May 13, 2022

SUBMITTED VIA REGULATIONS.GOV

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

Re: Comments on Notice of Proposed Temporary Waiver of Buy America Requirements for Construction Materials (Docket No.: DOT-OST-2022-0047)

Dear Secretary Trottenberg:

The American Iron and Steel Institute (AISI) is pleased to submit the following comments to the Department of Transportation on the Notice of Proposed Temporary Waiver of Buy America Requirements for Construction Materials (Docket No.: DOT-OST-2022-0047) (“Proposed temporary waiver”).

Background on the American Steel Industry

AISI serves as the voice of the American steel industry in the public policy arena and advances the case for steel in the marketplace as the preferred material of choice. AISI’s membership is comprised of integrated and electric arc furnace steelmakers, and associate members who are suppliers to or customers of the steel industry.

The American steel industry supports nearly two million jobs and contributes $520 billion to the economy. The industry is essential to our national and economic security and our critical infrastructure. Further, the domestic industry is the cleanest and most energy efficient of the leading steel industries in the world.

---

Industry Support for the Bipartisan Infrastructure Law

AISI and its member companies were strong supporters of the Infrastructure Investment and Jobs Act (IIJA), which was signed into law as the Bipartisan Infrastructure Law (BIL) in November 2021. Importantly for our industry, the bill authorized funding for about $850 billion in steel-containing infrastructure investment, including the existing Highway Trust Fund and new, additional funding for steel-containing projects for drinking water and wastewater, the electricity grid, and electric vehicle charging infrastructure. Additionally, key aspects of the law will expand and strengthen the requirements that federal agencies ensure that all iron and steel products purchased with taxpayer funds under those programs are made in America. AISI supports the efforts taken by the Biden-Harris administration and various federal agencies that have worked to implement the Bipartisan Infrastructure Law that will benefit the state of American infrastructure as well as the domestic steel industry.

AISI Comments on Proposed Temporary Waiver for Construction Materials

AISI and its member companies in the American steel industry have long taken the position that all iron and steel items procured by federal agencies with taxpayer dollars should be produced in the United States. Specifically, domestic preference provisions should require that all manufacturing processes for iron and steel occur in the United States, consistent with the longstanding application of the Buy America and Buy American statutory requirements for federal procurement. Doing so not only benefits the critical domestic industry, but also the global environment, given that the steel industry in the United States leads the world in clean steel production.

As such, AISI supports the actions taken by federal agencies to implement the key domestic iron and steel public procurement components of the infrastructure law. One of the key aspects of the infrastructure law is the requirement in Section 70914(a) that no later than May 14, 2022, each covered Federal agency must ensure that, “none of the funds made available for a Federal financial assistance program for infrastructure … may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.” For this obligation, the Department of Transportation (DOT) correctly notes on page 3 of the proposed temporary waiver that, under the infrastructure law, the Buy America programs administered by the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA) and other DOT agencies (e.g. the Federal Railroad Administration, the Federal Aviation Administration) contain existing iron and steel procurement preferences that must remain in effect.
AISI strongly urges the DOT to ensure that the robust domestic preference requirements for iron and steel that it has applied for decades remain in force. In particular, Section 70917(a) of the law provides that this “part shall apply to a Federal financial assistance program for infrastructure only to the extent that a domestic content procurement preference as described in section 70917 does not already apply to iron, steel, manufactured products, and construction materials.” (emphasis added). In other words, consistent with the law, DOT should maintain, if not strengthen, existing Buy America requirements for iron and steel to ensure that “all iron and steel” used in federal infrastructure projects are domestically produced. For instance, FHWA should continue applying its domestic preference requirements to all iron and steel components and subcomponents of manufactured products, as it has done for decades. This standard should be maintained by FHWA and adopted by other agencies within DOT, including FTA and FRA. Both FTA and FRA currently exempt iron and steel “subcomponents” of manufactured products from Buy America rules (covering only the “end product” and “components”). Consistent with the IIJA, DOT should close this Buy America loophole for subcomponents and ensure that all iron and steel components and subcomponents are covered by robust Buy America requirements.

Lastly, as the DOT considers public comments and options for the proposed temporary waiver for compliance with the new Buy America standards for construction materials for 180 days from May 14, 2022, AISI wishes to emphasize that all items made primarily of iron or steel are explicitly excluded from this guidance and temporary waiver. On page 4, the proposal properly states that items made primarily of iron and

---

2 AISI notes with concern DOT’s interpretation of this provision as “allow[ing] Federal agencies to preserve existing Buy America policies and provisions that meet or exceed the standards required by the Act.” (emphasis added). The waiver notice’s use of the term “allows” is inconsistent with the IIJA’s clear mandate that DOT continue to apply these existing requirements. Accordingly, AISI respectfully requests that DOT clarify this inconsistency in subsequent guidance and make clear that the agency will continue to apply its existing Buy America requirements to iron and steel.

3 In a December 1997 memorandum, FHWA clarified that “[w]hile FHWA does not apply Buy America requirements to ‘manufactured products,’ we do apply the requirements to specific components within those products.” See Memorandum from Donald P. Steinke, Chief, Highway Operations Division, FHWA, to Mr. Edward V.A. Kussy, Acting Chief Counsel, FHWA, through Mr. Wilbert Baccus, Deputy Associate Counsel, Program Legal Services Division, FHWA, re: Buy America Policy Response (Dec. 22, 1997). The agency has also stated that “Buy America requirements apply to any steel or iron component of a manufactured product regardless of the overall composition of the manufactured product.” FHWA’s Buy America Q and A for Federal-aid Program, Q&A No. 8, http://www.fhwa.dot.gov/construction/contracts/buyam_qa.cfm.

4 As a result, for example, foreign rebar that is used in certain concrete material (e.g., concrete guideway parapets and concrete drainage pipes), has been deemed compliant with FTA’s Buy America requirements.
steel are expressly excluded from the definition of construction materials, which are instead defined as being made primarily of such materials as non-ferrous metals, plastic or polymer products, glass, lumber, or drywall.

Summary

Again, AISI appreciates the opportunity to provide comments on this proposed temporary waiver regarding the Buy America requirements for construction materials under the Bipartisan Infrastructure Law. As stated above, the DOT has correctly reiterated that existing iron and steel procurement preferences remain in effect without change as the infrastructure law is implemented and as the proposed waiver is in effect. It is similarly important that DOT states that items made primarily of iron or steel are excluded from this guidance and temporary waiver, and reaffirms, consistent with the IIJA, that all iron and steel used in federally funded infrastructure projects, including iron and steel used as components/subcomponents of manufactured and other products, be domestically produced. AISI remains committed to working with DOT to successfully implement the Bipartisan Infrastructure Law for the benefit of our national infrastructure systems.

Sincerely,

Kevin M. Dempsey
President and Chief Executive Officer