



May 20, 2022

Celeste Drake  
Director, Made in America Office  
Office of Management and Budget  
725 17th Street NW  
Washington, DC 20503

RE: Request for Information: Application of domestic preference requirements to infrastructure projects.

Dear Director Drake,

On behalf of the asphalt pavement industry, we submit the following information in response to the Office of Management and Budget's (OMB) Request for Information (RFI) on the application of Build America, Buy America Act published in the Federal Register on April 21, 2022.

***In summary, the asphalt pavement industry requests OMB issue clear, cogent guidelines that pursuant to Section 70917 of Public Law 117-58, the Investment in Infrastructure and Jobs Act (IIJA), asphalt cement binder and additives used to bind aggregate (stone, sand, or gravel) are statutorily exempt from the domestic content requirements contained in the Build America, Buy America Act.***

The Infrastructure Investment and Jobs Act (IIJA) requires the application of domestic preference requirements to infrastructure projects funded by Federal financial assistance or direct Federal procurement contracts. IIJA also includes the following Build America, Buy America Act exemption:

**SEC. 70917. APPLICATION.**

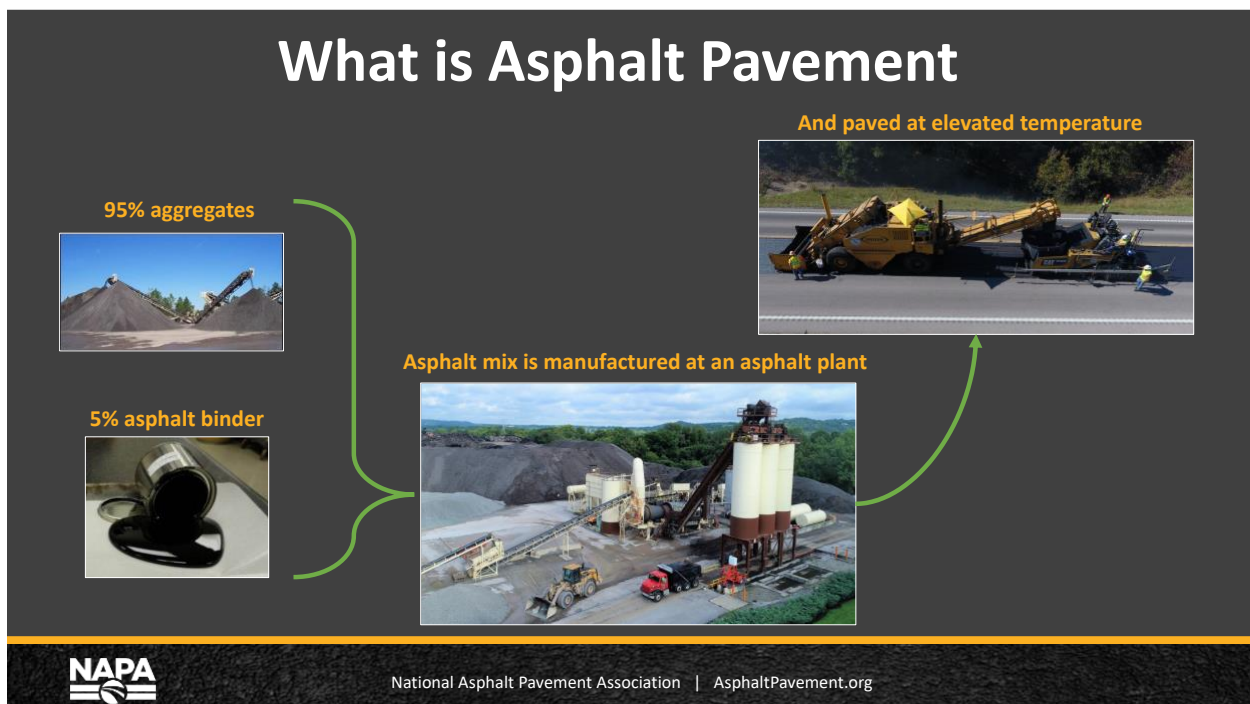
(c) LIMITATION WITH RESPECT TO AGGREGATES.—In this part—

(1) the term “construction materials” shall not include cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives; and

(2) the standards developed under section 70915(b)(1) shall not include cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives as inputs of the construction material.

The federal government, and state and local highway agencies procure asphalt mixtures to maintain, preserve, rehabilitate, reconstruct, and construct highways and roads throughout the United States. Asphalt mixtures are a combination of two primary inputs: approximately 95 percent aggregate (stone, sand, or gravel) bound together by approximately 5 percent asphalt cement binder. Asphalt mixtures are produced in the United States at a manufacturing facility known as an asphalt plant, where the aggregates and asphalt cement binder are heated, mixed according to precise engineering formulas to meet specification requirements, and loaded into trucks for transport to the paving site for installation.

The illustration below shows how asphalt concrete mixtures are manufactured using two of the three inputs: aggregates and asphalt cement binder, and then installed at the paving site.



Asphalt cement binder is a cementitious material. Asphalt cement binder is a binding agent that has proven to be readily adhesive, waterproof, and durable. In the United States, “asphalt cement” is often called “asphalt binder.” The asphalt cement binder is, as the name implies, the cement that holds the aggregate together. The process of mixing an asphalt cement binder with aggregate to produce an asphalt mixture (aka, asphalt concrete) has been in use for well over 100 years. A Google search will show that “asphalt cement” is frequently used in Federal, state, and local specification documentation. **Thus, asphalt cement binder is a “cementitious material” and is exempt from the Build America, Buy America Act.**

A third material input to asphalt cement mixtures is additives. Additives are any non-aggregate or non-asphalt cement binder material that is added (1) at the plant directly to the asphalt mixture during production, or (2) added to the asphalt cement binder prior to delivery to the asphalt plant.

Director Celeste Drake  
May 20, 2022  
Page 3

Additives are specified by transportation agencies and are used to improve the physical and chemical properties of asphalt cement binders and mixtures. Typically, additives include polymers, chemicals, and organic chemicals; however, it is important to understand that future technological advances of asphalt pavements may rely on additives currently not in use today to meet performance or sustainability requirements. Enclosure 1 includes a current list of additives commonly used today.

Asphalt additives are specified by federal, state, and local agencies to improve the physical and chemical properties of asphalt binders and mixtures. Additives can include polymers, chemicals, and organic materials. **Based on their use in the production of asphalt mixtures, additives are exempt from the Build America, Buy America Act.**

In closing, we urge OMB to issue clear, unambiguous guidance on the statutory exemption for asphalt cement binder and additives to eliminate any confusion that may lead to unintended supply chain disruptions during the implementation phase of IIJA.

We are available at any time to answer your questions or provide additional information. Thank you for your consideration of our comments on the Build America, Buy America Act.

Sincerely,



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Asphalt Institute



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National Asphalt Pavement Association



Rick Church  
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FP<sup>2</sup> Inc.



Ali Mostardo  
Executive Director  
Association of Modified Asphalt Producers



Kevin Monaco  
Chair  
State Asphalt Pavement Associations\*

**\*State Asphalt Pavement Associations**

Alabama Asphalt Pavement Association  
Arkansas Asphalt Pavement Association  
California Asphalt Pavement Association  
California Construction and Industrial Materials Association  
Colorado Asphalt Pavement Association  
Connecticut Asphalt & Aggregate Producers Association  
Dakota Asphalt Pavement Association  
Delaware Asphalt Pavement Association  
Asphalt Contractors Association of Florida  
Georgia Asphalt Pavement Association  
Hawaii Asphalt Paving Industry  
Illinois Asphalt Pavement Association  
Asphalt Pavement Association of Indiana  
Asphalt Paving Association of Iowa  
Kansas Asphalt Pavement Association  
The Plantmix Asphalt Industry of Kentucky  
Louisiana Asphalt Pavement Association  
Maine Asphalt Pavement Association  
The Maryland Asphalt Association  
Massachusetts Aggregate & Asphalt Pavement Association  
Asphalt Pavement Association of Michigan  
Minnesota Asphalt Pavement Association  
Mississippi Asphalt Pavement Association  
Missouri Asphalt Pavement Association  
New Jersey Asphalt Pavement Association  
Asphalt Pavement Association of New Mexico  
New York Construction Materials Association  
Carolina Asphalt Pavement Association  
Flexible Pavements of Ohio  
Oklahoma Asphalt Pavement Association  
Asphalt Pavement Association of Oregon  
Pennsylvania Asphalt Pavement Association  
South Carolina Asphalt Pavement Association  
Tennessee Road Builders Association  
Texas Asphalt Pavement Association  
Utah Asphalt Pavement Association  
Virginia Asphalt Association  
Washington Asphalt Pavement Association  
Asphalt Pavement Association of West Virginia  
Wisconsin Asphalt Pavement Association

## Enclosure 1

Additives used in asphalt cement binders and asphalt mixes, as specified by state and local transportation agencies, currently in use today and subject to change as technology evolves leading to better performing asphalt pavements.

<b>Antistrip Agents</b>	Hydrated lime	Ethylene-vinyl acetate (EVA) polymer	
	Quick Lime		
	Fatty amine derivative		
	Surfactants		
	Organo-silanes		
	Polyamines		
<b>Binder Modifiers, Elastomers</b>	Biopolymers	<b>Binder Modifiers, Recycling Agents</b>	
	Ground tire rubber		
	Natural rubber (polyisoprene)		
	Polychloroprene latex		
	Acrylic polymers and acrylate polymers	<b>Fibers, natural</b>	
	Polyvinyl alcohol		
	Reactive Ethylene Terpolymers		
	Styrene-butadiene-rubber (SBR)		
<b>Binder Modifiers, Extenders</b>	Styrene-butadiene-styrene (SBS) and other elastomeric terpolymers, such as but not limited to SEBS and SIS, with and without crosslinking	<b>Fibers, synthetic</b>	
	Plant based oils and derivatives		
	Lignin and Lignin derivatives		
	Petroleum based modifiers		
	Re-refined engine oil bottom (REOB), aka vacuum tower asphalt extender (VTAE)	<b>Mineral fillers</b>	
Sulfur			
<b>Binder Modifiers, Natural Asphalt</b>	Gilsonite		
	Trinidad Lake Asphalt		
<b>Binder Modifiers, Other</b>	Biochar		<b>Pigments</b>
	Polyphosphoric acid (PPA)		
<b>Binder Modifiers, Plastics</b>	Ethylene acrylate copolymer	<b>Recycled Plastic</b>	
	Ethylene propylene copolymers (EPM)		
	Ethylene propylene diene (EPDM) polymer	<b>Warm Mix Additives, Chemical</b>	
<b>Binder Modifiers, Other</b>	Natural and synthetic Zeolites (hydrated aluminosilicates)		
			<b>Warm Mix Additives, Waxes</b>
		<b>Warm Mix Additives, Other</b>	