent legislation built upon those preferences by establishing domestic content requirements for indirect procurement

¹DAVID H. CARPENTER AND BRANDON J. MURRILL, CONG. RSCH. SERV., R46748, THE BUY AMERICAN ACT AND OTHER FEDERAL PROCUREMENT DOMESTIC CONTENT RESTRICTIONS, (Nov. 8, 2022) available at <https://crsreports.congress.gov/product/pdf/R/R46748> [hereinafter CRS Report R46748].

²U.S. GOV’T ACCOUNTABILITY OFF., GAO–05519, THE BUY AMERICAN ACT (1978) available at <https://www.gao.gov/assets/105519.pdf>.

³*Id.*

using Federal funds allocated for contracts and partial project investment.⁴ These policies governing indirect Federal investment are typically referred to as “Buy America” policies, distinct from the Buy American policies governing direct Federal procurement.

ENACTMENT OF BUY AMERICA

Buy America requirements, as they relate to surface transportation, date back to the Surface Transportation Assistance Act (STAA) of 1978 (P.L. 95–599) and are distinct from requirements under the Buy American Act of 1933, which is specific to direct procurement by the Federal Government.⁵ The Federal Highway Administration’s (FHWA’s) initial Buy America requirements for Federal-aid highway funding programs were established in Title IV, Section 401 of the STAA of 1978.⁶ Section 165 of the STAA of 1982 (P.L. 97–424) modified FHWA’s requirements to provide that funds authorized for Federal-aid highway projects, which included transit, rail, and road transportation, could not be obligated unless the steel, cement, and manufactured products used in those projects are produced in the United States.⁷ This law further expanded that these Buy America provisions apply to all projects regardless of overall cost and directed FHWA to develop relevant waiver procedures.⁸ Cement was subsequently removed from the list of covered goods in 1984.⁹

In addition to Buy America policies, Congress has passed additional policies designed to support domestic manufacturing and prevent unfair competition. For example, in 2019, Congress passed the Transit Infrastructure Vehicle Security Act, enacted as part of the National Defense Authorization Act of 2020 (P.L. 116–92), which prevents Federal funding for mass transit projects from being allocated to State Owned Enterprises connected to the Chinese Communist Party (CCP).¹⁰ That legislation specifically imposes a prohibition on the use of Federal funds to purchase rail cars or buses from a manufacturer that is owned or controlled by, is a subsidiary of, or is otherwise legally or financially related to a corporation based in China.¹¹ More recently, on May 23, 2023, the Committee on Transportation and Infrastructure favorably reported H.R. 3317, the Rolling Stock Protection Act, a bipartisan bill to eliminate existing policy which currently allows four public transit agencies to continue contracted payments to entities connected to the CCP.¹²

III. BUY AMERICA PROVISIONS UNDER IIJA

IIJA CHANGES TO BUY AMERICA

IIJA expanded Buy America coverage to various types of infrastructure projects that receive Federal investment but had previously been exempt or otherwise not required to meet domestic sourcing and content preferences. The law expanded Buy America requirements to include transmission facilities, electric utility structures, broadband infrastructure, and buildings and real property.¹³ Additionally, the law provided funding for new programs to fund construction of a National charging network.¹⁴ This significant expansion of Federal funding for EV chargers has led to

⁴ CRS Report R46748, *supra* note 1, at 1.

⁵ CHRISTOPHER D. WATSON, CONG. RSCH. SERV., IF119898, CONGRESS EXPANDS BUY AMERICA REQUIREMENTS IN THE INFRASTRUCTURE INVESTMENT AND JOBS ACT (P.L. 117–58) (Dec. 7, 2021) available at <https://crsreports.congress.gov/product/pdf/IF/IF11989> [hereinafter CRS Buy America Requirements].

⁶ Surface Transportation Assistance Act of 1978, Pub. L. No. 95–599, 92 Stat. 2689.

⁷ Surface Transportation Assistance Act of 1982, Pub. L. No. 97–424, 96 Stat. 2097.

⁸ U.S. DEPT OF TRANSP., FHWA, *Buy America Final Rule*, (Nov. 25, 1983), available at <https://www.fhwa.dot.gov/construction/contracts/831125.cfm>.

⁹ Pub. L. No. 98–229, § 10, 98 Stat. 55 (Mar. 9, 1984); see also Buy America Requirements, 50 Fed. Reg. 2,289 (Jan. 16, 1985).

¹⁰ 49 U.S.C. § 5323(u).

¹¹ See e.g. Nat’l Defense Authorization Act for Fiscal Year 2020, Pub. L. No. 116–92, 133 Stat. 1198; Jeff Davis, *Final Defense Bill Bans New Purchases of Mass Transit Vehicles from Chinese Companies—After 2-Year Delay*, ENO CENTER FOR TRANSPORTATION, (Dec. 10, 2019), available at <https://enotrans.org/article/final-defense-bill-bans-new-purchases-of-mass-transit-vehicles-from-chinese-companies-after-2-year-delay/>.

¹² Press Release, H. COMM. ON TRANSP. & INFRASTRUCTURE, *T&I Committee Approves Package of Bills to Strengthen America’s Supply Chain*, (May 23, 2023), available at <https://transportation.house.gov/news/documentsingle.aspx?DocumentID=406454>.

¹³ OMB, INITIAL IMPLEMENTATION GUIDANCE ON APPLICATION OF BUY AMERICA PREFERENCE IN FEDERAL FINANCIAL ASSISTANCE PROGRAMS FOR INFRASTRUCTURE, M–22–11 (Apr. 18, 2022) available at <https://www.whitehouse.gov/wp-content/uploads/2022/04/M-22-11.pdf> [hereinafter M–22–11].

¹⁴ U.S. DEPT OF TRANSP., FHWA, NATIONAL ELECTRIC VEHICLE INFRASTRUCTURE (NEVI) FORMULA PROGRAM Q&A, available at https://www.fhwa.dot.gov/environment/nevi/resources/nevi_program_faqs.cfm.

new considerations for policymakers regarding the application of Buy America.¹⁵ These considerations are discussed in more detail below.

While iron and steel have long been central to Buy America domestic preferences, construction materials as a broad category were not subject to Buy America prior to IIJA. IIJA broadened the range of component and construction materials to which domestic sourcing requirements are applicable by including nonferrous metals, such as copper used in electric wiring; plastic- and polymer-based products; glass, including optical fiber; and other specific construction materials, such as lumber and drywall.¹⁶ Additionally, it instructed the Office of Management and Budget (OMB) to issue material and process definitions for manufacturers and financial assistance project recipients to provide further clarity.¹⁷ These details were released by OMB in a Memorandum to Executive Departments and Agencies on April 18, 2022.¹⁸

WHAT IS BUILD AMERICA, BUY AMERICA ACT (BABAA)?

While IIJA expanded on previously enacted Buy America provisions, it also codified BABAA in Title IX. BABAA requires that when procuring iron, steel, manufactured products, and construction materials for use in infrastructure projects that receive Federal funding assistance, preference must be given to materials produced by companies and workers in the United States.¹⁹ These provisions apply to all infrastructure projects whether funding is allocated through IIJA or other Federal programs.²⁰ BABAA did not replace existing Buy America policies that had equivalent or stronger provisions, and therefore largely did not affect the existing highway and transit Buy America policies. However, a major change to highway and transit programs under BABAA is the expansion of Buy America preferences to include more construction materials.²¹

Part I of BABAA further defines products, materials, and types of projects, outlines the manner in which deficiencies may be identified and addressed, requires the OMB Director to establish guidance and standards, and outlines agency processes and deadlines for the application of these preferences.²² While BABAA includes Buy America coverage for construction materials generally, the law specifically exempted “cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives”²³ from such coverage. As directed in the law, subsequent guidance from OMB established a 55 percent domestic component and cost threshold for manufactured products and dictated that all manufacturing processes must occur in the United States.²⁴

Part II of BABAA establishes regulatory guidance dictating how Federal agencies must comply with, report on, and enforce the Buy American Act.²⁵ This section further directs OMB to establish the Made in America Office (MIAO) to oversee implementation and enforce compliance for domestic preference statutes as well as establish procedures and requirements for waivers of this preference in project development and product procurement.²⁶

WAIVING BABAA REQUIREMENTS

Per directives in IIJA, the MIAO established guidelines for Federal agencies to follow when waiving BABAA procurement preference requirements for infrastructure projects receiving Federal assistance funding. These waiver conditions are consistent with the waiver conditions for highways and transit programs that pre-dated BABAA.²⁷ These waivers may be granted, following consideration and approval by the affected Federal agency and the MIAO, under specific circumstances and on the basis of:

- Product Non-Availability—if an agency determines that iron, steel, or construction or manufactured materials are not domestically produced in sufficient or reasonable quality;

¹⁵ *Id.*

¹⁶ CRS Buy America Requirements, *supra* note 5, at 2.

¹⁷ *Id.*

¹⁸ M-22-11, *supra* note 13.

¹⁹ CRS Buy America Requirements, *supra* note 5, at 2.

²⁰ Build America, Buy America Act, Title IX, IIJA, Pub. L. No. 117-58, §§ 70901–52.

²¹ CRS Buy America Requirements, *supra* note 5, at 2.

²² Fact Sheet, OMB, MIAO, *What is Build America, Buy America?*, available at <https://www.whitehouse.gov/wp-content/uploads/2022/07/Build-America-Buy-America-Factsheet-and-FAQs-for-Award-Recipients.pdf> [hereinafter MIAO Fact Sheet].

²³ IIJA, Pub. L. No. 117-58, § 70917.

²⁴ MIAO Fact Sheet, *supra* note 22.

²⁵ *Id.*

²⁶ Build America, Buy America Act, Title IX, IIJA, Pub. L. No. 117-58, §§ 70901–52.

²⁷ 23 C.F.R. § 635.410 (2024).

- Unreasonable Cost—if an agency determines that the inclusion of domestically-sourced iron or steel, construction materials or manufactured products will increase the overall project cost by more than 25 percent; and
- Public Interest—if an agency determines that meeting domestic sourcing and content procurement requirements is inconsistent with the public interest.²⁸

The MIAO further announced guidance that waivers must be both necessary and justified and should be project- or award-specific or time limited, targeted to project-necessary products, and conditional to advance overall Buy America priorities and policies.²⁹ The MIAO also requires agencies to publicly post waiver applications, consult with the MIAO, develop a waiver transparency website, and review general applicability waivers that have been in place for more than five years.³⁰

IV. SELECT MODAL REQUIREMENTS

CURRENT FHWA REQUIREMENTS

FHWA's Buy America requirements impose procurement preference restrictions, requiring that all steel, iron, and manufactured products and components permanently incorporated into Federal-aid highway construction be sourced domestically.³¹ Manufacturing processes for such components must also take place in the United States.³² While covered under the FHWA Buy America policies, manufactured goods have been exempted from Buy America rules for highway projects under a 1983 general applicability waiver discussed in further detail below.³³

Federal highway Buy America laws and regulations stipulate contracting procedures for Federal-aid construction projects seeking to utilize non-domestically sourced steel and iron and grant that those requirements do not apply when the incorporation of those materials does not exceed one-tenth of one percent or are less than a total cost of \$2,500.³⁴ It further describes waiver requirements and appeal processes.³⁵ FHWA Buy America requirements are applied to all project contracts funded under Title 23 programs that are subject to National Environmental Policy Act (NEPA) review if at least one of the project's contracts is funded with Title 23 funds.³⁶ The C.F.R. outlines that waiver requests must be submitted in writing to the Regional FHWA Administrator.³⁷ While guidance released in April 2022 from the MIAO outlined information suggested to be included in a waiver request, no formal waiver template exists.³⁸ Further, following enactment of IIJA, waiver requests are required to be reviewed by the MIAO.³⁹ Stakeholders have raised concerns that the waiver process has become lengthy and unpredictable.⁴⁰

CURRENT FEDERAL TRANSIT ADMINISTRATION (FTA) REQUIREMENTS

FTA Buy America requirements prevent the agency from utilizing appropriated funds for projects unless "the steel, iron, and manufactured goods used in the project are produced in the United States."⁴¹ These requirements also apply to FTA grant recipients.⁴² Grantees must include proposal specifications for procurement of steel, iron, or manufactured goods (including rolling stock) with an appropriate no-

²⁸ M-22-11, *supra* note 13, at 3.

²⁹ MIAO Fact Sheet, *supra* note 22.

³⁰ *Id.*

³¹ U.S. DEPT OF TRANSP., FHWA, CONTRACT ADMINISTRATION CORE CURRICULUM MANUAL, (Page 87), available at <https://www.fhwa.dot.gov/programadmin/contracts/cacc.pdf>.

³² *Id.*

³³ 23 C.F.R. § 635 (1983).

³⁴ U.S. DEPT OF TRANSP., OST, DOT'S IDENTIFICATION OF FEDERAL FINANCIAL ASSISTANCE INFRASTRUCTURE PROGRAMS SUBJECT TO THE BUILD AMERICA, BUY AMERICA PROVISIONS OF THE INFRASTRUCTURE INVESTMENT AND JOBS ACT (Jan. 2022), available at <https://www.transportation.gov/sites/dot.gov/files/202201/DOT%20Report%20on%20Financial%20Assistance%20Infrastructure%20Programs.pdf>.

³⁵ *Id.*

³⁶ *Id.*

³⁷ 23 C.F.R. § 635.410 (2024).

³⁸ M-22-11, *supra* note 13, at 3.

³⁹ OMB, IMPLEMENTATION GUIDANCE ON APPLICATION OF BUY AMERICA PREFERENCE IN FEDERAL FINANCIAL ASSISTANCE PROGRAMS FOR INFRASTRUCTURE, M-24-02 (Oct. 25, 2023), available at <https://www.whitehouse.gov/wp-content/uploads/2023/10/M-24-02-Buy-America-Implementation-Guidance-Update.pdf> [hereinafter OMB Implementation Guidance].

⁴⁰ Press Release, ASS. GEN. CONTR., *OMB Releases Additional BABAA Guidance* (Oct. 26, 2023), available at https://advocacy.agc.org/omb_releases_additional_babaa_guidance.

⁴¹ Buy America Requirements, 49 U.S.C. § 5323(j)(1).

⁴² *Id.*

tice of the Buy America provision, as well as a completed Buy America certificate in accordance with 49 C.F.R. §§ 661.6 or 661.12.⁴³

Congress increased the rolling stock domestic content requirements from 50 percent in 1978, to 55 percent in 1989, to 60 percent in 1991, and then a gradual increase from 60 percent to 70 percent between fiscal year 2017 and fiscal year 2020.⁴⁴ Rolling stock includes train control, communication systems, traction power equipment, and rolling stock prototypes.⁴⁵ Final assembly must occur in the United States and all procurements must abide to pre-award and post-delivery Buy America audit provisions.⁴⁶

Unlike rolling stock, FTA requires manufactured goods be 100 percent produced in the United States.⁴⁷ To meet these guidelines: (1) All of the manufacturing processes for the product must take place in the United States; and (2) All of the components of the product must be of United States origin.⁴⁸ Notably, a component is still considered of United States origin if it is manufactured in the United States, despite the origin of its subcomponents.⁴⁹

FTA grant recipients may apply for a waiver of Buy America requirements for project components or equipment if those materials are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality, are cost prohibitive, or if the agency determines waiving domestic sourcing requirements is in the public interest.⁵⁰ The process to seek a waiver is outlined in 49 C.F.R. Subtitle B, Chapter VI § 661.9 and includes the submission of a written declaration of the need for a domestic sourcing exception to the appropriate regional office, review by the agency, and, per IIJA, consultation and final determination by the MIAO.⁵¹ While this process does include prescriptive timelines for the public posting of waivers under final approval consideration, there are no formal internal deadlines for agency review or progress notification to waiver applicants.⁵² The resulting uncertainty in waiver review has led to confusion and project delays.⁵³

V. RECENT IMPLEMENTATION CHALLENGES

The Administration released initial implementation guidance related to BABAA on April 18, 2022, and on February 9, 2023, OMB issued proposed guidance.⁵⁴ In the interim, FHWA issued Questions and Answers related to BABAA on February 1, 2023, and on February 7, 2023, FTA held a webinar on the applicability of BABAA construction materials provision.⁵⁵ However, concerns were repeatedly raised that additional clarity was needed in order to ensure proper compliance with these provisions.⁵⁶ On August 23, 2023, 15 months after releasing its initial guidance, final guidance related to BABAA was issued from OMB.⁵⁷

Over the same period, the United States Department of Transportation (DOT) also advanced waiver and exemption processes for grantees and funding applicants,

⁴³ *Id.*; see also, Pre-Award and Post-Delivery Audits of Rolling Stock Purchases, 49 U.S.C. § 5323(m) and 49 C.F.R. § 663 (2024), available at <https://www.ecfr.gov/current/title-49/subtitle-B/chapter-VI/part-663> [hereinafter Pre-Award and Post-Delivery Audits of Rolling Stock Purchases].

⁴⁴ TRANSP. RESEARCH BOARD, LEGAL RESEARCH DIGEST, UPDATED GUIDE TO BUY AMERICA REQUIREMENTS—2015 SUPPLEMENT (May 2017) available at <https://nap.nationalacademies.org/read/24780/chapter/1>.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ U.S. DEPT OF TRANSP., FTA, *Buy America*, available at <https://www.transit.dot.gov/buyamerica>.

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ Waivers, 49 C.F.R. § 661.7 (2024).

⁵¹ OMB Implementation Guidance, *supra* note 39, at 5.

⁵² *Id.*

⁵³ *Id.*; see also, *Reviewing the Implementation of the Infrastructure Investment and Jobs Act Before the Subcomm. on Highways and Transit. of the H. Comm. on Transp. and Infrastructure*, 118th Cong., (Mar. 28, 2023).

⁵⁴ M-22-11, *supra* note 13, at 3.

⁵⁵ FHWA, *FHWA's Buy America Q and A for Federal-aid Program*, available at https://www.fhwa.dot.gov/construction/contracts/buyam_qa.cfm (last updated Mar. 20, 2023); FTA, *Buy America Update, Construction materials Waiver for Certain Contracts and Solicitations, FTA Internal Webinar*, YOUTUBE, (Feb. 7, 2023), available at <https://www.youtube.com/watch?v=61UYE680by4>.

⁵⁶ *The State of Transportation Infrastructure and Supply Chain Challenges: Hearing Before the Subcomm. on Highways and Transit of the H. Comm. on Transp. and Infrastructure*, 118th Cong., (Feb. 1, 2023); *Reviewing the Implementation of the Infrastructure Investment and Jobs Act: Hearing Before the Subcomm. on Highways and Transit of the H. Comm. on Transp. and Infrastructure*, 118th Cong., (Mar. 28, 2023).

⁵⁷ Guidance for Grants and Agreements, 88 Fed. Reg. 162, 57750 (Aug. 23, 2023).

delivering additional issues for stakeholders seeking project funding, with the cited intent of phasing in new Buy America requirements. For example, on May 25, 2022, DOT issued a temporary waiver of Buy America requirements for construction materials provided for awards obligated during the 180-day period between May 14, 2022, and November 10, 2022.⁵⁸ According to the waiver, regarding the 180-day timeline, the majority of commenters “stated that this length of time would likely be inadequate to accomplish the goals of the transition waiver period and suggested that it should be increased.”⁵⁹ On November 4, 2022, DOT proposed a waiver that would exempt certain de minimis costs and small grants from Buy America requirements.⁶⁰ This proposed waiver was finalized on August 16, 2023.⁶¹

As of January 2024, DOT’s website indicates that five Buy America waivers have been issued that fall within the jurisdiction of the Subcommittee.⁶² These waivers including two relating to construction materials, a temporary waiver for vans and minivans, one related to EV chargers, and one related to de minimis costs and small grants.⁶³ Additionally, OMB’s MIAO website indicates that DOT is reviewing three pending Buy America waiver requests within the jurisdiction of the Subcommittee, including two for the nonavailability of manufactured products and one for public interest for Pacific Island Territories and the Freely Associated States.⁶⁴

FHWA’S EV CHARGER WAIVER

On February 21, 2023, FHWA published in the *Federal Register* a temporary public interest waiver of Buy America requirements for chargers of EVs that went into effect on March 23, 2023.⁶⁵ The waiver applies in two parts: the first phase applies “to all EV chargers manufactured by July 1, 2024, whose final assembly occurs in the United States, and whose installation has begun by October 1, 2024.”⁶⁶ The second phase of the waiver “[applies] to all EV chargers that are manufactured on or after July 1, 2024, whose final assembly occurs in the United States, and for which the cost of components manufactured in the United States is at least 55 percent of the cost of all components.”⁶⁷ BABAA defines the term produced in the United States as:

- (A) in the case of iron or steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- (B) in the case of manufactured products, that—
 - (i) the manufactured product was manufactured in the United States; and
 - (ii) the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
- (C) in the case of construction materials, that all manufacturing processes for the construction material occurred in the United States.⁶⁸

The waiver stipulates that Buy America requirements must be followed for EV charger housing components that are predominantly steel and iron.⁶⁹ The waiver does not include an end date.⁷⁰ In the waiver, FHWA specified it was removing EV chargers from coverage under the existing general waiver of Buy America require-

⁵⁸ Temporary Waiver of Buy America Requirements for Construction Material, 87 Fed. Reg. 31936 (May 25, 2022), available at <https://www.govinfo.gov/content/pkg/FR-2022-05-25/pdf/2022-11195.pdf>.

⁵⁹ *Id.*

⁶⁰ Waiver of Buy America Requirements for De Minimis Costs and Small Grants, 88 Fed. Reg. 55817 (Aug. 16, 2023) available at <https://www.govinfo.gov/content/pkg/FR-2023-08-16/pdf/2023-17602.pdf>.

⁶¹ *Id.*

⁶² DOT, *Made in America*, available at <https://www.transportation.gov/office-policy/transportation-policy/made-in-america>.

⁶³ *Id.*

⁶⁴ OMB, MADE IN AMERICA OFFICE, *Waivers*, available at <https://www.madeinamerica.gov/waivers/>.

⁶⁵ Waiver of Buy America Requirements for Electric Vehicle Chargers Notice, 88 Fed. Reg. 10619 (Feb. 21, 2023), available at <https://www.govinfo.gov/content/pkg/FR-2023-02-21/pdf/2023-03498.pdf> [hereinafter EV Chargers Notice].

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ Build America, Buy America Act, Title IX, IIJA, Pub. L. No. 117–58, § 70912(6)(B).

⁶⁹ EV Chargers Notice, *supra* note 65.

⁷⁰ *Id.*

ments for manufactured products, discussed below, which the Administration shortly thereafter announced it was reviewing.⁷¹ FHWA is required to review the waiver five years after the date of issuance.⁷²

On July 26, 2023, Senator Rubio introduced S.J. Res. 38, a Congressional Review Act (CRA) resolution that would invalidate the final notice “Waiver of Buy America Requirements for Electric Vehicle Chargers.”⁷³ On November 8, 2023, the Senate passed S.J. Res 38, without amendment, followed by House passage on January 11, 2024.⁷⁴ The CRA was vetoed by the President on January 24, 2024.⁷⁵

FHWA’S MANUFACTURED PRODUCTS WAIVER

In January 1983, shortly after enactment of the STAA of 1982, FHWA issued a temporary public interest waiver of Buy America requirements for “manufactured products.”⁷⁶ FHWA issued a Final Rule retaining this waiver for “all manufactured products other than steel and cement manufactured products”⁷⁷ which went into effect on December 27, 1983. While Buy America requirements for FHWA Federal-aid highway programs have been amended through legislation and litigation—for instance, removing Buy America requirements for cement in 1984 and adding iron materials and manufactured products to Buy America preference requirements in 1991—the waiver for manufactured products remains in effect today.⁷⁸

As part of BABAA provisions in IIJA, Federal agencies are required to review general applicability waivers every five years following the issuance of such a waiver.⁷⁹ On March 17, 2023, FHWA issued a Notice and Request for Comment on its review of its General Applicability Waiver of Buy America Requirements for Manufactured Products, and received over 7,500 comments during the 30-day window in which this request remained open.⁸⁰ On December 6, 2023, the Office of Information and Regulatory Affairs (OIRA) released their 2023 Fall Regulatory Agenda.⁸¹ This document, which details the regulatory actions the administration will likely consider or publish in 2024, included a notification that FHWA submitted a proposed rulemaking for OIRA review on the application of Buy America to Manufactured Products. OIRA has listed April 2024 as the projected date of publication of this Notice of Proposed Rulemaking.⁸²

VI. WITNESSES

- Carlos M. Bracer, P.E., Executive Director, Utah Department of Transportation, on behalf of the American Association of State Highway and Transportation Officials (AASHTO)
- Ty Edmondson, P.E., Chief Executive Officer, T.A. Loving Company, on behalf of the Associated General Contractors of America (AGC)
- Dan Needham, Executive Vice President of Commercial, Nucor Corporation
- Brian Enders, Vice President, Walbec Group, on behalf of the National Asphalt Pavement Association (NAPA)
- Megan Salrin, Legislative Representative, United Steelworkers (USW)

⁷¹*Id.*

⁷²*Id.*

⁷³A joint resolution providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the FHWA relating to “Waiver of Buy American Requirements for Electric Vehicle Chargers”, S.J. Res. 38, 118th Cong. (2023).

⁷⁴*Id.*

⁷⁵*Id.*

⁷⁶23 C.F.R. § 635 (1983).

⁷⁷*Id.*

⁷⁸Pub. L. No. 98–229, 98 Stat. 55; DOT, FHWA, 23 *CFR Part 635 Final Rule General Material Requirements* (July 21, 1993) available at <https://www.fhwa.dot.gov/construction/contracts/930721.cfm>; see also NAT’L ACADEMIES PRESS, BUY AMERICA REQUIREMENTS FOR FEDERAL HIGHWAY PROJECTS 13 (2020), available at <https://nap.nationalacademies.org/read/25799/chapter/5>.

⁷⁹Build America, Buy America Act, Title IX, IIJA, Pub. L. No. 117–58, §§ 70901–52.

⁸⁰Notice and Request for Comment on FHWA’s Review of its General Applicability Waiver of Buy America Requirements for Manufactured Products, 88 Fed. Reg. 16517 (Mar. 17, 2023), available at <https://www.govinfo.gov/content/pkg/FR-2023-03-17/pdf/2023-05498.pdf>.

⁸¹OFF. OF INFO. AND REG. AFFAIRS, *Agency Rule List—Fall 2023*, available at <https://www.reginfo.gov/public/do/eAgendaMain>.

⁸²Application of Buy America to Manufactured Products, NPRM, available at <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202310&RIN=2125-AG13>.

IMPLEMENTATION OF BUY AMERICA PROVISIONS: STAKEHOLDER PERSPECTIVES

THURSDAY, FEBRUARY 15, 2024

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON HIGHWAYS AND TRANSIT,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
Washington, DC.

The subcommittee met, pursuant to notice, at 10 a.m. in room 2167 Rayburn House Office Building, Hon. Eric A. “Rick” Crawford (Chairman of the subcommittee) presiding.

Mr. CRAWFORD. The Subcommittee on Highways and Transit will come to order.

I ask unanimous consent that the chairman be authorized to declare a recess at any time during today’s hearing.

Without objection, so ordered.

I also ask unanimous consent that Members not on the subcommittee be permitted to sit with the subcommittee at today’s hearing and ask questions.

Without objection, so ordered.

As a reminder, if Members wish to insert a document into the record, please also email it to DocumentsTI@mail.house.gov.

I now recognize myself for the purpose of an opening statement.

OPENING STATEMENT OF HON. ERIC A. “RICK” CRAWFORD OF ARKANSAS, CHAIRMAN, SUBCOMMITTEE ON HIGHWAYS AND TRANSIT

Mr. CRAWFORD. Good morning, and I want to welcome our witnesses today. Thank you all for being here. We are here to better understand the Biden administration’s implementation of Buy America, including those provisions that were in the Infrastructure Investment and Jobs Act, or IIJA.

As most of us here know, I forcefully supported U.S. manufacturing and our domestic steel industry for many years, and I am proud to serve as the Republican cochair of the Congressional Steel Caucus. I am particularly pleased to have a great steel company, Nucor, which has significant investments in my home State of Arkansas, here with us today.

Buy America policy supports and strengthens our domestic manufacturing economy, which is crucial for both our national prosperity and security. Enforcing Buy America requirements ensures that taxpayer dollars are spent here in the United States, and not enriching our foreign adversaries, such as the Chinese Communist Party.

For example, in 2019, I led congressional efforts to pass the Transit Infrastructure Vehicle Security Act, or TIVSA, which was included as part of the National Defense Authorization Act of 2020. This law prohibits the use of Federal funds to purchase rolling stock—buses and railcars—from Chinese-owned or Chinese-domiciled manufacturers.

Unfortunately, codification of the TIVSA and its prohibition on purchasing transit equipment from China did not send a clear enough message to the Federal Transit Administration. The FTA determined that transit agencies which had formed contracts with restricted manufacturers, including the state-owned China Railway Rolling Stock MA Corporation, prior to December 2019, would be granted a lifetime exemption from the procurement prohibitions enacted by law.

We are presently working to fix that loophole.

Earlier this Congress, the committee marked up and passed my bipartisan bill, H.R. 3317, the Rolling Stock Protection Act, to firmly and finally put an end to the practice of sending American taxpayer dollars to Chinese-based manufacturers of railcars and buses. The recent committee passage of the Rolling Stock Protection Act is just one example of the longstanding, bipartisan work of this committee to ensure that Buy America policies are effective.

Buy America is not new to the transportation sector. The first provisions date back to the Buy American Act of 1933, which was the first Federal law to require domestic sourcing preferences for items purchased with Federal funds.

The Surface Transportation Assistance Act of 1982, or STAA, expanded Buy America provisions and stipulated that funds authorized for Federal-aid highway projects, including transit, rail, and road transportation, cannot be obligated unless the steel, cement, and manufactured products used are produced in the United States. STAA also directed the Federal Highway Administration, FHWA, to develop its Buy America waiver procedures to provide procurement requirement relief for grant recipients under specific circumstances.

One such waiver, affirmed in a 1983 FHWA final rule, exempted all manufactured products, other than steel and cement, from Buy America provisions. However, this “manufactured products” waiver, which has been in place for 40 years, is now under review by the Biden administration, as required by IIJA.

During the public comment period on the waiver’s review, the administration received more than 7,500 comments from stakeholders, and I hope that our witnesses today will share their thoughts on this important and pending process.

While I may not adamantly support everything IIJA did, one thing it made very clear was that Buy America was critical. For example, IIJA expanded Buy America provisions to federally funded projects that had previously been exempt, including transmission facilities, electric facility structures, broadband infrastructure, and real property and buildings.

IIJA also included the Build America, Buy America Act, which expanded domestic production preference for construction materials in addition to iron, steel, and manufactured products and extended

those requirements to all infrastructure projects that receive Federal funding, not just those authorized in the bill.

Further, IIJA created the Made in America Office, as part of the Office of Management and Budget, to provide and enforce compliance guidance and evaluate waiver requests for project applicants seeking exemptions under specific circumstances.

That said, since the enactment of IIJA, this committee has continued to receive testimony raising concerns about the implementation of Buy America. For example, despite direct legislative language, the Biden administration took 15 months to publish final guidance on Buy America implementation and compliance.

To add to the confusion, during that same timeframe, the U.S. Department of Transportation, or DOT, was advancing its own waiver and exemption process guidance for grantees and funding applicants, which included the issuance of a waiver for all Buy America requirements for construction materials for awards obligated over a 180-day period.

The contradictory guidance put forward by the Biden administration on Buy America waivers continues to cause project delays and regrettably leads to cost increases for the businesses that build our roads and bridges as well as operate the equipment in our transportation network.

States and industry need clear guidelines, including an understanding of what is and is not required when applying for a waiver, so that we can continue constructing a modern and efficient transportation system reliant on American manufacturing.

Our witnesses will offer their perspectives on the continued implementation of Buy America and the opportunities to continue growing and supporting domestic manufacturing. Again, I thank them for appearing before us today.

[Mr. Crawford's prepared statement follows:]

Prepared Statement of Hon. Eric A. “Rick” Crawford, a Representative in Congress from the State of Arkansas, and Chairman, Subcommittee on Highways and Transit

We are here to better understand the Biden Administration's implementation of Buy America, including those provisions that were in the Infrastructure Investment and Jobs Act (IIJA).

As most here know, I have forcefully supported U.S. manufacturing and our domestic steel industry for many years and am proud to serve as the Republican co-chair of the Congressional Steel Caucus. I'm particularly pleased to have a great steel company, Nucor, which has significant investments in Arkansas, here with us today.

Buy America policy supports and strengthens our domestic manufacturing economy, which is crucial for both our national prosperity and security. Enforcing Buy America requirements ensures that taxpayer dollars are spent here in the United States, and not enriching our foreign adversaries, such as the Chinese Communist Party.

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Unfortunately, codification of the TIVSA and its prohibition on purchasing transit equipment from China did not send a clear enough message to the Federal Transit Administration (FTA). The FTA determined that transit agencies which had formed contracts with restricted manufacturers, including the state-owned China Railway

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The contradictory guidance put forward by the Biden Administration on Buy America waivers continues to cause project delays and regrettably leads to cost increases for the businesses that build our roads and bridges as well as operate the equipment in our transportation network.

States and industry need clear guidelines, including an understanding of what is and is not required when applying for a waiver, so that we can continue constructing a modern and efficient transportation system reliant on American manufacturing.

Our witnesses will offer their perspectives on the continued implementation of Buy America and the opportunities to continue growing and supporting domestic manufacturing. Again, I thank them for appearing before us today.

Mr. CRAWFORD. I now recognize Ranking Member Holmes Norton for 5 minutes for an opening statement.

**OPENING STATEMENT OF HON. ELEANOR HOLMES NORTON
OF THE DISTRICT OF COLUMBIA, RANKING MEMBER, SUB-
COMMITTEE ON HIGHWAYS AND TRANSIT**

Ms. NORTON. I would like to thank subcommittee chair Rick Crawford for holding this hearing on the implementation of Buy America provisions.

Buy America is a foundational policy for our highway and transit programs and for U.S. workers. These policies date back to the late 1970s and have ensured that as States, localities, and transit agencies build projects, they are also supporting U.S. jobs and domestic supply chains.

Buy America ensures that taxpayers see double the benefit in transportation projects: First, they see the safety or mobility benefits of the project; second, the projects are built with American products, creating good-paying jobs for workers.

While the Federal highway and transit programs have benefited from Buy America policies for over 45 years, that is not true for every Federal infrastructure program. The passage of the Infrastructure Investment and Jobs Act changed that. The law included the Build America, Buy America Act, a cornerstone of the Biden administration's industrial policy. The law extended domestic content requirements to all federally funded infrastructure programs.

While highway and transit programs already included most of these requirements, the Infrastructure Investment and Jobs Act expanded Buy America to also cover construction materials.

This is a new policy for the Federal highway and transit programs. Congress and the Biden administration must provide State departments of transportation and transit agencies with the resources they need to understand and comply with the new requirements.

Another recent change is the Biden administration's policy increasing Buy America standards for electric vehicle chargers. These new standards will help us bring an emerging manufacturing sector to the United States, while also helping to reduce pollution in our communities. I was pleased that President Biden vetoed the effort to overturn the increased standards for electric vehicle chargers, and that these new, stronger Buy America standards will stay on the books.

I also look forward to hearing from our witnesses about the Buy America waiver process. While Buy America waivers should be used judiciously, there are instances in which infrastructure projects may require materials or products not made in the United States. In those instances, the waiver process should be fair and transparent to stakeholders.

Finally, I would be remiss not to mention this committee's role in banning Federal transit funds from being used to purchase transit rolling stock from Chinese state-owned enterprises. That is a particularly critical policy here in the National Capital region, home to much of the country's intelligence and national security apparatus. I appreciate the bipartisan work of my colleagues to confront that challenge.

I thank our witnesses for being here today, and I look forward to working with you to improve and strengthen our Nation's Buy America policies.

[Ms. Norton's prepared statement follows:]

Prepared Statement of Hon. Eleanor Holmes Norton, a Delegate in Congress from the District of Columbia, and Ranking Member, Subcommittee on Highways and Transit

I would like to thank Subcommittee Chair Rick Crawford for holding this hearing on the implementation of Buy America provisions.

Buy America is a foundational policy for our highway and transit programs, and for U.S. workers.

These policies date back to the late 1970s, and have ensured that as states, localities and transit agencies build projects, they are also supporting U.S. jobs and domestic supply chains.

Buy America ensures that taxpayers see double the benefit in transportation projects. First, they see the safety or mobility benefits of the projects.

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That is a particularly critical policy here in the National Capital Region, home to much of the country's intelligence and national security apparatus. I appreciate the bipartisan work of my colleagues to confront that challenge.

I thank our witnesses for being here today and look forward to working with you to improve and strengthen our nation's Buy America policies.

Ms. NORTON. Thank you, Mr. Chairman.

Mr. CRAWFORD. I thank the ranking member. I now recognize the ranking member of the full committee for 1 minute—actually, 5 minutes—for any comments he may—

Mr. LARSEN OF WASHINGTON [interrupting]. Yes, let me race through this, then.

[Laughter.]

OPENING STATEMENT OF HON. RICK LARSEN OF WASHINGTON, RANKING MEMBER, COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

Mr. LARSEN OF WASHINGTON. Thank you, Chair and Ranking Member, for holding this hearing.

Today's hearing focuses on the implementation of the Buy America policy. And I want to thank all the witnesses for being here today and for all your efforts to create jobs and strengthen the U.S. manufacturing sector.

The subcommittee has jurisdiction over several agencies that have decades of experience implementing Buy America policies. The Federal Highway Administration and Federal Transit Administration both were directed by Congress in the 1970s and 1980s to enforce domestic content requirements on projects that use Federal funds. Since their enactment, these requirements have been updated to respond to various issues facing the U.S. economy.

Broadly speaking, current Buy America policies ensure that federally funded transit, rail, and road transportation projects cannot be built unless the iron, steel, manufactured products, and certain construction materials used in those projects are produced in the U.S. The intent of these policies is to maximize the economic value of Federal infrastructure investments in the U.S. and ensure taxpayer dollars benefit our workers and companies.

Under the leadership of this administration, Democrats are taking a proactive and strategic approach to create jobs and strengthen the U.S. industrial base.

The Bipartisan Infrastructure Law delivered historic investments to upgrade the Nation's infrastructure and expanded domestic procurement policies through the Build America, Buy America Act provisions in the BIL.

The law expanded Buy America coverage to all federally funded infrastructure projects, including those that had previously been exempt.

By requiring the use of products and materials made in the U.S., the Build America, Buy America provisions have helped stimulate private-sector investment in domestic manufacturing, bolster critical supply chains, and support the creation of good jobs so that America's workers and industries can compete and lead globally.

Since the Biden administration took office, the economy has added nearly 800,000 manufacturing jobs, and real manufacturing construction spending in the U.S. has doubled since the enactment of the Bipartisan Infrastructure Law.

This surge comes from a trio of policy achievements enacted in the last Congress: the BIL, the Inflation Reduction Act, and the CHIPS and Science Act.

These laws expanded Buy America provisions and provided dedicated funding and incentives to encourage private investment in our economy. This public spending has not crowded out private spending. Real private spending on transportation construction has grown by nearly 14 percent since the President signed the BIL.

Following the enactment, this administration has faced several competing priorities, including getting this historic funding out quickly and efficiently—an issue this full committee has analyzed and will continue to analyze—while applying new and expanded

domestic content requirements to infrastructure projects. The administration has made clear that it has a commitment to Buy America and enforcing these requirements as soon as practically possible.

Additionally, the Biden administration is committed to using waivers from Buy America in a limited and strategic manner. In the past, broad and permanent waivers have diluted the potential benefits of Buy America policies. And a lack of targeted waivers, even when warranted, delayed critical infrastructure projects.

Waivers, when issued appropriately, are a tool to signal where gaps exist in the domestic supply chain or allow time for compliance with stronger Buy America standards. Temporary and targeted waivers send clear market signals, allowing for a phase-in of domestic procurement preferences, which create an incentive for firms to invest in the U.S. and create good jobs in our communities.

For example, EV chargers were previously largely exempt from Buy America under a 1983 general waiver for manufactured products. Although not required to do so by law, the administration extended Buy America coverage to EV chargers under a phased-in implementation plan to give private-sector companies in the U.S. time to adjust their supply chains. This policy, which will be fully in effect in July, is already spurring hundreds of millions of dollars of factory investments and jobs for domestic EV charger production.

Failed attempts to repeal the standard would have resulted in EV chargers again being exempt from Buy America, resulting in taxpayer dollars going to overseas companies. So, I am pleased the President vetoed this bad idea and instead honored his commitment to our workers and manufacturers.

And yet I do continue to welcome the opportunity to celebrate our infrastructure benefits that each of our districts and constituents are reaping because of the BIL. The committee continues delivering bipartisan solutions for all Americans, and Buy America continues to enjoy broad bipartisan support, and I look forward to today's discussion.

[Mr. Larsen of Washington's prepared statement follows:]

Prepared Statement of Hon. Rick Larsen, a Representative in Congress from the State of Washington, and Ranking Member, Committee on Transportation and Infrastructure

Thank you, Chairman Crawford and Ranking Member Norton, for holding this hearing.

Today's hearing focuses on the implementation of Buy America policy and its impact on our economy.

Thank you to all our witnesses for being here today and for your efforts to create jobs and strengthen the U.S. manufacturing sector.

This subcommittee has jurisdiction over several agencies that have decades of experience implementing Buy America policies.

The Federal Highway Administration and Federal Transit Administration both were directed by Congress in the 1970s and 1980s to enforce domestic content requirements on projects that use federal funds.

Since their enactment, these requirements have been updated to respond to various issues facing the U.S. economy.

Broadly speaking, current Buy America policies ensure that federally funded transit, rail, and road transportation projects cannot be built unless the iron, steel, manufactured products, and certain construction materials used in those projects are produced in the United States.

The intent of these policies is to maximize the economic value of federal infrastructure investments in the U.S. and ensure that taxpayer dollars benefit our workers and companies.

Under the leadership of this Administration, Democrats are taking a proactive and strategic approach to create jobs and strengthen the U.S. industrial base.

The Bipartisan Infrastructure Law (BIL) delivered historic investments to upgrade the nation's infrastructure and expanded domestic procurement policies through the Build America, Buy America Act (BABAA) provisions in the BIL.

The law expanded Buy America coverage to all federally funded infrastructure projects, including those that had previously been exempt.

By requiring the use of products and materials made in the U.S., the Build America, Buy America provisions have helped stimulate private sector investments in domestic manufacturing, bolster critical supply chains, and support the creation of good jobs so that America's workers and industries can compete and lead globally.

Since President Biden took office, the economy has added nearly 800,000 manufacturing jobs.

According to the Treasury Department, real manufacturing construction spending in the U.S. has doubled since the enactment of the BIL.

This "surge" comes from a trio of policy achievements enacted last Congress: the BIL, the Inflation Reduction Act (IRA), and the CHIPS and Science Act.

These laws expanded Buy America provisions and provided dedicated funding and incentives to encourage private investment in our economy. This public spending has not crowded out private spending. Real private spending on transportation construction has grown by nearly 14 percent since the President signed the BIL.

Following the enactment of the BIL, the administration faced several competing priorities, including getting this historic funding out quickly and efficiently—an issue the full Committee has analyzed and will continue to analyze—while applying new and expanded domestic content requirements to infrastructure projects.

This administration made a clear commitment to Buy America and enforcing these requirements as soon as practicably possible.

Additionally, the Biden administration has committed to using waivers from Buy America in a limited and strategic manner.

In the past, broad and permanent waivers have diluted the benefits of Buy America policies and a lack of targeted waivers, even when warranted, delayed critical infrastructure projects.

Waivers, when issued appropriately, are a tool to signal where gaps exist in the domestic supply chain or allow time for compliance with stronger Buy America standards.

Temporary and targeted waivers send clear market signals, allowing for a phase-in of domestic procurement preferences, creating an incentive for firms to invest in America and create good jobs in our communities.

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I am pleased the President vetoed that bad idea and instead honored his commitment to our workers and manufacturers.

I continue to welcome the opportunity to celebrate the infrastructure benefits each of our districts and constituents are reaping because of the BIL.

This Committee continues delivering bipartisan solutions for all Americans, and Buy America continues to enjoy broad bipartisan support.

I look forward to today's discussion.

Mr. LARSEN OF WASHINGTON. With that, I yield back.

Mr. CRAWFORD. The gentleman yields.

Mr. LARSEN OF WASHINGTON. Just under a minute.

Mr. CRAWFORD. I would now like to welcome our witnesses and thank them for being here today.

Mr. Carlos Braceras, the executive director of the Utah Department of Transportation, on behalf of the American Association of State Highway and Transportation Officials.

Mr. Ty Edmondson, CEO of the T.A. Loving Company, on behalf of the Associated General Contractors of America.

Mr. Dan Needham, executive vice president at the Nucor Corporation.

Mr. Brian Enders, vice president of the Walbec Group, on behalf of the National Asphalt Pavement Association.

And Ms. Megan Salrin, legislative representative for the United Steelworkers.

Briefly, I would like to take a minute to explain our lighting system to our witnesses. It seems pretty self-explanatory. There are three lights in front of you. Green means go. But unlike a stoplight, yellow does not mean proceed with caution, as you might expect.

[Laughter.]

Mr. CRAWFORD. It means kick it into high gear, because you are fixing to run out of time. And red will indicate that your time has concluded, and we would ask you to conclude your remarks. You might hear a little tap of the gavel, just to remind you, in case you exceed that 5-minute mark. So, when it turns red, just be advised.

And I ask unanimous consent the witnesses' full statements be included in the record.

Without objection, so ordered.

I ask unanimous consent that the record of today's hearing remain open until such time as our witnesses have provided any answers to any questions that may have been submitted to them in writing.

Without objection, so ordered.

I also ask unanimous consent that the record remain open for 15 additional days for comments and any information submitted by Members or witnesses to be included in the record of today's hearing.

Without objection, so ordered.

As your written testimony has been made part of the record, the subcommittee asks that you limit your oral remarks to 5 minutes.

Before our first witness, Mr. Braceras, gives testimony, I would like to recognize Representative Owens to give a short introduction.

Mr. OWENS. Thank you, Mr. Chair. As I introduce my good friend, Mr. Carlos Braceras, I would like to take a few minutes to—I think it is very relevant to take a minute to brag on the State we both serve.

Utah is a relatively small State, but we definitely push above our weight in so many ways: the fastest growing State in the union since 2020; one of the fastest growing States in recovering from the economy, from COVID; most collaborative between State, Federal, and local; and extremely innovative because of our entrepreneurial culture. We are the State that balances our budget every single year; we have state-of-the-art airports, international, regional; we are building an inland port that expands the length of our State, which will make Utah the distribution hub of the West; and we were recently selected as the site for the 2034 Winter Olympics.

Just this morning, I read that of the 400 cities ranked by Milken Institute, Salt Lake City, Provo-Orem, and St. George ranked in

the top four of the best performing cities in the Nation. At the heart of this smart growth is a vision of the Utah's Department of Transportation, UDOT. At the head of UDOT is Mr. Carlos Braceras.

Carlos joined the Utah Department of Transportation in 1986 and was appointed executive director in 2013. In this capacity, he is responsible for UDOT's 1,600 employees and the design, construction, and maintenance of Utah's 6,000 miles of roads and highways. Under Carlos' leadership, UDOT continues to rise to the challenge of our State's beautiful yet unique geography and our explosive population growth. He has used innovation and creativity to complete major highway expansions in record time.

In addition to his responsibility to UDOT, Carlos also chairs the AASHTO Agency Administration Managing Committee, and is the past president.

UDOT continues to represent what I call the "Utah way," which is to lead.

And Carlos, I look forward to the members of the Highways and Transit Subcommittee hearing your remarks and insight on innovative work you have been doing back home. Welcome.

Mr. CRAWFORD. With that, Mr. Braceras, you are recognized for 5 minutes.

TESTIMONY OF CARLOS M. BRACERAS, P.E., EXECUTIVE DIRECTOR, UTAH DEPARTMENT OF TRANSPORTATION, ON BEHALF OF THE AMERICAN ASSOCIATION OF STATE HIGHWAY AND TRANSPORTATION OFFICIALS (AASHTO); TY EDMONDSON, CHIEF EXECUTIVE OFFICER AND PRESIDENT, T.A. LOVING COMPANY, ON BEHALF OF THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA (AGC); DAN NEEDHAM, EXECUTIVE VICE PRESIDENT OF COMMERCIAL, NUCOR CORPORATION; BRIAN ENDERS, VICE PRESIDENT, WALBEC GROUP, ON BEHALF OF THE NATIONAL ASPHALT PAVEMENT ASSOCIATION (NAPA); AND MEGAN SALRIN, LEGISLATIVE REPRESENTATIVE, UNITED STEELWORKERS (USW)

TESTIMONY OF CARLOS M. BRACERAS, P.E., EXECUTIVE DIRECTOR, UTAH DEPARTMENT OF TRANSPORTATION, ON BEHALF OF THE AMERICAN ASSOCIATION OF STATE HIGHWAY AND TRANSPORTATION OFFICIALS (AASHTO)

Mr. BRACERAS. Chair Crawford, Ranking Member Norton, and members of the subcommittee, thank you for holding today's hearing on Build America, Buy America. I am Carlos Braceras, and I serve as the executive director of the Utah Department of Transportation. I am also on the AASHTO board, including serving as AASHTO's president in 2018 to 2019.

I want to thank this subcommittee for your leadership on surface transportation issues that ultimately led to the enactment of the IIJA. State DOTs have recognized since day one of IIJA that the delivery of this historic investment is paramount.

American money should be spent on American stuff to benefit Americans. But at the end of the day, the true benefit is realized through projects that we deliver to save lives and make lives better. AASHTO and the State DOTs strongly support the goal to increase American manufacturing capacity by creating new domestic

jobs and encouraging economic growth. However, we also recognize this transformation cannot occur overnight or with a flip of a switch.

When I am trying to do something really big, I usually find it more effective to break it down into pieces. I think we will be able to meet our shared goals of building the American manufacturing base if we can remember Pareto's law: Focus on what constitutes 80 percent of the value of projects being used in transportation. No, this does not mean that we forget about the other 20 percent, but recognize we are jumping on a very fast-moving train.

Our transportation projects are moving forward quickly. For more than 40 years, Buy America statutes have required domestic manufacturing processes for iron, steel, and certain manufactured products permanently incorporated into the Federal highway and transit projects. IIJA significantly expanded coverage to five categories of construction materials. With the 2024 transportation construction season on the horizon, State DOTs are experiencing delays due to supply chain issues, material availability, and, yes, continued worker shortages.

Now, while construction projects are accustomed to dealing with complex realities, we are seeing further delays as part of the industry effort to comply with BABA. While AASHTO understands the difficult nature of implementing new BABA requirements across the entire Federal Government, it is important to recognize the disruption that occurs as a result of changes to previously issued guidance. Programming projects is like a symphony, so, some major changes to one single project can have a cascading effect on timing and resource allocations to very many projects.

Also, State DOTs expend significant effort to change specifications, quality assurance, and other documentation, and to train DOT employees, consultants, and contractors on how to comply with guidance. Consistency and guidance will make our teams more effective and efficient.

I want to highlight the importance of a timely and transparent waiver process. Currently, many States would like to see improvements in several areas: the time it takes for a waiver to be processed, the level of effort and time required to develop a waiver, and clearer guidance on what the required documentation is.

I want to note that, for manufactured products, we have been operating under the FHWA public interest waiver of general applicability since 1983. FHWA is currently considering termination of this waiver, which would represent an extreme challenge for State DOTs and for manufacturers. We agree with the 2013 FHWA determination that rescinding the waiver would not have a significant impact on American manufacturing, because manufactured products comprise a small percentage of the cost for the highway construction program, which also means it is a small share of the market for manufacturers.

In other words, the benefits are likely to be limited, and the cost to schedules and budgets significant. If there is one thing I hope you will take away from my testimony, it is the importance of keeping the 1983 FHWA waiver of general applicability in place.

To close, we firmly believe that a deliberative, practitioner-informed process between Government and industry should continue

to guide implementation of Build America, Buy America. This will ensure timely, cost-effective investments and successful delivery of critical transportation infrastructure projects funded through IIJA.

Thank you for the opportunity to provide testimony at this hearing, and I look forward to your questions.

[Mr. Bracer's prepared statement follows:]

Prepared Statement of Carlos M. Bracer, P.E., Executive Director, Utah Department of Transportation, on behalf of the American Association of State Highway and Transportation Officials (AASHTO)

INTRODUCTION

Chair Crawford, Ranking Member Norton, and Members of the Subcommittee, thank you for the opportunity to appear today at this important hearing on implementation of the Build America, Buy America (BABA) requirements included in the Infrastructure Investment and Jobs Act (IIJA).

My name is Carlos Bracer, and I serve as Executive Director of the Utah Department of Transportation (UDOT) and on the Board of Directors of the American Association of State Highway and Transportation Officials (AASHTO), including as AASHTO President in 2018 through 2019. Today, it is my honor to testify on behalf of AASHTO, which represents the state departments of transportation (state DOTs) of all 50 states, the District of Columbia, and Puerto Rico.

I first joined UDOT with degrees in engineering and geology in 1986. Prior to my appointment as the Executive Director in May 2013, I served as the Deputy Director for twelve years with previous experience as a Region Director, Major Project Manager, Chief Geotechnical Engineer and Chief Value Engineer. In addition to serving as a past AASHTO President, I am also Chair of the AASHTO Agency Administration Managing Committee and Chair of the Technical Working Group of the AASHTO Center for Environmental Excellence. I am also the past Chair for the AASHTO Committee on Design.

I would like to extend AASHTO and UDOT's utmost gratitude to you and your colleagues on the House Transportation and Infrastructure Subcommittee on Highways and Transit (the Subcommittee) for your dedicated and tireless leadership on surface transportation policy that ultimately led to the enactment of the IIJA. Stable and long-term policy and funding provided through a robust multi-year federal surface transportation bill remains crucial to the work of every single state DOT to meet its goal of improving safety, mobility, and access for everyone, which is articulated in AASHTO's 2021–2026 Strategic Plan. Our country depends on a well-functioning transportation system for the quality of life for all of our citizens and to remain economically competitive.

At UDOT, our mission is to enhance quality of life through transportation, and I would like to share several examples of how the IIJA is supporting that mission. I will start with the Bridge Formula Program, which has been one of the most valuable elements of IIJA for Utah. We have identified 90 bridges for improvements, which we prioritized with a goal to address as many locally-owned bridges as possible; of the 90 bridges prioritized, 76 are locally owned. Without the Bridge Formula Program, many of these bridges wouldn't be improved for quite some time; however, after implementation of the five-year program, all bridges that were in poor condition at the time of prioritization will be addressed. This translates to increased safety and accessibility in locations where needs are high and resources are short.

Another formula fund program is supporting resilience in Utah. We are using funds from the Promoting Resilient Operations for Transformative, Efficient, and Cost-Saving Transportation (PROTECT) Formula Program to deliver projects that will mitigate wildfire and flooding risks, which are common in Utah. We also hope to implement another if we are able to obtain additional competitive grant funding through the PROTECT program.

Next, through the National Electric Vehicle Infrastructure (NEVI) Formula Program, we will be able to expand availability of electric vehicle charging infrastructure, especially to rural areas of our state where very few options exist for communities and visitors. We have awarded contracts for all Phase One sites in Utah, and we are now working with private sector partners who will build and maintain the sites.

Beyond formula funding programs, IIJA funding enables us to continue forward with delivering the largest transportation program in Utah's history. The IIJA's highway formula program was a crucial aspect of the last surface reauthorization, and coupled with an extremely robust state program in Utah, we are making a difference for all citizens in our state. And even though we have more than two and a half years before the IIJA funding expires, now is an ideal time to start thinking about the next reauthorization.

With those many benefits in mind, I again thank the Subcommittee for the opportunity to share input from the states. Today's hearing is an example of Congress' important oversight responsibility on IIJA implementation. By holding this hearing, the Subcommittee demonstrates its understanding of the impact of BABA on translating resources provided in the IIJA into programs, projects, and ultimately, tangible benefits for the public. As the owners and operators of transportation infrastructure in every corner of the country, state DOTs and AASHTO greatly appreciate the opportunity to offer our perspective on this vital issue.

STATE DOT'S SUPPORT FOR OVERALL INTENT OF BUILD AMERICA, BUY AMERICA

From the very beginning of our developing nation, we have valued investment in our transportation system—starting with rivers, harbors, and post roads. We recognize that a well-functioning and safe transportation system is the foundation of a strong economy and provides quality of life benefits such as access to employment, education, recreational, and health services opportunities. It is this interconnected multimodal national transportation system that has enabled the United States to become the most vibrant and powerful nation in history.

Thanks to Congress, we have been able to continue honoring our nation's commitment to transportation investment through the IIJA. State DOTs have recognized since Day 1 of the IIJA in November 2022 that delivery on this historic investment is paramount. AASHTO and the state DOTs have been partnering closely with the federal executive branch including the United States Department of Transportation (USDOT) in providing coordination, collaboration, and direct assistance to ensure that the benefits promised by the law are fully realized.

As you know, a key policy priority included in the IIJA pertains to new BABA requirements. AASHTO and the state DOTs remain unwavering in our strong support of the goal to increase America's manufacturing capacity by creating new domestic jobs and encouraging economic growth; however, we also recognize this transformation can't occur overnight or with the flip of a switch. As such, we firmly believe that a deliberative and practitioner-informed process between government and industry should continue to guide implementation of BABA. This will ensure timely, cost-effective investments and successful delivery of critical transportation infrastructure projects funded through the IIJA.

IMPROVING EXECUTION OF BUILD AMERICA, BUY AMERICA TO REMOVE OBSTACLES TO PROJECT DELIVERY

For more than 40 years, Buy America statutes have required a domestic manufacturing process for iron, steel and certain manufactured products permanently incorporated into federal-aid highway and transit projects. The IIJA expanded Buy America coverage to five categories of construction materials: non-ferrous metals, plastic and polymer-based products, glass, lumber, and drywall.

With the 2024 transportation construction season on the horizon, there remains significant concern regarding the readiness of industry for the transition to recent and anticipated increases in BABA requirements. State transportation agencies are continuing to experience material and product delivery delays due to supply chain issues, material shortages, and worker shortages. Materials including aluminum, which is used in numerous products including light poles, mast arms, and sign panels; glass beads, which are used in retro-reflective pavement markings; fiber optic cable; epoxy; and plastic pipe/conduit have been in short supply around the country over the past two years—contributing to ongoing delivery delays for these critical items. While construction projects are accustomed to complex realities of utility relocation, we are seeing further delays as part of states' efforts to comply with BABA.

Specific examples of state DOTs experiencing delays are as follows:

- Utilities present particular challenges for many states. *Delaware* has experienced significant delays in design on several projects as some utility companies have been unwilling to sign project agreements with BABA requirements. In addition, there are several projects that the state DOT and utility companies have jointly decided to change from advance utility work to concurrent project utility work to address utility company BABA concerns. Their preference would have been for advance work. There is now a possibility that changing the process

from advance utility work to concurrent work will delay the overall project once construction begins.

- *Georgia* is experiencing delays primarily due to utilities failing to sign agreements because of BABA provisions. This is because utility companies would have to source materials outside of their regular operations and specifically for projects that have federal funding. This has contributed to project delays at award and during construction. Numerous questions persist on interpretation of BABA requirements and inconsistent application across jurisdictions and agencies.
- Project challenges related to BABA extend beyond utilities. *California* was unable to locate a domestic source for a key element of an emergency project. They procured a non-domestic source item for temporary use, while a domestic sourced item could be procured. As a result, they incurred the additional cost of the temporary nondomestic item, experienced an approximately four-month project delay in accepting the contract, and expended additional capital and support costs during the extended delay.

On a safety-related project, one of California’s standard sole-source products was found to be non-domestically manufactured and subject to the polymer-based construction material requirements of Buy America. This issue was identified prior to advertisement, and they were able to specify a more expensive product that had been used in more critical safety zones, produced by the same manufacturer at one of their domestic facilities. As these safety-related items undergo pre-qualification testing for safety performance, finding domestic substitutes can create delays. Changing Buy America requirements requires an implementation period of 18 months to allow for alternative domestic materials and products to be identified, tested, and specified without producing significant project delays and associated costs.

- *Maine* has experienced challenges with procuring BABA-compliant glass beads and marine decking, leading to project delivery difficulties. With the removal of the manufactured product waiver, Maine will need to request relief on products such as composites (e.g., Glass Fiber Reinforced Plastic) from Canada, traffic signal equipment from Mexico, and geosynthetics from Asia. In addition, Maine relies on Canadian precast producers to meet the need for precast prestressed girders, precast culverts, and other transportation related precast products. The limited number of BABA-compliant precasters in the northeastern United States and the impracticality of trucking heavy precast elements long distances will increase costs and limit overall production.
- *Nebraska* has had difficulty securing silane sealers, as they are not currently produced in the United States. Silane sealers are vital in sealing and pausing the deteriorating effects on concrete caused by Alikli-Silica Reactions. In addition, Nebraska has very reactive aggregates used across the state on roadway concrete projects; the state has not been able to program older in-place concrete roadways that were constructed with inadequate amounts of supplementary cementitious materials like Class F fly ash, as no other viable Buy America product performs similarly.
- *North Dakota* cannot procure submersible pumps for lift stations that are Buy America compliant. Submersible pumps for lift stations play a vital role in managing groundwater and stormwater in road construction projects.

With that said, AASHTO appreciates the actions taken to date by the Biden Administration since enactment of the IIJA to help with transitioning to the new BABA statutory provisions. We specifically recognize the following actions:

- January 2023: Waiver of the construction materials requirement for certain “grandfathered” projects in advanced stages of procurement.
- August 2023: Finalized and enacted a “de minimis” waiver from all Buy America requirements for the lesser of \$1,000,000 or 5 percent of certain covered components and materials on a project, or for entire projects that include less than \$500,000 in federal funding.
- October 2023: The White House Made in America Office (MIAO) updated “high-level coordinating guidance” for implementation of Buy America and similar programs that took effect on Oct. 23, 2023. This MIAO guidance included:
 - Reaffirmation that Buy America does not cover tools, equipment or supplies not “incorporated” into the project.
 - Adding three new standalone categories of covered construction materials to those specified by Congress—fiber optic cable (including drop cable), optical fiber, and engineered wood.

- Confirmation of Congress' intent that covered construction materials do not include "cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives." However, MIAO contends these materials can be covered if included in manufactured products, such as precast concrete.

Importance of Consistency in Federal Guidance

Congress intended the IIJA to spur expansion of America's manufacturing capacity, promote the creation of jobs across the country, and encourage economic growth. To ensure timely and successful delivery of critical infrastructure projects enabled under IIJA, the White House MIAO, Office of Management and Budget (OMB), and USDOT should deploy a deliberative, practitioner- and industry-informed process for BABA implementation.

While AASHTO understands the complex nature of implementing the new BABA requirements across the entire federal government, it is important to recognize the disruption that occurs when OMB and USDOT frequently update and alter previously issued guidance. Every state DOT expends significant effort to change specification language, quality assurance language, and other documentation and to train state DOT employees on how to comply with any guidance.

Consistency not only helps state DOTs but also our transportation industry partners. Therefore, it is important that any issued guidance not be a moving target. As state DOTs prepare, plan, and design projects for 2024 bid lettings, it is important to ensure that the transportation industry is prepared for and fully understands the new BABA requirements. Uncertainty related to BABA guidance due to frequent revisions to the process on how to comply with the law can impact the ability to adequately source and procure products, can increase costs, and lead to possible project delays.

In Utah, our teams are grappling with the distinction between general manufactured parts in contrast with project-incorporated manufactured parts. This uncertainty creates several difficulties. First, UDOT staff and our contractors are spending significant additional time researching and trying to make their own determinations about compliance. In cases where our teams are uncertain and need further guidance, they are unable to accurately estimate budgets and schedules without either clarification or waivers, or both. This causes delays for the projects in question, and it also has cascading effects on other projects. Programming projects is like a symphony, so major changes to one project can affect timing and resource allocation for other projects.

Additional uncertainty arises even when we are sure of BABA compliance with certain materials. Costs and availability of such products tend to be less stable, which can cause problematic variables and delays when developing and delivering a transportation program.

Need for a Transparent and Workable Waiver Process

It is important that the BABA waiver process at the White House and USDOT be timely and transparent, including clear indication of when the federal agency received the waiver request. States report that the waiver process and expectations of approval are not clear. States that have not submitted waiver requests report that the lack of a clear process remains a barrier in seeking approval in the first place. Specifically, there are three main factors contributing to this barrier:

- The time that it takes for the waiver to be processed exceeds the time limit on project deadlines;
- The level of effort and time required to submit a waiver may not be worth putting forth when the outcome and timing of the outcome are so uncertain, and;
- The required documentation and supporting evidence to be submitted is unclear.

Of the states who have used the waiver process and responded to AASHTO's inquiry, all of them would like to see improvements. The most critical area in which improvement is needed is clarity on the specific rules of when a waiver is required. A more transparent process for submitting a waiver request—including specific listings of required documentation—would provide greater support for states. Additionally, a set timeline for when to expect a decision on the waiver can help states plan more effectively.

The challenges imposed by the waiver request process are also burdening states with additional workforce requirements necessary to carry out the documentation requirements necessary to comply with BABA. States have been facing challenges to maintain full-time staff just to process routine documentation associated with construction projects. Unfortunately, time-consuming administrative tasks related to BABA waiver requests add further strain to state DOT staff and reduce their capac-

ity to support non-federally funded transportation projects and infrastructure that would otherwise complement and leverage investments driven by the IIJA.

Review and Potential Rescission of Manufactured Products Waiver

The IIJA requires federal agencies to review existing general applicability waivers of Buy America requirements. Using traditional waiver authority, FHWA issued a public interest waiver of general applicability of FHWA's Buy America requirement for manufactured products (Manufactured Products General Waiver) in 1983. Through this waiver, FHWA does not currently apply Buy America requirements to manufactured products except for predominantly steel and iron manufactured products, predominantly steel and iron components of manufactured products, and covered construction materials. Termination of this waiver would represent a major challenge and an additional administrative burden for state DOTs and manufacturers.

Given the wide range of products used in transportation and the global sourcing that has been established over the past several decades, this type of new requirement could lead to project cost increases and delays. Moreover, we believe the challenges from removing the current general applicability waiver for manufactured products will greatly outweigh any benefits to the domestic manufacturing capacity in this country.

In 2013, FHWA maintained its original finding from 1983 that the waiver of Buy America for manufactured products does not have any significant impact on American manufacturing since manufactured products comprise a small percent of the highway construction program. AASHTO believes the original justification for granting the general applicability waiver for manufactured products still applies.

State DOTs use a broad range of manufactured products on their projects supported by the Federal-aid Highway Program. Many of these products—or significant components of the products—are not readily available domestically. This includes products such as traffic signals, cameras, luminaires, controllers, cabinets, changeable message signs, and traffic management system components. Without the continuation of the current general applicability waiver of Buy America requirements for manufactured products, the ability of state DOTs to deliver the Federal-aid Highway Program will likely be impacted by project delays that could affect the safety of the traveling public and the operation of our road and highway system, which is a critical link in the delivery of our already strained supply chains.

State DOTs also foresee significant challenges with tracking and documenting compliance with any new manufactured product requirements. As with the new requirements for construction materials, States have resource constraints that would make the administration of additional Buy America requirements even more difficult. This includes additional owner and contractor staff time needed to collect and evaluate documentation verifying the percentage of domestic content of numerous and widely varied manufactured products. In addition, from the manufacturing side, consistency in the implementation of requirements across such a broad cross-section of products will be challenging, creating additional burdens on the private sector manufacturers and suppliers of these products.

If FHWA decides to rescind or narrow the applicability of the current Buy America waiver for manufactured products, state DOTs and industry will need sufficient notice and time to allow for an orderly transition. Market conditions and supply chains for manufactured products used in Federal-aid construction projects have developed over several decades, and these processes would take multiple years to adapt to a new way of doing business.

AASHTO recommends USDOT and FHWA conduct market research and focus application of BABA on a limited number of manufactured product categories that will have the most significant impact on American manufacturing and expand this focus incrementally if tangible and positive impacts are realized. It would be unrealistic to immediately require American-made products in categories where a domestic industry is not currently in place or envisioned to develop in the near future. Furthermore, USDOT and FHWA should continue seeking ways to prevent project disruptions caused by difficulties in certifying commercially available off-the-shelf (COTS) components.

In Utah some of our contractors report that they are unwilling to bid on certain projects because of the impractical amount of time required to obtain and document manufactured products. In such cases, they report that the cost to track compliance and quantities is simply not worth their time, especially when the materials in question represent a small portion of the overall project cost. The unintended consequence is a decrease in competition and, in some cases, extreme difficulty being able to deliver certain projects because contractors cannot justify the business case.

Streamlining Certification with AASHTO Industry Document Repository

Absent the recommended improvements to BABA implementation requirements as noted above, individual states are relying on their own certification processes, with many states looking to self-certification by their contractors and suppliers. To assist with certification, AASHTO is looking to enable collaboration between state agencies, contractors, designers and suppliers on developing a centralized listing of domestically made construction materials complying with the new Buy America requirements.

AASHTO's Product Evaluation and Audit Solutions (APEAS) technical service program released a new tool in May 2023 known as the Industry Document Repository (IDR). The IDR provides manufacturers and distributors with an interface to upload and manage documentation and associate each upload with an existing product previously evaluated by APEAS. Additionally, industry users can assign and manage tags to associate these uploads with specific states and agencies, while providing categorization for BABA purposes. Documents uploaded by industry are made available to state DOTs, which can greatly streamline the certification effort.

CONCLUSION

Thank you for allowing me to share AASHTO's and its state DOT membership perspectives—including those of Utah—on BABA implementation. As I noted, states strongly support the policy intent of BABA to strengthen domestic industry in delivering needed transportation programs and projects. At the same time, states continue to have significant concerns regarding the readiness of industry for this transition and the near-term negative impact on the delivery of needed transportation projects in communities around the country.

We believe that additional preparatory work—including robust market research into the availability of American-made goods in the broad cross-section of materials covered by the new BABA requirements—needs to be undertaken at the federal level to ensure a less disruptive transition to domestic products while providing the necessary time for adjustments in the sourcing of listed construction materials. Ultimately, critical infrastructure projects intended to improve safety, mobility, and access for everyone should not be disrupted while transportation agencies and their partners continue to make best-faith efforts to integrate the new BABA requirements into their program and project delivery processes.

Thank you for the opportunity to provide testimony at this hearing and I look forward to your questions.

Mr. CRAWFORD. Thank you, Mr. Bracer. I will now recognize Mr. Edmondson for 5 minutes.

**TESTIMONY OF TY EDMONDSON, CHIEF EXECUTIVE OFFICER
AND PRESIDENT, T.A. LOVING COMPANY, ON BEHALF OF
THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA
(AGC)**

Mr. EDMONDSON. Chairman Crawford, Ranking Member Norton, and members of the Subcommittee on Highways and Transit, thank you for inviting me to testify on this vitally important topic. My name is Ty Edmondson, and I am the CEO and president of T.A. Loving Company and a board member of the Associated General Contractors of America, where I serve as chair of the Utility Infrastructure Division.

T.A. Loving Company was founded in Goldsboro, North Carolina, in 1925. Today, the company employs more than 400 construction professionals who work on transportation, water, education, healthcare, and other essential facilities and civil infrastructure projects.

In my testimony today, I will discuss the implementation of the Build America, Buy America Act as it relates to the construction industry.

Before I continue, I want to be clear. I am not here today to debate the merits of Buy America. I, along with AGC, support the efforts to expand domestic manufacturing capabilities.

In addition, I would like to mention that the challenges I will be discussing today mostly do not pertain to iron and steel materials, as similar requirements for such products date back decades. The IIJA expanded coverage to construction materials and tasked the OMB with providing guidance to the industry stakeholders and to be the ultimate decisionmaker for waivers.

So, what does all this mean for construction companies bidding on a road project?

After the State DOT opens a project for bidding, construction companies work to put together a proposal. We reach out to the suppliers to get estimates for the various materials. Since we are ultimately responsible, we ask for what they refer to as a “Buy America certification letter” that guarantees to the contractor that these materials are compliant.

Since the passage of IIJA, we have asked suppliers for certification letters and instead get asterisks on their quotes saying they cannot certify compliance. This is particularly prevalent with manufactured products such as permanent traffic management and safety equipment. Put simply, there is uncertainty.

In construction, that means increased costs because contractors have to account for that in their bids to mitigate risk. How can an individual contractor be expected to adhere to rules and regulations when it’s a moving target? Such situations are especially challenging for smaller companies like a DBE, who lack the resources of a larger company.

Currently, my company is having difficulty sourcing the following materials and products, among others: geotextiles, LED lighting, electrical components, signal cabinets, generators, pumps, motors, UV disinfection equipment, and PFAS treatment systems and media.

Historically, the waiver process has not been transparent or efficient. For example, a waiver request for the Illinois DOT for non-domestic pumps took more than 2 years to be posted for public comment and allow a manufacturer to respond that they have the compliant product. Unfortunately, cases such as these are not isolated instances and result in unintended consequences such as project delays, material substitutions, project redesigns, or contractors opting not to bid on a project.

With OMB’s latest memorandum, a Federal agency must also consult with the OMB on the waiver scope prior to public comment and after the comment period ends to have the OMB make the final decision. This is akin to requiring a local school district to contact the Department of Education twice to approve a child’s absence note to verify that the child can return to school.

The requirement also adds unnecessary political pressure.

Because of these concerns, AGC and other stakeholders filed a formal request for rulemaking today. We are urging the White House to drop its current approach to the waiver process and focus on implementing the requirements at a higher level and empower Federal agencies with broad discretion to fill in the details for projects they understand best.

I thank the subcommittee for the opportunity to testify today, and I look forward to answering any questions you may have.
[Mr. Edmondson's prepared statement follows:]

Prepared Statement of Ty Edmondson, Chief Executive Officer and President, T.A. Loving Company, on behalf of the Associated General Contractors of America (AGC)

I. INTRODUCTION

Chairman Crawford, Ranking Member Norton, and members of the Subcommittee on Highway and Transit, thank you for inviting me to testify on this vitally important topic. My name is Ty Edmondson, and I am the CEO & President of T.A. Loving Company and a board member of the Associated General Contractors of America (AGC) where I serve as Chair of the Utility Infrastructure Division.

AGC is the leading association in the construction industry, representing more than 27,000 firms, including America's leading general contractors and specialty-contracting firms, many of which are small businesses. Many of the nation's service providers and suppliers are also associated with AGC through a nationwide network of chapters. AGC contractors are both union and open shop and are engaged in the construction of the nation's highways, bridges, transit systems, airports, waterworks facilities, waste treatment facilities, commercial buildings, shopping centers, factories, warehouses, levees, locks, dams, water conservation projects, defense facilities, multi-family housing projects, and more. In 2020, 91% of firms within the construction industry had 20 or fewer employees.¹

T.A. Loving Company was founded in Goldsboro, North Carolina in 1925. For nearly 100 years, our firm has played an essential part in the growth of our home state and the country by building thousands of construction projects across the southeast and as far away as California. T.A. Loving Company is responsible for historic undertakings including the construction of Fort Bragg, now Fort Liberty, a watershed project for our company at the outset of World War II, and the construction of the Pettus Bridge in Selma, Alabama—a national historic landmark.

Our work has taken T.A. Loving Company's workforce to numerous states, and over the course of 99 years—our company has provided gainful employment and career opportunities to more than 35,000 Americans. Those people and projects have provided the Southeast with access to clean water resources, improved transportation, educational opportunities, life-saving healthcare, and other essential facilities and civil infrastructure.

Today, T.A. Loving Company employs more than 400 construction professionals and continues to build across North Carolina, Virginia, and South Carolina.

In my testimony today, I will discuss the implementation of the Build America, Buy America Act (BABAA) as it relates to the construction industry, including the challenges that it poses in efforts to rebuild our nation's transportation infrastructure.

The Infrastructure Investment and Jobs Act (IIJA) represents the most significant infusion of investment in our infrastructure since the enactment of the Interstate Highway System in the mid-1950's. Under the IIJA, Congress broadened Buy America requirements for transportation projects. I want to be clear; I am not here today to debate the merits of Buy America. I, along with AGC, wholeheartedly support efforts to expand domestic manufacturing capabilities. However, implementation has been confusing and unclear, creating uncertainty that has led to unintended consequences for construction companies, facility owners, and overall, our nation's infrastructure.

My testimony today will shed light on both the obstacles presented by BABAA implementation within our industry and pragmatic actions that could mitigate the challenges for construction companies so that we can rebuild our nation's infrastructure without unnecessary delays and burdens.

And before I begin, I'd like to mention that the challenges and actions that I will be discussing today mostly do not pertain to iron and steel materials. Our members have not reported issues with domestic sourcing of iron and steel, as similar

¹ <https://data.census.gov/table?q=CB2000CBP:+All+Sectors:+County+Business+Patterns,+including+ZIP+Code+Business+Patterns,+by+Legal+Form+of+Organization+and+Employment+Size+Class+for+the+U.S.,+States,+and+Selected+Geographies:+2020>

sourcing requirements for them date back to the 1930s and have had a much greater amount of time to adjust their processes to meet requirements.

II. EXPANSION OF BUY AMERICA POLICIES

Buy America policies have been present in federal aid transportation projects since they were included in an amendment to the Surface Transportation Assistance Act of 1982. The primary aim of this legislation was to foster and safeguard specific domestic manufacturing industries by mandating that iron, steel, and manufactured products utilized in federally assisted highway and rail projects be produced within the United States.

Over subsequent years, Buy America requirements expanded to include additional infrastructure sectors, such as water-related projects and aviation. However, the largest expansion of such domestic sourcing requirements was included in the IIJA with the BABAA.

BABAA expanded coverage to all other infrastructure projects funded by federal dollars such as electric utilities and broadband. Moreover, BABAA broadened the scope of covered materials to include all other metals in addition to iron and steel, along with plastic and polymers, lumber, drywall, and glass.

As part of the IIJA, the White House's Office of Management and Budget (OMB) was tasked with providing guidance to industry stakeholders on the specifics of the requirements. Preliminary guidance was issued on April 18, 2022, and the law was slated to take effect less than a month later, on May 14, 2022.² The short notice prompted numerous federal agencies to request sweeping general applicability waivers from BABAA as they were necessary to assess the changes, update policies, train staff, and allow partners to do the same while adjusting supply chains to meet the new requirements. As a reminder, this was during a time when, at least from the construction industry's standpoint, the supply chain crisis and inflation were at its worst.

Despite many of these sweeping waivers being in effect for over six months, it seemed that the law would not come into effect for most infrastructure projects until the beginning of 2023. However, on February 9, 2023, just as federal agencies were finalizing their policies and their partners were finishing administrative requirements, such as material lists and certificates of compliance, OMB released a Notice for Proposed Rulemaking (NPRM), exploring options to expand Buy America requirements beyond what the IIJA entailed.³ The timing of the NPRM also led to federal agencies and their partners, such as state DOTs, pausing from updating their policies, as there was now the sudden possibility that the work put into the preliminary guidance might be rendered obsolete, with expanded requirements for more materials and more stringent criteria for already covered materials.

With the final guidance being released on October 25, 2023, many stakeholders have yet to adjust their policies, contracts, and supply chains to ever changing and ever-expanding requirements.⁴ While initially the category of "construction materials" required that the last and second to last manufacturing steps be taken in America to be BABAA compliant, the final guidance expanded those requirements by adding additional manufacturing steps that have to take place in the U.S. For example, aluminum would need to have from initial smelting and melting through to final shaping, coating, and assembly occur domestically to be compliant. In addition to expanding manufacturing requirements, more items were added that were not included in the IIJA and BABAA, including engineered wood and optical fiber. With a two-month timeline for the expansive requirements to go into effect, the industry is once again scrambling to try to meet requirements that were released without due considerations for domestic manufacturing capabilities to meet these requirements and stakeholder's abilities to adjust their procedures and supply chains.

To illustrate the rushed implementation of these requirements, you can visit many of the state DOT's websites to see that nearly six months after final manufacturing requirements have gone into effect, many have yet to update their policies, forms, material lists and/or contract language. This is not an attack on state DOTs, but just highlights that such sweeping and expansive requirements necessitate a much greater phase-in period than has been afforded.

²M-22-11 Memorandum for Heads of Executive Departments and Agencies <https://www.whitehouse.gov/wp-content/uploads/2022/04/M-22-11.pdf>

³Guidance for Grants and Agreements <https://www.federalregister.gov/documents/2023/02/09/2023-02617/guidance-for-grants-and-agreements>

⁴M-24-02 Memorandum for Heads of Executive Departments and Agencies <https://www.whitehouse.gov/wp-content/uploads/2023/10/M-24-02-Buy-America-Implementation-Guidance-Update.pdf>

So, what does all of this mean for construction companies bidding on a road project, for example? After the state DOT lets a project, construction companies like mine work to put together a bid for the project. We reach out to suppliers to get estimates for the various materials and as part of the estimation process. And we ask for what they refer to as a “Buy America Certification Letter” that guarantees to the contractor that these materials are Buy America compliant. We then keep these certification letters on hand in case of a Buy America audit.

Since the passage of the IIJA, what we have seen is a lot of bids from suppliers come with an asterisk, denoting that the supplier cannot certify that these materials are Buy America compliant. We now have added risk to this project because our suppliers are unable to make this certification. Some companies will now choose not to move forward with a bid, while others will add in extra cost to account for this unknown risk.

In an effort to tackle these issues, AGC chapters throughout the nation have been engaging with their state DOTs on the implementation process. To highlight the work in my home state, Carolinas AGC has been working with the North Carolina DOT through a joint committee to identify possible problems and provide solutions associated with meeting BABAA requirements. I believe that NCDOT has been making positive steps in implementing the new requirements, but it is important to keep in mind that each state DOT is responsible for their own implementation and as such, vary greatly between each other.

III. REGULATORY BURDENS CREATE UNCERTAINTY AND FURTHER INCREASE COSTS

Confusion surrounding new Build America, Buy America Act (BABAA) requirements

While AGC supports efforts to bolster American manufacturing capabilities, it is imperative that such efforts are executed with clarity and without unduly burdening those tasked with procuring materials for the construction of our nation’s infrastructure.

Unfortunately, OMB’s implementation process, as previously highlighted, has been characterized by hasty implementation processes and requirements that insufficiently account for existing manufacturing capabilities, material delivery timelines, and the administrative adjustments necessary to adhere to the new mandates. Put simply, there is uncertainty. In construction, uncertainty means increased costs because contractors have to account for that in their bids to mitigate this risk.

The recent Request for Information (RFI), jointly issued by various agencies, including the U.S. Department of Transportation (DOT), Environmental Protection Agency (EPA), and the Department of Housing and Urban Development (HUD), exemplifies how the Administration has imposed requirements on local agencies and contractors without a comprehensive understanding of the availability of various manufactured products essential to infrastructure construction.⁵ Despite the incorporation of BABAA requirements into contracts since May 14, 2022, federal agencies are still in the information-gathering phase, as evidenced by activities such as this RFI occurring as recently as December 2023.

How can individual contractor firms be expected to adhere to rules and regulations when the enforcing agencies lack an understanding of the availability of materials required for compliance in the first place? While some firms have dedicated or partially dedicated personnel to handle Buy America requirements, T.A. Loving Company does not have such staffers to support these requirements. Our project teams are the ones faced with additional responsibilities to meet Buy America regulations. This is especially challenging if you were a smaller construction company trying to bid on a project, as it adds additional responsibilities to workers already wearing many different hats.

The process for contractors becomes even more complicated if they do work with more than one state or local government. For example, because there is no federal listing of what specific products fall under the categories of “construction materials” and “manufactured products” as outlined in BABAA, a firm working with two state DOTs could face different interpretations for the same construction material. AGC members have noted that a specific product could be classified as “construction material” by one state DOT while another will classify it as a “manufactured product.” Under BABAA and OMB requirements, these two classifications require vastly different manufacturing requirements, forcing a contractor to be able to source the same product that goes into a job site, but with different ways of manufacturing that product.

⁵ Request for Information Regarding Products and Categories of Products Used in Water Infrastructure Programs <https://www.epa.gov/system/files/documents/2023-11/epa-hq-ow-2023-0396-0001.pdf>

Material Availability is Still an Issue

Since 2020, supply chain disruptions have posed significant challenges for the construction industry. We have experienced increased material delivery times and shortages that have delayed projects. While the American public was well-aware of lumber shortages and the subsequent surge in prices, our industry experienced similar scenarios with many other materials that were much less publicized. In many instances contractors encountered difficulties in locating the necessary materials required to initiate or conclude projects.

Just in 2022 and 2023, AGC data reflect that:

- 93% of contractors experienced issues with acquiring materials⁶
- 65% of contractors experienced project delays due to longer material delivery times or shortages.⁷
- 35% of contractors experienced delays due to the government (lack of approvals, inspectors, etc.).

While the worst of the supply chain constraints and inflation seem to be behind us, challenges still exist with long delivery times and certain material shortages. The public comments by stakeholders, including AGC, for the aforementioned Request for Information by the EPA and DOT demonstrate that many materials still require over a year for delivery after an order has been placed. Although the project delivery process may enable contractors to procure these materials in time for projects breaking ground, it can still result in substantial delays in cases where additional materials are needed for an ongoing project.

These shortages and prolonged delivery times are for materials that are not Buy America compliant. With IIJA funding hitting the ground and BABAA requirements coming into effect, compliant materials, if available at all, will experience disproportionate demand that has the potential to exasperate existing supply chain problems.

Currently, my company is having difficulty sourcing the following materials and products:

- Geotextiles (engineering fabric)
- LED lighting
- Electrical Components including switchgear, transformers, controls and switches
- Signal cabinets
- Generators
- Pumps
- Motors
- Aeration equipment
- Ultraviolet disinfection equipment
- Valve actuators
- PFAS treatment systems and media
- Brass products
- Water meters and associated communication devices

While it would be ideal for the industry to have a manufacturing base that can produce all necessary products for the construction of our highways and transit, the reality is that certain essential products lack domestic manufacturers. Even if manufacturing plants were to be established in response to the demand for such products, our industry requires a more phased approach that would allow these plants to actually be built and scaled to meet production demands. Otherwise, stringent BABAA requirements could impede infrastructure construction.

Whenever AGC has raised concerns about the challenges posed by the current BABAA implementation process, the Administration has consistently referred to the waiver process outlined in BABAA and its 15-day timeline for approval or rejection. However, OMB's implementation of the waiver process and historical precedent with waivers paints a different picture.

DE-POLITICIZE BUY AMERICA WAIVER REQUESTS

Past Experience Sets a Bad Precedent

The burdensome Buy America waiver process often leads to unintended consequences. As an example of flaws within the system, on August 28, 2023, the Federal Highway Administration (FHWA) posted for comment a waiver request from

⁶ AGC's 2022 Buy America Materials Survey <https://www.agc.org/news/construction-material-shortages-risk-undermining-infrastructure-projects-most-contractors-struggle>

⁷ AGC & Autodesk Workforce Survey <https://www.agc.org/news/2023/09/06/new-survey-shows-significant-flaws-nations-approach-preparing-workers-construction-careers-and-how>

the Illinois Department of Transportation (ILDOT) for non-domestic pumps.⁸ The waiver was initially submitted by the Illinois DOT to FHWA on May 21, 2021. How are U.S. DOT and the White House supposed to determine if there are domestic manufacturers or not if the public is not made aware of the waiver request for nearly two and a half years? In this instance, a supplier responded to the posted waiver request and confirmed that they could indeed meet the requirements and supply those pumps. While this appears to be a “good news” story, it is frustrating that two years were wasted in the process.

Among the waiver process’ unintended consequences is its politicization, which unfortunately appears to be embedded within the system. For example, on June 24, 2020, a waiver request was made to FHWA for the installation and maintenance of a suicide deterrent system on the Golden Gate Bridge in San Francisco, CA, where an average of 30 people die from suicide each year.⁹ Despite the fact that this critical construction request was made in June 2020, the waiver was not posted for 15 months and a determination on this life-saving waiver request was not made until nearly two years after the initial request, on February 7, 2022. This delay shows that the politicization of waivers is a bipartisan problem occurring across multiple administrations.

To illustrate how slow the process can be, there are waiver requests dating back to 2016 that have not yet been given any determination and are still pending on FHWA’s website. For a list of additional examples that demonstrate the slow nature of the waiver process so far, please see Figures 1 and 2 in the Appendix. It is important to note that the examples I have shared with you are waiver requests under Buy America requirements prior to the expansion of requirements under BABAA. With the new BABAA rules, the waiver process could get a lot worse since the number of materials that it applies to is expanded.

The lack of confidence in the Buy America waiver system has led to some unintended consequences. First, as was already mentioned, it causes project delays when a seemingly insignificant component cannot be sourced domestically. Second, project owners and designers may opt to substitute original materials with domestically available alternatives. This might not always be a feasible option and it raises the risk of someone using substandard materials that miss the project’s initial goals and requirements. Third, they can change the scope of the project to not require that material. And fourth, contractors either ultimately choose to not bid on a project or build increased costs into the bid to ensure they can account for this uncertainty.

OMB Added More Steps to the Waiver Process

A memorandum released by OMB on October 25, 2023, mandates that federal agencies notify and consult with the Made in America Office before posting proposed waivers for public comment.¹⁰ This additional requirement is poised to further extend the timeline between a project stakeholder’s waiver request and the public’s opportunity to comment on its necessity.

To clarify, prior to BABAA, a funding recipient (usually the local government agency in charge of the project) had to request a waiver from the federal agency providing the funding and then have that federal agency make a determination on the waiver’s merits and necessity after posting the waiver request for public comment. With BABAA and OMB’s latest memorandum, a local government agency now has to navigate the following waiver process:

- I. The local agency has to request a waiver and send it to the federal agency.
- II. The federal agency must consult with the OMB on the waiver’s scope prior to publishing for public comments.
- III. Once the consultation is finished and modifications are made to the request by the White House, the federal agency can finally post the request for public comments.
- IV. After the comment period ends, the federal agency has to go back to the OMB’s Made in America Office to have them make a final decision on whether the waiver is granted or not.
- V. Once the decision by the OMB has been made, the federal agency will inform the local agency of the decision.

⁸Notice of Buy America Waiver Request—ILDOT <https://www.fhwa.dot.gov/construction/contracts/waivers.cfm?id=175>

⁹Notice of Buy America Waiver Request—Golden Gate Bridge <https://www.fhwa.dot.gov/construction/contracts/waivers.cfm?id=157>

¹⁰M-24-02 Memorandum for the Heads of Executive Departments and Agencies, <https://www.whitehouse.gov/wp-content/uploads/2023/10/M-24-02-Buy-America-Implementation-Guidance-Update.pdf>

While agencies should publish Buy America waiver requests for public comment as soon as they receive them, OMB says otherwise. The BABAA waiver system implemented by OMB is akin to requiring a local school district to contact the Department of Education twice to approve a child's absence note to verify that the child can return to school. In this comparison, the Department of Education thinks the school district is incapable of properly verifying attendance. The president appoints the head of the Department of Transportation, Federal Highway Administration, and Federal Transit Administration. The idea that the highest office in the land cannot trust its own appointed and capable managers and agencies to make decisions is alarming and exhibits the degree to which construction projects are being micromanaged at the highest level of government.

Involving the White House with Buy America Waivers Makes it More Political

The requirement for the White House to have the ultimate decision on any waiver request introduces the potential for the politicization of the waiver process. The requirement for the Made in America Office to be the final decision maker for waiver approvals and denials is not included in the IIJA. This requirement comes from Executive Order 14005 "Ensuring the Future Is Made in All of America by All of America's Workers," which directs OMB to be involved in every single waiver request sent to federal agencies.¹¹ The added requirement for federal agencies to communicate and consult with the White House on Buy America waiver requests unnecessarily adds political pressure.

It is important that all Buy America waivers get equal treatment whether it is for an electric vehicle charger, a transit system, or a roadway project. Likewise, the waiver process must be depoliticized. If a waiver is granted, it does not mean that the Trump Administration or Biden Administration does not care about domestic manufacturing or American jobs; it means that they also care about American construction jobs and want to rebuild America's infrastructure as promised under the IIJA.

Again, AGC is supportive of efforts to expand domestic manufacturing efforts and its members help build those manufacturing projects. However, we are concerned that reality of the timeline necessary to attract and build a stronger domestic manufacturing sector will come at the expense of construction jobs because of project delays caused by an opaque, politicized, and lengthy waiver process.

Industry Stakeholders Take Action

To further demonstrate the concerns that industry stakeholders have with the implementation of BABAA, today, February 15, 2024, AGC joined a coalition of trade associations that includes the American Public Transportation Association, the American Road & Transportation Builders Association, and the National Association of Home Builders in filing a formal request for rulemaking urging the White House to drop its current approach to the waiver process and focus on implementing the requirements at a generalized level and empower federal agencies with broad discretion to fill in the details.

While the groups underscore that they fully support BABAA's core purpose of strengthening domestic manufacturing, they note that OMB's focus on managing virtually every aspect of the Build America, Buy America Act requirements is not practical and causes confusion and delay with federal agencies that fund construction projects. In particular, the groups home in on the uncertainty surrounding the OMB's implementation of the waiver process and historical precedent with such waivers. While OMB sets itself a 15-day approval or denial process for waivers, too often the politics of these waivers creates bureaucratic inertia.

The groups' filing urges the need for timely waivers, given the record number of projects utilizing federal funding, short-term deficiencies in domestic manufacturing capabilities, increased materials costs and unpredictable lead times for key components. The trade groups put forth recommendations to ensure an effective and "depoliticized" waiver process by allowing all such requests to be treated equally and transparently.

The formal petition requests a new rulemaking under the Administrative Procedures Act and a request under the Paperwork Reduction Act to review the way the administration collects Build America, Buy America Act waivers.

¹¹Executive Order on Ensuring the Future Is Made in All of America by All of America's Workers <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/25/executive-order-on-ensuring-the-future-is-made-in-all-of-america-by-all-of-americas-workers/>

IV. FHWA'S MANUFACTURED PRODUCTS WAIVER

When the initial Buy America requirements were being implemented for transportation projects in the 1980s, FHWA approved a general applicability waiver for manufactured products, the Manufactured Products Waiver. FHWA approved the waiver after it found that granting the Manufactured Products Waiver would have an insignificant economic impact on all materials covered under waiver since “foreign competition in natural materials was not significant due to their high transportation cost and the lack of availability of petroleum-based products from domestic sources in sufficient and reasonable quantities.” The most recent completed review of FHWA's Manufactured Products Waiver, in 2013, found that the initial reasoning still applied and that it was necessary to continue the use of the waiver to avoid significant project delays and cost increases for products that made up a minor portion of the total material cost of FHWA-assisted projects.

Ever since its inception in 1983, the Manufactured Products Waiver has been reviewed and upheld by both Republican and Democratic administrations, stating that the initial reasons for its existence hold true. It is currently undergoing review once again, in accordance with the requirements of the BABAA, which mandates a review of every prior general applicability waiver at least every five years. This long-standing waiver now faces the possibility of being removed, modified, or replaced.

While the outcome of the Manufactured Products Waiver review remains uncertain, highway contractors have expressed serious concerns about potential impacts if the handling mirrors other aspects of BABAA implementation. To illustrate the construction industry's concerns, in May of 2023, 65% of AGC and American Road and Transportation Builders Association members stated that removal of the waiver would have a major effect on the time and cost of their projects.¹²

Additionally, FHWA has previously stated that “it is very difficult to identify the various materials and then trace their origin” regarding manufactured product components.¹³ As BABAA's requirements insert cost of component tracking requirements to manufactured products in addition to tracing the various materials in a specific product, it will become even more burdensome and difficult to determine whether a specific product meets all requirements.

To further exemplify the need for a continued waiver, certain products and components are completely unavailable domestically and lack the conditions to be able to meet the manufacturing demands in the near future. The Department of Energy stated in its LED Manufacturing Supply Chain Report that “[v]irtually no LED lamp manufacturing is taking place in the United States today.”¹⁴ The lack of any available domestic raw materials, such as gallium, and the lack of currently available manufacturing make it all but impossible to be compliant with BABAA. As a result, American-made LED lighting on roads does not exist and will not exist for the foreseeable future.

Any rushed changes to the Manufactured Products Waiver which could restrict the source of LED lighting components could dramatically alter the safety of American roads and delay completion of projects. AGC urged FHWA to research material manufacturing capacity for all permanent products used in FHWA's projects before deciding to alter the current Manufactured Products Waiver to avoid any unintended consequences, particularly as it relates to safety.

V. BUY AMERICA CHANGES REQUIRE A PHASE-IN PERIOD

Adjustments to Supply Chains Take Time

When BABAA was coming into effect, nearly all federal agencies that provide financial aid for construction projects passed sweeping and time limited general applicability waivers. This was not because agencies don't support domestic manufacturing, but rather aimed at allowing all involved stakeholders, including manufacturers, local government agencies, and contractors, to adapt supply chains, train their workforce for new requirements, and adjust administrative procedures. As the requirements of the law have evolved to become ever more complex and demanding since April 2022, the need for an additional phase in period has become even more apparent.

¹²Survey of Transportation Construction Contractors on Buy America Compliance https://www.artba.org/wp-content/uploads/2024/01/Summary-Contractors-Buy-America-survey-5-23.pdf?mc_cid=7d1cddb08a&mc_eid=99055f418c

¹³FHWA Manufactured Products Waiver Final Notice https://archives.federalregister.gov/issue_slide/1983/11/25/53097-53104.pdf#page=3

¹⁴Department of Energy—2020 LED Manufacturing Supply Chain <https://www.energy.gov/sites/default/files/2021-07/ssl-2020-led-mfg-supply-chain-mar21jul21.pdf>

Numerous local AGC chapters are actively collaborating with their state DOTs across the nation to update their BABAA requirements. Unfortunately, implementing changes just 60 days after a final rule is impractical and irresponsible.

Furthermore, AGC members have noted that certain local agencies still have not taken action to update their BABAA requirements or are entirely unaware of the new requirements. In such instances, contractors find themselves in an increased risk environment where they are still ultimately liable for compliance with BABAA, yet the agencies they work with are not fully prepared to provide details, documents, or answers on how to properly comply.

While I would consider the previously mentioned partnership between Carolinas AGC and NCDOT a success so far, it is crucial that the permitting, design, and engineering communities work together to mitigate potential issues. From what we have experienced, my state's permitting agencies are overwhelmed with the amount of work. A waiver that makes sense is critical to ensuring that funding is put the work and projects break ground.

All Buy America Waivers Should be Treated Equally

In September 2022, FHWA released a proposed waiver for BABAA seeking public input on the necessity of a BABAA waiver for EV Charging Stations. The proposed waiver cited information on the relevant manufacturers, their stated production capacity, estimated demand for compliant charging stations, and asked for public feedback on their findings. In addition, the proposed waiver offered a timeline for a phase in period, where the BABAA requirements would increase gradually year over year until the manufacturers had adequate time to be able to meet the requirements fully.

AGC contends that such outreach and research should be performed to a similar degree of rigor for other manufactured products and construction materials subject to BABAA. That is indeed why it is simultaneously refreshing and troubling to see the EPA, DOT, HUD and others releasing a joint RFI on the availability of water infrastructure just this past December, when BABAA requirements are well into the implementation process and are beginning to appear on contracts.

As specifically outlined in the IIJA, the Secretary of the U.S. DOT is to work with the Hollings Manufacturing Extension Partnership to provide annual reports on the status of domestic sourcing requirements to various relevant House and Senate committees, including the Transportation & Infrastructure Committee. As part of the annual report's requirements, the Secretary is to provide updates on the challenges and gaps in the domestic supply base identified in carrying out the implementation of BABAA. As far as we are aware, these reports have not yet been provided to this and various other committees. Such reports would aid contractors in identifying potential challenges during the bid process, allowing for awareness of supply availabilities, reduction of uncertainties, and minimizing the workload for each contractor to provide optimal value for the American taxpayer.

VI. CONCLUSION

As previously noted, AGC supports efforts to boost domestic manufacturing. Unfortunately, the process by which the new BABAA requirements are being implemented leaves contractors with increased risks and liabilities while OMB continues to implement ever expanding and stringent requirements without providing transparency and data to back up their implementation timelines.

I request that the committee members work to ensure that the goals of these Buy America requirements are successful by working towards a quick and transparent waiver process and providing flexible requirements that allow federal and local agencies to rebuild their infrastructure. I thank the subcommittee for the opportunity to testify today and appreciate its continued efforts to help improve our nation's infrastructure. I look forward to answering any questions you may have.

APPENDIX

Figure 1—Notable Buy America Waivers That Have Been Approved or Withdrawn

Agency	Waiver	Date of Request	Date of Approval / Withdrawal	Days to Determine
FHWA and MARAD	Medium Voltage (MV) Cable Reel System https://www.fhwa.dot.gov/construction/contracts/waivers.cfm?id=165	9/8/2021	7/27/2022	322
FHWA	California Golden Gate Bridge https://www.fhwa.dot.gov/construction/contracts/waivers.cfm?id=157	6/26/2020	2/8/2022	592
FHWA	I-74 Bridge Recreational Trail https://www.fhwa.dot.gov/construction/contracts/waivers.cfm?id=156	3/20/2020	10/1/2021	560
FHWA	Alaska Inter-Island Ferry https://www.govinfo.gov/content/pkg/FR-2020-04-06/pdf/2020-07145.pdf	9/1/2018	2/19/2020	536
FHWA	Wyoming Avalanche Barrier https://www.fhwa.dot.gov/construction/contracts/waivers.cfm?id=143	3/9/2017	9/29/2021	1665

Figure 2—Notable Buy America Waiver Requests That Have Not Yet Been Determined

Agency	Waiver	Date of Request	Days Since Date of Request
FHWA	NJ/NY SeaStreak Ferry Vessels https://www.fhwa.dot.gov/construction/contracts/waivers.cfm?id=137	7/29/2016	2748
FHWA	ILDOT Submersible Pumps https://www.fhwa.dot.gov/construction/contracts/waivers.cfm?id=175	6/9/2021	972
FHWA	Vermont Submersible Pumps https://www.fhwa.dot.gov/construction/contracts/waivers.cfm?id=152	7/25/2017	2387
FHWA	Mount Vernon Library Commons Project https://www.fhwa.dot.gov/construction/contracts/waivers.cfm?id=176	6/6/2023	245
DOE	LEDs for Berlin School District https://www.energy.gov/management/baba-waiver-request-2023-04	3/1/2023	342
DOC	Broadband for BEAD Program https://www.commerce.gov/sites/default/files/2023-09/BEAD%20BABA%20Waiver%20Replacement.pdf	8/1/2023	189

Mr. CRAWFORD. Thank you, Mr. Edmondson.
I now recognize Mr. Needham for 5 minutes.

**TESTIMONY OF DAN NEEDHAM, EXECUTIVE VICE PRESIDENT
OF COMMERCIAL, NUCOR CORPORATION**

Mr. NEEDHAM. Chairman Crawford and members of the subcommittee, on behalf of Nucor Corporation and our 32,000 teammates, thank you for the opportunity to be here today. I am Dan Needham, executive vice president of commercial. I have been with Nucor since 2000 and in my current position since 2021.

Buy America and other domestic preference laws are vital to the American steel industry. We thank the committee for ensuring that they remain robust and effective.

Nucor is the largest and most diversified steel producer in the United States and the largest recycler of any material anywhere in the Western Hemisphere. We are one of the safest steel companies in the world, with a 2023 injury and illness rate that was less than 30 percent of the industry average.

Nucor is also a leader in sustainable steelmaking, producing steel using up to 100 percent recycled content. Our greenhouse gas intensity is 60 percent lower than the global average, and we aim to achieve net-zero greenhouse gas emissions by 2050.

Nucor continues to expand and improve our operations to ensure we can meet the needs of American infrastructure. Since 2020, we have invested more than \$12 billion to ensure that we can produce the steel needed for any project anywhere. Recent investments include a state-of-the-art, cut-to-length plate mill in Brandenburg, Kentucky, which produces plate for military, transportation, and energy applications, including offshore wind monopile foundations. We are the only steel producer in North America capable of producing the steel for these offshore wind monopile foundations. We are also expanding capacity in traditional product lines, including at a new rebar micro mill in Lexington, North Carolina.

Strong Buy America provisions are critical to these investments. Nucor firmly believes that investing in infrastructure ensures American safety and competitiveness, and supports a resurgence of American manufacturing that we have seen in recent years. When implemented effectively, Buy America requirements encourage investment and innovation, create stable and high-wage American jobs, and help keep high-emission and unfairly traded foreign steel out of U.S. infrastructure.

We have been encouraged by recent efforts to expand and strengthen domestic iron and steel requirements, whether through the Build America, Buy America Act or the IRA.

BABA's provisions require uniform application of Buy America requirements, with a "melted and poured" standard for iron and steel that agencies like the Federal Highway Administration and the Federal Transit Administration have implemented for more than 40 years. These Buy America programs are readily available models for other agencies to follow as they implement BABA.

As energy and infrastructure investments under the infrastructure law and IRA drive as much as 8 million tons of additional steel demand, robust and consistent Buy America provisions are as critical as ever. Nucor strongly supports recent improvements, but is carefully watching certain aspects of implementation.

First, as detailed in my written statement for the record, de minimis content or minor component waivers could result in sig-

nificant volumes of high-value steel products being unreasonably exempted. In August of last year, for example, DOT increased most of its de minimis content thresholds, which weakens existing Buy America programs and is inconsistent with BABA's goal of maximizing the use of American-made goods in our Nation's infrastructure.

Other agencies have proposed or implemented new waivers that would exempt so-called minor components from Buy America requirements. These waivers could exempt sophisticated steel products like fasteners, which are a critical product line for Nucor. We appreciate DOT's decision not to move forward with the minor components waiver, and hope other agencies follow suit.

The most effective Buy America requirements are simple and straightforward. FHWA's Buy America program is probably the gold standard. It requires all iron and steel to be produced in the United States, period. There are no loopholes and no ambiguity. As the Federal Highway Administration reviews its nationwide waiver for manufactured products, it should maintain its longstanding policy that all steel be produced in the United States, including the steel contained in manufactured products. FTA and other agencies should implement the same standard.

We thank the subcommittee and welcome the opportunity to work with you on effective Buy America implementation.

[Mr. Needham's prepared statement follows:]

**Prepared Statement of Dan Needham, Executive Vice President of
Commercial, Nucor Corporation**

Chairman Crawford and members of the Subcommittee, on behalf of Nucor Corporation ("Nucor"), and our 32,000 teammates across the country, thank you for the opportunity to testify regarding the importance of our country's Buy America laws. I am Dan Needham, Executive Vice President of Commercial at Nucor Corporation. I have been with Nucor since 2000 and have overseen commercial operations across product lines in my current position since 2021. Buy America and other domestic preference provisions are vital to the American steel industry, and we appreciate the Committee's efforts to ensure that they remain robust and effective.

Nucor is the largest and most diversified steel producer in the United States and the largest recycler of any product anywhere in the Western Hemisphere. Nucor produces one out of every four tons of American-made steel using up to 100% recycled content, and with 60% lower greenhouse gas intensity than the global steelmaking average. Nucor's goal is to achieve net-zero science-based greenhouse gas emissions by 2050, including Scopes 1, 2, and 3. Nucor is not only one of the cleanest and most efficient steelmakers in the world, but also one of the safest, with a 2023 steelmaking injury and illness rate that was less than 30% of the industry average.

Nucor is continuing to expand and improve our operations to ensure that we can meet the needs of our country's rapidly expanding infrastructure. Since 2020, we have invested more than \$12 billion that will ensure that we can produce the steel needed for any project anywhere, from roads and bridges to offshore wind facilities. Last year, we began operations at a \$1.7 billion, state-of-the-art cut-to-length plate mill in Brandenburg, KY that produces plate for our military in addition to transportation and construction applications. Nucor Steel Brandenburg is the first mill in the United States and one of only a few globally that can produce heavy gauge plate used in offshore wind monopile foundations. We are also expanding capacity in traditional product lines, including at a new \$350 million rebar micro mill in Lexington, NC that we anticipate will be operational by the end of this year.

Robust and well enforced Buy America provisions are critical to these investments. To justify and sustain them, Nucor needs to know that the demand created by U.S. infrastructure spending will not go to foreign producers who often sell at dumped and subsidized prices. Nucor firmly believes that investing in infrastructure

is crucial to American safety and competitiveness and to supporting the resurgence of American manufacturing that we have seen in recent years. When implemented effectively, Buy America requirements attached to infrastructure spending encourage investment and innovation in the domestic steel industry, create stable and high-wage American jobs, and help lower our carbon footprint by keeping emissions-intensive foreign steel out of U.S. infrastructure. Nucor continues to invest in part because of the greater demand for American-made steel that strong Buy America provisions create.

Nucor has therefore been encouraged by recent efforts in Congress to expand and strengthen domestic iron and steel requirements in recent infrastructure investments, whether through the Build America, Buy America Act (“BABA”) in the Infrastructure Investment and Jobs Act (“IIJA”), or through the domestic content bonus credit for renewable energy projects in the Inflation Reduction Act (“IRA”). It is worth noting at the outset that these provisions simply call on federal agencies to implement certain Buy America requirements that other agencies, like the Department of Transportation (“DOT”), have implemented effectively for decades. For example, the Federal Highway Administration (“FHWA”) and Federal Transit Administration (“FTA”) have successfully implemented a robust “melted and poured” standard for more than 40 years, which requires that all manufacturing processes for iron and steel products occur in the United States. DOT’s existing Buy America programs should serve as the model for other agencies as they implement BABA’s requirements.

BABA’s provisions should help to ensure consistency of implementation across the Federal Government, enhance transparency and communication among agencies and stakeholders, and extend robust Buy America requirements to federal agencies that have not previously applied such rules. As energy and infrastructure investments under the IIJA and IRA drive as much as eight million tons of additional steel demand annually, ensuring consistent Buy America implementation across the Federal Government is as critical as ever. While Nucor strongly supports BABA’s improvements, implementation has at times been inconsistent or even potentially contrary to the broader objective of ensuring that U.S. government investments benefit American workers and companies.

As a preliminary matter, Nucor remains concerned about delays in BABA implementation by certain agencies. BABA’s Buy America provisions were to be implemented no later than May 14, 2022. While some agencies, including DOT, have generally moved forward with implementation, others have issued extended “adjustment” or “phased implementation” waivers that have delayed application of BABA’s requirements significantly. The Department of Housing and Urban Development (“HUD”), for example, issued a phased implementation waiver in February 2023 that delays full BABA implementation through fiscal year 2025 for certain programs. The Treasury Department has also issued a waiver delaying implementation for certain types of funding through February 2028. There is no justification for delays of this magnitude. Numerous federal agencies, including DOT and the Environmental Protection Agency (“EPA”), have decades of experience administering similar Buy America programs and provide readily available frameworks for effective implementation.

Nucor has also been concerned by a proliferation of proposed waivers related to *de minimis* content or minor components that could result in significant volumes of high-value steel products being unreasonably exempted from Buy America requirements. In August of last year, for example, DOT issued a waiver that significantly increases the *de minimis* threshold to the lesser of 5% of total project costs or \$1,000,000 for most of its Buy America programs. This weakens Buy America programs and is inconsistent with BABA’s clear terms and objectives to maximize the use of American-made goods in our nation’s infrastructure.

The same is true of proposed waivers for so-called “minor components” of iron and steel products. Guidance from the Office of Management and Budget (“OMB”) suggested that such waivers could apply to as much as 5% of the content of iron and steel products. Some agencies have either proposed or implemented new waivers consistent with OMB’s guidance in a manner that could significantly weaken existing standards. These waivers threaten to sweep far too broadly and cover sophisticated iron and steel products like fasteners, which are a critical product line for Nucor and other domestic steelmakers. Nucor appreciates DOT’s decision not to move forward with a minor components waiver and urges other agencies to follow suit. Constant refrains over the years that supposedly “minor components” are impossible to track are untrue. Every steel product is fully traceable with readily available documentation from melting and pouring through final end product.

In Nucor’s experience, the most effective Buy America requirements are the ones that are simple and straightforward and that have limited exceptions. In critical

ways, FHWA's Buy America program is the gold standard in this respect. It requires all iron and steel to be produced in the United States, including components and subcomponents of manufactured products. Unlike FTA's exemptions for steel components and subcomponents of manufactured products, there are no loopholes and no ambiguity. As FHWA reviews its nation-wide waiver for manufactured products, it should leave untouched its longstanding policy requiring that *all* steel be produced in the United States, including the steel contained in manufactured products.

We are aware that critics of robust Buy America programs often assert that cost and availability concerns make compliance burdensome and compromise efficient completion of infrastructure projects. These claims are unsubstantiated and simply untrue. According to the American Iron and Steel Institute's most recent data, the American steel industry is operating at 76.3% capacity utilization thus far in 2024. That means that millions of tons of steel are readily available from domestic producers. Most of the steel required by federally funded infrastructure projects, moreover, consists of common construction grades that Nucor and others produce every day. Any short-term supply chain issues that may have existed during the COVID-19 pandemic are now a thing of the past. To the extent that certain specialty products may only be available from import sources, these situations are rare and can be dealt with by narrowly tailored, project-specific waivers.

Nucor also has concerns regarding implementation of the IRA's domestic content bonus tax credit rules for iron and steel products. As with BABA, IRA applies a clear melted and poured requirement for iron and steel products to count towards domestic content thresholds. We are concerned that implementing agencies have unreasonably exempted clearly iron and steel products like offshore wind monopile foundations and steel torque tubes for solar trackers. Removing products like these from the scope of the iron and steel requirement eliminates one of the IRA's primary incentives for sourcing American-made steel and is at odds with the law's goal of encouraging investment and creating jobs in American manufacturing industries. It also undermines the IRA's climate-related objectives. American steel is among the cleanest in the world thanks to the investments and innovations of companies like Nucor, and this clean steel should build America's green economy.

Thank you again for the opportunity to be here today. Nucor welcomes the opportunity to work with the Subcommittee to ensure that Buy America provisions are administered as effectively and efficiently as possible. I look forward to answering any questions you may have.

Mr. CRAWFORD. Thank you, Mr. Needham.

Mr. Enders, you are recognized for 5 minutes.

TESTIMONY OF BRIAN ENDERS, VICE PRESIDENT, WALBEC GROUP, ON BEHALF OF THE NATIONAL ASPHALT PAVEMENT ASSOCIATION (NAPA)

Mr. ENDERS. Ranking Member Larsen, Highways and Transit Subcommittee Chairman Crawford, Ranking Member Norton, and members of the committee, thank you for inviting me today to discuss lessons learned from the Buy America provisions via the Infrastructure Investment and Jobs Act. My name is Brian Enders, vice president of the Walbec Group, a construction company employing over 2,000 hard-working men and women throughout the upper Midwest.

Walbec is a vertically integrated organization of six companies that produce high-quality construction materials along with design, engineering, and construction services.

I was raised in Laona, a small town in northern Wisconsin. I started my career as an intern at Walbec, and over the last 20 years, grew into my current role. I serve on boards of the Wisconsin Asphalt Pavement Association and National Asphalt Pavement Association. I am also the chair of the National Center for Asphalt Technology at Auburn University, which continually improves our product through science. I am proud to join you on behalf of the National Asphalt Pavement Association.

It is vital to understand the many contributions of asphalt to our surface transportation network. Almost 95 percent of roads in the U.S. are surfaced with asphalt, including 65 percent of the interstate system. Almost 80 percent of airport runways are surfaced with asphalt. If you wonder what asphalt pavement really is, essentially it consists of two primary materials: aggregate, which is the stone, sand, and gravel that form the base; and asphalt binder, a specific refined oil product that serves as the glue bonding the aggregates together. Asphalt pavement contains about 95 percent aggregate and 5 percent binder. It can be designed for specific project requirements like traffic volumes and climate conditions, while remaining cost-effective to build, easy to maintain, and resilient to last for decades.

A source of pride for my industry is that asphalt pavement is the most recycled product in America. Old pavements can continuously be reused in new pavements.

Additionally, the asphalt pavement requires 20 percent less energy to produce and construct than other pavement materials, meaning fewer greenhouse gas emissions. In most parts of the country, asphalt pavement is produced with locally sourced materials, yet certain parts of the country need to import raw materials like asphalt binder and aggregate, because those materials are not available locally. There are a couple underlying reasons for this.

Nationwide, the U.S. lacks the refining capacity to fulfill the asphalt binder demand, and there are certain areas of the country lacking quality aggregate reserves. Without access to these necessary raw materials, road construction would be delayed or altogether cost prohibitive. That is why in certain regions of the country, mix producers import a small amount of raw materials, and it's why Buy America carries such an importance to our industry.

IIJA provided much-needed transportation funding for our communities. Wisconsin was able to invest in over 1,300 State and local highway projects, leading to job creation and economic growth. In addition to IIJA's historic highway funding levels, which NAPA supported, the package contains significant policy changes like Build America, Buy America.

For more than 40 years, Buy America required a domestic manufacturing process for certain products used on Federal-aid highway projects. The road building industry operated without these sourcing requirements because the components in asphalt pavements are not considered manufactured products, based on a waiver granted in 1983 by the Federal Highway Administration. During IIJA negotiations, some wanted to extend Buy America provisions to include various construction materials which would have made our work more difficult and more costly.

Fortunately, we worked with Senator Baldwin and our coalition partners to continue the 1983 exemption status for certain materials like asphalt binder and aggregates, protecting the construction materials supply chain. We appreciate the work of many on this committee who reaffirmed the legislative exemption in IIJA. Thanks to your support, as well as collaboration between NAPA and its peer construction material associations, the Office of Management and Budget issued extensive clarification reaffirming congressional intent to ensure Federal, State, and local agencies do not

place a new domestic sourcing requirement on materials like aggregate and asphalt binder.

The backbone of America's economy is its vast roadway system. Our roads connect people and goods, and asphalt is key to facilitating that connectivity.

Thank you for your continued support of transportation funding and for having me here today. I have included additional insights in my submitted written testimony. I welcome your questions.

[Mr. Enders' prepared statement follows:]

**Prepared Statement of Brian Enders, Vice President, Walbec Group, on
behalf of the National Asphalt Pavement Association (NAPA)**

INTRODUCTION

Full Committee Chairman Graves, Ranking Member Larsen, Highways Subcommittee Chairman Crawford, Ranking Member Holmes Norton, and members of the committee, thank you for inviting me today to discuss lessons learned from the Buy America provisions via the implementation of the Infrastructure Investment and Jobs Act (IIJA) package. For the asphalt pavement industry and my company, the Buy America exemption for aggregates and cementitious materials, including asphalt binder, enshrined in the IIJA legislation, is an absolute necessity to continue the essential business of constructing roadways, serving state departments of transportation and the traveling public.

My name is Brian Enders, Vice President of the Walbec Group, a Waukesha, Wisconsin-based construction company employing over 2,000 hard-working men and women throughout the Upper Midwest. Walbec is a vertically integrated organization of six companies—Payne and Dolan, Northeast Asphalt, Zenith Tech, Parisi, Premier Concrete, and Construction Resources Management. Together, we produce high-quality construction materials and deliver unparalleled professional design, engineering, and construction services. While we are often associated with state, municipal, and federal projects, many of our customers are commercial businesses. We build various infrastructure, including highways, roads, bridges, parking lots, bike trails, athletic tracks, and so on. Walbec is committed to helping people, including our team members, customers, and the public, reach their destinations. Our team comprises a great group of people across our companies who are ethical, positive, and family-focused.

I have worked for the Walbec Group my entire career, beginning as an intern in 2004 working on a paving crew with Northeast Asphalt and eventually joined the team as a project manager in 2007. I later became the area manager for Northeast Asphalt South in 2017 before becoming Vice President of Northeast Asphalt in 2019. I was born and raised in Laona, Wisconsin, and majored in civil engineering with an emphasis in construction management at the University of Wisconsin-Madison. I currently serve on the board of directors of the Wisconsin Asphalt Pavement Association and the National Asphalt Pavement Association (NAPA). In addition, I am the Chair of the National Center for Asphalt Technology (NCAT) located on the campus of Auburn University in Alabama; NCAT is the industry's premier academic and research institution aimed at advancing the industry's ability to provide asphalt pavements that are safe, sustainable, durable, and economical for road owners.

I am proud to join you on behalf of NAPA, the only national trade association representing the interests of asphalt producers and the asphalt pavement industry in the United States. NAPA represents over 1,100 member companies across the country and has advocated for our industry's critical legislative and regulatory priorities for nearly 70 years.

The Walbec Group is a multi-faceted construction materials producer, as we own and operate aggregate, ready-mix concrete, and asphalt facilities, but our company owes its success to its long and storied past producing and providing asphalt mixtures throughout the Midwest, and we have been a member of NAPA since its founding in 1955. The Walbec Group operates over 40 asphalt plants, producing millions of tons of asphalt each year, with projects across the major thoroughfares and highways throughout the Midwest, including I-43 and I-39. We also operate three multi-modal storage terminals on the Great Lakes, providing asphalt binder to the region.

ASPHALT BACKGROUND

When discussing highway funding and infrastructure policy—a key objective of this committee—it is vital to understand how asphalt is used for our surface transportation network. NAPA and the Federal Highway Administration (FHWA) report that asphalt accounts for almost 95% of the roadway market, which includes local and county roads, subdivisions and commercial/industrial parks, state and regional thoroughfares and highways, as well as federal and national interstate and intrastate networks¹. Further, our product makes up almost 80% of the airfield pavement market, which includes private and regional airstrips, military bases and airfields, along with larger, highly utilized national and commercial airports².

Asphalt pavement is 100% recyclable. In fact, at a rate of 99%, it is the most recycled product in America. The industry reuses and recycles 100 million tons of asphalt pavement a year, incorporating reclaimed asphalt pavement (RAP) into new pavements and saving taxpayers over \$2 billion annually.³ Asphalt mix requires 20% less energy to produce and construct than other pavement materials.⁴ Despite the scope of asphalt pavement utilization across the country, our industry's cradle-to-gate emissions associated with asphalt mix production represent only 0.3% of total U.S. GHG emissions⁵ and we are committed to industry-wide efforts to reduce that figure.

Now that I have established the scale of our product's varied and essential uses, I will illustrate its components and the relevance to Buy America policies. It is important to understand asphalt production and the materials we rely upon from the perspective of asphalt producers. You do not need a civil engineering degree to quickly understand asphalt production; it is straightforward, as asphalt pavement primarily consists of two materials:

1. Aggregate—the stone, sand, and rock raw material product that is the base of our finished product, and
2. Asphalt binder—the specific refined oil product that serves as the 'glue' that keeps the aggregate materials bonded and connected.

Roughly speaking, asphalt is made up of about 95% aggregate and 5% binder, and depending on the mix or maintenance strategies, may contain emulsifiers, additives, and other post-consumer waste products. Asphalt mix types can serve different purposes based on the customer's objectives, including traffic volumes, climate conditions, budget, performance expectations, and so much more.

ASPHALT PRODUCTION

In most parts of the United States, asphalt pavements can be produced reliably with local or regional access to aggregate materials, additives, and asphalt binder. However, certain parts of the country—particularly the West Coast, Pacific Northwest, Upper Midwest, and Northeast—depend upon importing raw materials that cannot be sourced locally. I will share insights on raw material imports and the need for supporting the current construction material exemption, but this underlying point is important: 100% of all asphalt mixtures used in the United States are produced right here in the United States in every Congressional district across the country. Local production is designed to meet local needs and support local communities—producing and constructing asphalt pavements are inherently local operations.

While I am best suited to discuss how our company's asphalt binder is sourced and the impact on our regional market, I would be remiss if I did not mention how

¹U.S. Department of Transportation, Federal Highway Administration. (2018, August 23). Table HM-12—Highway Statistics 2017. <https://www.fhwa.dot.gov/policyinformation/statistics/2017/hm12.cfm>

²Federal Aviation Administration (FAA) Airport Master Records (5010) Module in Airport Data and Information Portal. Retrieved by FAA representative September 15, 2020. <https://adip.faa.gov/agis/public/#/airportSearch/advanced>

³Williams, B.A., J.R. Willis, & J. Shacat. (2022). *Asphalt Pavement Industry Survey on Recycled Materials and Warm-Mix Asphalt: 2021*. (12th Annual Survey). National Asphalt Pavement Association. <https://member.asphaltpavement.org/Shop/Product-Catalog/Product-Details?productid={BDAB6C1D-7D96-ED11-AAD1-0022482A4988}>.

⁴Gambatese, J.A. & S. Rajendran (2005). Sustainable Roadway Construction: Energy Consumption and Material Waste Generation of Roadways. In Proceedings of the Construction Research Congress 2005: Broadening Perspectives. American Society of Civil Engineers, Reston, Virginia. doi:10.1061/40754(183)21

⁵Shacat, J., J.R. Willis, & B. Ciavola. (2022). *GHG Emissions Inventory for Asphalt Mix Production in the United States*. National Asphalt Pavement Association. <https://member.asphaltpavement.org/Shop/Product-Catalog/Product-Details?productid={45E463A7-BBF7-EC11-BB3D-0022482BC80B}>.

this same issue exists for aggregates, primarily along coastal cities on the East and West Coast, as well as the Southeast and Gulf of Mexico. These regions are too built up and cannot access local aggregate deposits, cannot be properly permitted, and/or lack the geological makeup necessary for suitable aggregate production. These constraints can be exacerbated by a difficult permitting process, taking years, if not over a decade, for aggregate facilities to be operational. Similar to asphalt binder, aggregate sourcing may be dependent upon what is available based on regional geological makeup.

The majority of asphalt binder used in our nation's roadways is refined domestically, however a small portion is imported. According to figures from the Energy Information Administration (EIA), the U.S. Chamber of Commerce, and the Asphalt Institute, in 2022 18.4% of the total liquid asphalt supply used for U.S. production was imported—with 88% of those imports coming from Canada.

If Buy America requirements were in effect for asphalt binder, the United States would need to increase refining capacity, especially in the Northeast, or refiners would need to increase production and/or expand material transport, counter-productive to climate goals. Further, costs to build and maintain U.S. highways—especially in certain regions—would be delayed and costs would skyrocket. For example, if Canadian-sourced asphalt binder and additives were arbitrarily delayed, it would have major disruptions to the binder market in the United States, including material shortages and higher prices. Given the lack of refining capacity in regions like the Pacific Northwest, Upper Midwest, and Northeast, Canadian imports are the most economical, efficient, and practical means to obtain the appropriate asphalt binder content for our mixes.

Within the Walbec Group's profile, we operate three multi-modal terminals that serve as an entry point for this necessary component of our asphalt products. These locations across the Great Lakes serve our entire spectrum of asphalt plants. Given the sheer scale and scope of projects we maintain and execute in the region, our work would not be possible without this raw material input.

As mentioned, RAP is the most recycled product in the country and continues to grow in use across our nation's roadway network, with RAP comprising 94 million tons of new pavement mixtures in 2021³. Through enhanced engineering innovations, asphalt is 100% recyclable, and the industry has worked hard to engineer RAP mixtures that provide an environmental benefit, without sacrificing quality or performance. Using RAP involves milling an existing road, processing and incorporating it into a new mixture, then laying that new mixture down as a new road surface. It represents circularity at its finest without any degradation, while reducing the virgin materials required to renew a road's surface.

Nationally, RAP is utilized at an average rate of 21.1% with positive impact on cost, materials, and emissions. To illustrate its importance to our sustainable road network, increasing RAP just 1% would avoid the equivalent greenhouse gas (GHG) emissions of approximately 30,000 passenger vehicles.⁵ RAP is a key component of the industry's goal to produce and construct net zero carbon emissions asphalt pavements by 2050. Ensuring the necessary raw materials to re-engineer and reuse RAP to meet performance and environmental demands is critical to achieving this vision.

BUY AMERICA BACKGROUND

NAPA understands and supports the merits of Buy America and why we need to support our domestic labor force, manufacturing, and raw material resources where available. But the asphalt pavement industry cannot execute a broad application of unincumbered Buy America provisions without unintended consequences on our product's design, quality, and cost to American taxpayers.

NAPA was a vocal supporter of IIJA. When it was signed into law in 2021, IIJA provided long-term, sustainable transportation revenue that has allowed us to make our communities safer, more efficient, and better connected. As a result, Wisconsin was able to invest in over 1,300 state and local highway and bridge projects to significantly improve our state's system, and this investment led to job creation and economic growth.

The multi-year highway reauthorization package contained in IIJA included various policies beyond the surface transportation formula funding and authorities granted to the FHWA, including the Build America, Buy America Act, regarding revised mandates to Buy America sourcing guidelines. I am here to share with you how we acquire our essential raw materials and how asphalt mix producers are impacted by Buy America.

For more than 40 years, Buy America required a domestic manufacturing process for certain products permanently incorporated into federal-aid highway and transit projects. The road building industry has operated without these sourcing require-

ments because the components in asphalt pavements are not considered manufactured products based on a waiver granted in 1983 by FHWA⁶. Yet, as IIJA moved through Congress and enveloped other bills like the US Innovation and Competition Act of 2021,⁷ Buy America was revisited under the updated Build America, Buy America standards via Section 4101.

IIJA's original text revised Buy America standards to be applicable to all materials and products within the General Services Administration's procurement, including raw materials like aggregates and asphalt binder that were previously exempted. Working with Senator Baldwin and industry coalition partners representing aggregates, cement, and ready-mix concrete, NAPA conveyed the importance of continuing the 1983 exemption status for certain construction materials including asphalt binder and aggregates.

Further, Congress understood that, without an exemption, a cumbersome and inefficient individual waiver process would be utilized. Thanks to the historic highway funding that IIJA provided, state departments of transportation (DOTs) are administering a record number of contracts. With this scaling up in project delivery and development, the individual waiver process would have hindered states' ability to deliver projects on time and on budget, due to the unnecessary regulatory burden. With even a medium size state like Wisconsin investing into 1,300 projects thanks to IIJA, it is easy to comprehend the added administrative burden an individual waiver process would have put on state DOTs, FHWA, and the entire asphalt contracting community.

Thus, when IIJA passed inclusive of the Buy America exemptions for certain construction materials like asphalt binder and aggregates, Congress recognized the uniqueness of our raw material sourcing was based purely on local market limitations and efficiencies. These actions provided certainty to the construction material supply chain, road owners, and road builders.

CLOSING

We appreciate the work of many members across this subcommittee who reached out to the Office of Management and Budget (OMB) and the White House last summer to reaffirm the legislative exemption in IIJA⁸. Thanks to your support and coalition comments submitted by NAPA and its peer construction material trade associations⁹, OMB issued extensive clarification that reaffirmed IIJA's congressional intent to ensure federal, state, and local agencies do not place a new domestic sourcing requirement on materials such as aggregate and asphalt binder. These materials are essential to building and maintaining our modern way of life in every neighborhood coast to coast.

The backbone of America's economy is its vast roadway system. Our roads connect people and goods from one end of the country to the other and asphalt is key to facilitating that connectivity. Asphalt offers a high-performing, strong, smooth, durable roadway surface for the traveling public. Long-lasting, durable asphalt pavements are the result of collaborative partnerships between researchers, manufacturers, paving contractors, and agencies. These experts work together to engineer and develop optimal pavement and mix designs, equipment, and processes to improve asphalt durability and performance. In addition, they engage in research and collaboration to develop best practices and techniques to enhance asphalt's performance. As American business moves, so do the demands on our nation's roads. I want to thank the committee for the continued support of transportation investment funding absent unrealistic mandates, thereby allowing us to continue building roads that are safe, sustainable, durable, and cost-effective for the traveling public around the country.

On behalf of my company and industry, thank you for hearing my perspectives on Buy America and working with us to continually ensure that no legislation or

⁶Federal Highway Administration, DOT (1983, November 25). Buy America Final Rule. Retrieved February 13, 2024, from <https://www.fhwa.dot.gov/construction/contracts/831125.cfm>

⁷U.S. Government Publishing Office (2022, March 28). *H.R. 4521—United States Innovation and Competition Act of 2021*. Retrieved February 13, 2024, from <https://www.congress.gov/bills/117th-congress/house-bill/4521/text>

⁸The White House (2023, August 14). *Biden-Harris Administration Releases Final Guidance to Bolster American-Made Goods in Federal Infrastructure Projects*. Retrieved February 13, 2024, from <https://www.whitehouse.gov/omb/briefing-room/2023/08/14/biden-harris-administration-releases-final-guidance-to-bolster-american-made-goods-in-federal-infrastructure-projects/>

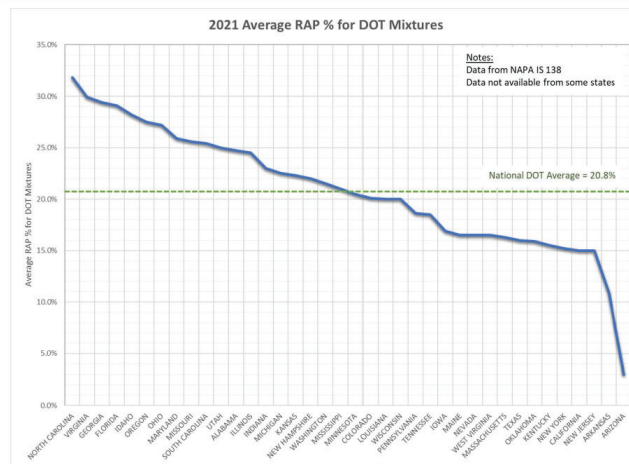
⁹NSSGA, PCA, NAPA, & NRMCA (2023, March 13). *Comment to the Office of Management and Budget on proposed amendments to 2 CFR 184 and 200 to implement the Build America, Buy America Act provision of the Infrastructure Investment and Jobs Act*. Retrieved February 13, 2024, from https://www.asphaltpavement.org/uploads/documents/GovAffairs/Buy_America/Association_coalition_OMB_BABAA_Comment.pdf

regulation unnecessarily impedes our ability to efficiently build roads, using the best materials possible, that help Americans and American businesses in every community thrive.

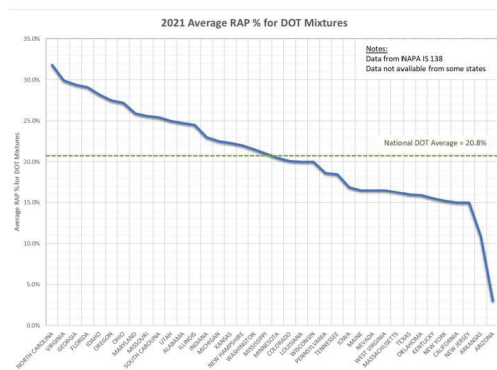
ATTACHMENTS

Graphics

Average RAP Use by State



RAP: One Simple Step



Increasing RAP by
1% nationwide
=
GHG emissions from



25,132
Passenger vehicles
driven for one year

Documents

- NSSGA, PCA, NAPA, and NRMCA (March 13, 2023). *Comment to the Office of Management and Budget on proposed amendments to 2 CFR 184 and 200 to implement the Build America, Buy America Act provision of the Infrastructure Investment and Jobs Act*. The document is retained in committee files and is available online at https://www.asphaltpavement.org/uploads/documents/GovAffairs/Buy_America/Association_coalition_OMB_BABAA_Comment.pdf

- NSSGA, PCA, NAPA, and NRMCA (August 15, 2023). *Update on Buy America*. The document is retained in committee files and is available online at https://www.asphaltpavement.org/uploads/documents/GovAffairs/Buy_America/JOINT_BABA_STATEMENT_8_16_23.pdf
- NAPA. *Fact Sheet: RAP Benefits for Pavement Owners*. The document is retained in committee files and is available online at https://www.asphaltpavement.org/uploads/documents/Sustainability/NAPA_RAP_Benefits_for_Pavement_Owners_1121.pdf

Mr. CRAWFORD. Thank you, Mr. Enders.
Ms. Salrin, you are recognized for 5 minutes.

**TESTIMONY OF MEGAN SALRIN, LEGISLATIVE
REPRESENTATIVE, UNITED STEELWORKERS (USW)**

Ms. SALRIN. Chairman Crawford, Ranking Member Norton, and members of the subcommittee, thank you for the opportunity to testify today on behalf of the United Steelworkers, the largest industrial union in the United States.

Our members truly supply America, manufacturing the inputs for our Nation's infrastructure from the pigment in yellow road paint to the steel that is used in bridges. That is why, in August of 2021, we led a multistate tour visiting USW-represented factories to spotlight workers ready and eager to deliver new and improved infrastructure. We heard over and over again that historic investments in our Nation's infrastructure should include strong Buy America policies that support American manufacturing workers, not corporations that outsource production to countries with weak or nonexistent labor and environmental standards.

Congress ultimately came together to pass the Infrastructure Investment and Jobs Act. Included in this bill was the bipartisan Build America, Buy America Act, which builds on the successful impact, but limited and inconsistent application, of pre-existing Buy America laws. BABA expands Buy America coverage to infrastructure programs across all departments and agencies. Previously, Buy America was limited to only a handful of programs, mostly within DOT.

BABA also broadens Buy America to cover manufactured products and common construction materials, categories that were either waived or not covered by existing laws.

To showcase the profound impacts the infrastructure investments coupled with Buy America have on American workers, let me tell you about my union siblings, members of Local USW 7-838 making fire hydrants at Mueller in Decatur, Illinois.

After the passage of the IIJA, and thanks to Buy America coverage for fire hydrants from a pre-existing law, orders at their plant soared, and the company approached us about mid-contract raises, which is unprecedented. But the benefits don't stop there. The increased orders triggered upstream employment opportunities, including at a copper mine in Utah, a brass manufacturing plant in Ohio, and a brass and bronze foundry in Illinois, all of which are USW-represented facilities. And that is just one example for one product of the ripple effects that these investments with Buy America can have on our workers and their surrounding communities.

However, we understand that the implementation is not an easy task. Reversing decades of neglect in our Nation's manufacturing base will not happen overnight, but we cannot and must not return to failed policies that have annually sent billions of tax dollars offshore. My written testimony details past significant outsourcing events, including loopholes that enabled the use of Chinese steel for the San Francisco-to-Oakland Bay Bridge, and a blanket waiver for broadband spending that helped give rise to Huawei and ZTE.

BABA means giving our companies and our workers the first shot at supplying the products and materials that go into our critical infrastructure. We commend the Biden administration and DOT for making strides in implementing new Buy America policies. DOT does deserve credit for proactively applying Buy America to electric vehicle chargers and for working to reverse the 40-year-old waiver of manufactured products.

Additionally, OMB's final guidance is now complete, which allows DOT to accelerate implementation for the benefit of all stakeholders.

But there is more work to do. Billions of dollars are still being spent on infrastructure projects that source foreign inputs, and here's why.

First, DOT delayed BABA's implementation beyond the May 2022 statutory deadline, and major elements of the law are still not in effect.

Second, DOT has issued general waivers that limit Buy America application. Instead, DOT should use product-specific waivers that are time limited and transparent so that manufacturers can gain insights on supply chain gaps, thus informing capital investments, program awardees can proceed on necessary infrastructure projects without delays, and policymakers can understand where we are dependent on China or other foreign sources.

Finally, DOT must avoid creating new loopholes. This means adhering to BABA's savings provision so that it results in more Buy America, not less.

USW stands ready to work with Congress and all stakeholders who are committed to the shared goal of American-made infrastructure, but we soundly reject political gamesmanship that toys with Buy America policies. And so too will voters, who, across the political spectrum, overwhelmingly support Buy America laws.

On behalf of USW members making the products that are the backbone of American infrastructure, thank you.

[Ms. Salrin's prepared statement follows:]

Prepared Statement of Megan Salrin, Legislative Representative, United Steelworkers (USW)

INTRODUCTION

Chairman Crawford, Ranking Member Norton, and members of the Subcommittee, thank you for the opportunity to testify at today's hearing. My name is Megan Salrin, and I am honored to serve as a Legislative Representative for the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, commonly known as the United Steelworkers or USW.

As the largest industrial union in the United States, our members truly "Supply America" from making the pigment that goes into yellow paint for roads to the steel

used in bridge construction, and hundreds of products in between. During a multi-state campaign in August 2021, our union visited factories that supply our infrastructure needs, spotlighting workers who are eager to deliver new and improved infrastructure, a more powerful economy, and stronger national security. However, over the past several decades, infrastructure investments have failed to keep up with a deteriorating system—one which has not been meaningfully modernized for today's needs. Meanwhile, the decimation of our nation's industrial sector through bad tax, trade, and procurement policies has resulted in fragile supply chains and a dangerous reliance on unreliable or potentially hostile foreign manufacturers.

We were pleased that Congress came together to enact the Infrastructure Investment and Jobs Act (IIJA), which is making historic infrastructure investments that lead to the creation and retention of good, family-supporting jobs throughout the United States. As one of many ways to fortify our neglected domestic supply chains and support American workers, our union advocated for strengthening and expanding domestic content preference policies, often referred to as “Buy America” policies, as a critical step to protecting our economic and national security. We were proud that Congress acted in a bipartisan manner to include the Build America, Buy America Act (BABA) in the IIJA, and today's hearing allows us to recognize the implementation progress and identify what needs to be done to ensure that the benefits of the law are fully realized.

BUY AMERICA SUPPORTS OUR SHARED POLICY GOALS

The purchasing power of the U.S. federal government and the federal financial assistance that it delivers for infrastructure and other purposes has the potential to grow domestic job creation and U.S. manufacturing capabilities. When funded by taxpayer dollars, Buy America policy acts as a commonsense preference for U.S. produced goods and materials that are used to construct the nation's public works infrastructure. The premise is simple: Buy America policies give domestic producers and workers the first shot at supplying the products and materials needed for infrastructure projects funded by taxpayer dollars.

The federal government has maintained various domestic content preferences for many years. For the purposes of this hearing, Buy America laws, applied to federally assisted infrastructure projects, should not be confused with Buy American laws, which are applied to direct government purchases and acquisitions. There are notable differences in coverage, origin standards, and reciprocal market access commitments with trading partners. There are also many states that have their own Buy America policies—which our union has supported.

Buy America policies are an important tool to ensure that taxpayer dollars support domestic manufacturing jobs and responsible manufacturing practices, not corporations that outsource production to countries with weak labor and environmental standards that too often are ignored. In fact, the existence of strong Buy America policies act to prevent shifts in production to countries that rely on practices that are significantly less energy efficient and far more polluting than here in the United States.

To illustrate how Buy America is good for our shared environmental goals, I point your attention to National Academy of Sciences' research showing that a large fraction of Chinese emissions are due to the manufacture of goods for foreign consumption. According to their research, “Los Angeles experiences at least one extra day a year of smog that exceeds federal ozone limits because of nitrogen oxides and carbon monoxide emitted by Chinese factories making goods for export”.¹

Moreover, it is simply unacceptable for U.S. tax dollars to be used to source materials from foreign factories whose workers are subjected to substandard working conditions. To illustrate this concern, the New York Times reported on iron foundry workers in India who produced manhole covers that were shipped eight thousand miles to Manhattan. According to the reporting, “impervious to the heat from the metal, the workers . . . relied on strength and bare hands rather than machinery. Safety precautions were barely in evidence; just a few pairs of eye goggles were seen in use”.²

Strong Buy America policies also stand to support workers of color who have been disproportionately affected by the decline of U.S. manufacturing, according to re-

¹ The New York Times, “China Exports Pollution to U.S., Study Finds”, January 20, 2014.

² The New York Times, “New York Manhole Covers, Forged Barefoot in India”, November 26, 2007.

search from the Economic Policy Institute (EPI).³ The authors noted that “factory jobs still provide a significant wage premium compared to other sectors,” and expanded use of Buy America policies in conjunction with other policies, “would create millions of good jobs for workers who have been hardest hit by globalization”. Additionally, according to Political Economy Research Institute (PERI) at UMass Amherst, when domestic content in infrastructure is maximized, U.S. manufacturing job gains increase by as much as 33 percent.⁴

Buy America policies have always garnered strong bipartisan support—both in Congress and among U.S. voters. In fact, January 2023 polling conducted by Morning Consult identified that 83 percent of voters agree that “taxpayer dollars should go toward infrastructure projects that utilize American-made products like iron, steel, and other construction materials versus products that are imported from foreign countries,” Democrats (82 percent), Independents (80 percent), and Republicans (87 percent) all agree.⁵

Finally, we note that Buy America policies applied to federally assisted infrastructure spending are wholly consistent with U.S. international obligations. Federal assistance infrastructure programs have largely been reserved by the United States (and other nations) from government procurement market access obligations in international trade agreements.

THE NEED FOR BABA

Prior to the IIJA, the Department of Transportation (DOT), the Environmental Protection Agency (EPA), and the Department of Agriculture (USDA) were among the few government entities with Buy America laws, but even these policies have been applied only to a limited scope of items—including iron and steel and, in limited cases, certain manufactured products. Additionally, DOT’s Buy America policies—already limited in statute—have been eroded by decades of excessive waivers and narrowed further by agency decisions.

One must look no further than a 1983 Federal Highway Administration (FHWA) Buy America waiver of all manufactured goods on the grounds that it was not in the “public interest” for a clear statutory requirement to be enforced. It is inarguably in the public interest that FHWA adheres to Buy America requirements imposed by Congress. Yet, this massive Buy America loophole has remained in place for decades across both Republican and Democrat administrations. As a consequence, billions of federal assistance dollars have been spent to purchase foreign-produced inputs for transportation projects, representing a missed opportunity to maximize the return on these investments with stronger supply chains and more jobs.

To remedy these concerns, Congress acted on a bipartisan basis to include BABA in the IIJA—a law that stands to build upon existing Buy America laws to address various gaps and shortcomings. Specifically, BABA ensures that any federally assisted infrastructure projects across all federal agencies and departments adhere to Buy America. The law also broadens the types of products and materials covered by Buy America to include iron and steel, manufactured products, and commonly used construction materials (e.g. copper, aluminum, glass, lumber, drywall, and fiber optic cable used to construct broadband).

Our union was fully supportive of BABA and commends Congress for recognizing that reinvesting tax dollars here at home creates American jobs, invests in goods produced under strong environmental and workplace safety standards, and protects our economic and national security by making our nation less dependent on imported products and materials from unreliable sources.

BUY AMERICA WORKS

As we examine Buy America policy at today’s hearing, we must be clear that implementation of the new BABA law is ongoing, and much of our public infrastructure spending continues to be completed absent major elements of the domestic content preference policy. However, we know that when the law is fully implemented and fully enforced, these modernized Buy America policies will deliver more for

³Economic Policy Institute, “Botched policy responses to globalization have decimated manufacturing employment with often overlooked costs for Black, Brown, and other workers of color”, January 31, 2022.

⁴PERI UMass Amherst, “How Infrastructure Investments Support the Economy”, January 16, 2009.

⁵Alliance for American Manufacturing (AAM), “New Polls Finds Overwhelming Support for Strengthening American Manufacturing”, June 13, 2023.

every federal dollar spent on infrastructure. Already, we have seen signs that the policy is working.

Electric Vehicle (EV) Chargers

Thanks to the Biden administration's proactive steps to apply Buy America to electric vehicle (EV) chargers, there are hundreds of millions of dollars in U.S. factory investments underway to produce BABA-compliant products that will power a diverse transportation network. According to the White House, just three years ago, there was almost no U.S.-based production of fast chargers; now there are at least 26 firms manufacturing these products within the United States. Since President Biden took office, at least 40 U.S. based facilities that produce EV chargers have been announced or opened.⁶ As of September 2023, these facilities now have the capacity to produce more than a million charging stations each year—including 60,000 fast chargers.⁷

Broadband

Companies in the broadband sector are also investing heavily in U.S. production to ensure that the optical fiber and fiber optic cable that will connect millions of Americans to one another are produced by American workers. At the White House signing ceremony for IIJA in November 2021, USW Local 1025 President Donnetta Williams from Corning's Wilmington, North Carolina plant, kicked off the ceremony, all the while wearing her USW "We Supply America" sticker. Her remarks touted the innumerable contributions of USW members. Later, in March 2023, CommScope and Corning announced combined investments of \$550 million that will create hundreds of new jobs in America to build the fiber optic cables that will help close the digital divide.⁸

Transit

In the transit sector, Buy America improvements in the 2015 Fixing America's Surface Transportation (FAST) Act increased content requirements for rolling stock gradually to 70 percent. This catalyzed significant investment in transit parts made in the USA.⁹ In 2017, Amsted Rail launched a dedicated transit section to meet the demand for domestically sourced components essential for transit rolling stock. This strategic move not only bolstered Amsted Rail's position in the market, but also provided vital support to hundreds of USW members employed at Amsted facilities across the country. By prioritizing domestic procurement and manufacturing, Amsted Rail's transit section not only ensures compliance with Buy America regulations, but also reinforces the commitment to quality, reliability, and job creation within the American transit industry.¹⁰ This investment underscores the transformative impact of policies that prioritize domestic production, benefiting both the economy and workers across the nation.

Meanwhile, Alstom leadership recently credited the new Buy America policy with strengthening Alstom's Hornell, New York operation, now the largest passenger rail manufacturing plant in the United States. The investments made there have had positive ripple effects for local suppliers making passenger seating and other inputs.¹¹

Water Infrastructure

With respect to water infrastructure projects, EJ Americas testified before the T&I Committee in 2021, telling members that "Buy America policies work and EJ's investments in its U.S. manufacturing capacity is demonstrable proof". EJ also warned that weak Buy America policies "miss the multiplier effect of taxpayer financed spending, resulting in lost opportunity and forsaken economic return."¹²

⁶U.S. Department of Energy, "Building America's Clean Energy Future: Investment Announced Under Biden Administration", Accessed February 13, 2024.

⁷U.S. White House, "Full Charge: The Economics of Building a National EV Charging Network", December 11, 2023.

⁸U.S. Department of Commerce, "Fact Sheet: Investing in America: Biden-Harris Administration Boosts Manufacturing Ahead of Historic Internet Infrastructure Investment", March 29, 2023.

⁹U.S. Department of Transportation, "Fact Sheet: Buy America 5323(j)", Accessed February 13, 2024.

¹⁰Amsted Rail, "Connecting Communities With High Performance Transit Rail Solutions", Accessed February 13, 2024.

¹¹The Evening Tribune, "Buy America: How new policies will impact Hornell Alstom, US rail industry", April 5, 2023.

¹²U.S. House Committee on Transportation, "Testimony of Tom Teske—Building Back Better: The Urgent Need for Investment in America's Water Infrastructure", February 23, 2021.

USW members also have stories to showcase the positive impact IJJA has had on their jobs and communities. The experiences of USW Members at Mueller, a fire hydrant manufacturer with locations in Illinois and Alabama, vividly illustrates the profound impact that infrastructure investments, coupled with Buy America, has on American workers throughout the infrastructure supply chain.

Following IJJA's passage, production at the fire hydrant plants soared, which prompted management to approach the union with an unprecedented proposal—reopening the contract to negotiate additional pay increases to attract and retain workers to meet the surging demand. The influx of orders provided financial stability for the company and workers, translating into additional income for families and invigorating local economies. IJJA's emphasis on strong origin standards for domestic products ensured that the benefits extended beyond the walls of the fire hydrant plants. The increased production of hydrants is creating employment opportunities throughout the supply chain, including at brass manufacturing plants that are hiring more USW members to keep up with demand.¹³

ELIMINATING LOOPHOLES

As we examine Buy America policies at today's hearing, we are reminded that it would be foolish to return to decades of flawed policies rewarding companies that have sent U.S. jobs offshore where they operate free of U.S. safety and environmental standards. We must work together to fully implement and enforce our Buy America policies in a manner that provides powerful incentives for companies to invest in U.S. operations.

Our members also know from painful experience that when Buy America policies are either nonexistent or eroded by bad implementation, major U.S. infrastructure projects are free to ignore American workers who are ready to get the job done.

For example, in 2013, California state officials used clever accounting gimmicks to avoid federal funding and bypass federal Buy America laws for the construction and completion of the San Francisco-Oakland Bay Bridge. They thought that using Chinese steel would net them \$400 million in savings to the overall project. Rather, the project was plagued with quality issues and cost overruns, all while thousands of jobs were created in China instead of here in the United States. The project was eventually finished—a decade behind schedule and nearly \$4 billion over budget.¹⁴

In New York, state officials decided to source 15,000 tons of steel, including the fabrication work, from China for the bridge deck replacement at the Verrazano-Narrows Bridge. In shocking fashion, the Metropolitan Transportation Authority (MTA) awarded the contract to a Chinese state-owned company that had never done such work. MTA used a very specific fabrication design, called orthotropic decking, and used it as an excuse to bypass U.S. companies and workers ready to rebuild the bridge.¹⁵

Also in New York, Chinese and other foreign-origin steel is used in the multi-billion-dollar LaGuardia Airport renovation.¹⁶ The project did not adhere to a federal Buy America law, which was notable given that the Port Authority of New York and New Jersey had received tens of millions of dollars in Federal Aviation Administration (FAA) grants for improvements at LaGuardia in prior years.¹⁷ The project was supported by \$1 billion in Passenger Facility Charges (PFCs), which can unfortunately be used to complete major projects without consideration of Buy America provisions.¹⁸

Similarly, clever accounting allowed Washington D.C.'s transit agency (WMATA) to avoid federal Buy America laws for the purchase of hundreds of 8000-series railcars. At the time, WMATA claimed that it would only be using non-federal (MD/VA/DC) funds for the purchase of these railcars, and not the hundreds of millions of federal assistance dollars it receives annually, including significant pandemic relief infusions.¹⁹

These loopholes are not limited to surface transportation investments; a blanket waiver of the 2009 Recovery Act's (ARRA) Buy America policy for broadband net-

¹³ USW, "The Infrastructure Program's Chain Reaction", October 28, 2022.

¹⁴ AAM, "Infrastructure Investment Creates American Jobs", October 2014.

¹⁵ The Wall Street Journal, "U.S. Icons Now Made of Chinese Steel" June 20, 2013.

¹⁶ New York Daily News, "Exclusive: LaGuardia Airport to use foreign steel in \$4B renovation angering U.S. industry", March 20, 2017.

¹⁷ U.S. Federal Aviation Administration, "Airport Improvement Program (AIP) Grant Histories", October 27, 2023.

¹⁸ The Airline Passenger Experience Association, "LaGuardia Airport Renovation: Q&A With LaGuardia Gateway Partners' Ed Baklor", March 21, 2017.

¹⁹ AAM, "D.C.'s Metro Picks a Rail Car Maker. But Will It Ditch Buy America?", October 7, 2020.

working infrastructure was issued, which helped fuel the rise of Chinese telecom companies such as Huawei and ZTE.²⁰ Policymakers have since been forced to enact restrictions for U.S. procurement and grants due to the national security risks that these foreign companies pose.²¹

CURRENT IMPLEMENTATION OF BABA

While the Biden administration and DOT have made progress in implementing BABA requirements, much remains to be done to ensure that maximum benefits of the policy are achieved. Reversing the negative impacts of decades of neglect in our nation's manufacturing base does not happen overnight. With sustained commitment and strategic investment, we can rebuild domestic industries, foster innovation, and secure long-term economic prosperity for all Americans.

Areas of Progress for BABA Implementation

The Biden administration and DOT have made notable strides in implementing Buy America policies, reflecting a commitment to bolstering domestic industries and supporting workers. These include, but are not limited to, the following examples:

Final Guidance Allows DOT to Accelerate Implementation

After a frustrating 17-month delay beyond the statutory deadline, in August 2023, the Office of Management and Budget (OMB) issued Final Guidance, allowing federal agencies to implement BABA. OMB's Final Guidance established construction material origin standards and other critical policies necessary to implement and enforce the new law. With OMB's Final Guidance in place, departments and agencies are now able to fully include BABA preference requirements in the terms and conditions of federal financial assistance awards for public infrastructure.

FHWA Is Applying Buy America to Electric Vehicle Chargers

Despite the existence of its now four-decade-old general waiver of its Buy America law for "manufactured products" issued in 1983, FHWA deviated from its longstanding policy to apply the Title 23 Buy America law to EV chargers purchased with newly authorized National Electric Vehicle Infrastructure (NEVI) Program Assistance. Recognizing the short-term market constraints faced by the emerging domestic EV charger manufacturing sector, FHWA implemented a phased-in approach for Buy America compliance, affording private sector companies a commercially reasonable time period to adapt their supply chains and domestic manufacturing operations. Notably, DOT's EV charger waiver results in the same final domestic origin imposed by the BABA law for "manufactured products". Importantly, from USW's vantage, this policy shift has already catalyzed significant investments in factories and created job opportunities in domestic EV charger production.

FHWA Is Working to Discontinue the 1983 Manufactured Products Waiver

In the 1982 Surface Transportation Assistance Act (STAA), Congress enacted the Title 23 Buy America law that remains applicable to the Federal-Aid Highway Program today. But since 1983, DOT has only applied the Title 23 Buy America law and its regulations to steel, but not to "manufactured products" despite the law's express coverage of this category of products.

After soliciting public input in 2023, FHWA has commenced a rulemaking process, expected to move forward in Spring 2024, aimed at phasing out the 1983 general waiver of manufactured products, and replacing it with updated guidelines to clarify the covered products. This longstanding blanket waiver has hindered opportunities for expanding domestic supply chains and discouraged investments in U.S. production for suppliers seeking to participate in Buy America-covered markets. By the FHWA's own estimates, the Title 23 Buy America requirement has only been applied to less than 5 percent of the average highway project since 1983 due to the "manufactured products" waiver.

Given the critical importance of revitalizing lost industrial capabilities, and the now apparent and unquestionable need to fortify existing ones, we acknowledge DOT's efforts to start undoing the harm of the 1983 waiver.

Areas for Improvement in BABA Implementation

As we examine Buy America policy at today's hearing, we must be clear that implementation of the new BABA law is ongoing and much of our public infrastructure

²⁰ U.S. National Telecommunications and Information Administration, "Fact Sheet: Broadband Technology Opportunities Program Buy American Requirement", March 2012.

²¹ U.S. Federal Communications Commission, "List of Equipment and Services Covered by Section 2 of the Secure Networks Act", September 20, 2023.

spending continues to be completed absent major elements of the domestic content preference policy. Since BABA was enacted in November 2021, DOT has issued multiple waivers and policy interpretations delaying implementation. Our union and other stakeholders have filed comments raising concerns regarding these actions. In some instances, such as their small grants and *de minimis* waivers, DOT has been responsive and adequately addressed the concerns of multiple commenters. However, billions of dollars are still being spent on infrastructure projects that are sourcing foreign inputs. It is imperative for DOT to expedite implementation by taking the crucial steps outlined below.

Implementation Delays

More than two years have elapsed since the enactment of IIJA, yet DOT has not fully implemented BABA. As the statutory implementation deadline of May 14, 2022, approached, DOT issued a series of general waivers that delayed the process. Consequently, billions of federal assistance dollars—including IIJA funded projects—have been expended across numerous infrastructure projects without key provisions of the BABA law being enforced. DOT must prioritize the expeditious implementation of BABA in order to make up for numerous missed opportunities due to neglected statutory deadlines.

Devoting Resources to Stakeholder Education

Although both FHWA²² and FTA²³ offer online guidance for stakeholders, it is important to prioritize education for all infrastructure stakeholders regarding the timing and implementation of BABA policies. While criticisms alleging confusion from some critics are exaggerated, DOT still bears the responsibility of collaborating with stakeholders to establish clear expectations for the construction sector and provide the strong market signals necessary to stimulate investments in manufacturing.

EPA provides a useful model for effective stakeholder engagement through initiatives such as trade shows, seminars, and outreach programs; adopting similar strategies would enhance understanding and compliance with BABA requirements across the infrastructure landscape.

Fewer General Waivers, More Product-Specific Waivers.

Since the enactment of BABA, DOT OAs have frequently resorted to the issuance of general waivers, which significantly restrict or entirely eliminate the application of Buy America provisions across various product categories, entire programs, and even agencies. These broad waivers ignore domestic workers who already produce Buy America-compliant goods and materials within the United States.

General waivers undermine the market signals crucial for stimulating investments in U.S. factories created by Buy America policies. Instead of utilizing general waivers, BABA directs departments and agencies to rely on product-specific, time-limited waivers. A targeted approach to waivers, accompanied by full transparency for the public, offers clear market signals essential for investors and manufacturers to confidently make substantial capital investments in domestic production capacity.

Increase Waiver Transparency

DOT must actively support and use the centralized MadeinAmerica.gov website, which is aimed at informing the public about pending and current Buy America waivers. Transparent Buy America waivers will bolster domestic manufacturing by enabling existing suppliers to promptly access potential opportunities to manufacture materials and products needed for infrastructure projects. Additionally, this waiver database will furnish valuable insights into the frequency, value, and nature of purchases that are not sourced from domestic producers, which empowers domestic manufacturers to make informed investment decisions aimed at bridging gaps in our production capabilities.

Expanded Use of MEP Supplier Scouting

With experience collaborating with small- and medium-sized manufacturers, the Manufacturing Extension Partnership (MEP) is well-equipped to identify domestic manufacturers prepared to supply the materials and manufactured products essential for infrastructure investment. Through BABA, Congress has explicitly mandated that DOT agencies, including FHWA and FTA, are to collaborate with MEP. While recognizing existing suppliers is an essential initial step, DOT should also ac-

²² U.S. Federal Highway Administration, “Construction Programs Guide—Buy America”, January 9, 2024.

²³ U.S. Federal Transit Administration, “Regulations and Programs—Buy America”, Accessed February 13, 2024.

tively engage with MEP to pinpoint manufacturers interested in expanding their operations to contribute to the domestic infrastructure supply chain.

Respecting the BABA “Savings Provision”

Congress included a “savings provision” in BABA to prevent the weakening of existing Buy America policies during the implementation process, reflecting its intention for DOT to apply *more Buy America, not less*. For example, DOT issued a proposed waiver for *de minimis* and small grants, which would have violated the savings provision if not revised. By increasing the pre-existing *de minimis* threshold, DOT would have weakened Buy America application for iron and steel products. Additionally, DOT proposed a \$500,000 small grants waiver when the pre-existing small grants waiver was \$150,000. In the final publication, DOT ultimately adhered to the BABA “savings provision”. DOT must be vigilant in the application of the “savings provision” in order to implement BABA as Congress intended.

Avoiding Shifting Origin Standards for Manufactured Products

DOT must steer clear of implementing policies that weaken Buy America by permitting multiple end products to be amalgamated as part of a “kit” or “system”. Since BABA mandates domestic final assembly of manufactured products and requires over 55 percent of their components to be domestically produced (70 percent for FTA rolling stock), adopting this “origin shift” approach effectively eliminates Buy America coverage for upstream components and materials. Congress should oversee the classification of “kits” as manufactured products and urge FTA to close its “systems as end products” loophole.

Monitoring for New Loopholes

Congress should diligently monitor the implementation of BABA to prevent the creation of new loopholes. This oversight must include scrutinizing the use of public interest and general applicability waivers that diminish or eliminate Buy America coverage.

Apply BABA Prior to Any Other Procurement Preference, Like Buy Clean

Under the Inflation Reduction Act, FHWA is instructed to use certain funds to procure low carbon materials—i.e. concrete/asphalt, steel, and other materials whose manufacturing process produces lower-than-average carbon emissions. As FHWA implements these provisions, it must ensure that BABA applies first, then Buy Clean can be applied second. At its core, Buy Clean policies are competitiveness policies birthed from the problem of Chinese steel in the California Bay Bridge, and aimed at ensuring that U.S. workers are making the materials used in our infrastructure projects. As FHWA implements these provisions, they must utilize global industry averages for emissions and bifurcate emissions standards for steel, just as the General Services Administration (GSA) did in their Buy Clean pilot, to ensure that no U.S.-based process for production is advantaged over another U.S.-based process for production.

CONCLUSION

The Biden administration and DOT have shown a strong commitment to bolstering the application of Buy America through proactive measures aimed at fortifying domestic manufacturing and supply chains. However, there is room for improvement as DOT continues BABA implementation.

Congress, too, can play a pivotal role in supporting the administration’s efforts by fostering bipartisan cooperation and focusing on the shared goal of enhancing American manufacturing and infrastructure—not by politicizing implementing policies.

On behalf of USW members making the products that supply our nation’s infrastructure projects, we appreciate the opportunity to share our views on the current implementation of Buy America. We look forward to working with Congress, DOT, and its stakeholders to advance the ability of U.S. companies, and their workers, to provide American-made products and materials for our public works infrastructure. Thank you.

Mr. CRAWFORD. Thank you, Ms. Salrin.

I ask unanimous consent to enter into the record statements from the American Traffic Safety Services Association, the Associated Builders and Contractors, the American Road and Transportation Builders Association, and a submission from the Portland

Cement Association and the National Ready Mixed Concrete Association.

Without objection, so ordered.

[Mr. Crawford's submissions for the record, including the aforementioned items, are on pages 81–95.]

Mr. CRAWFORD. Thank you all for your testimony. We will now turn to questions from the panel. I recognize myself for questions. I will start with Mr. Needham.

Arkansas' First Congressional District is proud to be a hub for steel manufacturing, as you well know. Mississippi County is the home of many major steel facilities, including three Nucor facilities. We appreciate your company's commitment to the families and local community there in our little corner of the country.

Could you elaborate on how Buy America requirements embedded in Federal policy have allowed domestic manufacturing and industrial production to flourish?

Mr. NEEDHAM. I didn't catch the last part. Could you ask that once again?

Mr. CRAWFORD. Yes. Could you elaborate on how Buy America requirements embedded in Federal policy have allowed domestic manufacturing and industrial production to flourish?

Mr. NEEDHAM. Yes, in two ways.

One thing, Buy America, what it does do is it gives companies like Nucor the confidence to invest in the future, knowing that U.S. tax dollars, taxpayers' dollars, are going to support and also support in buying American-made products. As I mentioned in my opening statement, that has allowed Nucor since 2020 to invest \$12 billion in our capabilities and expanding our capacity to meet customer demands.

The other thing I would say about Buy America is it absolutely creates and maintains high-paying and excellent jobs here in the United States, and I will give a couple of examples.

One thing that, I will highlight about Nucor is one of the things that is excellent about our company is our culture. And our culture is absolutely created by our 32,000 teammates around North America, predominantly here in the United States. And those 32,000 teammates create the results that we have in our company. And one way that we share in that is we all share in the fruits of our capabilities and our results.

One thing I would like to highlight is, our teammates participate in a profit-sharing program. In that profit-sharing program, I am glad to say, last year, Nucor paid out nearly \$1 billion to all of our teammates because of what they created. And so, Buy America programs help support jobs, create the volume that we need to provide great-paying jobs in our local communities.

Mr. CRAWFORD. In many cases, this focus on retaining American tax dollar investments in American companies and workers actually lowers the bottom line of project costs, and I am wondering if you could speak to that, as well. What are some of the long-term benefits you are realizing?

Mr. NEEDHAM. So, long-term benefits also—I spoke to the volume that it creates, and so, we make the investments, and those investments we are confident because we have programs like this that will support purchase of American-made products in the future.

The other thing that our team does is our team makes more money based on each ton, safe ton and quality ton, that they put out the door. So, programs like these support our teammates directly in providing that volume and those great jobs that we need.

It also provides the infrastructure that we need to support here in the United States, and that's absolutely a critical part of what we are seeing today through the IIJA, the IRA, and the CHIPS Act.

Mr. CRAWFORD. Excellent. Thank you sir.

Mr. BRACERAS, I spent years pushing and passing legislation that would prevent United States infrastructure dollars from making their way to companies based in China and with links to the Chinese Communist Party. Do State DOTs benefit when Federal infrastructure funds are provided to companies in China, or would the citizens of Utah and throughout the rest of the country stand to gain more when the U.S. Government ensures taxpayer dollars are delivered to companies in Utah and elsewhere in American businesses?

Mr. BRACERAS. Thank you, Mr. Chairman.

Absolutely, the State of Utah, the citizens of Utah, and the citizens of this country will benefit if we can grow the manufacturing base. I think this is one of the areas where we all agree on the goal, and that goal is to spend American money on American stuff to benefit Americans.

And so, Mr. Chairman, I may not have heard the last part of your question appropriately. So, if I could——

Mr. CRAWFORD [interrupting]. Just talking about the value that the investment in American companies delivers to communities.

Mr. BRACERAS. Yes, absolutely.

When we can help grow American businesses and American companies in the State of Utah, those companies, those people are part of our community. They are invested in our community and all those intrinsic values that make a community a great place to live. And when they understand that they are part of that community, they are not only a business, they are a community member, a community partner, and they are invested in the State of Utah for the long term.

And so, it's absolutely to the benefit economically, but also from those things that are so intrinsic and the things that we value most in our lives. They become friends, and they help support our communities. And so, I think, fundamentally, this is absolutely the right thing to do over the long run, is to try to get to a place where we can grow and nurture those businesses in the United States and Utah.

My goal is to deliver projects as effectively as possible and to get the benefits from those projects. And I would like to think that the free market system, if I can provide a level playing field, I can get that competition to get the best value for the taxpayers.

Mr. CRAWFORD. Thank you.

Mr. BRACERAS. And I believe in that.

Mr. CRAWFORD. Thank you, sir. I appreciate it.

Ranking Member Norton.

Ms. NORTON. I thank the chair. This question is for Ms. Salrin and Mr. Needham.

The Federal Highway Administration has longstanding Buy America requirements that apply to iron and steel. These protections are critical, as steel is the most widely used metal in the construction industry. So, Ms. Salrin and Mr. Needham, can each of you discuss the importance of Buy America in preserving good-paying jobs and a robust U.S. manufacturing base?

Ms. SALRIN. Yes, thank you for the question.

I think, with robust implementation of Buy America policies, not only can we preserve existing jobs, but we can create more jobs. Buy America essentially gives U.S. producers and workers a first shot at supplying the goods that go into our critical infrastructure. And so, I think that we can rebuild our middle class and ensure job security for millions of workers if we ensure robust implementation of Buy America.

Mr. NEEDHAM. Yes, I would agree that when we think of our manufacturing positions, they are high-paying jobs, they are excellent jobs. And it is wonderful to be a part of the resurgence of American manufacturing here in the United States. And so, Buy America certainly supports that, those efforts. It brings critical projects that we need for our country, and ones where we can certainly provide those at a great service here in the United States with American-made products.

And our teammates are absolutely right in the forefront of that. They benefit from that, from a standpoint of wage. As I mentioned, our teammates, a significant portion of their pay is based on volume and good volume that they put out the door, so, these projects certainly support that. And they also participate in how we share in the results of our company. So, Buy America certainly supports those.

Ms. NORTON. This is another question for Ms. Salrin and Mr. Needham.

There are additional benefits to manufacturing critical construction materials in the United States. Products made in America support jobs that provide access to healthcare. Thanks to our environmental laws, U.S. manufacturing tends to release fewer carbon emissions in the production process when compared with other countries. So, Ms. Salrin and Mr. Needham, can you discuss some of the other advantages, including worker benefits and environmental protection, that come with supporting manufacturing in America?

Ms. SALRIN. Yes, of course. I will do the worker benefits first.

So, by supporting American manufacturing and enforcing Buy America policies, you give us the demand for U.S. producers to increase production capacity. And when we go to the bargaining table, that gives us more opportunity to advocate for healthcare benefits, for retirement benefits, instead of fighting for job security. And so, it gives us more leeway when we go to the bargaining table to advocate for those extra benefits for our members, instead of focusing on job security.

In terms of the environmental protections, strong Buy America policies act to prevent shifts in offshore—shifts in productions to countries that have lower environmental standards and are high, more polluting than the United States. And so, we are just exporting our pollution at that point. Thank you.

Mr. NEEDHAM. And I would add that, from a climate standpoint, one of the things that is probably not well known to many, though, is for over 50 years now, Nucor has led the way in how we produce steel. And there are a couple of ways to produce steel, but we produce it by the circular method. And when I say that, we recycle scrap into new steel products. And so, our method of making steel versus what I would compare it to, the blast furnace method of extracting iron ore from the Earth, which is predominantly what's used around the rest of the world, our method is 66 percent lower in greenhouse gas emissions.

And so, Buy America provisions here, it certainly promotes American steel products. And I will tell you, the American steel industry today is one of the cleanest in the world, and that is a fantastic thing that we have, is the strength here, right here in the United States.

Ms. NORTON. My time is expired.

Mr. CRAWFORD. The gentlewoman yields.

Mr. Webster.

Mr. WEBSTER OF FLORIDA. Thank you, Mr. Chairman.

Mr. Edmondson, I know you are aware of the IIJA, some new requirements for an expanded number of items that would be part of the Buy America, and I just wondered if you have any insight into how these added items might impact a person putting together a bid, in that they have got to now find—it could be, in a sense, a trinket which sometimes was overlooked before, but can't be now. Have you any experience in that?

Mr. EDMONDSON. Yes, thank you.

Yes, when we put together a bid, we go out and we have got to pull together pricing on all the components that go into a job. And in anticipation of the Build America, Buy America requirements, we have started asking our manufacturers to provide a certification that says they can meet that requirement. And more and more times than not, we are seeing our manufacturers come back and say they may take exception.

And for us, as contractors, that's a problem because when we have a risk like that—that's what it equates to us—we have to make a decision, and it's either: proceed with the bid or deal with our price structure. And uncertainty in our world is not a good thing. So, the more and more that we can make this process be a certainty for us, the better off we are going to be.

We agree that—we are in the business of building America, so, we want this to go in place. But it will take some time on certain products. And like you said, there are minor products that you don't necessarily think about when you are putting together a bid on an interstate project, for instance, that may cause us real problems on the other end when we can't procure that product and meet the requirement.

Mr. WEBSTER OF FLORIDA. Have you found any suppliers that just can't do it, or are having difficulty in doing it?

Mr. EDMONDSON. We do have suppliers that just can't meet the requirement. And we tend to see it on—a lot of times, it's with manufactured products, where it may be a signal cabinet or a generator, things that pull together multiple components to make that

product. That gets extremely difficult for these manufacturers at times.

And quite frankly, the market is so good for a lot of these manufacturers, they are going to go to where they are comfortable, too. So, they may not pursue a certain type of job. If you are a generator manufacturer, they may go into a market that's not requiring that. So, that's causing us some problems.

But again, it's going to take some time, but it's going to end up being a good end result.

Mr. WEBSTER OF FLORIDA. So, is there a risk involved that you would—sort of a fudge factor of some kind that you might have the wrong product, or an uncertified product, or something like that?

Mr. EDMONDSON. Typically, the way it works is everything gets pushed down to the contractor. So, any requirement—we are ultimately going to be responsible to meet all the requirements, whatever is being imposed. So, that's our risk, and it's something we have to deal with on a daily basis.

Mr. WEBSTER OF FLORIDA. Also, is there sort of an added cost of complying in that there is extra administrative stuff that needs to be done? Have you found that to be true?

Mr. EDMONDSON. That is a real possibility. Our company, we don't have a dedicated person that is a procurement individual that guarantees we are going to meet these requirements. It's something our project teams have to do on a regular basis.

Probably one of my biggest concerns is we know how to deal with a lot of that, that process. Where you end up with trouble that—or what I think is you are going to negatively impact small businesses, disadvantaged businesses in some of these requirements, because ultimately, we take a price from a subcontractor, we are asking them to guarantee that product meets all requirements. So, it's putting a burden on them that they may or may not be able to deal with.

Mr. WEBSTER OF FLORIDA. The time has run out. I thank you for your answers.

I yield back.

Mr. CRAWFORD. The gentleman yields.

Mr. García.

Mr. GARCÍA OF ILLINOIS. Thank you, Chairman and Ranking Member, and all the witnesses for your expertise today.

Buying America requirements are essential for supporting good-paying, union jobs that manufacture and produce materials right here in the U.S. IIJA-funded infrastructure projects are beginning to break ground, and we should be using products made by U.S. companies with U.S. workers that benefit our economy.

The American Transportation Research Institute recently announced that the second and third most congested bottlenecks in the country are in or near my district. One of these is a segment on Interstate 290. This highway was constructed in the 1950s, is heavily traveled, and is severely deteriorated. It's in need of reconstruction, and there are plans to add a high-occupancy toll lane to improve congestion. A concurrent CTA project is also being considered in the same corridor to rehabilitate the Blue Line Forest Park branch rail station and terminal infrastructure.

Mr. Braceras, this project is estimated to bring in 22,000 construction-related jobs, will improve safety and mobility, and decrease pollution from idling vehicles. How can we encourage the State DOTs to abide by Buy America requirements?

And what additional resources do the agencies that you represent need to improve compliance and prevent delays?

Mr. BRACERAS. Thank you, Congressman.

First of all, all State DOTs support and adhere to the Build America, Buy America provisions, and they are committed to them. I think that's really an important component we need to all understand.

The percentage of items that we talk about sometimes is very small in terms of the total project piece, in terms of cost and elements. And so, I think it's better understanding of the supply chains to do some market research to understand the elements that are the more difficult ones to find compliance with. As Mr. Edmondson said, when a contractor is getting quotes on a job, it's a pretty tight timeframe for them to make this commitment, and they have to price the risk on that.

And so, I think, as a Nation, if we could better understand the market and where the stuff is—what are the things that are a challenge to us to have compliance with Build America, Buy America, and then what are the barriers with having that onshored, having that process onshored. I think that would help us—lend to us getting there in a much smoother way because we want to be there, we can get there.

I know we are going to get there as a country, it's just how we get there, and I don't want us to stumble over the small items that are more difficult. There are processes we can think about on how, as a country, we can figure out what are those things we should focus on, and then how can we help those elements, companies, the private sector say, "You know what? I think there is a business here for me to do this in America and to support those jobs."

Mr. GARCÍA OF ILLINOIS. Thank you for that.

Ms. Salrin, Buy America requirements are beneficial for many reasons, including the fact that they support domestic manufacturing jobs with responsible practices. Many countries that we outsource production to have weaker labor and environmental standards. The EPA has determined that they will not apply Buy America to the Clean School Bus Program.

Given that Congress has clearly identified that administering Buy America is in the public interest, how do departments and agencies determine that it is in the public interest to waive its application?

Ms. SALRIN. Thank you for that question. I will note that USW last year organized Blue Bird manufacturing workers in Georgia, and so, we have a really high stake in ensuring that EPA does apply domestic procurement standards for clean schoolbuses.

But I think, to answer your question, in terms of public interest, USW opposes—strongly opposes—public interest waivers and general applicability waivers because they do not send market signals, and they allow for a large variety of foreign products to come in. And we highly suggest—and in my testimony I lay out—that we should focus on product-specific waivers that will allow manufac-

turers to see gaps in the supply chain, invest in that, as well as allow departments of transportation to go ahead with projects without any delay, and then also give Members of Congress an idea of where we lack in domestic capacity.

Thank you.

Mr. GARCÍA OF ILLINOIS. Thank you much.

Mr. Chairman, I yield back.

Mr. CRAWFORD. The gentleman yields.

Mr. Bost.

Mr. BOST. Thank you, Mr. Chairman.

Mr. Needham, my office has heard from many industry stakeholders that are expressing concerns about how the Build America, Buy America Act has been implemented. And I have been told that the guidance is unclear and takes a long time for the administration to publish rules.

Mr. Chair, I request unanimous consent to enter into the record a letter from nine industry groups to the administration raising serious concerns about how the law is being implemented.

Mr. CRAWFORD. Without objection, so ordered.

[The information follows:]

Letter of March 20, 2023, to President Biden from Nine Iron and Steel Industry Groups, Submitted for the Record by Hon. Mike Bost

MARCH 20, 2023.

The President,
The White House,
Washington, DC 20500.

DEAR MR. PRESIDENT:

On behalf of the undersigned organizations, which represent the overwhelming majority of domestic iron and steel producers and their workers, as well as associations representing fabrication and manufacturing of iron and steel products, we write to express our collective support for Buy America policies that maximize the U.S. economic impact of infrastructure investments.

We applaud your enduring commitment to strengthening domestic content preference policies, including through Executive Order 14005 and implementation of the “Build America, Buy America” (BABA) policies enacted as part of the Bipartisan Infrastructure Law (BIL). Prior to BABA, our nation’s Buy America laws were limited in their coverage, eroded by unjustified waivers, and narrowed further by agency loopholes. As a result, billions of federal assistance infrastructure dollars have been used annually to purchase foreign products and materials—bypassing American workers ready to produce the inputs necessary to build our infrastructure. Full and immediate implementation of BABA to additional programs will ensure that American workers continue to produce the iron and steel products that comprise the backbone of our country’s public works infrastructure, as well as manufactured products and construction materials covered under the new law.

To ensure that BABA implementation matches the intent of Congress and your commitment to the policy, we wish to raise several pending implementation challenges that require careful recalibration. Congress established a May 14, 2022, statutory implementation deadline for departments and agencies to ensure that financial assistance awards comply with the new Buy America law. However, departments continue to deploy general waivers to repeatedly delay BABA implementation—including for iron and steel products that have established supply chains, have been subject to program-specific Buy America laws for decades, and are well-understood by infrastructure stakeholders. For instance, in addition to its initial six-month delay, the Department of Housing and Urban Development (HUD) recently proposed more waivers to further delay BABA coverage for iron and steel products that extend into late 2024. These delays have consequences for American workers and capital investment decisions, as billions of dollars from the BIL and other federal assistance are being spent absent major elements of the BABA law.

Furthermore, we are concerned that many departments have proposed *de minimis*, small grants, and minor components general waivers that are not only inconsistent with, but that also erode longstanding Buy America coverage for iron and steel products under existing statutes and well-established policies. Congress included a “savings provision” in the BABA statute to ensure that no existing policies or laws would be weakened during implementation. We are concerned, however, that several departments have advanced policies in their implementation of the new law that conflict with the “savings provision,” overlooking the spirit and the letter of BABA and its precursor federal Buy America requirements.

For instance, the Department of Transportation (DOT) has proposed a “*de minimis*” waiver that would allow non-compliant products totaling five percent of overall costs, or up to \$1 million, in its federal-aid infrastructure projects. Because DOT proposes to calculate its *de minimis* exception based on a percentage of overall costs rather than a percentage of materials costs, the amount of non-compliant, foreign products permitted to be used (5%) exceeds FHWA’s own estimate of the cost of all iron and steel (4.8%) used on a typical highway project. In other words, DOT’s proposed *de minimis* waiver effectively repeals Buy America coverage for iron and steel on highway projects less than \$20 million.

While we have no objections to reasonable exceptions and flexibilities to facilitate project compliance, many of the proposed *de minimis*, small grants, and minor components waivers being proposed by DOT and other departments are inconsistent, would undermine the new BABA law, or, worse yet, would erode existing Buy America laws and policies. The intent of the BABA law was not to create new loopholes to be exploited by foreign competitors to the detriment of U.S. manufacturers and their workers. We strongly urge that these general waivers be revised and that the Office of Management and Budget (OMB) update its April 18, 2022, memorandum, “Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure” (M–22–11), which is being relied upon by departments to justify these lenient implementing policies.

Again, we applaud your enduring commitment to strong Buy America policies, which ensure that the benefits of our infrastructure investments are felt by workers throughout our supply chains. Robust implementation of BABA directed by well-calibrated OMB guidance and department-level implementing policies will result in more American taxpayer dollars reinvested back into our economy—bolstering domestic supply chains, strengthening U.S. national security, and helping to revitalize the U.S. manufacturing base to the benefit of workers and communities across the country.

Sincerely,
 ALLIANCE FOR AMERICAN
 MANUFACTURING.
 AMERICAN FOUNDRY SOCIETY.
 AMERICAN INSTITUTE OF STEEL
 CONSTRUCTION.
 AMERICAN IRON AND STEEL INSTITUTE.

AMERICAN LINE PIPE PRODUCERS
 ASSOCIATION.
 MUNICIPAL CASTINGS ASSOCIATION.
 NATIONAL STEEL BRIDGE ALLIANCE.
 STEEL MANUFACTURERS ASSOCIATION.
 UNITED STEELWORKERS.

cc: DOT Secretary Pete Buttigieg
 HUD Secretary Marcia L. Fudge
 MIAO Director Livia Shmavonian
 OMB Director Shalanda Young

Mr. BOST. OK, now that we have got that in there, Mr. Needham, can you please speak to how the delays affect Nucor’s ability to meet demand?

Also, have you been able to talk with the administration about how to speed up the implementation?

Mr. NEEDHAM. The implementation specifically of Buy America?

Mr. BOST. Mm-hmm.

Mr. NEEDHAM. Because what I would say is the delays that we are seeing is in the actual breaking ground of projects. From an IIJA standpoint and certainly some of the IRA, some of that is certainly—I think one on the panel mentioned labor constraints and actually executing and building the projects. And then the other I would say is, just the process, the regulatory process of getting things through.

From a Buy America standpoint, from our perspective on the steel side, this has been implemented for over 40 years through the DOT and the Federal Highway Administration and the FTA, and that has been very effective. So, we have not seen delays because of that process. It's very well established from a standpoint of certifying projects.

As we produce steel, a critical part of our process that we have been doing from day one is certifying what are the components of the steel. And so, we issue certified mill test reports, and that will show the origins of the steel. And so, that has worked very well and continues to work well. So, I wouldn't say that we have seen delays from that standpoint on Buy America.

Mr. BOST. So, my second question, as many of you know, I have been a strong supporter of Buy America, especially with our steel industry. I have worked closely with many of my colleagues, including the chair, that our domestic manufacturing base is strong.

Now, over the past few decades, the American steel industry has been fighting foreign trade cheats. During the Trump administration and supported by this administration, the Department of Commerce took steps to fight back against illegal dumping of steel with trade tariffs. Now, this action to help boost the industry, however, seems to be at odds with the decision of drastically increasing and minimizing the threshold for Buy America requirements.

Now, I understand that there should be a reasonable level for exempting a product, but changing it from \$2,500 to \$1 million is a pretty drastic increase. Do you feel that these two policies align together, or how does the dollar amount from \$2,500 to \$1 million open the door for the same foreign actors to play the same games they did, but the Department has been trying to stop?

Mr. NEEDHAM. Thank you for that question. No, we don't think that that is a reasonable raise. And the reason for that is, the American steel industry today is operating at about 76 percent capacity utilization. So, there are millions of tons available for us to provide to these types of projects. And so, raising the de minimis is doing exactly what you have said, it is allowing foreign steel to come in when we can supply that.

The other thing it does—and I mentioned previously—is that the steel made here in the United States is 66 percent less in greenhouse gases. So, it's worse for our climate by bringing in foreign steel. And today, in America, about 70 percent of our steel is made through the circular steel method, with Nucor and our competitors leading the way.

Mr. BOST. Well, thank you for answering that question. I just wanted to make sure we got that on the record. It is my hope that every administration in the future understands how important it is to make sure that we are using American-made steel and other products. We know how it affects our communities, how important it is to keep people working. But not only that, to know that the quality of the product that we are putting in meets that standard that we expect.

With that, Mr. Chairman, I yield back.

Mr. CRAWFORD. The gentleman yields.

Mr. Menendez.

Mr. MENENDEZ. Thank you, Mr. Chair.

Ms. Salrin, I appreciate the United Steelworkers being one of the strongest proponents of Buy America policies. As you know, the Biden administration has issued new, stronger Buy America standards for electric vehicle chargers. Unfortunately, some in Congress attempted to repeal those standards earlier this year. So, it's important to set the record straight, especially given the importance of electrification projects across the country.

A few local examples from my district include New Jersey Transit's efforts to convert their bus fleet to electric vehicles and their work on converting diesel ferries to electric. I am excited to share that earlier this year, they received a Federal grant of \$7 million to carry out this important work.

Ms. Salrin, can you speak to the importance of strong Buy America standards and their impact on the electrification of the broader transportation industry, such as electric buses and electric ferry programs?

Ms. SALRIN. Yes, thank you for the question.

To discuss the EV charger waiver that DOT had implemented, basically this waiver deviates from a 1983 manufactured product waiver. DOT acted proactively to ensure that EV chargers and the manufacturers started domestic capacity because 3 years ago, we had zero manufacturers manufacturing EV chargers. And so, with the waiver implementing policy, this allows for manufacturers to invest, build up domestic capacity in order to meet the 55-percent domestic content threshold, and we believe that DOT has taken the right steps and continues to do so, and so, we are supportive of their efforts to increase domestic production of EV charging stations.

Mr. MENENDEZ. Great. Thank you for that.

Mr. Enders, thank you for your testimony this morning highlighting the importance of Build America, Buy America exemptions for the asphalt paving industry. New Jersey's Eighth Congressional District is one of the busiest transportation hubs in the country. Thanks to the IIJA, in fiscal year 2022 and 2023, New Jersey was awarded \$110 million in grants for road and bridge improvements, and the State was reimbursed \$166 million for their work. These projects are critical to improving New Jersey infrastructure, and asphalt pavement is a critical material in completing these projects.

Mr. Enders, can you share how road and bridge projects in New Jersey are impacted by construction material exemptions?

Mr. ENDERS. Yes, thank you for the question.

In different areas of the country, the availability to get asphalt binder or the availability to get quality aggregates differs. In Wisconsin, we have quality aggregates, and we can get them right there in Wisconsin. And it's pretty rural, so, the ability to open a quarry and get rock is a lot different, I'm sure, than it is in New Jersey, New York, and areas like that, where there isn't the room and the challenges.

So, having the ability to bring in materials to that area from, let's say, Canada and other areas like that, supplement the products that exist. And I think also what it does is it gives contractors flexibility, it gives them resources that are going to allow them to bid on more projects, complete more work.

Mr. MENENDEZ. Yes. You mentioned some of the dynamics specific to areas like New Jersey and the Northeast. How critical is recycled asphalt pavement usage within the New Jersey roadway market?

Mr. ENDERS. So, recycled asphalt is making up, right now, over 20 percent of new asphalt mix that goes out onto the roadway. When you are in urban areas that you are describing, the amount of reclaimed asphalt is—there's plenty. And the ability to continue to use more reclaimed asphalt, which ultimately gives you aggregates and asphalt binder, continues to help you be less reliant on the materials you are getting from other places.

Mr. MENENDEZ. Yes, and there are other benefits, as well. You also mentioned in your testimony that recycled asphalt pavement is a big part of the asphalt industry's focus on sustainability. Can you share more about that effort and the importance of exempting asphalt binder?

Mr. ENDERS. Part of exempting asphalt binder, again, it's not that we don't produce it in the United States, right? Over 80 percent, I believe, is produced in the United States. We are using it to supplement what we have going on.

The recyclability, as we continue to be able to do more of that, it helps us go closer to net-zero emissions by 2050, and it continues to be an avenue to reuse our materials that we have down. I mean, that is one of the benefits of asphalt, is that it continues to be reused and reused, most of the time back in the asphalt mix itself.

Mr. MENENDEZ. Great. Thank you all so much, and I yield back.

Mr. CRAWFORD. The gentleman yields.

Mr. LaMalfa.

Mr. LAMALFA. Thank you. Thank you, Mr. Chairman.

Mr. Needham, kind of a side thought on this. China was known for a long time as taking so much of our scrap metals and such. Do you have an idea what that percentage is these days? Are they using less of our scrap? Are we keeping more of it, like you were talking about in that circular conversation you were saying?

Mr. NEEDHAM. I don't have the specific content or amount that they are taking. But what I would tell you is, China produces steel predominantly through the extractive method. So, they would use less scrap in their process, although they have expanded in their—

Mr. LAMALFA [interrupting]. That is what you are alluding to, but it seemed for at least a long time that they were taking the bulk of American scrap and reconfiguring it over there.

Mr. NEEDHAM. Yes, the bulk of American scrap is recycled here in America. So—

Mr. LAMALFA [interposing]. Yes, that is good.

Mr. NEEDHAM [continuing]. Today about 20 percent, at most, 15 to 20 percent would be going export. But most of it is staying here in the U.S.

Mr. LAMALFA. OK, good. That's a big plus for all the logistics. I know you keep talking about greenhouse gas, but I have to remind everybody CO₂ is only 0.04 percent of our atmosphere. And all this net-zero talk is folly, especially when you consider that America is one of the countries already flattening the CO₂ curve, and China and others keep upping theirs. And so, we will do good

by doing that, but we are going to throttle ourselves if we keep pursuing these crazy CO2 goals and net-zero stuff. So, maybe we could back off on that a little bit.

But I wanted to ask also Mr. Braceras and Mr. Edmondson, as we keep going hell-bent towards this electric vehicle and these charging stations, and they are doing waivers in order to get the material from somewhere else, get these projects from somewhere else, do you think perhaps we could prioritize other infrastructure, other projects while we wait to scale up this domestic manufacturing for chargers that could be made here, and the other components so we are not sending so much dollars to foreign competitors?

Mr. BRACERAS. Yes, thank you for the question.

In Utah, we take an approach of all of the above. We can't just put all of our eggs in one basket. And so, air quality is one of the concerns that we deal with in Utah. We live in a basin. And when we get the winter inversions, the air gets trapped in there, and the air is not moving. And so, air quality is a very high concern for our citizens. And so, going towards electric vehicles, hybrid vehicles, hydrogen is something that we are looking at. We still believe that coal is going to play a good part of our portfolio, and oil and gas is a big part of the extractive industry in Utah, as well.

So, we believe that an all-of-the-above approach, and that how you get there is really important. I mean, we all agree on the goal of where we want to be, but we need to figure out the right transition methods so that the markets can see where we are going, the markets can adjust to where we are going as they can minimize risks to make investments in the long run.

Mr. LAMALFA. That's not really an answer. What I am looking for is, can we prioritize other things instead of having to buy foreign products because we have to hurry on this electric charger bit?

Mr. BRACERAS. I am probably not understanding your question very well. We believe electrification will be part of the future in Utah. We would like to have seen the guidance come out a little quicker out of the administration to help us implement this, and we do need some flexibility, but we're not—

Mr. LAMALFA [interrupting]. Thank you.

Mr. Edmondson, would you take a crack at that?

Mr. BRACERAS. OK.

Mr. EDMONDSON. I would answer the question this way. I think the manufacturing capacity in the country will move to the available markets, whatever those are. I mean, it will be the EV market, it will be the component of the product example I gave. I think the capacity in this country to move into those markets and fill the needs that we're going to have will definitely take place.

Is there going to be a priority given to EV over a generator manufacturer being able to meet that? I—

Mr. LAMALFA [interrupting]. Well, in that we're doing waivers in order to make EV charging systems and they have to come from somewhere else, whereas maybe we could be working on other things instead of hurrying EV chargers and having American jobs and American manufacturing. That's what I am getting at.

Mr. EDMONDSON. That's part of our argument with—we want a clear process that is not politicized, and it allows the manufactur-

ers to move into the markets where we need to move. And that's part of our concern.

The way it is programmed right now, OMB is basically going to dictate a lot of these answers, and that's why we are a proponent——

Mr. LAMALFA [interrupting]. That's a thing—that's not a market, that's being forced into a market that we are seeing that consumers are not chasing with electric cars as you see Ford pulling back, others pulling back.

And then a recent story I just saw on hydrogen, which, hey, would be great, but it seems like there are people a lot less confident in hydrogen's future.

So, I better yield back, Mr. Chairman. Thank you.

Mr. CRAWFORD. The gentleman yields.

Mr. Johnson.

Mr. JOHNSON OF GEORGIA. Thank you, Mr. Chairman, and thank the witnesses for your testimony today.

For years, we have listened to Donald Trump, better known as "Individual 1," brag about Made in America as his White House defended his own companies producing products overseas in countries such as China, Bangladesh, and Indonesia. Donald Trump's rhetoric about Made in America was like his infrastructure week, and his replacement for the Affordable Care Act, and his desire to build the wall. It was all words and no intention to get it done.

On the other hand, President Biden came in with a serious plan and competently took swift action and passed the bipartisan Infrastructure Investment and Jobs Act within his first year in office. The result is the U.S. economy, which is experiencing some of the strongest economic growth in the world, rather than trickle-down economics, it's expanding the economy from the bottom up and the middle out.

President Biden's policies of upgrading infrastructure and promoting domestic procurement through robust Build America, Buy America provisions is an important component of that economic growth, and the mandates to use American-made materials to boost domestic manufacturing, fortify supply chains, and foster the creation of high-quality union jobs is making a tremendous difference in the lives of the American people.

Ms. Salrin, last month, I had the honor of welcoming EPA Administrator Michael Regan to my district to celebrate the announcement that the DeKalb County School District has been awarded \$20 million to purchase all-electric buses under the Environmental Protection Agency grant program. And with major interstates running through my district, exposing residents to particulate matter and nitrogen dioxide, which are especially harmful to our children, I fully support the transition to electric vehicles and schoolbuses.

Buy America plays a crucial role in creating U.S. jobs and strengthening our economy, particularly as the global economy transitions away from the internal combustion engine to cleaner renewable energy sources that ameliorate the effects of climate change. So, can you speak to the importance of the Buy America on the global transition towards electric-powered vehicles and on how Buy America contributes to U.S. economic growth?

Ms. SALRIN. Of course. So, USW is the largest union in the auto supply chain. We manufacture a variety of auto parts specific to internal combustion engines, as well as numerous parts that go into EVs. And we also represent a majority of the oil workers.

But Buy America, proper implementation of Buy America, will allow us to transition and have a larger stake in the electric vehicle market. Like I mentioned before, 3 years ago, we didn't have any EV charger manufacturers, and that is a problem because the transition is happening, and we need to make sure that we are ready for it, and workers are trained, and jobs are there for workers to transition to.

And so, Buy America policies offer that kind of flexibility and ensuring that we can have the good-paying jobs still during the transition to cleaner and a diverse electric vehicle fleet, yes.

Mr. JOHNSON OF GEORGIA. Thank you. The United Steelworkers union is one of the strongest proponents of Buy America policies, and the Biden administration has issued robust Buy America standards for electric vehicle chargers. Unfortunately, however, some in Congress tried to repeal those standards earlier this year, but fortunately, they did not prevail. Can you speak to why President Biden's Buy America strict standards for EV chargers are so important?

Ms. SALRIN. Yes. So, Biden's policy deviated from a 1983 Manufactured Products Waiver, which basically would have made EV chargers not covered by Buy America at all. And what his policy did was phased-in implementation, and it requires final assembly to be done in the United States while manufacturers invest in critical capacity.

And then, in July, the requirements will be exactly what BABA had: 55 percent domestic content for EV chargers. And so, what the Biden policy did is it encouraged domestic investment to meet those requirements.

Mr. JOHNSON OF GEORGIA. Thank you, and I yield back.

Mr. CRAWFORD. The gentleman yields.

Mr. Stauber.

Mr. STAUBER. Thank you very much.

Mr. Needham, I want to real quickly ask. You said Nucor does a 66-percent cleaner than the original blast furnaces. Does that take into account the original make of the steel you are recycling?

[Pause.]

Mr. STAUBER. Just yes or no, because I have got to move on.

Mr. NEEDHAM. Can you repeat that, please?

Mr. STAUBER. So, 66 percent cleaner, you said, Nucor, right?

Mr. NEEDHAM. Yes.

Mr. STAUBER. Than the blast furnaces. Does that percentage take into account the original make of the steel?

Mr. NEEDHAM. The recycled content, the scrap, is—the makeup of that is not part of—

Mr. STAUBER [interrupting]. It's not. OK. OK, so, it doesn't include it. Obviously, from the Iron Range, I am going to protect the taconite.

Ms. Salrin, thank you for being here today. I appreciate you being here. Recently the EPA has finalized the Nation's first-ever

limits on emissions of mercury at taconite plants. Are you aware of the rule?

Ms. SALRIN. I am aware of it, but I have not been—I do not handle that issue for the steelworkers.

Mr. STAUBER. You don't handle the issue for the steelworkers?

Ms. SALRIN. Yes, that is a different staffer, but I can——

Mr. STAUBER [interrupting]. Do you realize that six of the seven taconite plants in this country are USW workers in the district I represent?

Are you concerned that this impact is going to put our steelworkers out of work and foreign source to steel? Are you concerned about that?

Ms. SALRIN. The USW is concerned, and we have been having discussions with EPA.

Mr. STAUBER. Did the USW in the rulemaking put any comments forward?

Ms. SALRIN. We did, and we are happy to provide those comments to you, yes.

Mr. STAUBER. OK. I don't think you did. I can't find any USW opposition to this rule. So, we will—I will look forward to——

Ms. SALRIN [interposing] Yes.

Mr. STAUBER [continuing]. If I am wrong, I look forward to you correcting me, OK? Because I have no knowledge of USW pushing back against this rule.

We talk about EV charging stations. So, in northeastern Minnesota, we mine the taconite that makes 82 percent of the steel made in this country. In your testimony—and what you said today is USW opposes waivers, and you said we need to build up our domestic capacity. And just moments ago you said we need to build up our critical capacity. Let's just talk about EV charging stations. You are aware the Biden administration wants to scrap Buy America for the EV charging stations, correct? You are aware of that?

Ms. SALRIN. That is not correct.

Mr. STAUBER. That is correct. That is correct. In fact, \$7.4 billion you want to waive to allow removing the Buy American. We had a hearing on it. Do you support waiving Buy American for the steel and the concrete and the critical minerals in the EV charging stations? Do you support that?

Ms. SALRIN. It is a product-specific waiver——

Mr. STAUBER [interrupting]. Wait a minute.

Ms. SALRIN [continuing]. That allows us to build up domestic capacity.

Mr. STAUBER. How can you build up domestic capacity when Biden has shut down our critical mineral mine? You can't build up domestic capacity. We have in northeastern Minnesota, ma'am, we have the biggest copper nickel find in the world: 95 percent of the nickel, 88 percent of the cobalt, over one-third of the copper, other platinum group metals that go into the EV chargers, et cetera, EV vehicles. And he shut it down.

So, when you say build up domestic capacity, let me kind of rephrase it, what you are saying. Currently, the administration that you support is working on memorandums of understanding with the Chinese Government in the Congo that own 15 of the 19 mines that use child slave labor, no environmental standards, and no

labor standards. I want our union workers in northeastern Minnesota to mine those critical minerals, don't you?

Ms. SALRIN. We do, too, yes.

Mr. STAUBER. And so, how can we build up critical capacity when Joe Biden and his administration shuts it down? It doesn't make sense to me in your explanation on building up critical capacity. It's not happening. You're outsourcing it. You don't want to outsource that, right? Because that removes union jobs. Am I right?

Ms. SALRIN. That is correct.

Mr. STAUBER. That is correct. Don't we want to build up domestic supply?

And remember, as a candidate, Joe Biden in October of 2020 said to the American people, we are going to mine these critical minerals domestically. That was music to our ears. After he was sworn in, what did he do? What did he do? He changed his mind from mining domestically. That hurts our steelworkers.

I want you to make sure that our boots-on-the-ground steelworkers in northeastern Minnesota are taken care of. The EPA rule on mercury, for you not to comment on it and then supporting a waiver—you said you don't support waivers. The USW supported the waiver on the Buy American for the EV charging stations, and I think this is simply unacceptable.

We need the work. Northeastern Minnesota can mine these critical minerals, ma'am, like, better than anybody in the country.

Ms. SALRIN. And we agree.

Mr. STAUBER. And I yield back.

Mr. CRAWFORD. The gentleman yields.

Mr. Mann.

Mr. MANN. Thank you, Mr. Chairman. Thank you all for being here today.

I represent the Big First District of Kansas, a primarily rural district in the western two-thirds of Kansas, where transportation is very, very important. We have 83,000 miles of roads, more than 4,000 miles of railroad tracks, 67 public airports. And we rely heavily on this infrastructure to get our ag products out of the fields, off the farms, away from feed yards, and to markets.

Buy America requirements have expanded domestic manufacturing capabilities and have had positive impacts on both Kansas and the U.S. workforce and economy. However, there has been significant confusion and uncertainty, as I see it, around the implementation of IIJA and the included Build America, Buy America Act.

At a time when our country is facing historic inflation and supply chain disruptions, OMB issued implementation guidance without consideration of our country's domestic manufacturing capabilities in the first place. This inconsistency and lack of transparency and waiver requirements has put significant strains on the industry and has led to increased cost delays and the inability to source and procure products, as mentioned earlier. OMB must produce consistent, transparent, and timely guidance on Build America, Buy America for compliance so these projects do not continue to be stalled.

A handful of questions. First for you, Mr. Edmondson—again, thanks for being here. Currently, OMB final guidance provides

agencies with discretion concerning the issuance of Build America, Buy America, these waivers we have been talking about. What do you believe we need to do to streamline and make the process more efficient?

Basically, how do we need to fix these waiver issues that we keep hearing talked about?

Mr. EDMONDSON. The best example I can give you is AGC of America, specifically our utility infrastructure division, works closely with the EPA, and they are very knowledgeable on our concerns. They are knowledgeable on the products we are having trouble with. The more we utilize—let the agencies that deal with the projects be more involved. That is the easiest solution that I can give you.

And it works because, again, our relationship just with the EPA is invaluable. And it's creating a great platform and a great forum for us to discuss the problems, and then they can then take it to wherever they have got to take it to deal with the issues that we are seeing. But they are very familiar with what's going on in the market, and I think that would be the case whether it's a highway issue or—well, pick your example, Federal issue, whatever. It's going to be the same, I believe.

Mr. MANN. Many comments filed in the docket in response to OMB's Build America, Buy America guidance emphasized the need for consistent implementation of the legislation's requirements. In its final guidance, OMB stated its intention to regularly convene interagency working groups to ensure that the Federal agencies implement Build America, Buy America in a consistent, uniform, efficient, and transparent manner.

Again, Mr. Edmondson, do you think the State DOTs have been invited to engage in these working groups to bring frontline experience and reality?

I mean, are these working groups helping? Are the working groups working, so to speak, and are we seeing improvements?

Mr. EDMONDSON. Yes. In North Carolina, we have a joint committee with our DOT, our Carolinas AGC, our local chapter. That has been a great resource. And it's a great forum for us to voice any concerns that we have in the marketplace. And then it also—they have that information and they're helping to, on the design side, they're helping to mitigate, where they can, any issues that aren't going to be sourced or that would be difficult to source here.

Mr. MANN. OK, and for you, Mr. Braceras, kind of the same question. What is your thought on these working groups? Have you all been invited to participate? Any feedback from your standpoint?

Mr. BRACERAS. Yes, thank you, Congressman.

Yes, I think relationships have been mentioned before, but the folks at the Federal Highway Administration, they are friends of ours, and they listen to us, and they are constantly reaching out and asking what they can do to help. We have folks in our division office that are Utah citizens that are aware of what we are dealing with, and that relationship really helps us get through some of these more difficult conversations.

At the end of the day, it's going to get down to us understanding the supply chains and what the market truly is to understand how

we can get to the point where 100 percent of everything—we don't have to even ask for waivers.

Mr. MANN. Yes.

Mr. BRACERAS. But it's a deliberate process of doing this, and we have to do it with the input from the stakeholders.

Mr. MANN. Great. Thank you.

Mr. Chairman, with that, I yield back.

Mr. CRAWFORD. The gentleman yields. Ms. Titus.

Ms. TITUS. Thank you, Mr. Chairman.

We have heard a lot about the impact on Buy America for the economy and how it creates jobs, it's good for workers. I suspect that the Buy America plan also benefits our environment. Can you talk about how it contributes to a more sustainable construction industry, maybe Mr. Needham?

Mr. NEEDHAM. Yes. What I have referred to before is that it certainly does benefit our environment, and one way it does is that the American steel industry, from our perspective and today, over 70 percent of it produces steel by the circular steel method. So, recycled scrap. So, the way we make steel here in the United States is 66 percent lower greenhouse gases than the blast furnace average around the world. So, absolutely, it does benefit from that standpoint.

Ms. TITUS. That is another benefit from Buy America, just—

Mr. NEEDHAM [interposing]. Absolutely.

Ms. TITUS [continuing]. Saving the planet.

Ms. Salrin?

Ms. SALRIN. Yes, so, I would like to draw your attention. In my written testimony, I highlighted how Buy America is so good for our shared environmental goals. And the National Academy of Sciences did research that showed a large fraction of Chinese emissions are due to the manufacture of goods for foreign consumption. They cited that Los Angeles experiences at least 1 extra day a year of smog that exceeds Federal ozone limits because of nitrous oxides and carbon monoxide emitted by Chinese factories making goods for exports.

And so, it is really important that we limit our procurement to American-made so that we are not benefiting Chinese polluters for entering our market and degrading our own environment.

Ms. TITUS. Thank you.

Anybody else want to comment?

Mr. ENDERS. I would just like to add that the exemption allows the asphalt industry to use reclaimed asphalt pavement. Currently, we are recycling over 90 million tons of asphalt in the United States and continuing to look at increasing that.

Ms. TITUS. That's great. I am glad to hear that. I think that's worth mentioning and putting on the record, so, thank you very much.

My second question has to do with waivers. I think you mentioned this in your testimony, that we need fewer broad and general waivers of Buy America, but that the time-limited, product-specific waivers can be useful tools or useful signals to the market. Would you elaborate on that?

Ms. SALRIN. Yes, of course. So, USW strongly opposes the general applicability, public interest waivers that cover a variety of prod-

ucts like the 1983 Manufactured Products Waiver. With product-specific waivers, we give manufacturers the ability—if they are transparent, you give the manufacturers the ability to go in, see the waivers, see the products that the waivers cover, and build up domestic capacity. And not only does that allow for us to be able to supply those products later, when the time limit is up, but it also allows Congress to know kind of where our supply chain gaps are, and it allows for transportation workers and State DOTs to continue projects without any delay if they are having trouble sourcing products.

So, product-specific waivers are really good, and the more that we have them, the more it means Buy America is working because we are making sure that we are investing in domestic capacity by that.

Ms. TITUS. So, they act as incentives for us to develop those industries that we are now having to get a waiver for to go outside.

Ms. SALRIN. Correct, because the decades of deindustrialization—it doesn't happen overnight, and so, they allow us to build up that capacity.

Ms. TITUS. Anybody else?

All right. Well, thank you. I yield back.

Mr. CRAWFORD. The gentleman yields.

Mr. Owens.

Mr. OWENS. Thank you, Mr. Chairman.

Build America, Buy America does not simply represent a policy. It represents a fundamental goal to reinvest America taxpayer dollars at home in our own communities, supporting American workers, businesses, and communities. However, even in the best Government, policies need refinement if it's not working for the cities, States, and communities.

Following exorbitant Government spending by this administration, Buy America requirements could not be more relevant. Every member of this committee shares the common goals of strengthening infrastructure, revitalizing American manufacturing, and fostering economic growth. Let's continue working together for this reality without the undue burden placed on American innovators and job creators.

First of all, I appreciate the education that I am getting, actually, the idea of what waivers mean and how that impacts us, and our goal to kind of make sure we are doing it right. Mr. Edmondson, you mentioned part of the solution would be EPA taking a bigger role. What I want to do is ask each—Mr. Braceras, Mr. Needham, and Mr. Enders, what do you see is the best way of keeping our priorities on America first, but yet tweaking our waivers so that it can fit in so we can grow this process where we can actually get to a point where we don't need waivers again?

So, your industry basically, how would you do that? I will start with Mr. Braceras.

Mr. BRACERAS. Thank you, Congressman.

So, I think it's important to recognize that there are a lot of moving parts to this. And as State DOTs are trying to move projects forward, we have got that goal of getting those projects advertised to get the safety benefits and the mobility benefits out there. And so, we really encourage our Federal partners to recognize what we

are trying to accomplish, but we are trying to do it within the parameters and the rules that are set by Congress and by those Federal agencies. And sometimes it doesn't feel like we have that necessarily they are recognizing what we are trying to accomplish. It feels like there might be more of a singular focus on what their rule is or what their goal is.

And so, I think encouraging the continual collaboration so that when we are having a conversation with the different Federal agencies, there is a recognition of what the end goal is. We are trying to save lives and make lives better, fundamentally. And we can do that, and we can still meet the provisions of Build America, Buy America if we all agree that we are going to work together towards those common goals, recognize some elements are going to be more difficult to get to. They are a very small percentage of what's actually being invested in transportation. Let's figure out what it takes together to get there.

Mr. OWENS. OK. Mr. Needham?

Mr. NEEDHAM. Yes, thank you for the question. What I would say, from a waiver standpoint, absolutely necessary, but applied in a narrow project-specific basis. And the reason I say for that is a lot of times what is not understood well is most of these products can be made right here in the United States, in America, with American-made teammates and workers. And so, the exceptions are very few.

And so, having a robust process around the waiver process is very important. From our standpoint, the guidelines give 15 days to respond to that, and that seems adequate. Sometimes, though, we are seeing that we have 7 days or less to reply, and so, I think it's important to have that robust process because a lot of these exceptions are made when we can just make the products here, and that's not well known.

Mr. OWENS. OK. Mr. Enders?

Mr. ENDERS. Yes, I think for the asphalt industry, maybe it's slightly different because what we are getting exemptions for on waivers are some of the inputs coming in to America. One hundred percent of the asphalt in our parking lots and the roads we are driving on is produced and made here in the United States.

As we continue to look at alternative ways in areas of the country where maybe they don't have access to quality raw materials, I think some of those alternatives can maybe provide ways to get to your goal.

Mr. OWENS. OK. I am just going to say this. We need to continue to advocate for your voices. And the point was made earlier, we have small business owners that truly are at risk. And our culture has to give them that room. That is where the base—that is our country, that is our freedom. So, whatever you can do to advocate for those small business owners, let us know. We are going to get more innovative legislation, that is our goal, to make sure we can hear from you guys and do the right thing. So, thank you so much. And I yield back my time.

Mr. CRAWFORD. The gentleman yields. Mr. Carbajal.

Mr. CARBAJAL. Thank you very much, Mr. Chair.

First let me say thank you to all the witnesses being here today.

Ms. Salrin, my father was once affiliated with the United Steelworkers of America as a copper miner in Arizona, so, I have an affinity for your union.

Mr. Enders, thank you for the acknowledgment regarding our committee's work on ensuring that OMB understood your industry's unique insights and various comments communicated to the agency. Now, with the Buy America ambiguity settled, what is the biggest priority facing your industry as we work on the next highway bill?

Mr. ENDERS. Thank you, and thank you for your help for our Buy America exemptions.

Really, the biggest priority for the asphalt pavement industry is sustainable road funding. The funding we have now, as I mentioned earlier, created over 1,300 projects in the State of Wisconsin, predominantly where we work, but there are many more on the shelf. And sustainable funding is something that can lead us to do those projects.

Mr. CARBAJAL. Great. As a followup question, we are now 2½ years into the Bipartisan Infrastructure Law. It is hard to believe that much time has gone by. As we are entering the final stages of this Bipartisan Infrastructure Law and start turning our attention towards the next highway bill ahead of 2026, does the certainty provided by OMB help clarify how the construction materials supply chain may operate, and minimize delays and cost overruns as it relates to your pavement production?

Mr. ENDERS. Yes, it does. We were very nervous as it went through the process to understand where we were going to be able to get resources to build roads. And when we don't know where the materials are going to be coming from and different things, we worry about hiring, investing in equipment, different things like that. So, yes, we are happy with where we are at.

Mr. CARBAJAL. Thank you.

Mr. Braceras, I think we can all agree that it is good policy to increase the domestic manufacturing base in the United States. However, we know we can't flip a switch and create new industries overnight. Can you give me your opinion on the implementation of the Bipartisan Infrastructure Law Buy America provisions from the perspective of a State department of transportation, specifically how the implementation process is working in Utah?

Do you have any recommendations on how to improve the implementation process?

Mr. BRACERAS. Thank you. Yes, I would say generally the implementation of IIJA is working well in Utah and working well for all State DOTs around the country. You should be proud of your State departments of transportation and how they are implementing that.

The certainty is important in any program, especially when we are making these types of investments. So, we like to know what is expected of us. And so, that early definition and guidelines are very important, especially as it pertains to IIJA.

We saw a little bit of, I will say, a speed bump in the implementation of the electric charging program because we are waiting for the guidance on that one right now. So, we look forward to continuing to work with this committee on the reauthorization.

I love my—the comment down here was long-term sustainable funding. The formula funding program provides us that stability to be able to make strategic investments into the future. Thank you.

Mr. CARBAJAL. Thank you.

Mr. Chair, I yield back. Thank you.

Mr. CRAWFORD. The gentleman yields. Mr. Johnson.

Mr. JOHNSON OF SOUTH DAKOTA. Thank you, Mr. Chairman.

And Mr. Edmondson, well, I will talk a little bit to you, and thanks for coming up in the conversation we had before today's hearing. I am grateful for that.

So, our country produces 95 million tons of cement every year. We use 120 million. And for that reason, I think IJJA really called out—really exempted cement and cementitious materials from some of these Buy American requirements. And yet we still had a lot of conversations today about the uncertainty. You had mentioned in your testimony that contractors can deal with two different State DOTs who have slightly different interpretations. And so, let's dive into that a little bit more.

I mean, tell me about the contractors and the confusion they may have when they bring cement onto a worksite, trying to understand whether or not Buy America applies to that.

Mr. EDMONDSON. Again, we would ask our suppliers to be involved in that process to identify the issues they've got, and that's probably our biggest resource. We rely on them to provide all that critical information. So, if they are seeing those issues, we would then take it to the project owner and deal with it that way.

Mr. JOHNSON OF SOUTH DAKOTA. So, what causes the confusion? I mean, as Mr. Carbajal mentioned, I mean, we are 2 years in. And I know we have gotten some additional clarity, and we are probably a lot further along than we were a year ago, but it still seems that I keep hearing about these conversations.

Mr. EDMONDSON. Yes, probably the biggest thing is, we are just—I think this flow of money that's going to have this requirement is just now hitting the market. So, I think you have had this long delay, but it has been in design and it has been going through the engineering process. So, I think we are just now on the front side of seeing the requirements go into effect, so, that has probably been some of the confusion, and when was it going to be implemented. It kept getting moved. And then back in the fall, it was implemented, and that's what I think it is.

Mr. JOHNSON OF SOUTH DAKOTA. Mr. Bracer, talk to me about the Federal Highway Administration. What can they be doing better in this arena?

Mr. BRACER. Yes. I think, we could always do some things better. And again, let me say that Federal Highways has been great partners in how we implement this.

One of the true advantages Federal Highways has is they have Federal Highway employees in every single State in the country who understand how we operate, and they understand the challenges that we have. And so, it's to continue to provide that resource and to help, I will say, support them in their decision-making roles. They are making decisions—we go to them all the time, asking them, "Well, what do you think of this? Can we do this?" And if they don't have to look over their shoulder back to

Washington too often, if they actually are trusted to make those decisions, that would be very helpful, and I think this administration is doing a good job supporting those amazing men and women there.

We, as States, we are kind of quirky in that we will say, like, well, we want flexibility, except for when we want consistency. And we all know, we have all been there in that type of situation.

But I think Federal Highways is a model in terms of how to implement Build America, Buy America. I would love to see more consistency. We do a lot of transit work, as well. Things are not necessarily consistent between the modal agencies. And so, I think consistency from U.S. DOT over all their modal agencies would be helpful not only for the departments of transportation, but probably also for our contractors, as well.

Mr. JOHNSON OF SOUTH DAKOTA. I think that is really well said about the need for consistency between and among agencies. And you are right, there is this natural push and pull for the Federal Highway folks in the States. Giving them that sort of autonomy makes a ton of sense. Rhetorically it's strong, but doesn't it contribute to this patchwork quilt we have heard about today?

Mr. BRACERAS. I would say that there is not a significant patchwork. There is consistency in making sure that the law is followed, the rules are followed. But there is an understanding of the uniqueness. Every State has some unique market differences, material sources differences. And those folks at the Federal Highway Administration, at the State level, they can recognize those unique differences and help us deal with it.

I mean, we had a cement powder shortage in the State of Utah over the last year and a half. We were bringing in cement powder from South Dakota and North Dakota, and we work with those State DOTs to say, hey, does this meet the spec, does it have all the compliance? So, there is great collaboration going on across the industry.

Mr. JOHNSON OF SOUTH DAKOTA. Well, I am sure the GCC plant in Rapid City, South Dakota, was happy to help.

And with that, Mr. Chairman, I would yield back.

Mr. CRAWFORD. The gentleman yields, and Ms. Scholten.

Ms. SCHOLTEN. Thank you, Chair Crawford and Ranking Member Norton, for holding this really important hearing, and thank you so much for our witnesses for being here today, sharing your insights into the challenges and opportunities of Buy America.

When Secretary Buttigieg testified in front of this committee in September, he noted that the Department of Transportation is looking to implement strategic on-ramps to Buy America to address supply chain concerns and build the necessary domestic infrastructure to meet that 70-percent threshold. I have a number of questions.

Ms. Salrin, my first question is for you. I represent over 700 employees of a tier 1 auto supplier that is working to build the first automated electric vehicle in America. They are committed to utilizing American labor and American materials, but they need 5,000 tons of steel annually. Do you believe temporary waivers to the Buy America requirements are the best way for companies like

theirs to fulfill their supply requirements until domestic manufacturing can build up and meet those needs?

And feel free to offer suggestions to tweaks, as well.

Ms. SALRIN. Yes. Without knowing what kind of steel this company needs, the steel industry has a lot of capacity, and so, they are able to support a lot of needs. But without knowing that, I will say project-specific waivers are really important because they allow that domestic capacity to be built up over time if we don't have it currently available.

Ms. SCHOLTEN. Mr. Enders, there are two major highway improvement projects needed in my district in west Michigan. These projects will rely on American asphalt. I am glad we were able to maintain waivers in the IIJA for materials like aggregate and asphalt binder to ensure economical and sustainable sourcing.

Are there concerns about other roadway materials that would benefit from the identified strategic on-ramps or temporary waivers, and how might you suggest that we address those?

Mr. ENDERS. Looking at the waivers we have, most of the other things we are getting are produced here in the United States and in our States. So, I think we just continue with the exemptions that we have for our industry, and I think everything falls in line with that.

Ms. SCHOLTEN. Thank you. My last question: The new policy entitled, "Waiver of Buy America Requirements for Electric Vehicle Chargers," the title of that program sounds like a weakening of the Buy America standards.

Ms. Salrin, can you explain why that's not the case?

Ms. SALRIN. Yes, of course. So, it actually strengthens Buy America standards for EV chargers. It's an implementing policy that allows the manufacturers of EV chargers to build up domestic capacity while they are brought online.

And the current waiver or implementing policy requires that final assembly already be built in the United States, and so, that is one good thing that's in the waiver, but it also requires the iron and steel of that charger to be built here, too.

And then, in July, it will take full effect. Buy America coverage will be in full effect for EV chargers. And so, this allows domestic manufacturers to build up capacity to meet the demand of the EV charging network. And so, the Biden policy actually strengthens Buy America coverage for EV chargers, not weakens it.

Ms. SCHOLTEN. Thank you. If we are to hold these companies to unrealistic standards, what is the impact there?

Ms. SALRIN. I am sorry. Can you repeat your question?

Ms. SCHOLTEN. You are talking about it not weakening the standards, but strengthening. Implementing unrealistic standards, what are the impacts there on the steel industry?

Ms. SALRIN. Yes. I would say the impacts of unrealistic standards open up our supply chains to or put our manufacturers and our workers at risk for foreign inputs to come in, and allows projects not to go through. And so, having these specific waivers allows that flexibility which is needed, especially since our Nation has had disinvestment and deindustrialization for over decades now, and we need to build up those critical supply chains because of the lack of industrial policy that we have had in the past.

Ms. SCHOLTEN. Thank you, very helpful. Thank you all for your time today.

Mr. CRAWFORD. The gentlewoman yields. Mr. Yakym. Just kidding. Mrs. Chavez-DeRemer.

[Laughter.]

Mrs. CHAVEZ-DEREMER. You never know who's going to show up right behind you, and you're like, aw, you thought you were in line. Thank you, Chairman.

Thank you all for being here today. As a new Member of Congress and representing Oregon's Fifth Congressional District, there is so much to learn in this industry.

Ms. Salrin, thank you for being here on behalf of America's steelworkers. We do such great work in the steel manufacturing sector, one of the most important sectors to our economy and national security. Of course, having loopholes in Buy America provisions do not benefit the taxpayer, nor the businesses and industries these provisions seek to benefit. But it also undermines the various rules and regulations industry must adhere to, from environmental to worker protections.

And critical to this conversation we must recognize that they aren't extraterritorial. China's steel companies do not adhere to U.S. regulations. So, when DOT policies allow the purchase of foreign steel, we undermine these very regulations and subject our own companies and workers to an unfair playing field at the taxpayer's expense, no less. It has been said a lot today, but I think we can all benefit if we get Buy America right. Without closing Buy America loopholes or streamlining regulations, only our competitors like China seek to benefit.

Ms. Salrin, you mentioned in your testimony that a January 2023 poll conducted by Morning Consult identified that 83 percent of Republican, Democratic, and Independent voters agree that taxpayer dollars should go toward infrastructure projects that utilize American-made products like iron, steel, and other construction materials versus products that are imported from foreign countries. So, Ms. Salrin, how do we achieve this consensus in Washington?

Is it the Buy America loopholes that are in the way, or is it something else?

Ms. SALRIN. Thank you for your question, and you hit on some very, very important points.

I will note that voters are sometimes way ahead of policymakers, mostly because they see firsthand how deindustrialization or how a bridge made of Chinese steel can impact them, as workers, but also their communities. And so, the hollowing out of our industrial base is not a Republican or Democratic issue. It is everyone's issue, and we must address that.

We also need a strong steel sector for our national defense and to independently build our infrastructure without being reliant on potential hostile or unreliable trading partners.

And so, Buy America is a bipartisan policy, and we need to keep it that way, and we need to make sure that the implementation in the administration is robust and strong, and ensures that no new loopholes are created.

Mrs. CHAVEZ-DEREMER. Thank you. You may be aware of the I-5 Interstate Bridge, which crosses the Columbia River and is a

major transportation connection between Oregon and Washington State. It has been undergoing major repairs, but also delays for replacement in the infrastructure.

We are all haunted by the San Francisco-Oakland Bay Bridge replacement project a decade ago, where California turned to Chinese steel to help to repair that bridge. Again, this in no way benefits American steel manufacturers. So, how do we ensure this doesn't happen again?

And to add to that, how do we prevent Federal and State governments turning to foreign products and steel to help repair this I-5 Bridge?

Ms. SALRIN. Yes, so, the San Francisco-Oakland Bay Bridge is, honestly, without a doubt, the epitome of bad Buy America loopholes. That project was a product of a segmentation loophole which allowed California to use State dollars to go ahead with the project, benefiting not only Chinese manufacturers, but Chinese workers, as well, and leaving American workers out of the equation. And that project ended up being way over budget and way past due.

And so, we learned a lot of lessons. And in the 2015 FAST Act, that loophole was closed. And so, to remain vigilant, I think, for your project—and thank you for supporting that—we need to make sure that no new loopholes are created.

And I will also highlight that the State of Oregon has implemented a State Buy America policy, which will allow stronger Buy America policy used with State and local funds. And so, thank you.

Mrs. CHAVEZ-DEREMER. Thank you.

Mr. Needham, it's my understanding that demand for domestically produced steel will likely increase in response to the recent implementation of the Infrastructure Investment and Jobs Act, the Inflation Reduction Act, and the CHIPS Act. In fact, I have seen some estimates that steel demand is projected to increase by 5 to 8 million tons annually as a result of these pieces of legislation.

So, given the likely increases in demand, does the domestic steel industry have enough capacity to supply federally funded highway and transit projects, as well as other infrastructure projects like the I-5 Bridge that may be subject to the Buy America requirements?

And your time is limited. I am over, so, if you could answer that very quickly, I would appreciate it.

Mr. NEEDHAM. Yes, thank you for that question. As I mentioned, the U.S. steel industry is about 76 percent capacity utilization. So, we have the capacity to supply those.

And also, the other thing that I mentioned earlier, Buy America, what it allows is for the confidence to invest in the future. We just started a new plate mill in Brandenburg, Kentucky, that is capable of supplying those types of projects.

Mrs. CHAVEZ-DEREMER. Thank you, Mr. Needham.

Thank you.

Mr. CRAWFORD. The gentlewoman's time expired. Mr. Burchett. I am sorry, it is Mr. Kean. My bad.

Mr. KEAN OF NEW JERSEY. Thank you. Thank you, Mr. Chairman, and thank you for our witnesses being here today.

Mr. Enders, you mentioned in your testimony that reclaimed asphalt pavement is a big part of the asphalt industry's focus on sus-

tainability. Can you share more about that effort, and why exempting asphalt binder is such a key necessity to incorporate?

I know that New Jersey isn't using as much of it as it should, but it sounds like it would help in utilizing current products/materials already in circulation while maintaining performance.

Mr. ENDERS. Yes. I mean, reclaimed asphalt pavement, currently we are recycling over 90 million tons of asphalt pavement. I mean, we are estimating that that's saving over \$3 billion in costs for new asphalt pavement. And part of it is, we can continue to recycle it. It goes back down, we can recycle it again. And so, in areas like New Jersey, where you have an abundance of reclaimed asphalt pavement, being able to insert that into your current asphalt mixes could provide both savings, and it keeps materials out of the land-fill.

Mr. KEAN OF NEW JERSEY. Thank you.

Director Braceras, in your testimony, you talk about the difficulties in securing Buy America waivers. Congress wanted to make it difficult to obtain a waiver, but not impossible. What recommendations do you have to improve the Buy America waiver process?

Mr. BRACERAS. Thank you very much. I think fundamentally, I agree, it shouldn't be easy to do, and waivers should be limited. And if you look at what's going on right now, they are limited right now.

But there needs to be less of a wait time. There needs to be more of an understanding of how long the process will take. We need to have clear guidance on what is expected in terms of documentation to justify a waiver. And so, if those three things are implemented, I think we can meet the goal of not having many waivers, but also giving a path forward because this is a pretty time-sensitive element for us.

If you heard Mr. Edmondson's testimony, when a contractor is preparing a bid, they are getting quotes from suppliers for all different types of things, and it's a short bid time. It could be a 4-week time period in which they are trying to get those prices locked down. And to be able to know that they are working off of products that meet the qualifications is critical. Otherwise, they are going to add risk to their bid, which costs the taxpayers more money.

Mr. KEAN OF NEW JERSEY. Thank you.

Mr. Needham, while the DOT has been implementing the Buy America policy for decades, IIJA expanded the application of those requirements to components and products that had previously been exempted. This expanded funding has led to other cabinet agencies like the Departments of Treasury, Interior, or HUD attempting to adhere to Buy America guidelines that may have previously been unknown to them.

Obviously, steel is used across all sorts of Federal products. Has there been consistency of implementation of Buy America provisions across the Federal Government?

Mr. NEEDHAM. No, there hasn't been consistency. In fact, HUD has delayed implementation to August of this year for several programs on iron and steel products. It has also delayed until next year the implementation for construction materials and manufactured products in a couple programs.

So, what I would say to that is a great example of it is the Federal Highway Administration and how they have administered this. And I think, as we look within our company of how we look at best practices, I think that would be a great way for other agencies to look at them and see how they have implemented it.

Mr. KEAN OF NEW JERSEY. OK, and if you are looking at that example, and you mentioned HUD, for example, as one of the people who have delayed the implementation, what impact does that have on society, inflation, and varying costs if these things are delayed?

Mr. NEEDHAM. So, what it does is, it encourages foreign products to come in when we can supply it here domestically very easily.

And actually, I mean, you are moving products from all over the world, so, the costs are absolutely—would be higher. Now, some of them you are not dealing with free market considerations. But certainly it's bringing products, shipping them from all over the world. Not great for the environment, not great for building our projects here.

Mr. KEAN OF NEW JERSEY. Thank you.

I yield back.

Mr. CRAWFORD. The gentleman yields. Ms. Maloy.

Ms. MALOY. Thank you, Mr. Chairman.

Mr. Braceras, good to see you. You said when you started your testimony that American money should be spent on American stuff to benefit Americans, to which I say amen. But I have been sitting here listening, and it sounds like we have a tension between two problems with spending American money to benefit Americans. We want to Build American, Buy American with American steel, but if waivers take a long time or if products can't be found, then projects get more expensive and taxpayers are paying for that, too, and those are American dollars.

And so, I just want to know, is there an area in particular where Build America, Buy America requirements create a particular challenge?

Because we keep hearing that DOT is the gold standard, and if everybody could do it the way you do it, it would work better. But you are saying there are still challenges. What area can we help you with?

Mr. BRACERAS. Thank you. You actually hit the hammer on the nail, and that is one of the challenges we have with this program.

We are trying to accomplish a couple of very worthy goals with the same tool, and so, it requires a little bit of, I say, flexibility and adaptability in terms of how we get there.

We want to grow the manufacturing base, we want to improve jobs for Americans, but we also want to deliver the projects that save lives and make people's lives better. And so, that's a little bit of a tension that exists in trying to achieve those two worthy goals. The challenge we experience right now with the Build America, Buy America is in—like I said earlier, represents a very small percentage of our projects. But it's those elements that have to be part of that project in order to complete it successfully.

And so, I really think, even from a Federal Highway Administration perspective—because they have been doing this for a long time, I think they do a great job—but it's better understanding what goes into these jobs, what are those elements that are a chal-

lenge to meet the Buy America, Build America, and then trying to figure out what kind of market incentives can we provide to help develop those companies that will build those products in this country.

And part of this is, companies need to know that this is not just a 5-year program. This is something that we are committed to for the long term, because if a business is going to grow, it's going to want to make an investment for 50 years, for 75 years. And so, the long-term signals that Congress can send, I think, are really important to help us get to where we get to 100 percent on Build America, Buy America.

Ms. MALOY. Thank you.

Mr. Needham, you represent the business side of this. Do you have anything to add to that?

Mr. NEEDHAM. Yes, I think that putting a process in place to really nail down to and narrowly define what are the pain points, and I think that is a great example that Mr. Braceras talked about, is what are those actual items. Because I think, from an iron and steel standpoint, we have been implementing this for quite a while. I am not aware of major pain points.

What I think is, we need a robust process to be able to bring those to the forefront and review them quickly, and that's what's needed. And that works, certainly, from our perspective, when we have the 15-day review and we can give a great example of are we capable of producing that here or not, and the exceptions to that are very few.

Ms. MALOY. OK, thank you.

Mr. Edmondson, do you have anything to add?

Mr. EDMONDSON. I agree with that. The earlier we can define what those pain points are, the better off we all are, and I think that's the key.

And open communication, the collaboration between the industry, the manufacturing capacity, the funding, all of that needs to work together to improve that process.

Ms. MALOY. Thank you.

Mr. Enders, in the few seconds I have left, is there anything you want to say that they haven't already covered?

Mr. ENDERS. I think they covered what I was thinking.

Ms. MALOY. OK. Thank you all for being here.

Mr. Chair, I yield back.

Mr. CRAWFORD. The gentlewoman yields. Mr. Graves.

Mr. GRAVES OF LOUISIANA. Thank you, Mr. Chairman. I want to thank all of you for being here today.

Mr. Edmondson, I'm from Louisiana. We have spent an extraordinary amount of money trying to build roads and water resource resiliency-type projects. Over the past few years, I have watched these projects very closely. I have seen routinely as projects are coming in 40 percent to, on the high end, 300 percent over initial project estimate.

Let me see if I can get my singing voice back here.

[Coughs.]

Mr. GRAVES OF LOUISIANA. Are you seeing similar outcomes from the projects that you are involved in?

Mr. EDMONDSON. We have seen an increase. A lot of it was supply chain-related.

Mr. GRAVES OF LOUISIANA. Supply chain, labor, inflation, all of those things—

Mr. EDMONDSON [interrupting]. We are seeing the supply chain issues. They are improving. We have seen that happen over the last 18 months.

Mr. GRAVES OF LOUISIANA. Are the estimates that I have given, are those out of bounds compared to what you have seen in projects?

Mr. EDMONDSON. I think over the past 4 to 5 years, we have seen that kind of increase.

Mr. GRAVES OF LOUISIANA. Thank you.

Mr. Braceras, are you seeing similar types of outcomes, and are you being challenged in implementation, as well?

Mr. BRACERAS. Yes, we are. I can't say it's—Build America, Buy America is not—

Mr. GRAVES OF LOUISIANA [interrupting]. Labor, supply chain, inflation—

Mr. BRACERAS [interrupting]. Yes, oh—

Mr. GRAVES OF LOUISIANA [continuing]. Just the cumulative effect.

Mr. BRACERAS. As an example, in 2021, we saw—maybe I'll start—we have our 5-year, what we call State Transportation Implementation Program, STIP. That's our little transportation nerdiness. That's about \$5 billion for the State of Utah. The Federal portion makes up about 20, 20.5 percent of that total program. We normally program in for the cash flow, a 5-percent increase in projects a year. In 2021, we saw a 16-percent increase. In 2022, that was a 12-percent increase. In 2023, we were at 8 percent.

So, we are starting to come back down. But you can imagine the inflationary impact that has had to our entire program.

Mr. GRAVES OF LOUISIANA. When you say “come back down,” you mean the rate of growth?

Mr. BRACERAS. The rate of growth, exactly.

Mr. GRAVES OF LOUISIANA. Yes.

Mr. BRACERAS. Exactly—no, price—and I keep reminding my legislators at home—prices probably are not going back to where they were before, but the rate of growth is starting to come back down into something that we can better manage.

Mr. GRAVES OF LOUISIANA. So, when I do some quick math based upon the numbers that you have thrown out and based upon what we have seen at home, there was a lot of excitement that the infrastructure bill was going to come in and provide all of these additional or excess supplemental funds. And based on what we are seeing at home, it is more than being consumed based upon the supply chain, the labor, inflation, and other impacts and costs. Are you seeing similar outcomes?

Mr. BRACERAS. Me?

Mr. GRAVES OF LOUISIANA. Yes, sorry.

Mr. BRACERAS. I just say thank God for IIJA. That increase was just critical for us to be able to help absorb these changes. I have seen increases like this before leading up to the 2008 crash that

we had, and at that time we saw up to a 20-percent increase in project costs.

Mr. GRAVES OF LOUISIANA. But based upon the additional funds that were included in IIJA, what we are seeing at home is that we are actually—the additional funds are being eaten up by the higher costs. Are you seeing similar—

Mr. BRACERAS [interrupting]. Yes, the formula program is, which is what we rely on, that's the foundation for us, we are not even quite break even.

Mr. GRAVES OF LOUISIANA. Yes, that is—

Mr. BRACERAS [interrupting]. So, there is not extra. The discretionary program is, obviously, the sugar on top.

Mr. GRAVES OF LOUISIANA. Yes.

Mr. BRACERAS. And that could be more, but that's not—you can't really plan for things on the discretionary program.

Mr. GRAVES OF LOUISIANA. Yes.

Mr. BRACERAS. That's a one-off.

Mr. GRAVES OF LOUISIANA. Sure, sure. Yes, well, I think we are seeing similar things at home and, obviously, need to figure out how to address this. And I will say it again: I think it's a cumulative effect, the inflation, the labor, supply chain, and other factors.

Ms. Salrin, look, I want to be very clear. I think everybody here, we certainly are very supportive of Buy America and want to use as many American products as we can in everything that we do, but I also have pretty extraordinary frustration looking at these Buy America standards that are being put in place, whether it's for the energy bill or for the infrastructure bill, and not having anywhere near the supply chain that's needed.

And so, we have seen on EV charging stations that haven't even been built yet, that they just did a blanket waiver. Congress tried to step in and stop that, and the administration blocked us. How do you feel about this, basically, invitation to bring in all these foreign products whenever the goal was to ensure that we had U.S. labor, U.S. products?

Ms. SALRIN. I will note that the EV charger waiver is an implementing policy, and it allows for critical capacity to get built up over time since we didn't have any.

Mr. GRAVES OF LOUISIANA. But if I recall correctly, they did a 5-year waiver.

Ms. SALRIN. No, implementation goes in full effect in July of this year.

Mr. GRAVES OF LOUISIANA. But I thought—and I might be misremembering, but I thought that the waiver that they did gave a 5-year waiver for the charging stations.

Ms. SALRIN. The 55-percent domestic content—

Mr. GRAVES OF LOUISIANA [interposing]. Right.

Ms. SALRIN [continuing]. For EV chargers goes into effect July of 2024.

Mr. GRAVES OF LOUISIANA. OK, maybe I need to go back and figure out what I am—

Ms. SALRIN [interrupting]. I am happy to provide that information. Yes, for sure.

Mr. GRAVES OF LOUISIANA. So, what about—I mean, does the fact that, here we are, years later, and we are not even building it, it seems like the—oh, I am sorry, Mr. Chairman. I will wrap.

I will just close and say this, and maybe I will offer some questions for the record. The regulatory agenda that we are seeing just doesn't seem compatible with the implementation agenda, and that here we are, years later, and we still have 80 percent of the money in the bank from the infrastructure program, which is incredibly frustrating, I know, to me.

Mr. Chairman, I apologize for going over. I yield back.

Mr. CRAWFORD. No problem. The gentleman yields.

Are there any other Members that haven't been recognized?

Seeing none, that concludes our hearing for today. I want to thank each of the witnesses for your testimony. Thank you again for being here today.

And the committee stands adjourned.

[Whereupon, at 12:20 p.m., the subcommittee was adjourned.]

SUBMISSIONS FOR THE RECORD

Letter of March 1, 2024, to Hon. Eric A. “Rick” Crawford, Chairman, and Hon. Eleanor Holmes Norton, Ranking Member, Subcommittee on Highways and Transit, from Trygve W. Hoff, P.E., ENV SP, Director of Government Relations, American Concrete Pipe Association, Submitted for the Record by Hon. Eric A. “Rick” Crawford

MARCH 1, 2024.

The Honorable RICK CRAWFORD,
Subcommittee Chair,
Highways and Transit Subcommittee, Washington, DC 20515.
The Honorable ELEANOR HOLMES NORTON,
Subcommittee Ranking Member,
Highways and Transit Subcommittee, Washington, DC 20515.

DEAR SUBCOMMITTEE CHAIR CRAWFORD AND SUBCOMMITTEE RANKING MEMBER NORTON:

The American Concrete Pipe Association asks that the attached statement be included in the official record of the hearing on the implementation of the “Build America, Buy America Act” (BABAA) provisions of the Infrastructure Investment and Jobs Act (IIJA) that was held by the Subcommittee on Highways and Transit on February 15, 2024.

After viewing the hearing, we firmly believe that the perspective of the ACPA and the cement and concrete industries are critical to the Subcommittee in fully understanding how the rollout of the “Build America, Buy America Act” (BABAA) is impacting suppliers, contractors, and project sponsors.

The effective and efficient utilization of the IIJA funding will depend, in part, upon Buy America rules that are clear and realistic as well as a waiver mechanism that can provide rapid exceptions to those rules, when warranted, so that worthy projects can be delivered on time and on budget.

Unfortunately, we are seriously concerned with a number of aspects of the Office of Management and Budget’s BABAA guidance that are inconsistent in its treatment of competing materials, products, and manufacturing processes. The Guidance also fails to recognize or appropriately provide for regional material shortfalls and supply chain challenges faced by domestic producers of concrete pipe. Taken together, these inconsistencies will lead to uncertainty and ultimately slow the delivery of surface transportation projects.

OMB vs. Funding Agencies. As other associations in the transportation and infrastructure sectors have pointed out, the guidance issued by the Office of Management and Budget (OMB) did not reflect the knowledge of federal funding agencies about the construction materials, manufactured products, and iron and steel used in projects under their jurisdiction. The exclusion of these agencies and their expertise has produced a set of rules that are unnecessarily bureaucratic and, in some instances, lack consistency.

To cite just one example, compare the treatment of reinforced concrete pipe and plastic pipe, two competing products used for drainage in federally funded highway projects. Under OMB’s final guidance, concrete pipe is classified as a “manufactured product” and the origin of the cement, steel, and aggregates used to make the concrete pipe must be factored into the 55% threshold. In contrast, plastic pipe is considered to be a “construction material” and the resin used to make the plastic pipe is not factored into the threshold calculation. These are competing products but the rules for calculating domestic content for the products under the OMB guidance are entirely different. It is difficult to imagine that a funding agency that routinely incorporates drainage pipe in its projects would create different rules for competing products that carry out the same function and are the product of similar manufacturing processes.

Concrete Pipe: Cement, Aggregates, and Reinforcing Steel. The core components in the manufacturing of concrete pipes are cement, aggregates, water, and reinforcing steel. Each of these three materials accounts for roughly one-third of the cost of producing a concrete pipe.

The 400,000 tons of reinforcing steel purchased annually by concrete pipe producers is American-made. The reason for this is that many of our customers are state departments of transportation and other public agencies responsible for the construction of taxpayer-funded infrastructure projects. Consequently, the reinforcing steel in concrete pipe must be domestically produced in order to comply with long-standing Buy America or other domestic content laws. In fact, every state transportation department requires reinforcing steel be made in the United States.

The supply chain for cement is fragile. The supply of domestically produced cement exceeds demand; however, the availability of cement varies significantly by geographic region. Under OMB's final guidance, cement that is used away from the job site—such as a precast manufacturing facility—will be counted in the 55% threshold calculation. This is another way in which the OMB guidance provides different rules for different products—precast concrete made in a factory setting must meet the 55% threshold, but cast-in-place concrete is exempt.

Similarly, the availability of aggregates differs by region. The reason for this is that the availability of aggregates is determined by specific types of geologic formations, which may or may not be present in any given region. If aggregates are not readily available, they must be transported from a different location.

We are concerned that any future shock to the supply chain related to any of these primary ingredients could seriously disrupt not only production of precast concrete products, but also the delivery of much-needed and long overdue infrastructure improvements.

Waivers. The realistic possibility of future disruptions in the supply chain for cement or aggregates, or both, makes it imperative that appropriate waivers are available and can, when necessary, be obtained quickly.

In years past, the waiver process hasn't functioned properly. More recently, the Biden Administration has said it intends for waivers to be a viable tool, but intends to limit any waivers, perhaps by project, duration, or geographic region. That said, the waiver process has yet to be completely outlined and a track record has not been established. In implementing the appropriate use of waivers, ACPA believes it is critical that agencies develop and use clear, consistent criteria in determining whether a waiver should be granted.

We urge the Subcommittee to continue its oversight of the implementation of BABAA, keeping a close watch on the waiver process to ensure that it offers a timely and transparent response to requests from project sponsors.

In closing, the ACPA appreciates the Subcommittee's attention to this important aspect of infrastructure construction. Our members support efforts to ensure clarity and flexibility in the application of the requirements of BABAA. This will be critical to ensuring American concrete pipe producers can meet the needs of their customers.

Sincerely,

TRYGVE W. HOFF, P.E., ENV SP,
Director of Government Relations, American Concrete Pipe Association.



Letter of February 15, 2024, to Hon. Eric A. “Rick” Crawford, Chairman, and Hon. Eleanor Holmes Norton, Ranking Member, Subcommittee on Highways and Transit, from Richard A. Julianio, CAE, General Counsel, American Road & Transportation Builders Association, Submitted for the Record by Hon. Eric A. “Rick” Crawford

FEBRUARY 15, 2024.

Hon. RICK CRAWFORD,
Chairman,
Subcommittee on Highways and Transit, U.S. House of Representatives, Washington,
DC 20515.

Hon. ELEANOR HOLMES NORTON,
Ranking Member,
Subcommittee on Highways and Transit, U.S. House of Representatives, Washington,
DC 20515.

DEAR CHAIRMAN CRAWFORD AND RANKING MEMBER NORTON:

The American Road & Transportation Builders Association (ARTBA) appreciates your leadership in oversight of the “Build America, Buy America Act” (BABAA) provisions of the Infrastructure Investment and Jobs Act (IIJA), and your holding today’s hearing.

ARTBA’s diverse membership includes nearly 8,000 private sector firms and public agencies, many of whom work with Buy America requirements regularly. They include contractors building transportation improvement projects, as well as suppliers and manufacturers of vital products, and agencies (including more than 20 state departments of transportation) who plan, fund and own the infrastructure assets themselves. All share a common interest in effectively implementing BABAA while building projects safely, efficiently and cost-effectively, especially given the IIJA’s record federal investments. Similarly, all share a common concern that conflicting federal policy objectives can dilute the timely economic and safety benefits of those investments. This submission to your subcommittee reflects insights from across our membership in this context.

ARTBA’S BUY AMERICA POLICY AND IMPLEMENTATION PRIORITIES

ARTBA wholeheartedly supports BABAA and the principle of strengthening domestic manufacturing. Our members would prefer a market through which they could always procure products made in the United States.

However, the short-term realities of that market reflect:

- Continued difficulties with elevated costs and lead times in procuring key materials.
- Inflation and supply chain difficulties following the COVID–19 pandemic.
- Particular challenges with domestic sourcing of construction materials newly covered by Buy America.
- Strong competition for materials across multiple sectors of construction and the broader economy.

ARTBA’s priorities for our members in BABAA implementation include the following:

- *The risk associated with Buy America compliance should not fall disproportionately on a project’s contractor.* Some agencies, like the Florida Department of Transportation, have adopted a collaborative approach in identifying and denoting Buy America-compliant products for use on their federal-aid projects. Regrettably, others have simply notified the industry of the new BABAA requirements while informing contractors of their unilateral responsibility to comply. Ultimately, contractors “price” risk in their bids. Unreasonable transfer of risk to contractors will often result in higher project costs, to the detriment of taxpayers.
- *Buy America compliance should start during the design and specification stages.* Incorporating domestic preference realities early in the project’s lifespan can minimize the subsequent need for Buy America waivers and associated delays.
- *The White House Office of Management and Budget (OMB) and its Made in America Office (MIAO) should focus on assessing materials markets and developing a common catalog of BABAA-compliant products.* These offices are uniquely situated to work across agencies and with project partners including federal-aid recipients, contractors, manufacturers and suppliers. OMB and MIAO can take a proactive approach in identifying problem areas and anticipating the need for targeted waivers.

- *Buy America requirements should be as clear and consistent as possible.* Numerous construction firms work across multiple states and transportation modes. They should be able to maintain confidence in their BABAA compliance approach when working in any of those jurisdictions. This underscores the importance of comprehensive and accurate BABAA training for officials from state and local agencies. Moreover, because OMB has issued a series of iterations of BABAA guidance over the past two-plus years, some contractors' portfolios include projects being built under one or more of four different Buy America regimes.
- *The Federal Highway Administration (FHWA) must maintain its longstanding Buy America waiver for manufactured products.* FHWA is now completing its statutorily-required review of the waiver, and appears under political pressure to roll back or repeal it, including through a spam campaign conducted by an advocacy group prone to sensationalism and name calling while possessing no demonstrable understanding of transportation construction. In reality, altering or eliminating this waiver will result in enormous new administrative costs for recipients and contractors. It also risks significant new project delays, as these parties attempt to document (often futilely) the origins of infinite components comprising a panoply of manufactured products used for transportation projects.¹ The bottom line will be fewer projects completed with IIJA dollars.
- *Inexpensive commercially available off-the-shelf (COTS) products should not be subject to Buy America requirements.* The origins of items such as nuts, bolts, tie wires, washers, and the like are as impossible to document as they are inexpensive to procure. Requiring their domestic sourcing does little to advance BABAA's principles, while again adding to project costs. A recent "de minimis" waiver implemented by the U.S. Department of Transportation (U.S. DOT) may help on a limited basis, but not for COTS-heavy projects such as rest areas and traffic operations centers.
- *The Buy America waiver process must be timely and transparent.* Under a new requirement established by President Biden through a 2021 executive order and codified in BABAA, the Made in America Office reviews proposed waivers from all federal agencies. This has added a major step to a process already fraught with delay and uncertainty among many agencies.
- *BABAA compliance should not threaten the viability of small and disadvantaged businesses.* Many of these firms do not maintain the resources to navigate compliance with Buy America requirements for a growing list of products. Others, such as specialty contractors and suppliers, were disproportionately harmed by the recent cost spikes for key products, as described above.

INDUSTRY SURVEY DETAILS ITS CONCERNS

In May 2023, ARTBA conducted a nationwide survey of transportation construction contractors.² The Associated General Contractors of America joined us in this project, to maximize the response. Several findings detail the concerns of the industry regarding BABAA implementation:

Construction Materials

- About two-thirds of contractors expected cost increases and/or delays on their projects because of new domestic preference requirements for plastics and non-ferrous metals.
- In addition, more than half of the respondents expected the new requirements to "significantly" worsen costs and availability for these products, given supply chain and inflationary pressures of the past several months.

Manufactured Products

- Nearly two-thirds of contractors expected significantly negative effects on their projects if FHWA changes its policy on manufactured products.

Clarity and Competition

- 62 percent of contractors described current Buy America policy in their state(s) as somewhat or very confusing.

¹An attached "exploding diagram" of a generator used in a highway rest area illustrates the impossible task of fully documenting hundreds of inexpensive components to a common manufactured product.

²A summary of survey results is attached.

- 26 percent said they were less likely to bid federal-aid work because of concerns or frustration with the new Buy America requirements.

COLLABORATION OF NATIONAL ASSOCIATIONS

Because of ongoing unease with BABAA implementation as outline above, ARTBA has joined with the American Public Transportation Association (APTA), Associated General Contractors of America (AGC) and National Association of Home Builders (NAHB) in petitioning OMB for a new rulemaking to clarify a number of these issues. Over the past months, our associations have submitted dozens of detailed comments and participated in numerous meetings with federal officials, yielding few tangible results.

We also strongly believe OMB should play a “big picture” role in implementing BABAA, such as creating the aforementioned compendium of compliant products that could be used across the federal government. In contrast, individual federal agencies, such as the modal administrations at U.S. DOT, bring decades of experience in implementing domestic preference requirements, and should be enabled to fully deploy their detailed knowledge of the projects, recipients, markets and industry specific to their respective programs.

Our coalition’s petition also seeks to improve the waiver process under the principles of the Paperwork Reduction Act.

We hope this petition results in meaningful improvements to BABAA implementation and a more collaborative approach among all parties to federal-aid policies and projects, including OMB itself.

CONCLUSION

As you continue your oversight role of IIJA implementation, we respectfully ask that you consider the insights of ARTBA members working to deliver projects funded by the IIJA, while maximizing the law’s benefits in safety, mobility, job-creation and other forms of economic growth. Thank you for your consideration.

Sincerely,

RICHARD A. JULIANO, CAE,

General Counsel, American Road & Transportation Builders Association.

Addenda:

- Results of May 2023 contractor survey
- Exploding diagram of John Deere generator used in highway rest area project (example of a manufactured product)

EXECUTIVE SUMMARY

SURVEY OF TRANSPORTATION CONSTRUCTION CONTRACTORS ON BUY AMERICA COMPLIANCE

The American Road & Transportation Builders Association (ARTBA) and Associated General Contractors (AGC) of America jointly surveyed their members on May 10–18, 2023, regarding current Buy America issues. 300 firms responded nationwide.

For more than 40 years, the Buy America law has required a domestic manufacturing process for iron, steel and certain manufactured products permanently incorporated into federal-aid highway and transit projects. In 2021, through the Infrastructure Investment and Jobs Act’s “Build America, Buy America Act,” Congress expanded domestic preference requirements to five categories of construction materials (non-ferrous metals, plastic and polymer-based products, glass, lumber, and drywall).

Both associations have reaffirmed their support for Buy America’s overarching objective of strengthening domestic manufacturing in the long term. However, as federal and state agencies work to implement the current Buy America requirements, the survey sought to quantify the industry’s short-term challenge of complying while minimizing project cost increases and delays.

The following are highlights of the survey ...

Construction Materials

About two-thirds of contractors expect cost increases and/or delays on their projects because of new domestic preference requirements for plastics and non-ferrous metals.

Respondents were asked about procuring various categories of domestically-produced construction materials and characterize how that process would affect their projects now and in the near future. Options for responses included:

- MAJOR EFFECT—It will be difficult or impossible to find U.S.-made products, resulting in larger cost increases and/or project delays;
- MINOR EFFECT—This requirement may cause some smaller cost increases and/or project delays; or
- LITTLE OR NO EFFECT—We can find the U.S.-made we need with minimal difficulty.

Here are the findings for the construction materials newly subject to Buy America³:

- Plastic and Polymer-based Products
 - Major Effect—40 percent
 - Minor Effect—26 percent
 - Little or No Effect—11 percent
- Non-ferrous Metals (such as copper, aluminum, lead, zinc, silver, gold and titanium)
 - Major Effect—31 percent
 - Minor Effect—30 percent
 - Little or No Effect—11 percent
- Glass
 - Major Effect—22 percent
 - Minor Effect—17 percent
 - Little or No Effect—14 percent
- Lumber
 - Major Effect—22 percent
 - Minor Effect—30 percent
 - Little or No Effect—16 percent
- Drywall
 - Major Effect—22 percent
 - Minor Effect—17 percent
 - Little or No Effect—14 percent

In addition, more than half of the respondents expected the new requirements to “significantly” worsen costs and availability for these products, given supply chain and inflationary pressures of the past several months.

Manufactured Products

Nearly two-thirds of contractors expect significantly negative effects on their projects if the Federal Highway Administration (FHWA) changes its policy on manufactured products.

Since 1978, FHWA has exempted many manufactured products (such as signal heads, pumps, generators, pavement marking and many more) from Buy America requirements. The agency determined that it would be prohibitively expensive or impossible to determine and certify the origins of many components within these products.

FHWA is now reviewing its manufactured products waiver and considering various options. The survey asked how a roll-back or repeal of the waiver would affect upcoming projects:

- 65 percent said a change would have a “major effect,” requiring significant additional time and cost to document and certify the components within manufactured products.
- 16 percent said it would have a “minor effect,” requiring some additional time and cost.
- Just 4 percent said it would have “little or no effect,” requiring minimal additional time and cost.

Waivers

Federal policymakers have emphasized that project sponsors can request Buy America waivers if covered products or materials are unavailable or greatly more expensive in domestic form.

- About half (48 percent) of respondents reported having no experience with Buy America waivers on their projects over the past two years.
- 16 percent said the waiver process had caused major project delays or uncertainty.

³Besides the responses listed, others include “Not Clear at This Time” and “Does Not Apply.”

- 16 percent said it caused no or only minor delays or uncertainty.

Clarity and Competition

Authoritative federal guidance will help ensure the new Buy America requirements are implemented consistently by state transportation agencies. With guidance from the White House Made in America Office still pending, ARTBA and AGC have monitored initial state-level implementation of the new requirements, making note of any inconsistencies. The survey asked respondents to characterize the clarity of this policy in their respective state(s).

- 62 percent of contractors described current Buy America policy in their state(s) as somewhat or very confusing.
- 29 percent described it as somewhat or very clear.

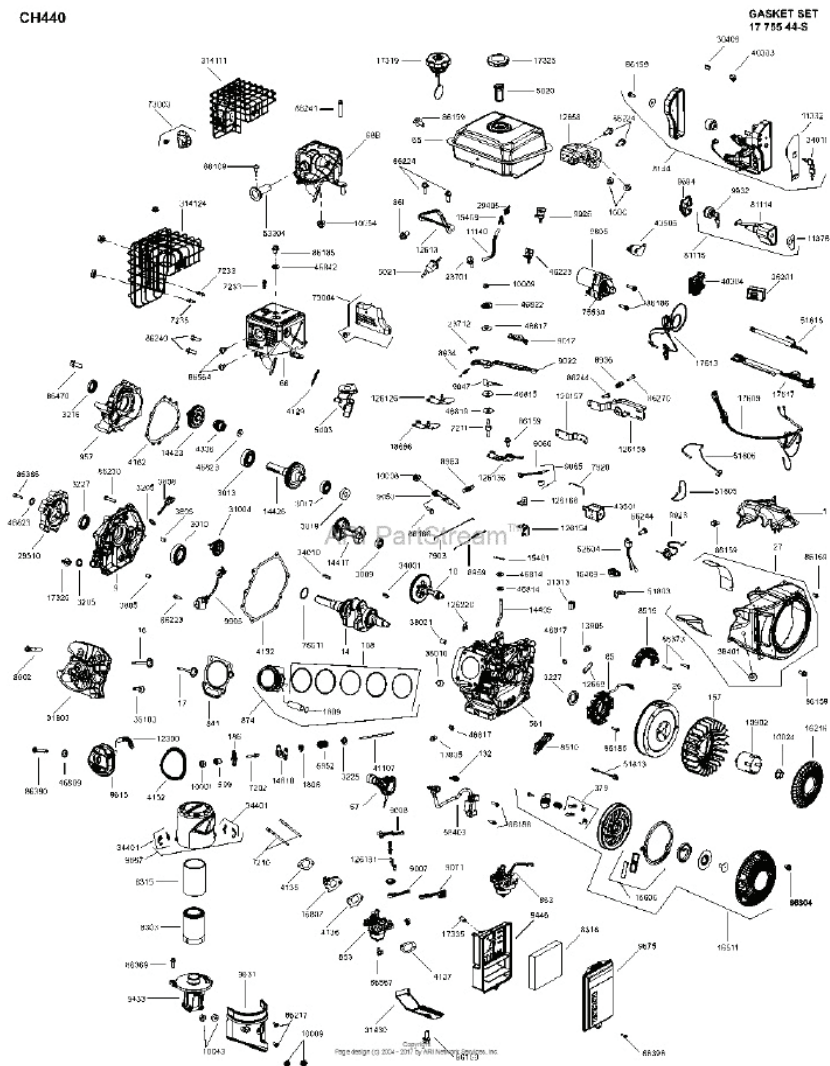
When viewed as unclear or unachievable, federal regulations can disincentivize contractors from bidding on federal-aid work and dampen competition, particularly given the variety of opportunities in other construction sectors. The survey asked if the new Buy America requirements would affect their decision to bid federal-aid highway and transit work in the next year.

- 26 percent said they were less likely to bid federal-aid work.
- 50 percent said it made no difference.
- 2 percent said they were more likely to bid.

Conclusion

The survey results underscore the need for federal officials, state agencies and industry to work collaboratively in preventing short-term disruptions on projects that could result from revisions to Buy America policy. To help maximize the benefits from unprecedented federal transportation investments, while seeking to strengthen domestic manufacturing, contractors need a clear, achievable regulatory framework, backed by market data and appropriate use of Buy America waivers, to do their part.

CH440



**Statement of the American Traffic Safety Services Association, Submitted
for the Record by Hon. Eric A. “Rick” Crawford**

The American Traffic Safety Services Association (ATSSA) appreciates the opportunity to submit this Statement for the Record to the House Committee on Transportation and Infrastructure’s Subcommittee on Highways and Transit regarding the hearing entitled “Implementation of Buy America Provisions: Stakeholder Perspectives.”

Given the impact of the Build America, Buy America (BABA) policies on the ability of state departments of transportation (state DOTs) to meet the investment goals of the Infrastructure Investment and Jobs Act (IIJA), the Committee is to be commended for providing the necessary oversight of this important topic.

Incorporated in 1970, ATSSA is an international trade association with over 1,500 members who are focused on advancing roadway safety. ATSSA members manufacture, distribute, and install roadway safety infrastructure devices such as guardrail and cable barrier, traffic signs and signals, pavement markings and high friction surface treatments, and work zone safety devices, among many others. As a leader in roadway safety infrastructure, ATSSA was the first non-governmental organization to adopt a Towards Zero Deaths vision and ATSSA members are committed to making zero fatalities a reality nationwide.

IMPLEMENTATION OF BUY AMERICA PROVISIONS

Just as important as the federal funding from the IIJA is in meeting the roadway safety needs across the country and reducing the number of traffic fatalities, the implementation of the many policy provisions in the IIJA can be just as impactful. ATSSA members understand the goals of the BABA requirements in the IIJA. Increasing domestic construction and manufacturing capacity in the United States is a worthwhile endeavor; however, the manner and methods used to attain these goals is critical.

ATSSA members continue to express concerns with the way the Office of Management and Budget (OMB) and the U.S. Department of Transportation (USDOT) have approached implementation of the BABA requirements. To better facilitate the process, ATSSA offers the following recommendations:

USDOT should provide additional guidance to state DOTs and industry stakeholders

OMB issued final guidance related to the updated BABA provisions that went into effect on October 23rd. Since that time, there has been considerable confusion across the country on how this guidance will impact the ability of the transportation industry to meet the BABA requirements.

Since the effective date of the OMB final guidance, ATSSA continues to hear from members in various states about the lack of clarity and consistency in the implementation of the new BABA requirements by state DOTs. This lack of uniformity across states is not only creating considerable confusion but is leading to a fear that the BABA implementation will result in 50 states all with different requirements and certification processes.

OMB clearly anticipated the possible need for further Federal agency implementation guidance and information, stating in the August 23rd Federal Register Guidance for Grant Agreements that: *“It is not possible for OMB to issue comprehensive guidance on every issue that may arise for different Federal agencies in the context of directly implementing their own unique Federal financial assistance programs ...”*¹

The OMB guidance goes on further to say: *“Federal agencies, in directly implementing BABA, may issue further guidance and provide further information to their recipients and other stakeholders on their own Federal financial assistance programs for infrastructure.”*²

Given the impact of this final OMB guidance on ATSSA members, we continue to ask that the U.S. Department of Transportation (USDOT) provide the critically necessary clarity to minimize disruptions and address concerns being raised across the country. This additional clarity would not only benefit ATSSA members but state DOTs, other transportation industry stakeholders and Federal Highway Administration (FHWA) Division Offices.

¹Office of Management and Budget Federal Register Guidance for Grants and Agreements, August 23, 2023—<https://www.govinfo.gov/content/pkg/FR-2023-08-23/pdf/2023-17724.pdf>

²Office of Management and Budget Federal Register Guidance for Grants and Agreements, August 23, 2023—<https://www.govinfo.gov/content/pkg/FR-2023-08-23/pdf/2023-17724.pdf>

Standardization needed for state DOTs and transportation industry partners

The BABA certification process required by state DOTs varies across the country. Some states require self-certification from contractors and product suppliers. Other state DOTs certify products themselves.

Many companies who provide products and materials for transportation projects work in more than one state—often regionally or across the country. When state DOTs use individually developed forms or processes to demonstrate compliance with BABA requirements, this not only creates confusion but also requires companies to devote additional staff resources to the paperwork process. It would be extremely beneficial for state DOTs and USDOT to require standardized information during the certification process.

Clearinghouse for BABA product compliance should be established

It would be extremely useful to the transportation industry and state DOTs if there were a centralized clearinghouse of construction materials and manufactured products that meet BABA requirements—an approved or qualified product list that would be available for use across the country on all federal transportation projects. Such a clearinghouse would provide clarity and certainty for state DOTs and make the compliance process for industry more efficient, less confusing, and less time-consuming.

Clarification on temporary use versus permanent incorporation of products

The OMB final guidance clearly makes a distinction between temporary use and permanent incorporation of a product utilized in an infrastructure project by stating: “On the issue of permanent incorporation, Memorandum M–22–11 explained that the Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project.”³

Despite this distinction, ATSSA members have expressed concern with the compliance form or certification requirements that state DOTs utilize to ensure a product is or is not BABA compliant or is a temporary use product. Often, companies must choose between checking a “yes” box or a “no” box when certifying that a particular product is BABA compliant. As noted above, when a product is intended for temporary use on an infrastructure project, it is does not have to comply with BABA requirements—so a company would check the “no” box. But checking the “no” box can imply that the product should not and cannot be used on an infrastructure project—when, in fact, as a temporary use product, it can be. There needs to be a third box on such forms or another opportunity that allows a company to state that their product is intended for temporary use and therefore does not have to meet the BABA requirements.

Improvements to the BABA waiver process are needed

The process to seek a product waiver from BABA requirements is difficult. While it is understandable that waivers should not be easy to attain, they should also not be impossible to secure.

The OMB final guidance provides information related to the justification of such waivers by stating: “Justification of waivers. A Federal awarding agency may waive the application of the Buy America Preference in any case in which it finds that: (1) Applying the Buy America Preference would be inconsistent with the public interest (a “public interest waiver”); (2) Types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality (a “nonavailability waiver”); or (3) The inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall infrastructure project by more than 25 percent (an “unreasonable cost waiver”).”⁴

The process to apply for such waivers must be transparent. It is often unclear the type of supporting documentation needed to successfully secure a waiver under the three conditions from the OMB final guidance cited above. Providing additional clarification as to the documentation required on a waiver application, requiring USDOT to acknowledge receipt of a waiver application, and providing waiver applicants with a timeline for approval or disapproval of their request would give state DOTs and the transportation industry some degree of certainty in how to manage the waiver process.

³Office of Management and Budget Federal Register Guidance for Grants and Agreements, August 23, 2023—<https://www.govinfo.gov/content/pkg/FR-2023-08-23/pdf/2023-17724.pdf>

⁴Office of Management and Budget Federal Register Guidance for Grants and Agreements, August 23, 2023—<https://www.govinfo.gov/content/pkg/FR-2023-08-23/pdf/2023-17724.pdf>

Federal Highway Administration manufactured product waiver needs to be retained

FHWA issued a public interest waiver of general applicability of Buy America requirements for manufactured products that do not contain iron or steel in 1993. ATSSA strongly urges FHWA to continue this current public interest waiver. With the growing challenge of increasing traffic fatalities in recent years, it is not an appropriate time to potentially hamstring the ability to deploy life-saving devices and countermeasures on U.S. roadways when the USDOT, state and local agencies are aggressively moving to combat these fatalities.

If FHWA does decide to terminate the current manufactured product public interest waiver, ATSSA requests the opportunity to comment on the process to impose BABA requirements on manufactured products and recommends a sufficient transition time to avoid unnecessary project cost increases and delays.

CONCLUSION

With the construction season upon us, it is important that every effort be made to assist state DOTs and the transportation industry in meeting the compliance requirements of the BABA provisions. ATSSA recognizes the importance that this Committee places on safety—safety for the users of the transportation system and the construction workers who go to work every day to make our roadways safer. As this Committee continues its oversight of the IIJA, ATSSA members ask for your assistance in ensuring the necessary BABA information and clarity is made available. ATSSA continues to work with its members to understand BABA requirements and facilitate the process for compliance. But we cannot do this in a vacuum. We look forward to working with our state DOT, industry and USDOT partners on this issue in the months to come.

Letter to Hon. Eric A. “Rick” Crawford, Chairman, and Hon. Eleanor Holmes Norton, Ranking Member, Subcommittee on Highways and Transit, from Kristen Swearingen, Vice President, Legislative and Political Affairs, Associated Builders and Contractors, Submitted for the Record by Hon. Eric A. “Rick” Crawford

The Honorable RICK CRAWFORD,
Chairman,

U.S. House Committee on Transportation and Infrastructure, Subcommittee on Highways and Transit, Washington, DC 20515.

The Honorable ELEANOR HOLMES NORTON,
Ranking Member,

U.S. House Committee on Transportation and Infrastructure, Subcommittee on Highways and Transit, Washington, DC 20515.

CHAIRMAN CRAWFORD, RANKING MEMBER HOLMES NORTON AND MEMBERS OF THE U.S. HOUSE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE SUBCOMMITTEE ON HIGHWAYS AND TRANSIT:

On behalf of Associated Builders and Contractors, a national construction industry trade association with 68 chapters representing more than 22,000 members, I write today to thank you for holding a Hearing on the Implementation of Buy America Provisions of the Infrastructure Investment and Jobs Act (IIJA). ABC urges the subcommittee to continue to weigh the impacts of these requirements on workers, small businesses, and the success of infrastructure projects funded by this bill.

While ABC supports strategies to expand domestic jobs and manufacturing to avoid global supply chain disruptions and capture economic benefits within America, ABC continues to have concerns regarding the immediate implementation of the guidance’s domestic content requirements.

Enacted in November 2021, the \$1.2 trillion Infrastructure Investment and Jobs Act expanded and made significant changes to Buy America requirements for federally funded infrastructure projects. The IIJA requires the following Buy America preferences and broadens the preferences to include nonferrous metals, such as copper used in electric wiring; plastic- and polymer-based products; glass, including optical fiber; and certain other construction materials, such as lumber and drywall:

- All iron and steel used in the project are produced in the United States. This means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- All manufactured products used in the project are produced in the United States. This means the manufactured product was manufactured in the United

States, and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55% of the total cost of all components of the manufactured product unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation.

- All construction materials are manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States.

The final guidance largely implements the guidance as proposed, with some limited technical modifications. It codifies the rules outlined above and is intended to clarify several aspects of Buy America implementation:

- Defines “cost of components” for manufactured products as acquisition cost and transportation costs for components purchased by the manufacturer, and all costs associated with manufacture of any components created by the manufacturer;
- Specifies manufacturing standards for various construction materials; and
- Defines “manufactured products” as products that have been processed into a specific form or shape or combined with other materials, “do not consist wholly or predominantly of iron or steel or both” and are not construction materials.

In 2023, ABC commented on the proposed guidance to urge OMB to balance Buy America requirements with safeguards against increased costs and delays of infrastructure projects funded by taxpayers.

ABC and our members are committed to building our nation’s infrastructure projects with the highest standards of safety and quality. ABC members stand ready for the opportunity to build and maintain America’s infrastructure to the benefit of the communities that it will serve.

Sincerely,

KRISTEN SWEARINGEN,
Vice President, Legislative and Political Affairs,
Associated Builders and Contractors.

Statement of the National Stone, Sand & Gravel Association, Submitted for the Record by Hon. Eric A. “Rick” Crawford

The National Stone, Sand & Gravel Association (NSSGA) appreciates the opportunity to provide comments on the House Transportation and Infrastructure Highways and Transit Subcommittee’s oversight hearing on the “Implementation of Buy America Provisions: Stakeholder Perspectives.”

NSSGA members consist of stone, sand and gravel producers; industrial sand suppliers; and the equipment manufacturers and service providers who support them. With upwards of 9,000 locations, the aggregates industry produces 2.5 billion tons of materials used annually in the United States. Aggregates are the building blocks of our modern society and are needed to construct and maintain communities, roads, railways, bridges, tunnels, our water supply, sewers, electrical grids and telecommunications.

Section 70917 (c) Materials

The NSSGA worked with Members of Congress, including on this Committee, in 2023 to ensure section § 70917(c) of the Build America, Buy America Act Part 1 (BABAA) of the Infrastructure Investment and Jobs Act (IIJA), Pub. L. No. 117–58, was correctly implemented in the Office of Management and Budget’s (OMB) proposed BABAA guidance and amendment to 2 CFR 184 and 200.

Section 70917(c)(1) established an important limitation to the term “construction materials” as the term is used in BABAA. The limitation 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 in BABAA, and thus does not establish a domestic content procurement preference for these items.

Section 70917(c)(2) prohibits the same construction materials from being included as “inputs” in “all manufacturing processes” producing “construction materials.” OMB is required to “issue standards” defining the term “all manufacturing processes” for construction materials to which BABAA does apply a domestic content procurement preference. Because Section 70917(c)(2) prohibits the definition of “all manufacturing processes” from including the listed items as inputs, the combination

of the listed items as concrete or asphalt mix are not a construction material for which BABAA establishes a domestic content procurement preference.

With support from Members of Congress, NSSGA was successful in seeing the OMB final guidance and 2 CFR amendments correctly recognize the intent of Congress concerning Section 70197(c).

Post-OMB Guidance Implementation Issues

The OMB's final guidance was issued Aug. 28, 2023, and became applicable 60 days later. While the guidance in many ways remained consistent with the OMB's April 2022 initial guidance memorandum, the August guidance did make changes to BABAA implementation and failed to address gradual implementation issues. BABAA implementation at the State DOT level and below remains challenging.

For example, Sec. 70914 requires procurements with federal financial assistance meet BABAA's domestic content procurement preference. The BABAA law, however, does not provide detailed instruction on how a compliant procurement is certified. OMB's August final guidance and rule implementing the BABAA law is similarly silent on detailed compliance certification. State DOTs have thus developed their own "BABAA Compliance Certifications" without instruction or guidance. States' BABAA compliance forms and processes vary state-to-state, and are often confusing and, or insufficiently reflect BABAA's compliance requirements for manufactured products, listed construction materials and exempt construction materials. The Federal Highway Administration (FHWA) needs to issue guidance on BABAA compliance certification forms and processes to remove confusion and delay.

Many State DOTs have added BABAA compliance as an additional feature of their "approved product lists" (APL) or "qualified products lists" (QPL). These lists predate BABAA, and their purpose is to confirm compliance of product input or component specification with a DOT's procurement specification. Often, however, an item on an APL/QPL may not be procured by the DOT for individual use. Instead, the item may be a component of a manufactured product. An item itself may be deemed not BABAA compliant individually but can be a component of a BABAA compliant manufactured product. FHWA guidance clarifying BABAA compliance at the APL/QPLs level is needed to avoid confusion, delay and potential false shortages of certain compliant products or construction materials.

In its final guidance, OMB stated its intention to regularly convene "inter-agency workgroups" to ensure "that federal agencies implement BABAA in a consistent, uniform, efficient and transparent manner. OMB should include State procurement authorities like State DOTs in these "workgroups" to bring front line experience and reality to the workgroup's efforts.

The FHWA had a waiver for manufactured products for many years. Section 70914 (d) of BABAA requires any pre-BABAA waiver to be reviewed. As of this date, the FHWA Manufactured Waiver has not been officially reviewed. This delay and lack of communication from FHWA on the status of the waiver contributes to confusion among procurers and suppliers as to the applicability of the waiver today, and whether or when it will be updated and made available for public comment.

As discussed above, BABAA Section 70917 (c) excludes "cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives" from BABAA's domestic content procurement preferences. This exclusion also applies to wet concrete and asphalt. These excluded materials are, in some cases, not adequately recognized in state DOT BABAA compliance certification forms and processes. The FHWA should provide guidance to clarify that excluded construction materials are not subject to BABAA compliance certification.

BABAA itself and OMB's final implementing guidance devotes much attention to product classification analysis for manufactured products and listed construction materials. In its final guidance, OMB provides an extensive narrative on classification processes, but only addresses a limited number of fact specific scenarios as examples of "correct" classification. These classification issues within the FHWA jurisdiction could be ameliorated with FHWA guidance for product classification analysis scenarios specific to road construction.

In conclusion, the practical reality of BABAA implementation will require ongoing guidance and direction to procuring authorities. Successful BABAA implementation will require at least some agency specific guidance to address implementation issues unique to each agency. This is certainly true with the FHWA and, as discussed above, prompt guidance from FHWA on those issues will be a positive step towards achieving the investment goals of the IIJA.

Letter of February 15, 2024, to Hon. Eric A. “Rick” Crawford, Chairman, and Hon. Eleanor Holmes Norton, Ranking Member, Subcommittee on Highways and Transit, from the Portland Cement Association and the National Ready Mixed Concrete Association, Submitted for the Record by Hon. Eric A. “Rick” Crawford

FEBRUARY 15, 2024.

The Honorable RICK CRAWFORD,
Subcommittee Chair,
Highways and Transit Subcommittee, Washington, DC 20515.

The Honorable ELEANOR HOLMES NORTON,
Subcommittee Ranking Member,
Highways and Transit Subcommittee, Washington, DC 20515.

DEAR SUBCOMMITTEE CHAIR CRAWFORD AND SUBCOMMITTEE RANKING MEMBER NORTON:

The Portland Cement Association (PCA) and the National Ready Mixed Concrete Association (NRMCA) appreciate the opportunity to submit a letter for the record of the “Implementation of Buy America Provisions: Stakeholders Perspectives” hearing. The cement and ready mixed concrete industries appreciate the opportunity to share our perspective on the implementation of the Build America, Buy America Act (BABAA) included in the Infrastructure Investment and Jobs Act (IIJA) as it relates to the treatment of cement and concrete mix.

Cement—the primary ingredient in concrete—is used in the construction of a wide range of federally-funded infrastructure, including roads and bridges, transit, airfield pavements, airport infrastructure, drinking and wastewater infrastructure, commercial and residential buildings, and schools. Cement is the most used material globally after water. Concrete is made by mixing cement, aggregates, and water.

In the United States, 120 million metric tons of cement is consumed annually, while 95 metric tons of cement are produced in the United States.¹ Additionally, there are regions of the United States where the primary ingredients to make cement are not prevalent, making regions of the country more reliant on imported cement to build the wide range of federal, state, and local infrastructure projects built with concrete. PCA and NRMCA shared this information during the formation of BABAA and consequently cement and cementitious materials as well as their combination as concrete mix were exempt from the definition of construction materials BABAA would apply to.

Specifically, section 70917(c)(1) of IIJA established an important limitation to the term “construction materials” as that term is used in BABAA. The limitation prohibits the term “construction materials” from including “cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents and additives.” Additionally, section 70917(c)(2) prohibits the same construction materials from being included as “inputs” in “all manufacturing processes” for construction materials, to which BABAA does apply a domestic content procurement preference. The legislative intent of section 70917(c) is to exempt cement and concrete mix, aggregates, and asphalt mix from Buy America requirements. Concrete mix is not in a final form when procured; only its use as a construction material establishes its final form. Concrete is perishable in that its plasticity is temporarily maintained by a continuous mixing action until used for its construction material purpose. All concrete mixes are mixed in close proximity to their procurement construction material purpose. Thus, all concrete mixing occurs in the United States.

As the Office of Management Budget (OMB) worked on the guidance to implement BABAA, their draft proposed rule and notification of guidance included questions that suggested ambiguity between cement and concrete mix. PCA and NRMCA joined the National Stone, Sand, and Gravel Association and the National Asphalt Pavement Association in filing detailed comments to OMB addressing a number of potential issues made in the draft rule and proposed guidance that failed to recognize concrete mix first as a construction material and second as a construction material exempt from Buy America.² In the final rule and guidance, OMB’s accompanying comments clarified that “section 70917(c) materials should not be considered manufactured products when they are used at or combined proximate to the work site—such as is the case with wet concrete.”³ We are pleased the final rule and final guidance recognizes that concrete mix is an exempt construction material.

¹ <https://pubs.usgs.gov/periodicals/mcs2023/mcs2023-cement.pdf>

² https://portlandcement-my.sharepoint.com/:b/g/personal/khartnett_cement_org/EbRH2E2U1NhFuy7EA7emKJoBAIWuOMgbaKVQqWePOkvliQ?e=30fd96

³ <https://www.federalregister.gov/documents/2023/08/23/2023-17724/guidance-for-grants-and-agreements>

We applaud OMB's hard work to ensure that the final rule is consistent with the legislative intent of BABAA.

Unfortunately, the final guidance and rule did not extend the exemption of concrete mix—or its components, including cement and cementitious materials as well as aggregates—to the concrete mix used in manufactured products incorporated into an infrastructure project. For example, concrete pipes, culverts, and bridge components. This nuance between the treatment of cement and concrete mix as a construction material and when it is incorporated into a manufactured product has engendered questions and confusion around whether a cement or concrete mix is Buy America compliant. In some cases, our concrete mix is being brought to a construction site, and in other cases, it is being incorporated into what OMB has characterized as a manufactured product. This unfortunate ambiguity poses significant challenges in application of Buy America.

We look forward to continuing to work with you to ensure BABAA is implemented to meet the legislative intent of section 70917(c) to exempt cement and concrete mix from Buy America requirements and the impacts of BABAA on the construction of infrastructure funded in part with federal funding. If you have any questions, please do not hesitate to follow up with Sean O'Neill with PCA or Andrew Tyrrell with NRMCA.

Sincerely,
SEAN O'NEILL,
*Senior Vice President, Government
Affairs, Portland Cement Association.*

ANDREW TYRRELL,
*Executive Vice President, Government
Affairs, National Ready Mixed
Concrete Association.*

Letter of February 14, 2024, to Hon. Sam Graves, Chairman, Committee on Transportation and Infrastructure, from Veso Sobot, P.Eng., Associate Director Corporate Affairs, Housing and Infrastructure Products, Westlake Corporation, Submitted for the Record by Hon. Tim Burchett

FEBRUARY 14, 2024.

Re: House Transportation Committee Hearing 15 Feb 2024

DEAR CHAIRMAN SAM GRAVES (R–MO):

Westlake Corporation (www.westlake.com) is a manufacturer of long-life building products headquartered in Houston, Texas.

We take this opportunity to inform your House Transportation Committee hearing scheduled for February 15th at 10:00 a.m. on our experience with “Buy Back America” and would appreciate this letter being submitted into the record.

Westlake is an interested stakeholder, with operations in Kentucky (Rep. Thomas Massie), Lodi, California (Rep. Doug LaMalfa and John Duarte, Rep. Jared Huffman, Rep. Grace Napolitano, Rep. Julia Brownley, Rep. John Garamendi, Rep. Salud Carbajal, Rep. Mark DeSaulnier), Brownsville/Newbern, TN (Rep. Tim Burchett, Rep. Steve Cohen), Wichita Falls, TX (Rep. Troy Nehls, Rep. Colin Allred), McPherson, KS (Rep. Tracey Mann), Janesville, WI (Rep. Derrick Van Orden), Greensboro, GA (Rep. Mike Collins, Rep. Henry Johnson), and Yucca, AZ (Rep. Greg Stanton).

Westlake would like to make the committee aware of some unintended consequences of “Buy Back America”.

In the making of municipal pipe and fittings for infrastructure projects, virtually 100% of the raw materials used to make pipe and fittings are manufactured in America. Those raw materials are sent to our Canadian wholly owned operations and converted into a unique and innovative earthquake-resistant biaxially oriented pipe with accompanying fittings. Those pipes are often sent back to the U.S. The strict enforcement of BABAA (Buy American, Build American Act) has led to exclusion on federally funded projects even though the raw material content of the pipe is 100% American. Moreover, exclusion is now happening on non-federally funded projects by distributors reluctant to deal with paperwork and/or carry two inventories.

Westlake requests that provisions be made for American companies with operations in USMCA (United States-Mexico-Canada Agreement) signatory countries to qualify for an exemption to BABAA if raw materials predominantly originate from the U.S.A.

That reasonable change to the BABAA requirements will lead to lower prices for taxpayers for American infrastructure, without stranding American assets. It will

also provide a safety mechanism for logistical channels to avoid supply chain issues experienced during COVID-19.

Yours truly,

VESO SOBOT, P.ENG.,
Associate Director Corporate Affairs, Housing and Infrastructure Products,
Westlake Corporation.

Statement of the National Association of State Outdoor Recreation Liaison Officers, Submitted for the Record by Hon. Val T. Hoyle

On behalf of the National Association of State Outdoor Recreation Liaison Officers (NASORLO), we appreciate the House Transportation and Infrastructure Committee holding a hearing to better understand the implementation challenges and opportunities for the Build America, Buy America requirements.

NASORLO is the organization that represents the states and territories related to their administration of the Land and Water Conservation Fund (LWCF). Our organization was formed in 1967 when representatives from state and territorial governments were called together by the federal Bureau of Outdoor Recreation to address administrative matters related to a new state outdoor recreation grants program called the Land and Water Conservation Fund. For over 50 years, our members have served as liaisons to the National Park Service in the administration of LWCF in funding outdoor recreation at the state, territorial, and local government level. As States' representatives, we understand how Americans will benefit greatly from a vibrant and dynamic State Assistance Program.

While the program we work closest with—the Land and Water Conservation Fund Stateside Program—is not within this Committee's jurisdiction, we are hopeful that lessons learned from BABA implementation can be utilized across agencies. We work on projects that involve playgrounds, recreation, trails, and other close-to-home infrastructure—development of which often includes equipment and materials impacted by BABA. As we heard in the hearing from witnesses, suppliers are struggling to certify “Made in America” goods. This is also true across states outdoor recreation projects, especially when some states' projects typically are not more than \$1 million.

One of our primary goals is to strengthen local economies where we build and maintain outdoor spaces. Unfortunately, requirements set forth under BABA often act as a roadblock for small communities looking to complete LWCF projects. Communities are facing limited resources and manpower with BABA adding to the overall impacts and as result, vital conservation and recreation initiatives that could greatly benefit these communities are often delayed or abandoned altogether, further widening the gap in access to outdoor spaces and environmental preservation efforts.

The Bipartisan Infrastructure Law gave agencies the authority to issue a waiver if necessary, and we have asked for temporary assistance to enable state liaison officers to continue implementing outdoor recreation projects while we work with the federal government to identify domestic manufacturing gaps.

Supply chain issues, inflation and workforce shortages during the pandemic have already made it more difficult than normal to build and maintain local parks. Many of our states are already behind schedule with prices now much higher than when states sent their original proposals which were prior to the passing of the Infrastructure Investment and Jobs Act. We know that the National Park Service is dedicated to making the Land and Water Conservation Fund work, as are we, but are extremely alarmed that, without a waiver, or retro-waiver for an already approved project, we will be unable to expend grant funds due to the unavailability of supplies needed to construct necessary infrastructure. Examples of this include:

- Historically appropriate lighting. All available product is manufactured in China.
- Any electrical parts, including LED lighting, breakers, lighting control systems, irrigation control systems, computers, point of sale (POS) systems, software management systems are either manufactured directly in China or have majority components that are directly manufactured in China.
- Plumbing supplies are predominantly manufactured in China.
- Sheet metal is predominantly manufactured in China.
- Lithium batteries, used for exit signage for example, are all manufactured in China.
- Iron and Steel products are approximately 50% more expensive when purchased from American manufacturers than when purchased from overseas manufac-

tures such as China and India. That significantly impacts a budget not designed for BABA requirements.

While we see the value in Build America, Buy America, we hope that this requirement will spur more American companies to manufacture these products in the United States, this will take years and BABA waivers can be revisited as this transition takes place. For background, the BABA requirement appeared in our grant requirements last year with no additional guidance. States handle compliance differently, with some states confirming compliance before submitting requests and some states relying on applicants to comply with requirements. Given the differing expectations, we worry that small communities charged with understanding the legal ramifications might not have the tools to comply. In all cases, we are concerned that the communities most in need of LWCF funding will not have the resources to identify hard-to-find materials and ultimately decide not to apply for these projects.

Given that the Department of Transportation is better versed in BABA requirements, we look to your Committee to encourage DOT, OMB, and other agencies to work across the federal government on best practices and expand waivers across federal agencies. We believe these recommendations can apply to all agencies and we hope to work with your Committee to lend our perspective:

- *Determine who certifies these funds for compliant vendors.* We recommend that federal agencies provide States with an overview of what needs to be certified consistent across each program related to BABA. Whether that is a letter from the vendor certifying the product is Made in America or other form of certification, we recommend clear guidance to the States so that State Liaison Officers and applicants can take on the task.
- *Offer guidance to local governments.* In many states, compliance falls on the local government applying for the project. We hope to give these communities as much information as possible to comply with Buy America requirements. We suggest that agencies begin providing training and guidance on BABA compliance emphasizing requirements, waivers, and alternatives and to give states an opportunity to provide examples of the impact on projects prior to the training.
- *Work with states to identify alternatives for products not manufactured in the United States.* Many project applicants are tasked with BABA compliance—often without realizing what that implies. We recommend offering webinars, access to staff, and other available resources to identify construction alternatives that are BABA-compliant. We recommend an expedited waiver process or a blanket waiver for purchase of items that are not available inside the United States, rather than states requesting individual waivers for the same item.
- *Commit to providing extension amendments for projects under federal programs.* States are often facing supply chain constraints outside of their control, which burns up most of the time of the allotted project. We recommend that agencies lay out a transparent process to offer extension amendments for the original projects—in this case, individual LWCF projects—to states facing BABA compliance complications.
- *Share waivers across agencies.* Waivers approved in different agencies, where applicable, should be able to be shared. For example, we see an opportunity for the \$750,000 Recreational Trails Program could carry over to National Park Service and LWCF since funds can oftentimes be used together.

Overall, we support BABA goals and objectives, but need to have a plan in place during the transition period. On behalf of the states administering LWCF, we hope to work with your Committee on administration-wide implementation of these requirements.

APPENDIX

QUESTIONS FROM HON. JEFFERSON VAN DREW TO TY EDMONDSON,
CHIEF EXECUTIVE OFFICER AND PRESIDENT, T.A. LOVING COM-
PANY, ON BEHALF OF THE ASSOCIATED GENERAL CONTRACTORS OF
AMERICA (AGC)

Question 1. What can be done to make the waiver process simpler and more transparent?

ANSWER. Several measures can be taken to create a streamlined and more transparent waiver application process. Although the Office of Management and Budget (OMB) has a 15-day process to determine approval of a waiver once it is posted, the agency must get pre-approval from OMB to even post the waiver for public comment.

This OMB pre-approval to post a waiver originates from Executive Order 14005 titled “Ensuring the Future Is Made in All of America by All of America’s Workers,” not from the Build America, Buy America Act (BABAA) contained in the Infrastructure Investment and Jobs Act (IIJA). Removing these requirements for OMB involvement in multiple stages of the waiver process would significantly expedite the waiver process.

To increase transparency, the www.MadeInAmerica.gov website should allow applicants to monitor the status of their requests. As it is right now, the time between when a recipient submits a waiver request and when it is posted by the agency can take months or even years. To increase transparency, the requests should be posted immediately when they are received by the agency and allow the public to comment. Instead, we have agencies are often sitting on requests that the public is not aware of. One of the prime benefits of public posting is that it allows domestic manufacturers the ability to potentially provide a BABAA-compliant item that could not otherwise be found.

Question 2. How are the smaller companies impacted by these policies more so than some of the bigger manufacturers?

ANSWER. As the representative for the construction industry, AGC of America’s expertise lies primarily within the construction services sector. Consequently, AGC is not in the best position to comment on the law’s impact on manufacturers.

From the perspective of construction firms, some larger firms have dedicated or partially dedicated personnel to handle Buy America requirements, but smaller construction companies most likely lack the resources. The requirements add additional responsibilities to workers already wearing many different hats at a time when the construction industry is facing an unprecedented shortage of qualified workers.¹

Question 3. Do these guidelines have any impact on the workforce?

ANSWER. As new Buy America requirements take effect, construction companies will have to provide additional training to their employees. This training will need to ensure that workers involved in various stages of an infrastructure project, including design, bidding, procurement, and construction, are well-versed in the intricacies of the new requirements to ensure compliance. While Buy America policies aim to support the domestic manufacturing industries, the delays in the waiver process can delay or halt construction projects, which in turn negatively impacts construction workers.

Question 4. What would be a reasonable timeline for these policies to be phased into practice by manufacturers without negatively affecting their output and bottom line?

¹AGC & Autodesk Workforce Survey <https://www.agc.org/news/2023/09/06/new-survey-shows-significant-flaws-nations-approach-preparing-workers-construction-careers-and-how>

ANSWER. OMB should have implemented Buy America requirements on a product-by-product basis based on research of supply chains and domestic manufacturing capacity. Instead, the final guidance was issued on October 25, 2023, yet federal agencies such as the EPA and DOT are still in the process of gathering information concerning the manufacturing capacity and availability of various construction materials and products.^{2,3}

According to feedback from AGC members, construction companies anticipate requiring approximately three years following the finalization of the rules. This would provide them an adequate amount of time to understand the requirements, educate and train workers, analyze and adjust supply chains, change operating procedures both on the field and in administrative capacities, adjust estimating and bidding processes, and identify challenges pertaining to sourcing materials.

QUESTIONS FROM HON. MARILYN STRICKLAND TO BRIAN ENDERS, VICE PRESIDENT, WALBEC GROUP, ON BEHALF OF THE NATIONAL ASPHALT PAVEMENT ASSOCIATION (NAPA)

Question 1. Last summer, I had the pleasure of visiting an asphalt plant from a NAPA company in my district—Granite Construction. During this visit, we discussed the same issues of the asphalt industry that you noted in your testimony, along with similar construction materials, and the need for the exemption to be seen through. I am glad the Transportation and Infrastructure Committee's efforts have helped us get to that goal, however, could you share any potential concerns if this issue were to be opened up again?

ANSWER. To begin, thank you for visiting an asphalt plant—it is that engagement that allows us to better tell our story and allow officials like you to better see how our product is made and understand all the complexities the asphalt industry must consider.

As you know, the asphalt industry would certainly suffer supply chain disruptions and price increases if we do not have this construction material exemption. While we operate in the Upper Midwest and can't speak specifically to the market in the Pacific Northwest, we do know that states like Washington and Oregon would have significant supply chain disruptions as that market—like ours—must rely upon a majority of its necessary asphalt binder imported from Canada and other friendly trade neighbors. We are worried that as we plan and build in the final years of the IIJA package, and your Committee works on its successor in the 119th Congress, that we mitigate precious federal resources if we arbitrarily exacerbate the construction material supply chain.

In short, it would be creating unnecessary obstacles to complete vital road projects on time and on budget.

Question 2. While Walbec does not operate in Washington State, could you share from an anecdotal perspective how the Pacific Northwest is equally impacted by construction material exemptions?

ANSWER. Absolutely—while our markets are very different from a climate, traffic and state topography perspective—we are very similar in the asphalt binder we need to import in order to domestically manufacture the necessary asphalt we need for local road construction. Like Washington, Wisconsin has minimal refining capabilities, and given its geographic proximity to the Canadian border, we are able to utilize Canadian crude—which is a “sweeter” crude and better suited for asphalt production. Without getting too much into the complexities, asphalt binder is the “glue” to ensure the pavement is durable and effective on our roadways; Canadian crude has certain properties that really help with pavement mixtures—it has more viscosity and when utilized in certain pavement mixes, could help extend pavement lifespans. This is a long way of saying that states like Washington and Wisconsin benefit from being closer to Canadian refining production and can implement these raw materials in local pavement mixes more efficiently. Because of these similarities, our markets import over 75% of asphalt binder from Canada compared to other markets across the country.

² EPA—Request for Information Regarding Products and Categories of Products Used in Water Infrastructure Programs <https://www.federalregister.gov/documents/2023/11/20/2023-25515/request-for-information-regarding-products-and-categories-of-products-used-in-water-infrastructure>

³ DOT—Request for Information on the Use of Manufactured Products in Highway Projects https://www.fhwa.dot.gov/construction/cqit/buyam_rfi.pdf

If we undo our Buy America exemption for construction materials, it will upend these markets considerably and create increased costs and material delays. Markets like the PNW and Upper Midwest are some of the most vulnerable if our construction material supply chain exemption were to be eliminated.

Question 3. In your testimony, you raised RAP a few times. How critical is RAP usage within the Washington State roadway market and its ability to mitigate additional virgin material usage?

ANSWER. Reclaimed Asphalt Pavement (RAP) is the most recycled product in the country, as we utilized over 90M tons in 2021. Utilizing RAP allows asphalt producers to mill up current roadway asphalt pavement—which is 99% recyclable—while adding minimal asphalt binder, aggregate, various emulsifiers and additives, and deploy that material on the same roadway it had come from. We believe we can deploy more RAP in markets across the country, including states like Washington, which will save taxpayer dollars and meet/exceed pavement specifications. In fact, State DOTs and FHWA save over \$3B in costs by using RAP, and our industry stands ready to do more. The national average for RAP usage across State DOTs is about 20.8%; if we were to raise that national average by just 1%, we would eliminate greenhouse gas emissions from the equivalent of +25,000 cars every year.

Deploying more RAP in Washington would vastly save on costs and prevent hundreds of thousands of tons of paved asphalt going unused or put into landfills. It is a vital and effective pavement mix design for the Washington DOT to consider and about 20% of their road mixtures use RAP, but they could certainly use more. We hope that the next highway reauthorization can include language to help promote and entourage RAP deployment in our national roadway market, and we'd be happy to assist with more insights as the Committee begins its work.