

Comments of the Transportation Departments of  
Idaho, Montana, North Dakota, South Dakota, and Wyoming  
to the  
United States Department of Transportation (USDOT)  
Regarding  
Construction Materials Used in Federal Financial Assistance Projects for Transportation  
Infrastructure in the United States Under the Build America, Buy America Act; Request for  
Information  
Docket No. DOT-OST-2022-0047  
August 16, 2022

---

The transportation departments of Idaho, Montana, North Dakota, South Dakota, and Wyoming (“we” or “our”) appreciate the opportunity to respond to the notice in this docket, by which the U.S. Department of Transportation (USDOT) seeks information to assist it in implementing the Build America, Buy America Act (BABA) provisions of the Infrastructure Investment and Jobs Act (IIJA) as applied to construction materials.<sup>1</sup> Notice at 87 Federal Register 45396 (July 28, 2022).

**Overview: Implementation of BABA and other Buy America Statutes Must Avert Adverse Impacts to Delivery of Transportation Projects and Programs Funded by USDOT**

We appreciate that, early in the notice, USDOT states that the information it seeks in this docket includes the potential impacts to USDOT-funded projects. Id. In response, we emphasize that we continue to consider it critically important to administer BABA and other applicable Buy America statutes (hereinafter “Buy America” statutes or requirements) so that prompt delivery of transportation projects – including safety projects – can proceed.

For example, at an earlier stage of this docket, in comments dated May 10, we supported adoption of the then proposed 180-day waiver from Buy America requirements for construction materials while joining the American Association of State Highway and Transportation Officials (AASHTO) and many others in recommending that the waiver be for considerably more than 180 days.

We want to be clear that we unreservedly support the goal of buying American-made items, including construction materials. Further, over the last year or more there has been disappointing performance of long distance and increasingly expensive international supply chains. That performance has underscored positive aspects of utilizing products made in the U.S. by American workers. Compared to foreign-made products, U.S.-made products are generally made far closer to where they are needed by State DOTs and others delivering Federal transportation infrastructure programs.

---

<sup>1</sup> Public Law No. 117-58, 135 STAT 429 et seq., is sometimes referred to as “IIJA” and sometimes as the bipartisan infrastructure law (BIL). The Build America Buy America Act is set forth in the IIJA beginning at section 70901.

Yet, as USDOT knows, the new Buy America requirements of the new infrastructure law expanded the scope of Buy America requirements, particularly for construction materials – a very major change. It is important that implementation of new and expanded Buy America statutes takes a realistic approach and recognizes, at a minimum, the need for appropriate waivers and for a prudent transitional period – a phase-in – while sources of U.S.-made products are identified and developed to replace or complement non-U.S. sources being used today.

Phasing in the new requirements, after careful data gathering to identify where Buy America qualified materials are available and in what quantity, will still mean achieving increases in qualified procurements over time.

But a phase-in would also avert undue cost increases (which would be especially unwelcome at a time of already significant inflation) and the loss of U.S. construction jobs that would accompany virtually overnight implementation of Buy America requirements as to construction materials. We are concerned over the real potential for delay of projects when American-made products are unavailable, very hard to obtain, or hard to obtain on time or at reasonable cost. These considerations are recognized as bases for waivers, including public interest waivers. See OMB Memo M-22-11 (April 18, 2022) regarding implementation of Buy America laws. We consider these types of cost and delay impacts to be foreseeable and having a downward impact on U.S. construction jobs.

As we said in our May 10 comments, we consider it very unlikely that these issues will be fully and satisfactorily resolved by the end of the current 180-day waiver from BABA for construction materials. Further waivers will be needed – and very soon, by early November – to enable the work implementing the Bipartisan Infrastructure Law (BIL) to take place at the brisk pace we and so many others in the transportation sector support and hope to achieve. Benefits will follow, including jobs and other benefits of transportation infrastructure improvements, including safety, improved mobility for people and business, and carbon reduction program investments.

We emphasize that this can be done while enhancing U.S. capacity to supply construction materials used in Federally financially supported infrastructure projects, but that effort should be realistic and not abrupt and unrealistic in nature. Further, it should be considered that many transportation investments improve safety, even if not labeled as “safety” projects, and those benefits must be preserved through sound policies implementing Buy America statutes.

Yet, implementing a change in the law to extend Buy America requirements to construction materials will be extremely challenging at best. It will take a considerable amount of time to gather data on the sourcing of the full range of materials and products and to establish certification processes and other implementation approaches. Further, OMB is still developing standards. Time must be allowed for States and others to adjust and consider the availability of materials and products after OMB issues final standards. We do not see that it would be prudent to assume this can be achieved in less than one year. While we appreciate that the current 180-day waiver is at least in part intended to avoid the adverse impacts of rushed implementation, more than 180 days is needed to do all this carefully while achieving the fundamental goal of making transportation infrastructure investments, which support jobs not only in construction but in the operating economy.

We support AASHTO’s recommendation that the current waiver for construction materials be extended while research is undertaken as to the practicalities of applying Buy America requirements to at least the most commonly used construction materials, with AASHTO estimating that –

“The construction industry – considering contract and supply chain issues – will need at least 24 months to source sufficient quantities of domestically-produced construction materials.”

Having to implement the program absent such a waiver could subject investments to undue cost increases and even reduced work and a hiatus of more than a few projects when American-made products are not available, very hard to obtain, or hard to obtain on reasonable terms of cost and timing.

In addition to providing needed waivers, USDOT and other Federal agencies should construe Buy America provisions so as to allow flexibility to States and others implementing projects with Federal funds. In that vein, we support AASHTO’s position that utility relocation work not be subject to Buy America requirements.

### **Special Circumstances Facing Rural, Cold Weather States**

As relatively rural states that may be considered “small market” by vendors of some materials and products, we are particularly concerned that the burden of an absence of waivers could fall very heavily on us, as scarce Buy America qualified products tend to be sent to more populous areas. The resulting blow to program delivery, local jobs, and transportation benefits could well be magnified by the short construction season in our northern, high elevation states – where even short delays and project disruptions can push project completion into the “next construction season.” That outcome also increases costs as, in addition to inflation, at least some costs would be added due to demobilization and mobilization of the construction forces associated with a project being pushed into an additional construction season.

### **Practical Implementation of the Exemption for Cement, Aggregates, and Asphalt Binder**

Further, BABA includes an important statutory exclusion from Buy America requirements for certain cement, aggregate, and asphalt binder products.<sup>2</sup> Should there be instances of doubt as to whether a particular item is or is not within that exclusion, construing the exclusion broadly is recommended for both administrative and commercial practicality. Taking such an approach will not undercut the broad goals of Buy America laws but could limit the need to consider waivers and remove administrative complexity in some instances. Also, the excluded materials are so very important to so many projects. Congress clearly wanted them to be readily available in a practical way. We believe that includes situations where aspects of the work related to those exempt products occurs on site, such as application of “tack” as part of the process of using asphalt mix or applying “fog” after application.

---

<sup>2</sup> Section 70917 of IIJA.

## **Do Not Require States to Reopen Awarded Contracts**

It is not appropriate or feasible to apply the Buy America requirements of the new infrastructure law to projects where bids were already submitted and awarded based on materials that had no country-of-origin stipulations. Contractors and suppliers would be put into a position where they may have to seek out and procure different materials; agreements with current suppliers may no longer be viable; orders for materials already being filled based on projects awarded may need to be canceled; and State DOTs will be faced with project delays and requests for material price increases caused by the changes.

So, USDOT and the Executive Branch must carefully – and appropriately – define the meaning of when the new Buy America requirements for construction materials will apply to projects. We feel strongly this needs to be at the time funds are authorized by Federal Highway Administration (or other USDOT agency) for a project, not the time of first obligation of funds for the project. Projects that were bid and awarded prior to expiration of the current waiver for construction materials (even let last year) may not have funds obligated until after Nov. 10, 2022, (or a waiver end date extended past November 10). USDOT must word its requirements so that they do not impose Buy America requirements on contracts bid and awarded with no specifications or requirements for Buy America in place, even if funds have not yet been obligated.

## **Prompt Action on Waiver Requests**

As USDOT and other agencies work to strike the balance between strengthening production here in the U.S. and allowing States and others to promptly and cost effectively deliver the infrastructure program and meet Buy America requirements, our current view is that USDOT should take action soon to extend the current waiver for construction materials, as recommended by AASHTO, while USDOT considers further actions. We also recommend that USDOT ensure that its waiver process is highly efficient and able to react promptly when waiver requests are filed by State DOTs or others in response to rapidly changing circumstances regarding product availability. This should include committing to the public that USDOT would adhere to prompt deadlines in deciding waiver applications.

## **EV Charging Equipment**

While this docket concerns application of Buy America requirements to construction materials, we take this opportunity to note our continuing concern that the electric vehicle (EV) charging deployment provisions of the new infrastructure law, including but not limited to the NEVI program, may be extremely hard to implement successfully without a waiver from Buy America requirements. The Administration itself stated in the Federal Register last fall that, as of that time, it was unaware of EV charging equipment that met the Buy America iron and steel requirements.<sup>3</sup> We are unaware that this situation has changed dramatically and suspect that

---

<sup>3</sup> 86 Federal Register 67115 at 67117 (November 24, 2021).

needs for EV chargers cannot be met, near term, solely with Buy America qualified products. Prompt action on a practical waiver is strongly encouraged as to EV charging equipment.

**Specific Questions Posed by USDOT**

In addition to the above points and the conclusion immediately below, see also further below at pages 6-13 our responses to questions posed by USDOT in the July 28 Federal Register notice in this docket.

**Summary and Conclusion**

We support the goal of buying American-made products, including construction materials. However, a transitional and gradual approach to implementation of new requirements is warranted to simultaneously better enable realization of other benefits of the new infrastructure law, including construction jobs and transportation as well as economic and environmental benefits resulting from the delivery of projects.

As also noted above, waivers will be one appropriate tool to achieving that transitional approach. Statutory interpretation tools also may be available to advance a gradual approach that does still advance Buy America and Build America goals while preserving other benefits. We urge USDOT and the Administration generally to make specific interpretative and waiver decisions in accord with that approach, including a substantial further waiver for construction materials in the near future.

The transportation departments of Idaho, Montana, North Dakota, South Dakota, and Wyoming thank USDOT for the opportunity to comment. We respectfully request that further action on the subject matter of this docket be in accord with our comments, including our below responses to specific questions.

\*\*\*\*\*

**16 Specific Questions Posed by USDOT, with Responses, Begin on Next Page**

## **16 Specific Questions Posed by USDOT**

**(1) In addition to those construction materials identified by OMB, are there specific materials, products, or categories of materials or products that are commonly used in DOT-funded projects that should be included as “construction materials” for the purpose of BABA implementation?**

No.

At this time, “construction materials” should be limited to those already listed by OMB in its April 18, 2022, memorandum. Other items that are processed should be treated as “manufactured products” (unless the iron or steel provision is applicable).

Moreover, to the extent that USDOT does not follow our recommendation (and AASHTO’s) and extends the current (180-day) general waiver for construction materials, but would consider narrower waivers, we agree with AASHTO that USDOT should focus Buy America implementation on efforts to increase Buy America qualifying supplies of the most commonly used materials. Further, USDOT should not delay construction projects by insisting on near term Buy America compliance for low volume materials that might be needed for some projects – but for which the low volume might not provide a sufficient enticement for the U.S. business community to develop new sources that are Buy America qualified.

As low population states, even with large land areas and long highways, we are often considered “small market” states for construction materials and manufactured products. So, we are especially concerned that, in the absence of a general nationwide waiver for construction materials (and manufactured products), a general waiver or waivers for many materials and products is needed in our states to ensure that highway work under the new infrastructure law can proceed without significant delays. Stated another way, we are concerned that absent sufficient waivers covering our states, an inadequate (nationally) supply of Buy America qualified materials might be directed heavily at larger markets, creating particular shortages in our states.

Further, we are states with short construction seasons. As a result, even short duration dislocations in important supplies can cripple timely delivery of projects, pushing project completion into the “next construction season.”

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

We agree with the apparent USDOT assumption that an item should be classified to only one of what is referred to in this question as “the three categories.” Otherwise, an item could be subject to whatever factors govern, for example, two categories, and then a State DOT needing the item

may well need two waivers if the item were not available in Buy America eligible form or did not satisfy tests as to quantities or cost.

So, in implementing a regime based on three non-overlapping categories, we offer the following.

To the extent an item includes sufficient iron and/or steel to trigger applicability of Buy America requirements for iron and steel, that (iron/steel) should be the category.

As stated above, as to non-ferrous items, “construction materials” should be only those listed by OMB in the April 18 memorandum. Other items would be manufactured products.

An item listed as a construction material (i.e., non-ferrous metals, plastic and polymer-based products, glass, lumber, and drywall) should be interpreted as being in a basic form. For example, plastic and polymer-based materials is a broad category that, beyond sheets or strands of material or other basic forms, would be difficult to interpret as a “construction material.” For example, PVC pipe, made from plastic and polymer-based materials, appears to us to be a manufactured product. Items that are treated, cut, or shaped are also among those that appear to have been manufactured – whether sheets of metal for signs or pressure, fire, or insect retardant treatment for lumber.

Similarly, we also view fiber optic cable as a manufactured product. In that case, glass or polymer fibers are bound together around a central steel cable or plastic carrier for support and then covered for protection by, for example, layers of material such as aluminum, Kevlar, or polyethylene.

AASHTO points out in response to this question that application of a coating to an item should result in the item becoming a manufactured product. We would include in manufactured products those where the manufacturing, or application process, occurs on the construction site. Accordingly, we would answer AASHTO’s question as to the status of combining pavement marking and glass beads on site by responding that the combination constitutes a manufactured product.

Also, unless there is to be administrative paralysis of program delivery, until such time that there is a clear determination by USDOT as to whether an item derived from the above-referenced OMB list (but subject to processes) is a construction material, is a manufactured product, or is covered by a waiver, a good faith determination by the relevant State DOT should be allowed to stand. That way, program delivery can proceed promptly – including the delivery of safety projects and additional projects with safety benefits.

**(3) Are there items that DOT agencies currently treat as manufactured products that should instead, under the OMB Initial Implementation Guidance, be treated as construction materials?**

No. As explained above in response to Question 2, we would narrowly construe what is actually covered by that OMB list of construction materials. Further, as explained in response to Question 1, we agree with AASHTO that, to the extent that a general waiver is not in effect, overall

administration of the BABA and Buy America statutes as applied to construction materials, including policy as to waivers, should focus on encouraging American manufacturing of the most commonly used construction materials and high-volume items and should be more open to waivers applying to low volume materials.

**(4) Based on the definition of “all manufacturing processes” in the OMB Initial Implementation Guidance, what do you consider “the final manufacturing process” and the “immediately preceding manufacturing stage” for common goods used in DOT-funded projects in each category of construction material listed in the OMB Initial Implementation Guidance or any other category you identify in response to Question 1 above?**

- i. Non-ferrous metals**
- ii. Plastic and Polymer based Products**
- iii. Glass**
- iv. Lumber**
- v. Drywall**
- vi. Other (please specify)**

We agree with AASHTO’s reply to this question in that, depending on the material under consideration, the identification of individual stages within a given manufacturing process is frequently not straight-forward or self-evident. It may be difficult for anyone other than a particular manufacturer of a product to appreciate where a step in a manufacturing process for the product ends and where the next step in the process begins – or whether some sequence is considered to be one step. In addition, for some materials, the manufacturing process may consist of only one step beyond the acquisition of raw materials. Clarification is needed, possibly material by material, for industry to determine whether the final two manufacturing stages for a product are accomplished in the U.S.

**(5) Are the final manufacturing process and the immediately preceding manufacturing stage different for different types of products made from similar materials (e.g., Polyvinyl Chloride (PVC) or High-Density Polyethylene (HDPE) pipe vs. PVC or HDPE lumber)?**

See comments for Question 4, where we indicate difficulty in drawing lines as to where one step in a manufacturing process ends and the next one begins, even for a particular manufacturer of a particular product. Comparing steps for different products, even seemingly similar products, could well prove challenging.

**(6) Certain DOT OAs have long provided definitions of “manufacturing processes” in their implementing regulations for Buy America requirements. For example, FTA's regulation at [49 CFR 661.3](#), which it applies to manufactured products, states: “[T]he application of processes to alter the form or function of materials or of elements of the product in a manner adding value and transforming those materials or elements so that they represent a new end product functionally different from that which would result from mere assembly of the elements or materials.” FHWA's regulation for steel and iron materials at [23 CFR 635.410\(b\)\(1\)](#) applies to all “manufacturing processes, including application of a coating, for these materials must occur in the United States. Coating includes all processes which**

**protect or enhance the value of the material to which the coating is applied.” Should the same (or a similar) definition of a manufacturing process apply to the final manufacturing process and the immediately preceding manufacturing stage for construction materials commonly used in DOT-funded projects? If not, why not, and is there another standard for manufacturing processes that might be more appropriate to apply to construction materials?**

As AASHTO noted, depending on the material in question, such as for plastic, there may only be one manufacturing stage between the acquisition of the “elements of the product” and the production of the finished material, such as a plastic pipe. In such a case, there would be no “immediately preceding manufacturing stage.”

AASHTO also noted that some may seek greater clarity as to whether an item was “manufactured” if the particular process is to refine it from another material (such as epoxies derived from petroleum) rather than by adding something (a coating to a metal bar, for example). Again, our view is to narrowly construe the scope of “construction materials” so that, for example, the application of a process to an item would result in it being a manufactured product.

Further, sometimes it is easy to confuse a process using an item from the item itself. Today, for iron and steel, the application of a coating has to occur in the United States as a manufacturing process, but the coating itself does not have to be manufactured or sourced in the United States. To the extent a manufactured product (or even a construction material) is not the subject of a waiver from Buy America requirements, this distinction developed for iron and steel (that the coating is not covered by Buy America requirements) should continue.

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

As noted in AASHTO’s response to this question, examples of items that overlap with a type of item on OMB’s construction materials list that are typically used only after being combined into a manufactured product include:

- Glass beads used in pavement markings;
- Non-ferrous metals (e.g., zinc) used in coatings;
- Non-ferrous metals (e.g., copper, aluminum), plastics, and glass used in wiring or poles or geotextiles; and
- Non-ferrous metals (e.g., lithium) used in batteries and other electrical devices.

Used in such fashion, we have long considered these to be manufactured products, not construction materials.

We also consider that items that are combined on a job site also become manufactured products, such as when paint is combined with glass beads at the time those items are applied to a road surface.

**(8) FTA already has an established procedure for bidders or offerors to certify the origin of steel and iron and manufactured products in its implementing regulation at [49 CFR 661.6](#). Should FTA require the same procedure to assure the origin of construction materials for FTA-funded projects? If not, what should FTA do differently?**

We would not object to FTA attempting to use the same process for different items, but we agree with AASHTO that there would be merit to efforts to have each USDOT agency have a common approach to application of Buy America to construction materials.

Regardless, we think implementing a certification approach and other elements of implementing new or expanded Buy America requirements to construction materials will take time. The processes for Buy America certifications for iron and steel have evolved over nearly 40 years, not overnight. As a result, in the near term, waivers or partial waivers or other flexibilities will be appropriate to ensure that implementation in pursuit of the goals of Buy America requirements does not disrupt the benefits of advancing and delivering highway and other transportation projects and programs – such as jobs, economic and environmental benefits, and safety and other transportation benefits.

**(9) Under FHWA-funded programs, State DOTs are responsible for Buy America compliance, per [23 CFR 635.410\(d\)](#). Bidders are required to comply with the project specifications, including Federal-aid projects with Buy America requirements. Most State DOTs require certifications/Step-certifications from bidders/contractors/suppliers to ensure compliance. Should FHWA continue to follow this process for certifying construction materials? If not, what should FHWA do differently?**

We see merit in attempting to apply the same process to many new items, but the context calls out for more flexibility. Also, we understand that the step certification process relates to the heat at steel mills and traceability. That likely is relevant to only a few, if any, other materials. Further, as noted earlier, we agree with AASHTO that there would be merit to efforts to have each USDOT agency have a common approach to application of Buy America to “construction materials.”

Again, we think implementing a certification approach and other elements of implementing new or expanded Buy America requirements to construction materials will take time. The processes for Buy America certifications for iron and steel have evolved over nearly 40 years, not overnight. As a result, in the near term, waivers or partial waivers or other flexibilities will be appropriate to ensure that implementation in pursuit of the goals of Buy America requirements does not disrupt the benefits of advancing and delivering highway and other transportation projects and programs – such as jobs, economic and environmental benefits, and safety and other transportation benefits.

We also note that, if there were labeling standards concerning Buy America eligible status for construction materials (and perhaps manufactured products as well), this would alleviate significant tracking, administrative, and paperwork burdens.

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

We have made clear our recommendation for an extension of the current waiver for construction materials. That stems from the likely difficulty of compliance in the very near term. But, given the complexity of the various manufacturing processes and other factual issues, any initial certification process (and other aspects of compliance) should be flexible and, for example, could include accepting a good faith certification made by a manufacturer.

AASHTO’s reply to this question, which among other things, describes a possible phased-in compliance approach, illustrates the difficulty of compliance and the need for flexibility in the implementation of new requirements.

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

No. We agree with AASHTO that significant clarification is needed, including:

- The categorization of some materials may be unclear (construction material versus manufactured product) for such items as plastics, epoxies, and “refined” materials – though we have included in these comments suggestions as to how these matters should be resolved and addressed, including narrowly construing what is a construction material.
- What to do if the number of manufacturing stages required for a given material or product is less than the two that are required to be based in the U.S.

We also suggest that, in the implementation of these new requirements, some bidders may be reluctant to participate if there is a risk of penalties even assuming good faith efforts. A practical implementation approach likely requires a combination of clarity from USDOT combined with flexibility to have a safe harbor for actions taken in good faith by bidders and State DOTs.

**(12) Are there construction materials commonly used in DOT-funded projects for which suppliers or manufacturers cannot readily determine or trace the country of origin of the final manufacturing process and the immediately preceding manufacturing stage? Are there records or documentation already in use that could serve as evidence of the origin of these to manufacturing processes (e.g., country of origin documentation, mill markings, quality control tracking)?**

AASHTO has offered some examples of materials that may not be readily traceable for the final two manufacturing stages (or for which there may not be two distinct manufacturing stages) including: recycled glass used in glass beads, plastic, and polymers and epoxies.

Also, since the idea of tracing the origin of potentially a significantly larger universe of items (compared to only iron and steel) is new, we do not yet have significant institutional experience working with businesses in tracing origins for these items. Yet, we are concerned that we might learn, for example, that mill markings (useful for tracing) could be obscured by manufacturing processes that occur later in time.

On the other hand, we believe that AASHTO's product evaluation program includes an evaluation of facilities, including location. This information could be helpful in identifying the place of origin of items.

And, of course, input from manufacturers on this question would be helpful.

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

This question needs input from the industry – contractors, suppliers, and manufacturers.

However, based on some discussions with suppliers and industry, we believe that geotextiles are currently foreign sourced and unlikely to be U.S. sourced in the near term.

AASHTO's comments identify a number of materials where near term availability of Buy America qualifying materials is unlikely, or at best questionable, including zinc for coatings, lithium for batteries, and others. AASHTO also notes that for some products imposing Buy America requirements may not be a sufficient inducement for generation of U.S. sources, because of relatively low volumes.

Northern tier states may be, to some extent, dependent on Canadian sources for some products to avoid the cost increase that may result from obtaining product from U.S. sources that are more distant.

**(14) Which construction materials commonly used in DOT-funded projects currently are produced in the United States in sufficient and reasonably available amount and of satisfactory quality? Please feel free to provide any additional information on how production of these construction materials in the United States supports the regional or local economy or workforce.**

This question needs input from the industry – contractors, suppliers, and manufacturers.

However, we note that there are not only national but regional considerations in addressing these issues. For example, North Dakota accesses considerable lumber from Canada. South Dakota tends to use only U.S. sourced lumber. However, if implementation of Buy America requirements were to mean that North Dakota could not use Canadian lumber in USDOT-funded projects, that could make it harder for South Dakota to access Buy America qualifying lumber for use in USDOT-funded projects.

**(15) Are there construction materials commonly used in DOT-funded projects that are produced in the United States but subject to supply constraints? Please be specific regarding lead times or delays that will be experienced on DOT- funded projects as a result of a specific construction material supply constraint. Is the constraint on domestic supply a recent phenomenon (i.e., beginning in 2020 or later), or is it a longstanding market condition?**

We are experiencing supply constraints for the following materials on DOT-funded projects:

- Fabricated steel members,
- Epoxy/Pavement marking paint resins,
- Cable guardrail,
- Woven wire fence,
- Stainless steel, and
- Wooden fence posts.

The supply constraints experienced with these are a recent phenomenon (within the last few years). For each of these types of materials, the delay can be months to an entire construction season. Supply shortages will vary from region to region and state to state. In addition to the six items listed above, we are also experiencing shortages of light poles and traffic signal poles and equipment. In addition, AASHTO mentioned lumber and rubber shortages in some states.

Further, inflation is impacting the cost of these and other items.

**(16) Are there construction materials commonly used in DOT-funded projects that previously were not produced in the United States but are currently produced in the United States or are in the process of “onshoring” as a result of recent statutory, regulatory, or market changes?**

This question needs input from the industry – contractors, suppliers, and manufacturers.